

NOTICE OF CONTESTED CASE

In the Matter of the Application for a Site Certificate for the South Dunes Power Plant

Pursuant to Oregon Revised Statute (ORS) 469.370(4) and Oregon Administrative Rule (OAR) 345-015-0014(2), the Oregon Department of Energy (the department) issues this Notice of Contested Case on the Application for Site Certificate for the proposed South Dunes Power Plant.

On October 12, 2015 the department issued a Proposed Order in the Matter of the Application for a Site Certificate for the proposed South Dunes Power Plant, as required by ORS 469.370(4) and OAR 345-015-0230(2). The Proposed Order recommends that the Oregon Energy Facility Siting Council (Council) grant the site certificate for the facility subject to the recommended conditions. The Proposed Order is available on the ODOE website (<http://www.oregon.gov/energy/Siting/Pages/SDP.aspx>). Revisions to the Proposed Order from the Draft Proposed Order are described below. Additionally, a list of the statutes and rules applicable to the Proposed Order is attached to this notice as Attachment A.

Pursuant to ORS 469.370(5), following issuance of the Proposed Order, the Council must conduct a contested case proceeding on the Application for Site Certificate. Persons eligible to request party or limited party status in the contested case proceeding may petition for party status by submitting a written request to the Hearing Officer. **The Hearing Officer must receive the request by 5:00 p.m. on November 11, 2015.** If the Hearing Officer does not receive the written request within the time stated, the requesting persons will have waived any right to participate in the contested case. The requirements for eligibility and the contents of a petition for party status are discussed in detail below.

Persons Eligible to Request Party Status or Limited Party Status

Individuals and organizations have the right to request party or limited party status in the contested case proceeding if they raised an issue that may be the basis for a contested case either at the public hearing on the Draft Proposed Order held on June 25, 2015 or through written comment on the Draft Proposed Order submitted between May 27, 2015 and June 25, 2015. Party status or limited party status in the contested case proceeding may be requested as provided in ORS 469.370(5) and OAR 345-015-0016(3).

OAR 345-015-0016(3) provides that:

- Only those persons who have commented in person or in writing on the record of the public hearing described in OAR 345-015-0220 may request to participate as a party or limited party in a contested case proceeding on an application for a site certificate.
- To raise an issue in a contested case proceeding, the issue must be within the jurisdiction of the Council, and the person must have raised the issue in person or in writing on the record of the public hearing, unless the Department of Energy did not follow the requirements of ORS 469.370(2) or (3) or unless the action recommended in the proposed order described in OAR 345-015-0230, including any recommended conditions of approval, differs materially from the action recommended in the Draft Proposed Order, in which case the person may raise only new issues within the jurisdiction of the Council that are related to such differences.

- If a person has not raised an issue at the public hearing with sufficient specificity to afford the decision maker an opportunity to respond to the issue, the Hearing Officer shall not consider the issue in the contested case proceeding. To have raised an issue with sufficient specificity, the person must have presented facts at the public hearing that support the person's position on the issue.

The applicant, Jordan Cove Energy Project, L.P., is a party to the contested case pursuant to ORS 469.370(5), and, therefore, is not required to petition for party status. The applicant must, however, submit to the Hearing Officer the list of issues the applicant wishes to raise in the contested case by the deadline for requesting party status.

The department will participate in the contested case with all of the rights of a party pursuant to OAR 345-015-0080(2).

Submittal Requirements-Petition to Request for Party or Limited Party Status

Persons eligible to request party or limited party status in the contested case proceeding must submit a written petition to the Hearing Officer. The Hearing Officer must receive the petition by 5:00 p.m. on November 11, 2015. Two copies of the petition for party status must be submitted by first class or certified mail to the Hearing Officer no later than November 11, 2015. Petitions may be submitted by fax before the 5:00 p.m. deadline; however, the fax must be followed by mailing the petition. The Hearing Officer for the proposed South Dunes Power Plant is:

- David Petersen
Tonkon Torp LLP
1600 Pioneer Tower
888 SW Fifth Avenue
Portland, OR 97204
Fax: 503-274-8779

Additionally, please submit one copy of the petition to the Department's Energy Siting Analyst:

- Andrea Goodwin, Siting Analyst
Oregon Department of Energy
625 Marion Street NE
Salem, OR 97301
Fax: 503-373-7806

If the Hearing Officer does not receive the petition by 5:00 pm on November 11, 2015, the requesting person(s) will have waived any right to participate in the contested case. The petition must contain all of the information described below.

Contents of a Petition for Party or Limited Party Status

A petition for party or limited party status must comply with the requirements of OAR 137-003-0005(3) and OAR 345-015-0016(5), and must include:

- (a) A short and plain statement of the issue or issues the person desires to raise in the contested case proceeding.

- (b) A reference to the person's comments on the Draft Proposed Order at the public hearing or in writing, showing that the person raised the issue or issues before the close of the public hearing record.
- (c) A detailed description of the person's interest in the proceeding and how that interest may be affected by the outcome of the proceeding.
- (d) Names and addresses of the petitioner and of any organization the petitioner represents;
- (e) Name and address of the petitioner's attorney, if any;
- (f) A statement of whether the request is for participation as a party or a limited party, and if as a limited party, the precise area or areas in which participation is sought;
- (g) If the petitioner seeks to protect a personal interest in the outcome of the proceeding, a detailed statement of the petitioner's interest, economic or otherwise, and how such interest may be affected by the results of the proceeding;
- (h) If the petitioner seeks to represent a public interest in the results of the proceeding, a detailed statement of such public interest, the manner in which such public interest will be affected by the results of the proceeding, and the petitioner's qualifications to represent such public interest; and
- (i) A statement of the reasons why existing parties to the proceeding cannot adequately represent the interest identified in subsection (3)(d) or (e) of OAR 137-003-0005(3).

Response to Petitions

Within 48 hours of the deadline for requesting party status, the Hearing Officer must issue a Notice of Requests for Party Status. The Notice shall include an explanation of the requirements for party status, the Hearing Officer's responsibilities in evaluating requests for party status, a complete service list, and notice of the seven day right for all potential parties to respond to the requests for party status under OAR 137-003-0005(4).

Default

In accordance with ORS 469.370(6), if no one requests party status, the Proposed Order shall be forwarded to the Siting Council and the contested case hearing shall be concluded. If a person submits a request for party status and fails to appear at the pre-hearing conference, the Siting Council may issue a final order adverse to that person upon making the determinations required by ORS 469.503.

Pre-hearing Conference

For those who petition for party status, a pre-hearing conference will be conducted by telephone on November 24, 2015 beginning at 2:00 p.m. Petitioning parties wishing to participate may call 1-877-873-8017 and use participant code 799345.

Failure to raise an issue in the pre-hearing conference constitutes waiver of that issue in the contested case as provided in OAR 345-015-0083. Following the pre-hearing conference, the Hearing Officer will issue an Order on Requests for Party Status, followed by a Pre-hearing Order to all those granted party status. The Pre-hearing Order will establish the schedule for the contested case hearing.

Consideration of Submitted Petitions

The Hearing Officer will consider petitions for party status and issue an order granting or denying party status based on the above requirements and on the following factors, as required by OAR 137-003-0005(7):

- (a) Whether the petitioner has demonstrated a personal or public interest that could reasonably be affected by the outcome of the proceeding;
- (b) Whether any such affected interest is within the scope of the agency's jurisdiction and within the scope of the notice of contested case hearing;
- (c) When a public interest is alleged, the qualifications of the petitioner to represent that interest;
- (d) The extent to which the petitioner's interest will be represented by existing parties.

Contested Case Hearing

The contested case will commence with the filing of sworn, written direct testimony. Unless rescheduled by the Hearing Officer through the pre-hearing order, the contested case hearing will begin with the filing of sworn, written direct testimony on January 11, 2015. The remainder of the hearing schedule will be determined by the Hearing Officer and will likely include submission of written rebuttal testimony and in-person cross-examination before the Hearing Officer.

Representation by Counsel

Parties may be represented by counsel. Legal aid organizations may be able to assist parties with limited financial resources.

Revisions to the Draft Proposed Order

The Proposed Order primarily includes revisions to reflect the procedural history of the public hearing on the Draft Proposed Order and to respond to issues raised in comments received on the record of the public hearing. The Proposed Order does not differ materially from the Draft Proposed Order.



Todd R. Cornett, Administrator
Energy Siting Division
Oregon Department of Energy

October 12, 2015

Attachment A: LIST OF STATUTES AND RULES PURSUANT TO ORS 183.415

OREGON ENERGY FACILITY SITING

Statutes

ORS Chapter 469
ORS 469.300 to ORS 469.570
ORS 469.590 to ORS 469.619

Administrative Rules

OAR Chapter 345, Division 1	OAR 345-022-0040	OAR Chapter 345, Division 27
OAR 345-001-0010	OAR 345-022-0050	OAR 345-027-0020
OAR Chapter 345, Division 22	OAR 345-022-0060	OAR 345-027-0023
OAR 345-022-0000	OAR 345-022-0070	OAR 345-027-0028
OAR 345-022-0010	OAR 345-022-0080	OAR 345-022-0120
OAR 345-022-0020	OAR 345-022-0090	OAR Chapter 345, Division 24
OAR 345-022-0022	OAR 345-022-0100	OAR 345-024-0090
OAR 345-022-0030	OAR 345-022-0110	OAR 345-024-0550 to 0720

LAND USE

Coos County

Chapter III §§ 3.1.300; 3.1.200 3.1.500; 3.2.150; 3.2.700; 3.3.400; 3.3.500
Chapter IV §§ 4.2.100; 4.2.600, Table 4.2e; 4.6.205; 4.6.225; 4.6.230;
4.6.235; 4.6.300; 4.6.345; 4.7.105; 4.7.115; Table 4.7a(3), (4)(a), (7);
Chapter V, Article 4.4, Table 4.4-c; Chapter VII, § 7.5, 7.1.550, Section 6
and 13; Chapter IV; § 4.5, Zoning District 6-WD, §§ 4.5.276; ; Zoning
District 6-DA, §§ 4.5.281(A)(4), 4.5.281(B)(2)(a) and (b), 4.5.281(B)(4),
4.5.281(B)(7); Zoning District 7-D, §§ 4.5.286(A)(7), 4.5.283(B)(5); Zoning
District 8-WD, §§ 4.5.371(A)(7)

Statewide Land Use Goals

OAR 660-015-0000 (1)–(14)

OREGON DEPARTMENT OF FISH AND WILDLIFE (Fish and Wildlife Habitat Standard, Threatened and Endangered Species Standard)

Statutes

ORS Chapters 496 and 506

Administrative Rules

OAR Chapter 635, Division 100	OAR 635-415-0010
	OAR 635-415-0015
OAR Chapter 635, Division 415	OAR 635-415-0020
OAR 635-415-0000	OAR 635-415-0025
OAR 635-415-0005	

OREGON DEPARTMENT OF AGRICULTURE (Threatened and Endangered Species Standard)

Statutes

ORS Chapter 564

Administrative Rules

OAR Chapter 603, Division 73

OREGON PARKS AND RECREATION DEPARTMENT (Scenic Resources, Cultural Resources, Recreation)

Statutes

ORS Sections 97.740–97.760
ORS Sections 358.905-358.955
ORS Section 390.235

Administrative Rules

OAR 736, Division 51

ORS 390.010

OREGON DEPARTMENT OF STATE LANDS (Removal/Fill Permit)

Statutes

ORS 196.795 to ORS 196.990, ORS
Chapter 274

Administrative Rules

OAR Chapter 141, Division 85
OAR 141-085-0500 through -
0785

OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY

Statutes

ORS Chapter 468A
ORS Chapter 465 and 466
ORS Chapter 459

Administrative Rules

OAR Chapter 340 Division 14 OAR Chapter 340, Division 41
OAR Chapter 340, Division 35 OAR Chapter 340, Division 45
OAR 340-035-0015 OAR Chapter 340, Division 55
OAR 340-035-0035 OAR Chapter 340, Division 93

OAR Chapter 340, Division 40 OAR Chapter 340, Divisions 216,
OAR 340-040-0020 218 and 224
OAR 340-040-0030

OAR Chapter 340, Division
100—113

OREGON WATER RESOURCES DEPARTMENT (Water Use)

Statutes

ORS Chapter 537 and 540

Administrative Rules

OAR Chapter 690

OREGON PUBLIC UTILITY COMMISSION

Statutes

ORS 757.035

Administrative Rules

OAR Chapter 860, Division 24

OREGON DEPARTMENT OF AVIATION

Statutes

ORS 836.530
ORS 836.600 through 836.630

Administrative Rules

OAR Chapter 738, Division 70

OREGON DEPARTMENT OF TRANSPORTATION

Administrative Rules

OAR Chapter 734, Division 51 and 55

OREGON DEPARTMENT OF GEOLOGY AND MINERAL INDUSTRIES

Administrative Rules

OAR Chapter 632, Division 15