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To: Energy Facility Siting Council

From: Thomas Jackman, Rules Coordinator

Date: November 6, 2026

Subject: Agenda Item D1 (Information Item): Organizational Expertise Rulemaking for the November 19-20, 2026 EFSC Meeting

Attachments: Attachment 1: RAC Feedback

STAFF RECOMMENDATION

Staff requests direction on which, if any, additional information requirements would make the organizational expertise standard more useful to the Council's approval decision. For each of the six areas below, staff explains why more information might help and where applicants are likely to object. Any new requirement should address a clear gap in what the Council needs to know.

This meeting is for policy direction. The Council is not being asked to approve rule language or authorize a Notice of Proposed Rulemaking. Retirement and financial assurance are addressed in a separate report.

BACKGROUND

The organizational expertise standard, OAR 345-022-0010, asks whether an applicant can design, construct, operate, and retire a facility in compliance with Council requirements, protect public health and safety, and restore the site to a useful, non-hazardous condition. The rule addresses experience, personnel and contractor qualifications, past performance, reliance on third-party permits, and applicant information.

On July 18, 2025, the Council authorized informal rulemaking and a combined RAC for organizational expertise and retirement and financial assurance. The Council kept the standards separate. The RAC then met on December 15, 2025, March 4, 2026, and August 27, 2026.

What the current rule requires

A site certificate is the Council's approval for an energy facility. Before issuing one, the Council must determine that the applicant can design, build, operate, and retire the facility in compliance with Council requirements. The applicant must also be able to protect public health and safety and restore the site to a useful, non-hazardous condition. This is the organizational expertise standard in OAR 345-022-0010.

The rule considers experience, staff and contractor qualifications, past performance, and certain permits held by others. The applicant may rely on a parent company, a related company, or a contractor for expertise. The central question is whether that expertise will actually be available to the project. For example, a parent company's operating experience may be relevant, but common ownership alone does not explain how its people or resources will support the applicant.

Why staff seeks direction
Council members have found this standard difficult to evaluate with the current information requirements. Staff is prepared to develop stronger requirements where additional evidence would help the Council decide whether an applicant can carry out its responsibilities. That benefit should be clear enough to justify the added work for applicants and reviewers.

Six Areas for Council Direction
For each area, the Council can ask staff to pursue the additional information, develop a narrower requirement, or keep the current approach. Members can select individual parts of an option. Keeping the current approach would leave the applicant's existing duty to meet the standard in place.

Staff expects applicants to oppose tougher requirements, including limited additions. State efforts to reduce siting burdens make a clear justification especially important. For any area worth pursuing, staff seeks direction on what the Council needs to know that current submissions do not adequately explain.

What the advisory committee has said
When considering the six areas discussed below, keep in mind the following RAC member positions:

- **Evidence of available support.** Chair Condon sought meaningful evidence that applicants could use the expertise and resources they relied on. Applicants would still be able to rely on outside expertise.
- **Project timing and private agreements.** David Lawlor (NextEra) and the industry organizations Oregon Solar + Storage Industry Association (OSSIA) and Renewable Northwest raised concerns about confidential business terms, review burden, and arrangements not finalized until after permitting.
- **Fair use of compliance history.** OSSIA and Renewable Northwest cautioned that citation totals for background review could disadvantage experienced operators and obscure minor problems corrected promptly.
- **Clear expectations.** Council member Beier supported a checklist or template and sought a clearer explanation of company structures and project development timing.

Issue 1 - Who controls the applicant

What applicants provide now. Applicants provide documents about their legal structure and authority to apply, and identify participants and owners as required for their type of organization. The rule does not require the same ownership and control chart from every applicant.

What more could be required. A chart showing the ownership chain up to the people or company ultimately in control, with an explanation of who can manage the applicant, enter support agreements, and direct certificate compliance.

Why it might help. This could help the Council understand who makes decisions and can commit support to the project. It would not make every owner responsible for the certificate.

Likely applicant objections. Complex structures take time to document and review. Full company agreements may contain unrelated business terms. Excerpts, formal authorizations, or public registration records may be sufficient, making this requirement potentially unnecessarily burdensome.

Council choice:

1) Require a complete ownership chart and explanation of controlling interests from all applicants;
2) Clarify current disclosures about participants and control by other companies and seek supporting records only where needed; and/or
3) Keep the current requirements.

Issue 2 - Whether outside expertise will be available

What applicants provide now. Qualifications of staff and outside providers. The Council may consider whether the applicant has access to technical expertise, but the rule does not prescribe the additional evidence described below.

What more could be required. For each part of the work, such as design or operation, identify who will do it, how the applicant will oversee it, and evidence that the necessary support will be available. This could include how long support will last and significant limits on ending it.

Why it might help. A qualified provider does not by itself show that the applicant can make use of its people or resources. A commitment from someone authorized to provide support, or selected agreement terms, could establish that connection.

Likely applicant objections. Applicants may finalize service contracts and funding only for projects that move forward. Requiring final contracts or a separate financing review during the application could be premature and costly.

Council choice:

1) Require this evidence for each part of the work;
2) Limit it to a short oversight description and evidence of important outside support, accepting existing records when sufficient; or
3) Keep the current approach.

Issue 3 - What past projects show about capability

What applicants provide now. The applicant's experience with similar facilities and the qualifications of known staff and providers.

What more could be required. Specify project types for which applicants and key providers must describe their roles, amount of work, dates, and results. Staff has also considered a list and review of known failures to complete similar construction, operation, or retirement responsibilities within the past five years.

Why it might help. This would distinguish experience developing a project from experience building or operating it. Uncompleted work could also warrant explanation.

Likely applicant objections. A separate history requires research, and projects may be canceled or transferred for business reasons unrelated to expertise. New project companies may rely on experienced people without having their own project history. Comparable equipment or process experience may also be relevant.

Council choice:

1) Develop the fuller project history and review of uncompleted work;
2) Request only representative projects, roles, and results in a short narrative or table; or
3) Keep current requirements.

Issue 4 - What the compliance record shows

What applicants provide now. The applicant's past performance, including how often regulators have cited it for violations involving similar facilities, equipment, or processes, and how serious those violations were.

What more could be required. Relevant serious or recurring problems involving the applicant and outside providers, including unresolved regulatory cases that meet defined criteria and older unresolved obligations. A broader requirement would specify the period normally covered.

Why it might help. This could reveal recurring management problems, lost permits, or unresolved restoration duties that bear on the project.

Likely applicant objections. Companies with many facilities have more records to search and may have more citations because they have more operations. Pending allegations must be distinguished from violations established by final decisions. Responsibility, severity, recurrence, corrective action, and the scale of operations all matter.

Council choice:

1) Develop the broader history;
2) Keep current applicant disclosures and add only known, relevant final regulatory decisions involving providers, with responsibility and corrective action explained; or
3) Keep current requirements.

Issue 5 - Expertise hired later and changes after approval

What applicants provide now. Some staff and contractors may be unknown during review. In specified circumstances, the rule allows other evidence, including a promise to obtain expertise by contract.

What more could be required. A documented hiring or contracting plan with qualifications and timing, proof that needed expertise is in place before the affected work, and notice of significant changes. One working draft uses a five-business-day notice deadline and approval of significant replacement arrangements under clear criteria.

Why it might help. This would make the later check explicit and help track continued capability. The Council would still need enough evidence at approval; expertise needed to prepare the application could not be postponed.

Likely applicant objections. Applicants finalize contracts as projects advance and need to make routine staffing changes. Broad notice and approval duties could delay those decisions.

Council choice:

1) Develop the full plan, verification, notice, and replacement approval requirements;
2) Limit changes to verification of identified missing expertise and prompt notice of changes that could significantly impair compliance; or
3) Keep current requirements.

Issue 6 - Permits held by others and access to their services

What applicants provide now. Information about state or local permits held by others when the project depends on their resource or service. The Council must find that the needed permit and access are likely to be available. If a necessary permit is outstanding at approval, the certificate must restrict affected construction or operation until that requirement is met.

What more could be required. Clearer permit status, access duration and limits, and whether the proposed use requires a permit change. Require proof that access has been secured before the affected activity, even if the permit already exists. A broader approach would add continuing review of significant changes.

Why it might help. This could show whether the resource or service will be available when the project needs it, not just that the resource is theoretically available.

Likely applicant objections. Information may already be elsewhere in the application. Requiring it twice or reviewing minor permit changes adds work, even where cross referencing is an option.

Council choice.

1) Develop the full information, verification, and continuing review requirements;
2) Focus on permit status, access terms, and a check before the activity, using references to existing information; or

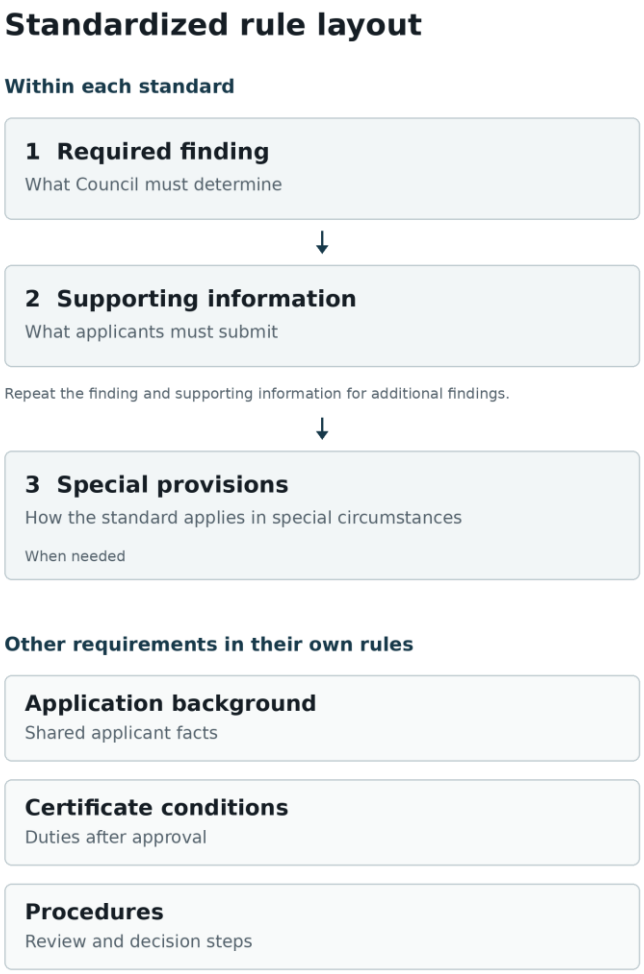
3) Keep current requirements.

A clearer way to organize the rules

The Council can also direct staff to reorganize the rules so readers can distinguish the decision required for approval, the information supporting that decision, and duties that apply afterward. The proposed pattern is:

What the reader needs to know	Where it would go
The decision required for approval	Begin OAR 345-022-0010 with the capability the Council must establish before issuing a certificate.
Information supporting that decision	Place the organizational expertise information immediately after the required conclusion.
Special situations	Follow with sections explaining expertise obtained later, permits and access, and which outside providers the rule covers.
Common applicant information	Put identity, contacts, legal existence, authority to apply, and the permit list in the Background Information Exhibit, a section of the application.
Duties after approval	Put continuing capability, later verification, significant changes, and loss of expertise in the mandatory conditions rule. These are requirements included in site certificates.

This pattern could be adapted to other standards, with review procedures in the appropriate rule divisions. The Council can support the layout while keeping every current requirement. Staff would provide a comparison showing which provisions are kept, moved, clarified, added, or removed, and show policy changes separately.



Council direction and next steps

For each of the six areas, staff asks the Council to identify whether additional evidence would help it evaluate an applicant, what that evidence should establish, and whether a broader or limited requirement is justified. The Council may keep current requirements in any area. Staff also seeks direction on the proposed organization, including the option to reorganize without changing the requirements.

Staff would then prepare draft language and a comparison with the current rules. The draft would distinguish clarifications from new duties, allow specific references to information already submitted, and scale detail to the provider's responsibilities and the facility's size and complexity. It would address relevant history periods and updates during review, and explain available procedures for protecting records without promising confidentiality beyond the law. Staff would also explain how changes would apply to matters already under review and existing certificates, and obtain legal review of the Council's authority, which decisions staff may make, protected records, and any changes affecting certificate transfers. Staff would return to the RAC, report its feedback and remaining disagreements, and bring a proposal to the Council for later action.