

A PUBLIC GUIDE TO ENERGY FACILITY SITING IN OREGON



By the
OREGON
DEPARTMENT OF
ENERGY

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OREGON
DEPARTMENT OF
ENERGY

Welcome to the Oregonians' Guide to Siting and Oversight of Energy Facilities

Introduction

What is Siting?

Siting means choosing where to put something, like a building or a project. It involves picking the best spot, going through the applicable review process and getting the needed permissions and rights for construction. This process ensures that the chosen location is suitable for the intended use and considers factors like environmental impact, accessibility, and regulatory compliance.

Siting of Energy in Oregon

Reviewing and potentially siting energy facilities in Oregon is a thorough and sometimes lengthy process. The Oregon Department of Energy developed this guide to help Oregonians better understand the energy facility siting process, and the roles and responsibilities of the Energy Facility Siting Council and Oregon Department of Energy staff. Just as importantly, this guide is intended to help Oregonians effectively participate in the state siting process, and to understand their roles in offering public input on proposed facilities or proposed amendments to existing facilities.

This guide is for reference and informational purposes only. It is not exhaustive, nor is it intended to provide legal advice. Any perceived or actual conflict between the language of this document and Oregon Revised Statutes or Oregon Administrative Rules will be resolved by reference to those applicable ORS and OARs.

Suggestions for how we can improve this guide can be submitted to energy.siting@energy.oregon.gov.

Staying in Touch

As you have questions, or for more information, please reach out to us at:

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Introduction to the Energy Facility Siting Council

In 1975, the Oregon Legislature passed legislation creating the Energy Facility Siting Council (EFSC or the Council) and the Oregon Department of Energy. Today, ODOE pursues its mission to lead Oregon to a safe, equitable, clean, and sustainable future – a mandate that includes providing staff and resources to the Council. EFSC, in turn, is responsible for overseeing the review of and decision-making for most large-scale energy facilities and infrastructure in Oregon. State-level oversight of energy facilities helps ensure a comprehensive, coordinated review. Proposed facilities must meet the Council's siting standards to receive a Site Certificate, which is required for a facility to be built, and the Council has ongoing regulatory authority over the construction operation and decommissioning of the facility to protect public safety and Oregon's environment.

Council Members

EFSC is a separate government body from the Oregon Department of Energy. Seven volunteer members serve on EFSC for up to two four-year terms. The Governor appoints EFSC members, who must be confirmed by the Oregon State Senate. Members may be reappointed and reconfirmed to serve a second term. Individuals interested in serving on EFSC can apply through the Governor's Boards and Commissions appointment process. Geographic representation and diverse expertise both factor into EFSC appointments. New members go through an onboarding process to familiarize themselves with EFSC responsibilities, and all members receive ongoing training.

What Do We Mean by a "Standards-Based Process?"

The state of Oregon has 16 general standards that most proposed energy facilities must meet to receive approval for a site certificate, plus facility-specific standards. If Council finds that energy facility proposals satisfy all applicable standards and requirements, the facilities must be approved. Standards cover issues such as land use, environmental impacts, wildfire, and cultural resources.

EFSC has final decision-making authority over whether to authorize an energy facility that falls under state jurisdiction. EFSC's authority to approve or deny an energy facility is based entirely on the standards applicable to each proposed facility. All facilities have to meet the same 16 general standards. Facility-specific standards may also apply. Applicants must provide enough evidence to prove their application meets all the required standards.

Council Meetings

EFSC is subject to Oregon Public Meetings Law, which governs processes like advance public notice, executive sessions, quorums, and minutes. At least four of the seven EFSC members must be in attendance to take formal action on any matter. Members may participate over the phone or virtually.

EFSC holds meetings throughout the state. Generally, they hold meetings in locations close to a facility they are considering or discussing during that particular meeting. Hearings on Draft Proposed Orders are required to be held in the vicinity of the location of proposed facilities.

EFSC meetings are typically monthly and scheduled at the beginning of every calendar year. About one week in advance of each meeting, public notices are posted to the EFSC website, sent to individuals on EFSC's general mailing list, and a press release is sent to media. Notices include the meeting date, time, location, and agenda. On occasion, a special meeting, with limited notice (no less than 24 hours), may be scheduled and held in person or virtually. All notices include information on how to participate in meetings via phone and webinar. In the event of an emergency, a meeting may be held with less than 24 hours' notice, with notice appropriate to the emergency circumstances.

How EFSC Sets Its Agendas

EFSC adheres to a prescribed process for reviewing proposed facilities and taking public comment on those facilities. Meetings typically include facility updates and presentations from Department staff, developers, and other stakeholders. Depending on where a proposed energy facility is in its review process, EFSC may make decisions or issue orders. All meetings include an open public comment period for items that are not on the agenda or otherwise closed for public comment, and some agenda items may include specific opportunities for input. These opportunities, which are discussed more fully later in this document, will be clearly noted in EFSC meeting agendas.

Staying Involved

EMAIL: ODOE shares information about EFSC through general and project-specific email lists. [Register](#) to receive public notices and other information on ODOE's website.

MAIL: Request mailed notices by contacting ODOE at energy.siting@oregon.gov or 503-378-4040 or 800-221-8035.

WEBSITE: Find ODOE online at www.oregon.gov/energy. All projects have their own pages in the Energy Facility Siting section. Rulemaking materials can be found in the "Get Involved" section.

SOCIAL MEDIA: You can access ODOE's Facebook, X (Twitter), and Instagram accounts from www.oregon.gov/energy. Follow for timely information and reminders about meetings.

Interested parties may request EFSC discussion or action on a particular subject. If you want to ask EFSC to take up a particular topic, you must make the request in writing to EFSC Secretary (energy.siting@energy.oregon.gov). With the concurrence of the EFSC Chair, the EFSC Secretary will place the item on the agenda for a future meeting.

Meeting Materials

Materials reviewed by EFSC to prepare for meetings and for issuing decisions are made available to the public, excluding those that are subject to attorney-client privilege or confidential materials. ODOE's website is updated with presentations and other documents, and notices announcing the meetings will include links to relevant documents or attachments. Paper copies of many materials are available at the meetings. A recording of the meeting is typically posted within a few business days after the meeting.

Staffing the Council: ODOE and Department of Justice

ODOE's Energy Facility Siting Division serves as staff to EFSC. Siting Division staff manage the application review process and other issues related to a proposed or operating facility or other Siting Division administration. While EFSC is the final decision-maker on all proposed facilities, ODOE staff make recommendations to EFSC about whether a proposed energy facility complies with applicable statutes, standards and other rules, and if a facility should receive a Site Certificate or be allowed to amend its Site Certificate. Staff also provide compliance review and oversight during pre-construction, construction, operation, and decommissioning.

The Oregon Department of Justice provides legal counsel to both EFSC and ODOE. DOJ's Assistant Attorneys General provide legal advice to ODOE and EFSC, and represent them in legal proceedings, including contested cases on Site Certificate applications. In certain instances, one DOJ attorney may represent/advise ODOE staff while another represents/advises EFSC.

The Governor's Energy Policy Advisor, ODOE management, and staff from other ODOE divisions may participate in presentations to EFSC. Siting Division staff may call on subject matter experts across the agency for assistance during application review and compliance activities.

Funding the Council and Application Reviews

The EFSC review process requires full cost recovery. Specifically, the applicant is responsible for all expenses related to:

- ODOE’s application review and associated recommendations to EFSC
- Tribal Governments, State agencies, and local governments reimbursable review and comment, as requested by ODOE
- DOJ advice and representation
- EFSC’s review and decision
- Ongoing expenses related to compliance and monitoring once a Site Certificate is issued.

All expenses paid by the applicant or the holder of the Site Certificate are required by law to be necessary, just, and reasonable.

For EFSC meetings, all general costs such as room rental, food, hotel accommodations, and per diem for EFSC members, are apportioned to each agenda item based on the amount of time that agenda item took relative to the overall duration of the meeting.

EFSC Jurisdiction

EFSC has jurisdiction over facilities that meet the statutory definition of “energy facility” in [ORS 469.300\(12\)\(a\)](#). Energy facilities under EFSC’s jurisdiction require a Site Certificate from EFSC before those facilities may be constructed and operated.

EFSC’s jurisdiction includes most large-scale energy generating facilities and infrastructure in Oregon. What constitutes “large-scale” can depend on the physical footprint of the facility, how much energy is produced at the facility, or both.

Certain facilities – liquefied natural gas terminals, for example – fall exclusively under federal jurisdiction. In those cases, EFSC has no jurisdictional authority for review or approval.

In other instances, facilities may be subject to both federal and state jurisdiction; for example, a facility that meets state jurisdictional thresholds and is to be sited partially or wholly on federal land would need both federal approval and an EFSC Site

Approved facilities receive a site certificate to operate. A site certificate is a:

“Binding agreement between the State of Oregon and the applicant, authorizing the applicant to construct and operate a facility on an approved site, incorporating all conditions imposed by the Council on the approved facility.”

Once issued by Council decisions, site certificates can only be changed through the amendment process.

Certificate. For facilities that are subject to both federal and EFSC jurisdiction, ODOE and EFSC will coordinate with the federal agencies to reduce duplicative efforts.

Facilities that do not meet the definition of “energy facility” for purposes of EFSC jurisdiction, and that are not subject to exclusive federal jurisdiction, are subject to review and approval by the local jurisdiction in which the facility is proposed to be located, such as county or city authorities.

For all facilities subject to EFSC jurisdiction, ODOE staff coordinate the application for the Site Certificate review process on behalf of EFSC, but EFSC is the decision-making authority under state law.

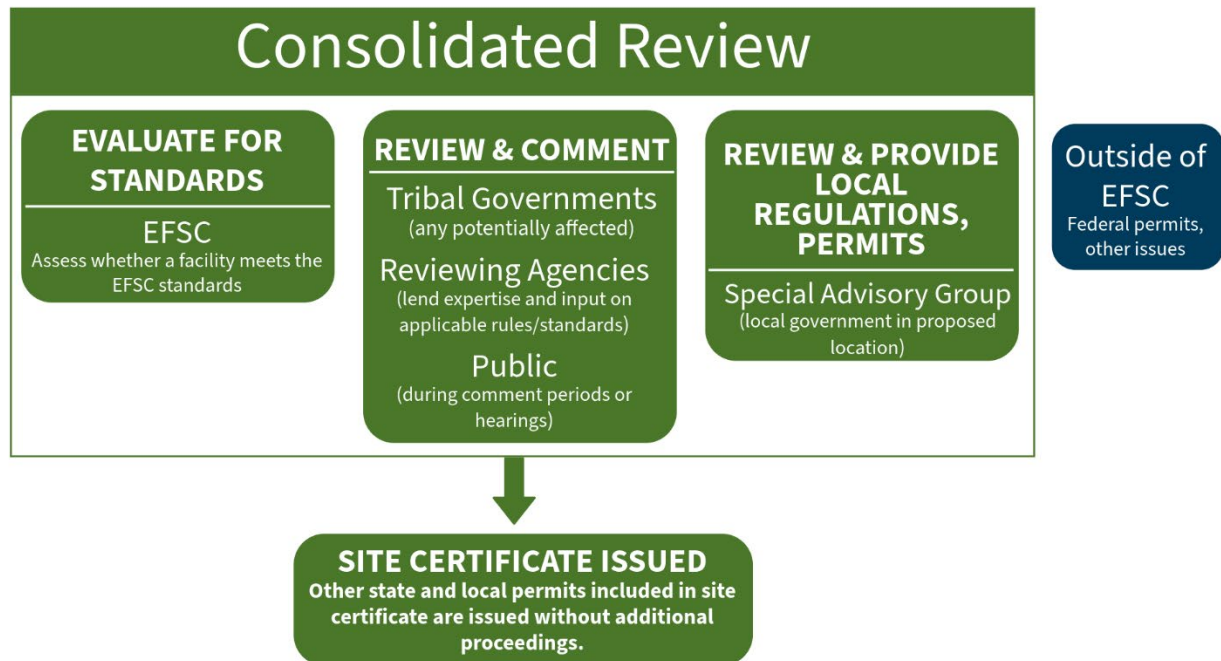
Exemptions

Oregon statutes exclude some facilities from the Site Certificate requirement. [ORS 469.320\(2\)](#) lists facilities for which a Site Certificate from EFSC is not required. Even so, these types of facilities still must receive EFSC approval granting the exemption before they can be constructed. The most common exemptions are for high efficiency cogeneration facilities, as defined in [ORS 469.320\(2\)\(c\)](#), and some biofuel production facilities, as defined in [ORS 469.300\(12\)\(a\)\(G\)](#).

Working with Tribal Governments and Other State and Local Agencies

Oregon’s Energy Facility Siting review is designed by statute and rule as a consolidated review. EFSC seeks input from Tribal Governments, state agencies, and local governments, each of which provide specific knowledge and expertise related to EFSC standards and applicable rules, including, in some circumstances, permits or approvals that for non-EFSC jurisdictional facilities would be administered by those agencies directly. Some local or state standards or permits that would be required for the facility become EFSC jurisdictional permits. This helps to eliminate duplication, simplify timelines and decision-making processes, and makes it easier for the public to track and participate.

Oregon Revised Statutes and Administrative Rules designate specific bodies as “reviewing agencies.” These are state and local entities that oversee rules and regulations that may be applicable to the siting of an energy facility or have specific expertise related to an applicable EFSC standard. ODOE relies on reviewing agency expertise during application review. For example, the Oregon Department of Fish and Wildlife may provide recommendations for a facility proposed near breeding grounds for a particular species of bird; this feedback will inform details of the EFSC’s Final Order.



Tribal Governments that are identified as potentially affected by the proposed facility are also asked to review the proposed facility application and provide comments. Reimbursement is also available to these Tribes through contracts established with ODOE.

All state agencies and local governments participating as reviewing agencies are allowed to enter into an agreement with ODOE to be reimbursed for costs of work requested of them. These costs are reimbursed by the applicant.

The governing body of any local government where a facility is proposed to be located is designated as a Special Advisory Group (SAG). The SAG has multiple responsibilities in the review process, including providing to EFSC applicable requirements from the local government’s comprehensive plan and land use regulations that are required by the statewide planning goals and in effect on the date the Preliminary Application is submitted. The SAG can also review and provide input to EFSC on any other issue related to an EFSC standard that is of concern to the SAG.

Once a Site Certificate has been issued by EFSC, any state and local permits that are included in and governed by the Site Certificate must be issued by the state or local governments without any additional hearings, conditions, or proceedings. State and local agencies have ongoing compliance responsibilities along with ODOE to monitor and enforce conditions of applicable permits, as necessary.

Some permits and issues are outside of the EFSC process. These typically include federal permits, permits that are delegated by the federal government to state agencies, issues related

to workplace safety and labor or wages, and other issues. Facility developers must maintain compliance with these permits and requirements independent of the Site Certificate process.

The Proposed Energy Facility Review Process

Major Phases in the EFSC Review Process

EFSC's application review process integrates all applicable state and local standards, requirements, and permits necessary to receive a Site Certificate into a single process with seven major steps. A consolidated review process eliminates duplication, different decision timelines, and different appeal paths while simplifying opportunities for public participation.

The EFSC application review process is very thorough and typically takes between one and two years.

The charts below outline the process for reviewing new proposed energy facilities and amending existing Site Certificates.

Additional Resources

The ODOE website includes documents with EFSC process flowcharts and milestones laid out. We are happy to make copies available for community events and outreach meetings.

[EFSC Process Overview Fact Sheet](#)

[EFSC Frequently Asked Questions](#)

[EFSC Process Flowchart](#)

Process for Reviewing New Proposed Energy Facilities



Process for Amendments to Existing Site Certificates



Pre-notice of Intent

Prior to submitting a Notice of Intent, applicants may have meetings with ODOE, Tribal governments, other state agencies, or local governments to discuss specific issues or the review process. There may be articles in local newspapers or other media. ODOE typically does not comment on meetings that take place during this pre-NOI time period because the first official step in a facility site review process is the receipt of a NOI, described below.

Notice of Intent

While the NOI step is technically a pre-application, it begins the application process for a proposed facility. In an NOI, an applicant provides general information about the site and characteristics of the proposed facility and discusses potential impacts from construction and operation of the proposed facility. The Oregon Administrative Rules describe the exhibit requirements for the NOI:

- Exhibit A Applicant and Participating Persons
- Exhibit B Facility Description
- Exhibit C Facility Location
- Exhibit D Transmission or Pipeline
- Exhibit E Permits Required
- Exhibit F Adjacent Property Owners Name and Addresses
- Exhibit G Maps
- Exhibit H Non-Generating Facility Need
- Exhibit I Choice of Land Use Standards (EFSC or local jurisdiction)
- Exhibit J Identification of Potentially Significant Environmental Impacts
- Exhibit K Information about Potentially Significant Adverse Impacts to Public Services
- Exhibit L Protected Areas
- Exhibit M Water Use
- Exhibit N Carbon Dioxide
- Exhibit O Applicable OARs, ORS and Local Land Use Requirements
- Exhibit P Schedule to Submit an Application
- Exhibit Q Consultation with State Commission on Indian Services

The NOI is the public's first opportunity to submit formal comments on a proposed facility.

Some exhibits require the evaluation of specifically established study areas.¹ These include the area within the project site boundary as well as extending as far as 20 miles from the site boundary.

¹ OAR 345-001-0010(35)

Reviewing Agencies, Special Advisory Groups, and Public Notice of the Notice of Intent

Once the NOI is received, ODOE notifies Tribal Governments, reviewing agencies and Special Advisory Groups, requesting review, comments, and information on applicable state and local regulations and ordinances. At the same time, the NOI is made available to the public for comment on the ODOE website, and notice is sent to the general mailing list.

Oregon administrative rules require notice to be sent to people who have contacted ODOE and requested to be included in notice mailings for a specific facility, and persons who are on ODOE's "general" ESFC mailing list. Anyone can be added to either of these lists by requesting notice through ODOE's website (see the section Staying Involved on page 2).

During the NOI phase, ODOE must also provide notice to property owners within a certain distance of the tax lots or parcels that a facility is proposed to be sited on. The list of property owners is provided by the applicant and must include all owners of record as shown on the most recent property tax assessment roll.

Notifying property owners is required at several steps in the review process. Property owners may not opt out of the required notifications. Notifications are sent to the property owners' addresses on record, not the address of the property itself.

ODOE must also publish notice of the NOI in a newspaper of general circulation that is available in the vicinity of the proposed facility. The public notice and the NOI are both posted on the ODOE website.

Public input at the NOI stage helps the applicant identify issues that, if covered by an applicable EFSC standard, can be avoided by redesigning the project or addressed in the application. Comments should be as specific as possible. Please note, commenting at this stage does not preserve the right to request party status in a contested case proceeding. In order to reserve that right, a commenter must comment during the Draft Proposed Order comment timeframe, which is discussed below.

Public Information Meeting

One or more public information meetings may be scheduled in the vicinity of the proposed facility during the NOI phase to introduce the facility to the public. The public may raise issues that can be addressed at the meeting or more fully addressed in the application. Public

The NOI Is:

- Applicant's conceptual plan.
- Information about applicant, facility, and potential impacts.
- Reviewing agencies' and public's first opportunity to participate.
- Valid for two years.

The NOI Is Not:

- A detailed application.
- A complete or final plan.

information meetings are not required during the NOI phase, but they are often scheduled to help ensure people who are interested have additional access to information about the proposed facility that can help inform input and public comments later in the review process.

Project Order

Following receipt of the NOI, ODOE prepares a project order. The project order establishes all state and local standards or criteria that must be met for EFSC to issue a Site Certificate. To issue a Site Certificate, EFSC must find that an application includes enough evidence to prove it complies with applicable rules and standards that are in place on the date the Site Certificate is issued, not the date the project order is issued. The one exception is that applicable local land use regulations are those that are in place as of the date the Preliminary Application is submitted. The project order can be amended at any time.

The project order includes the specific analysis area the applicant must review for various exhibits. The analysis areas are, at a minimum, the area within the site boundary but can extend beyond the site boundary. These analysis area distances start with the study area distances described in the NOI section above and are increased or decreased based on ODOE's preliminary evaluation of the proposed facility type and location, as well as input received from Tribal

Governments, reviewing agencies, Special Advisory Groups, and the public. The project order also specifies if the applicant must conduct on-the-ground surveys or "desktop" surveys, which use digital data, maps, charts, and other resources for site planning.

The standards identified in the project order set the stage for how EFSC will review the proposed facility.

Timelines

By Oregon Administrative Rule, ODOE must issue the project order, to the extent practicable, within 140 days following the date of submission of the NOI.

The NOI expires two years after submittal if no application has been submitted. If the applicant requests an extension to EFSC at least 45 days before the expiration date, EFSC may extend the expiration date for up to one year.

The Project Order:

- Is a blueprint for the project application.
- Tells the applicant which standards and requirements apply to their project.
- Establishes the analysis areas.
- Provides the basis for EFSC's evaluation and decision. The Final Order and site certificate are based on standards identified in the project order.
- Can be amended at any time.
- Must be issued within 140 days after the NOI is received.

Developing the Preliminary Application

The next step in the process is for an applicant to prepare the Preliminary Application for a Site Certificate. The applicant completes appropriate studies and develops the exhibits and information necessary for the Preliminary Application. To complete the exhibits and information, the applicant may work directly with Tribal Governments, reviewing agencies or Special Advisory Group, and may provide drafts of the exhibits and information to ODOE for comment. This period may be lengthy, from several months to more than a year. To agencies not involved at this stage or to the public, it may appear the project has disappeared, yet the work continues.

The Preliminary Application and Full Application:

- Provide detailed descriptions of the proposed facility.
- Include technical assessment of compliance with standards identified in the Project Order.
- Are based on different analysis areas for different standards.

Submitting the Preliminary Application

The applicant submits the Preliminary Application to ODOE. It is required to contain the information specified in [Chapter 345, Divisions 21 and 22](#) of the Oregon Administrative Rules.

Facilities must conform to local and state land use laws. When applicants submit a Preliminary Application, it must select whether to have the local government in which the facility is located determine land use compliance or have EFSC determine land use compliance. Once the Preliminary Application is submitted, the applicant may not choose a different land use path.

Completeness Review

After the Preliminary Application is submitted, ODOE has 60 days to conduct a completeness review and either notify the applicant that the application is complete or request additional information. Per [OAR 345-015-0190\(5\)](#), an application is complete when ODOE finds that the applicant has submitted information adequate for EFSC to make findings or impose conditions on all applicable EFSC standards.

A Preliminary Application is also reviewed by Tribal Governments, reviewing agencies, and Special Advisory Groups. These entities, within specified timelines, submit comments or requests for additional information to ODOE.

If more information is needed, ODOE will issue a “request for additional information,” describing what ODOE or reviewing agency needs to make a determination of completeness. ODOE will specify a date by when the applicant must provide the additional information. If the applicant does not respond by the required date, including any approved extensions, the EFSC may reject the application. ODOE will review all submittals in response to the request and may include reviewing agencies in the review of the responses.

ODOE makes the Preliminary Application available to the public on ODOE’s website and the applicant may provide copies to the community (generally at the local library). ODOE does not issue a formal public notice, and public comment is not sought at this time.

Review of the Complete Application for a Site Certificate

The Complete Application for a Site Certificate (ASC) is deemed filed when ODOE receives the complete application. The ASC can consist of either the Preliminary Application plus a supplement responding to ODOE and reviewing agency questions and Requests for Additional Information, or a revised application document addressing the request for additional information and questions.

The ASC is provided to Tribal Governments, reviewing agencies and Special Advisory Groups for their review along with a notice asking them to provide a report regarding any applications for permits administered by that agency, issues significant to the agency, the agency’s conclusions regarding the proposed facility’s compliance with applicable rules and statutes, recommended Site Certificate conditions, and any other information important for the EFSC’s consideration.

The ASC is made available to the public on ODOE’s website. ODOE also issues a public notice informing the public that the application is complete and of any public information meeting(s) that may be held on the ASC (see next section).

Information included in an ASC:

- Applicant and Participating Persons
- Background Information Exhibit
- Carbon Dioxide Emissions
- Electric Transmission Line Electric and Magnetic Fields
- Evaporative Cooling Tower
- Financial Capability
- Fish and Wildlife Habitat
- Geologic and Soil Stability
- Historic and Cultural Resources
- Land Use
- Materials Analysis
- Noise
- Non-Generating Facility Need
- Organizational Expertise
- Other Requested Information
- Other Specific Requirements
- Permits Required
- Protected Areas

- Public Services
- Recreation
- Scenic Resources
- Site Restoration
- Soil Conditions
- Threatened and Endangered Plant and Animal Species
- Waste Minimization
- Water Use
- Wetlands and other Jurisdictional Waters
- Wildfire

Public Information Meeting

After the completeness review has been concluded, ODOE issues a public notice informing the public that the application is complete and of any public information meeting(s) that may be held on the Complete Application for a Site Certificate. Public information meetings on the ASC are not hearings or formal public comment opportunities. They are held to add another opportunity to access information about a proposed facility, which in turn can help inform formal public comment offered later in the process. At public information meetings, Department representatives explain the siting process, and applicants provide details about the proposed facility. These meetings are an opportunity for the public to ask questions about the process and the facility, so they better understand the review process and what is being proposed. While public information meetings do not include a public comment component, they provide information that can be useful for the formal comment period during the Draft Proposed Order phase.

Preparing the Draft Proposed Order

After receiving a complete application, ODOE next prepares a “Draft Proposed Order” using the information contained in the Complete Application for a Site Certificate and comments from Tribal Governments, reviewing agencies, and Special Advisory Groups.

The DPO includes staff’s evaluation of the information and a recommendation to EFSC of whether the ASC satisfies all applicable standards and rules. If staff determines that the ASC adequately demonstrates the facility will comply with all applicable standards and rules, or will do so with appropriate conditions, staff will recommend EFSC approve and issue a Site Certificate.

If staff determines that the evidence in the ASC is not sufficient to demonstrate compliance with all applicable standards and rules, staff will recommend that EFSC deny the ASC.

The Draft Proposed Order:

- Is based on an evaluation of the application against all applicable standards and rules.
- Incorporates Tribal Government reviewing agency, and Special Advisory Group comments received during the application review phase.
- Details the findings of facts and conclusions of law.
- Sets forth recommended conditions of approval and any monitoring plans or reasons why the application should be denied.

Draft Proposed Order Public Comment Period

When the DPO is issued, ODOE will provide notice of and schedule a public comment period and hearing. The notice is sent to the general and facility-specific mailing lists, and to nearby property owners listed on the most recent property tax assessment roll. The applicant is asked to provide an updated property owner list prior to the notice. The notice must also be published in at least one newspaper in the vicinity of the proposed facility at least 20 days before the public hearing.

Comment periods must be at least 20 days but are generally 30 days or longer. Comments may be submitted via email, regular mail, fax, or hand-delivery to ODOE’s offices at 550 Capitol Street NE, Salem, Oregon, any time until the close of the record. After the close of the DPO record, no additional comments may be provided.

Public hearings for a DPO must be held near the proposed facility’s location. While EFSC may appoint an independent hearing officer to preside over the hearing outside of an EFSC meeting, they are typically held in front of EFSC during a regularly scheduled meeting in the evening. The public comment period provides the public, reviewing agencies, and the applicant an

opportunity to provide written and/or oral testimony on the application and DPO. In other words, it's a critical step in the process, where the public can offer input on the review of an application. In addition, to preserve the right to raise an issue in the contested case phase, a later step in the process, a person must comment during the DPO public comment period, either orally at the DPO hearing or in writing. To preserve that right, a person must:

What's A Hearing Officer?

Hearing officers independently run the contested case, providing third-party oversight of the review process. EFSC contracts with outside individuals that perform this service.

1. Raise issues that are within EFSC jurisdiction. This means an issue must be associated with one of the applicable EFSC standards or other laws applicable to the proposed facility. A complete list of EFSC standards that could be applicable to any proposed facility is below. A more specific list of the applicable standards and laws for any particular facility is identified in that facility's project order. Commenters should reference which standard their issue relates to.
2. Raise issues on the record, either in writing during the DPO public comment period, or verbally at the DPO public hearing.
3. Raise issues with "sufficient specificity" to afford the applicant, ODOE and EFSC an adequate opportunity to respond, including a statement of facts that support the person's position on the issue, including identifying the standard or OAR that is at issue. Simply listing the standard is not considered sufficiently specific.

EFSC standards are laid out in the Oregon Administrative Rules

- [345-022-0000 General Standard of Review](#)
- [345-022-0010 Organizational Expertise](#)
- [345-022-0020 Structural Standard](#)
- [345-022-0022 Soil Protection](#)
- [345-022-0030 Land Use](#)
- [345-022-0040 Protected Areas](#)
- [345-022-0050 Retirement and Financial Assurance](#)
- [345-022-0060 Fish and Wildlife Habitat](#)
- [345-022-0070 Threatened and Endangered Species](#)
- [345-022-0080 Scenic Resources](#)
- [345-022-0090 Historic, Cultural and Archaeological Resources](#)
- [345-022-0100 Recreation](#)
- [345-022-0110 Public Services](#)
- [345-022-0115 Wildfire Prevention and Risk Mitigation](#)
- [345-022-0120 Waste Minimization](#)

- [345-023-0005 through 0040](#)
 - Need Standard for Non-Generating Facilities
- [345-024-0010 – 0015 Specific Standards for Siting Wind Facilities](#)
- [345-024-0030 Specific Standards for Surface Facilities Related to Underground Gas Storage Reservoirs](#)
- [345-024-0090 Specific Standards for Transmission Lines](#)
- [345-024-0500 – 720 Standards for Energy Facilities that Emit Carbon Dioxide](#)

After the DPO hearing, EFSC members will review the DPO at a public meeting, typically its next regularly scheduled meeting. Staff may require additional time to consider issues and comments raised during the public comment period. During the review of the DPO, ODOE staff will provide detailed information about the proposed facility, ODOE’s recommendations, an overview of the comments received and any responses to comments provided by the applicant. In advance of this meeting, EFSC will also receive all comments and applicant responses submitted on the record of the DPO. EFSC has the opportunity to question staff about the proposed facility and about ODOE’s recommendations, and may direct staff to modify sections of the DPO or respond to additional issues raised during the DPO hearing process.

Preparing the Proposed Order

ODOE revises the DPO to a Proposed Order based on EFSC’s discussion and deliberations, and comments received during the public comment period on the DPO. If issues raised during the DPO public hearing process require changes to the analysis, or if EFSC requested changes to the DPO, the Proposed Order will reflect those changes.

ODOE issues the Proposed Order and sends public notice of the Proposed Order to all interested parties, including reviewing agencies, the general and facility-specific mailing lists, and property owners. There is no public comment period on the Proposed Order.

The Contested Case Process

A contested case provides an opportunity for those who properly raised an issue during the public comment period to challenge ODOE's recommendations to EFSC. If no challenges are raised, this phase is brief. The public notice of the Proposed Order includes notice of the contested case proceeding and the deadline for requests to participate in the case as a party or limited party. The notice is sent to the applicant and all persons who commented in person or in writing on the record of the public hearing on the

Contested Case:

- Is an administrative judicial process governed by Oregon law.
- The EFSC application review process has the “contested case” phase built into the timeline to ensure Oregonians have a clearly defined opportunity to raise issues about a proposed energy facility.
- The process allows additional evidence and evaluation of issues that are not resolved through the Proposed Order phase.

Draft Proposed Order. Only those persons who have commented in person or in writing on the record of the Draft Proposed Order public hearing are eligible to request to participate in the contested case. The purpose of the contested case proceeding is for an impartial hearing officer to evaluate properly raised issues and make a recommendation to EFSC on those issues. The hearing officer does not decide whether the application is to be granted or denied. The hearing officer makes a recommendation to EFSC for EFSC's review and decision. Any final decision by EFSC is appealable directly to the Oregon Supreme Court and any appeal is limited to issues raised in the contested case proceeding.

The hearing officer's responsibilities include reviewing requests to participate in the contested case and determining who may participate and on what issues, as appropriate. A person denied party status by the hearing officer may appeal that decision to EFSC. The applicant and Department are automatic parties to a contested case. If no additional persons request party status to participate in the contested case, and the applicant has not raised any issues to be addressed in the contested case, the hearing officer will conclude the contested case proceeding.

Only ODOE, the applicant and those who have been granted party status by the hearing officer may participate in the contested case proceeding. The proceeding typically includes discovery (production of documents), written presentation of evidence and rebuttals, live cross-examination, and written closing arguments.

Following the contested case proceeding, the hearing officer issues a Proposed Contested Case Order stating the hearing officer's findings of fact, conclusions of law and, if necessary, recommended Site Certificate conditions on the issues in the contested case. Parties to the contested case proceeding have an opportunity to file exceptions to the Proposed Contested Case Order.

EFSC Review and Action on the Facility Application

After the conclusion of the contested case phase, EFSC will review the Proposed Contested Case Order, exceptions, responses to exceptions, and ODOE's Proposed Order. EFSC may adopt, modify, or reject the Proposed Contested Case Order and Proposed Order. In its Final Order, EFSC will grant or deny issuance of a Site Certificate. An affirmative vote of at least four EFSC members is required for approval of a Site Certificate.

The Final Order includes the final findings of fact and conclusions of law and, as necessary, information about how the facility complies with each applicable standard and rule. If EFSC determines the proposed facility satisfies all applicable standards and rules, it must issue a Site Certificate.

The Site Certificate represents a binding agreement between the State of Oregon and the applicant. It authorizes the applicant to construct, operate, and retire the energy facility substantially as described in the Site Certificate. A Site Certificate approval is typically subject to conditions as specified by EFSC.

The Final Order:

- EFSC evaluates the Proposed Order issued by staff and the contested case order issued by the hearing officer, then outlines in the Final Order if Council will adopt, modify, or reject the findings of facts, conclusions of law, and conditions of approval.

The Site Certificate:

- A site certificate is issued with a Final Order and contains conditions for the construction, operation and retirement of a facility.

Appealing EFSC's Decisions

Parties to the contested case may apply for a rehearing by EFSC within 30 days from the date the Final Order approval or rejection is issued. Unless EFSC acts on the rehearing application within 30 days after it is filed, the rehearing application is considered denied.

Any party to a contested case may file a petition for judicial review within 60 days of EFSC's Final Order or within 30 days after the date an application for rehearing is denied or deemed denied. Issues on appeal are limited to those raised by the parties in the contested case proceeding. The Oregon Supreme Court has exclusive jurisdiction for judicial review of the EFSC's approval or rejection of an ASC.

Amending a Site Certificate

After a developer receives a Site Certificate for an energy facility, they can request an amendment at any time during the life of the facility. There are many reasons a Site Certificate holder may seek EFSC approval of an amendment. Examples include extending construction deadlines, adopting newer technology, adding a new facility component, or transferring the Site Certificate to a new facility owner.

The amount of time EFSC's amendment process takes depends on the scope of the amendment request. There are two amendment process types, a standard amendment and a pre-

operational request for amendment. A pre-operational request for amendment is only available before a facility starts operating, is reserved for unforeseen and unavoidable circumstances, and generally proceeds in a more expedited manner.

After receiving a preliminary request for a standard amendment, ODOE must notify the public that a request has been received. ODOE then reviews that request to determine if it is complete and, if necessary, requests additional information from the certificate holder. After ODOE determines a request for amendment is complete, it analyzes the information provided and prepares a Proposed Order. The public is given an opportunity to make comments on the request for amendment and Proposed Order, either in person at a public hearing or in writing. The certificate holder must respond to public comments, while ODOE may do so at its discretion. After the initial round of comments and responses, there is an opportunity for further written exchanges between members of the public who commented on the Proposed Order, the certificate holder and ODOE, known as replies and sur-replies. After considering public comments and the subsequent written analyses, ODOE must issue a draft of the Final Order with a written analysis of any comments on the Proposed Order, including analysis of any responses, replies and sur-replies, and indicate whether, in light of those comments it recommends any changes to the Proposed Order. If ODOE recommends any changes, it will include them in the draft of the Final Order. EFSC then reviews ODOE's written analysis of comments, the draft of the Final Order and makes its final decision on the request for amendment.

Facility Compliance

Introduction to ODOE's Compliance Program

ODOE monitors each facility throughout its lifecycle to maintain compliance with EFSC's Final Order and all Site Certificate conditions. The Compliance Officers are the facility compliance lead for ODOE.

Pre-Construction Compliance Activities

A Compliance Officer will schedule an inspection of the site prior to any ground-breaking activities. At that time, the Compliance Officer will discuss construction planning and requirements for compliance with the Site Certificate.

A Site Certificate typically includes conditions related to pre-construction actions and approvals. ODOE will review the certificate holder's submittals and may seek review assistance from Tribal Governments, reviewing agencies and Special Advisory Groups for certain pre-construction compliance submittals. The certificate holder may not start construction prior to complying with all applicable pre-construction conditions.

To provide the responses required by the pre-construction conditions and to adequately characterize the site, the certificate holder may complete studies on the facility site that may require heavy equipment. Work of this type is not considered "construction." Construction is defined as "worked performed on a site, excluding surveying, exploration or other activities to define or characterize the site, the cost of which exceeds \$250,000."²

Why Energy Facility Compliance Matters:

Most energy facilities will exist for decades, and some facilities are planned to be in service in perpetuity. It's important for the State of Oregon to have an established program that ensures facilities are designed, constructed, operated, and decommissioned consistent with their site certificate and conditions.

Construction Phase Compliance Activities

The certificate holder may not begin construction until all pre-construction conditions have been met but must begin construction by the date required in the Site Certificate. The certificate holder may make a "request for amendment" to the Site Certificate to change the construction start or completion deadline (see Extension Requests below). The certificate holder is required to report promptly to ODOE when construction begins.

ODOE will schedule site visits during construction to monitor compliance with the Site Certificate conditions. In addition, the certificate holder is required to provide semi-annual

² ORS 469.300(7)

progress reports to ODOE. Construction must be completed by the date included in the Site Certificate

Construction Deadline Extension Requests

The certificate holder may request extension of the beginning or completion deadlines through a request for amendment to the Site Certificate. The certificate holder must request an amendment to extend beginning or completion deadlines within the 12 months before the deadline. If a request for amendment is made, there will be public notice, and opportunity for the public to comment on the request.

Site Certificate Termination

If the certificate holder fails to begin or complete construction by the dates established in the Site Certificate, EFSC must terminate the Site Certificate. If the certificate is terminated, future facility developers would be required to begin the application process again at the NOI stage.

Facility Inspections

To monitor compliance with all Site Certificate conditions, ODOE conducts inspections during facility operation. The inspection frequency is determined by many factors but will generally be at least annually. ODOE also reviews the required annual reports and any additional documents required to be submitted. ODOE may request additional information or seek support from other agencies to monitor facility compliance.

Any person may [request an inspection](#) of an energy facility if they believe there is a violation of an EFSC order or Site Certificate condition, or a situation exists that may lead to unnecessary exposure of an individual to hazardous materials or unsafe conditions. ODOE will follow the procedures included in [OAR 345-026-0050\(2\)](#) if a request is received.

Reporting Incidents

The certificate holder is required to notify ODOE within 72 hours of occurrences involving the facility if:

1. There is an attempt by anyone to interfere with its safe operation.
2. There is a significant natural event such as a fire, earthquake, flood, tsunami or tornado, or human-caused event such as a fire or explosion.
3. There is any fatality at the facility.

ODOE will monitor the certificate holder's response to the incident if there may be an impact on how the certificate holder meets the Site Certificate conditions.

Decommissioning and Retirement

EFSC's standard for Retirement and Financial Assurance ([OAR 345-022-0050](#)).

If a facility is retired or abandoned, the certificate holder is obligated to decommission the facility and restore the site to a useful, non-hazardous condition. To protect the state against a facility being abandoned and/or a Site Certificate holder declaring bankruptcy before decommissioning a facility, as part of compliance with EFSC's standards for Retirement and Financial Assurance, a Site Certificate holder is required to procure a bond or letter of credit from an EFSC-approved financial institution in an amount deemed sufficient to restore the site. The bond or letter of credit is held by the Oregon Department of Energy Siting Division Fiscal Analyst for the life of the facility. The bond or letter of credit would be used by the state should a Site Certificate holder fail to meet its obligation to decommission and restore the site.

Special or Non-Routine Circumstances

Expedited Review

An applicant may request expedited review of an application if the proposed facility qualifies under applicable statutes ([ORS 469.370\(10\)](#)). Facilities that have a generating capacity of less than 100 megawatts may request expedited review. If EFSC approves, no NOI is filed. Tribal Governments, reviewing agencies and SAGs receive notice of the application when the Preliminary Application is received. Certain other Special Criteria Facilities, such as gas-fired generating plants of sizes that would preclude inclusion as a small capacity facility, may also qualify for expedited review.

Federal Intersect Under the National Environmental Policy Act

Both EFSC and the federal government have authority over EFSC-jurisdictional facilities that cross federal lands. In those instances, a federal agency decision will be necessary for some aspects of a proposed facility, and the National Environmental Policy Act (NEPA) may require the preparation of an environmental review document.

The NEPA process is an independent federal process that considers alternatives and impacts. The process differs from the EFSC review process in that much of the detailed information that is required as part of the EFSC review to verify that each applicable standard before it can be approved is not required until after the public review process in NEPA.

Facilities that have a federal intersect may provide additional opportunities for the public to comment or attend meetings or hearings. Federal public notices will inform the public about their opportunities to comment or attend meetings and hearings.

EFSC Rulemaking

Introduction to EFSC Rulemaking

EFSC is responsible for adopting rules that establish application requirements, review procedures, and standards for the siting, construction, operation, and retirement of energy facilities. EFSC rules determine procedures to amend, suspend, revoke, transfer, or terminate a Site Certificate. They also govern regulations related to the transport and disposal of radioactive materials and the siting of nuclear power facilities and uranium mills in Oregon.

The EFSC Rulemaking Process

Rules adopted by EFSC are located in [Oregon Administrative Rules Chapter 345](#). EFSC has also expressly adopted key provisions of the Attorney General’s Uniform and Model Rules under OAR Chapter 137. If there is a conflict between the model rules and the EFSC’s rules, EFSC will apply its own rules.

EFSC typically approves an updated rulemaking schedule each year. After a rulemaking schedule is approved, staff works on EFSC rulemaking projects according to the approved schedule. Each rulemaking project generally consists of two phases.

1. EFSC initiates informal rulemaking which includes how it will obtain public input on the rulemaking. This is often done using a rulemaking advisory committee made up of interested people and organizations.
2. The Council initiates formal rulemaking when ODOE provides draft proposed rules that were created during the informal rulemaking stage and EFSC agrees to move forward with them. The steps in the formal rulemaking process typically include:
 - Filing a Notice of Proposed Rulemaking with the Oregon Secretary of State.
 - Providing public notice and establishing a comment period on the draft proposed rules.
 - Holding a public hearing on the draft proposed rules.
 - Adopting the draft proposed rules as final rules with or without changes based on EFSC’s review and taking into consideration all comments.
 - Filing the permanent rules with the Oregon Secretary of State.

Appeals related to EFSC rulemaking activities must be made to the Oregon Supreme Court, and all petitions must be filed within 60 days after the date the rule became effective under ORS 183.355.

EFSC rulemakings include opportunities for public comment. Visit the “Get Involved” section of www.oregon.gov/energy.

For More Information

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