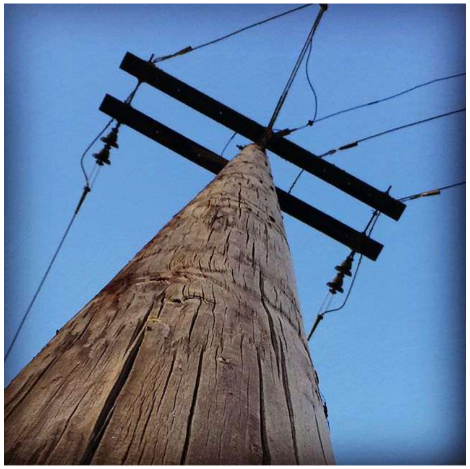
Oregon Department of **ENERGY**

OAR 345, Division 026
OERFA Rulemaking Advisory Committee

August 27, 2026



50 YEARS of SERVICE OREGON DEPARTMENT OF ENERGY

CURRENT RULES AND LOCATION

- **345-022-0010** Organizational Expertise
- **345-022-0050** Retirement and Financial Assurance

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Organizational Expertise

(1) To issue a site certificate, the Council must find that **the applicant** has the organizational expertise to construct, operate and retire the proposed facility in compliance with Council standards and conditions of the site certificate. To conclude that the applicant has this expertise, the Council must find that **the applicant** has demonstrated the **ability** to design, construct and operate the proposed facility in compliance with site certificate conditions and in a manner that protects public health and safety and has demonstrated the ability to restore the site to a useful, non- hazardous condition. **The Council may consider the applicant's experience, the applicant's access to technical expertise and the applicant's past performance in constructing, operating and retiring other facilities, including, but not limited to, the number and severity of regulatory citations issued to the applicant.**

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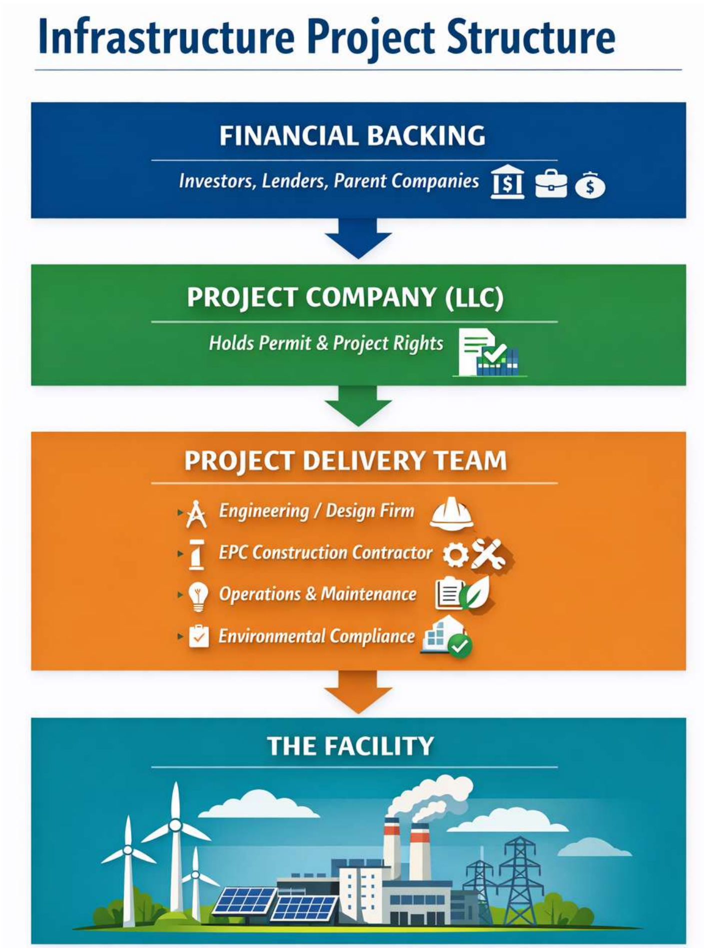
The Problem

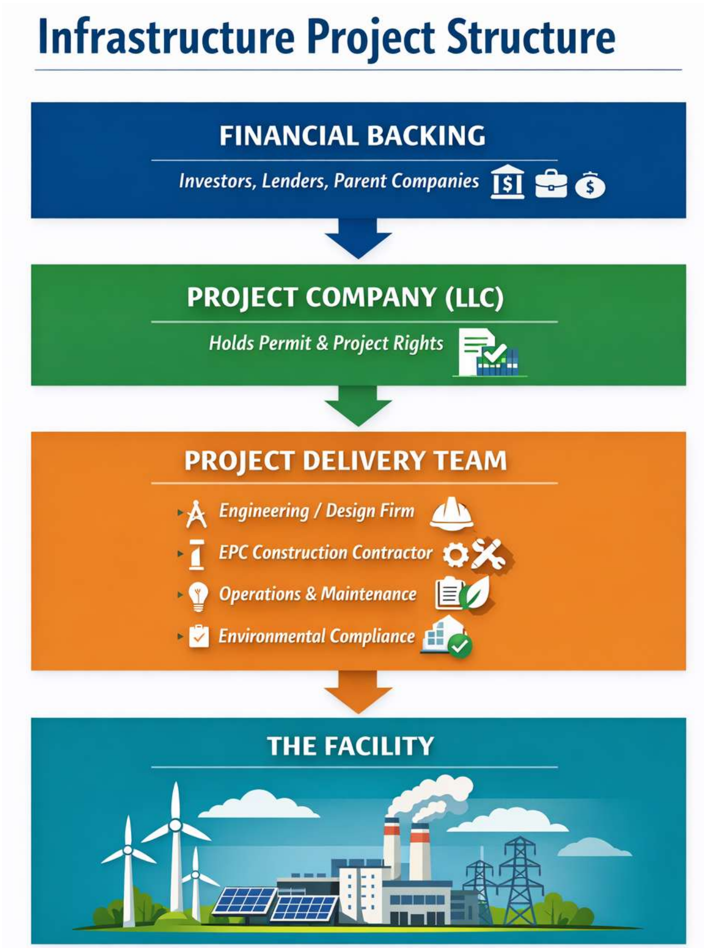
What we are evaluating →



The Problem

What we care about →

What we care about →



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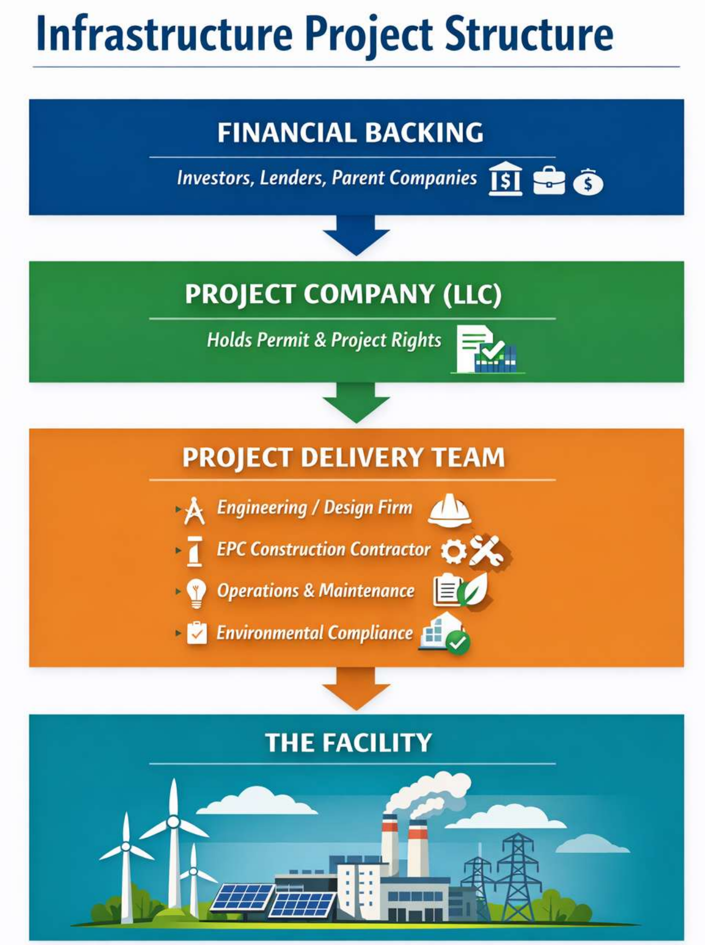
The Problem

What we care about →

Is the project funded?

What we care about →

Will the project be properly delivered?



What We Want To Avoid

- Treating the parent company as the applicant when a properly funded and supported LLC or Single Purpose Entity is created to run the application.

- Allowing the parent company to submit a poorly funded and ill-conceived project without any risk by using a shell company.

What Do We Want To Know?

The Ask
Is the project adequately funded / resourced?
Will the folks tasked with building and operating the facility do so in a manner that complies with site certificate requirements?

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How Should Applicants Prove It?
Overview

- Make the standard focus on the applicant's actual ability to carry out the full life cycle of the facility.
- Recognize that a project LLC may rely on other companies, but require proof that those resources will really be available.
- Focus on substance rather than corporate form.
  - The idea is not to treat an LLC, a newly formed project company, or a multilayered ownership structure as inherently problematic. The central questions would be who controls the applicant, where the necessary resources are located, and whether the applicant has secured access to them.

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Ownership, Control, Governance

- **Require a complete ownership-and-control chart**
  - Applicant should provide a chart showing the ownership chain from the applicant through the ultimate controlling company or person. The chart would identify ownership percentages, voting or management control, and the role each relevant entity plays in supporting the project.
- **Identify the ultimate controlling entity**
  - This would help the Council understand who ultimately has the power to direct the applicant, change its management, sell the project, or discontinue corporate support.
- **Require information about how the applicant is governed and who can bind it**
  - The applicant would provide its operating agreement, bylaws, partnership agreement, or comparable governing documents, where they exist. The purpose is not to scrutinize every internal business provision, but to determine who has decision-making authority and whether the applicant has authority to enter contracts, receive parent support, fund the project, and satisfy certificate obligations.
- **Broaden the operating-agreement concept beyond a document "between" the parent and applicant.**
  - An operating agreement is not necessarily an agreement between two companies and may not contain a parent-support commitment. We should focus on whatever governing documents and agreements actually establish ownership, management authority, capital obligations, and access to parent or affiliate resources.

Reliance on Other Entities

- **Create the concept of a "relied-upon entity"**
  - Does not have to be a single entity, various entities could provide various support functions, e.g., financial support, engineering expertise, etc.
- **Require the applicant to identify exactly what it is relying on each entity to provide**
- **Require evidence that each relied-upon entity possesses the claimed capability**
- **Require evidence that the capability will be legally and practically available when it is needed**
- **Replace nonbinding parent comfort letters with meaningful commitments when parent support is essential**
- **Allow flexibility in the form of the parent commitment.**
  - Does not have be a "guaranty". A letter, services agreement, capital-support agreement, or other instrument could work, provided it creates a sufficiently specific and enforceable obligation.
- **Allow preliminary agreements during application review, with a firm hold point before the capability is needed**.
  - *Consider making this a mandatory condition rather than an application requirement.*
- **Require continuity of support, not permanent reliance on one particular parent**
  - Projects may be sold and corporate structures may change over the life of a facility. A parent or contractor could be replaced, but only after the applicant demonstrates that the replacement provides equivalent or greater capability.

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Project Performance History

- **Require a standardized project-history table instead of an open-ended narrative**
  - The applicant would provide consistent information about relevant projects, including the project's location, technology, size, status, the entity's role, important dates, and project outcome. This would make applications easier to compare and reduce selective descriptions of only successful projects

- **Apply the project-history requirement to the entities whose experience is actually being relied upon**
  - The table would generally cover the applicant, the ultimate controlling company where relevant, and any parent, affiliate, operator, or contractor whose experience is material to the Council's finding. It would not automatically require information about every entity in a large corporate family.

- **Use a defined and proportionate scope for comparable projects**
  - Consider the disclosure of Oregon projects, a reasonable number of recent comparable projects elsewhere in the country, and any additional projects the applicant affirmatively relies upon. This avoids demanding a complete global inventory from a large developer while still providing a meaningful performance record.

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Project Performance History Cont.

- **Focus on objective project outcomes**
  - The applicant would disclose projects that received approval but were not completed, projects where construction stopped, facilities that ceased operation unusually early, and projects with incomplete retirement or restoration obligations.
- **Require the applicant to explain why an unsuccessful or discontinued project had that outcome**
  - A project that was canceled because it lost an interconnection agreement is different from a project left partially constructed or unrestored.
- **Unsuccessful projects would be relevant evidence, not an automatic disqualification**
  - The Council would consider the entity's role, the circumstances, regulatory compliance, site disturbance, corrective actions, and whether obligations were ultimately satisfied.
- **Require disclosure of material adverse performance**
  - Relevant information could include significant regulatory violations, permit revocations, penalties, debarments, material defaults, bankruptcies affecting project completion, and failures to complete required restoration.
- **Use a defined lookback period**
  - E.g., a ten-year period for most project and performance disclosures. The Department could request older information where a particularly significant event remains relevant.

Ongoing Disclosure

- **Require applicants to update material information before the Council's final decision**
- **Require continued maintenance of the capabilities on which the Council relied**
  - The site certificate would require the certificate holder to maintain relied-upon expertise, support agreements, insurance, and other essential arrangements for as long as they are needed.
- **Require advance notice of material changes**
  - The certificate holder would notify the Department before materially changing or terminating a parent commitment, services agreement, operator, key contractor, insurance arrangement, or other relied-upon capability.
- **Allow the Department to request updated information when circumstances raise a legitimate concern**
  - If there is evidence of financial distress, loss of a parent commitment, a major corporate restructuring, or another material development, the Department could request updated organizational or financial information rather than waiting for the next annual report.

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Confidentiality

- **Create a defined process for confidential business information**
  - Applicants would submit an unredacted regulatory copy and a public redacted copy, together with a specific explanation of the legal basis for each claimed redaction

- **Avoid blanket confidentiality claims**
  - The applicant would need to identify the particular information it believes is exempt rather than labeling entire operating agreements or financial submissions confidential

- **Preserve Oregon public-records law**
  - The rule would establish a submission process but would not create a new exemption or promise that information will be withheld when Oregon law requires disclosure.

Conclusion

We want to shift the inquiry from:

“Does someone in the corporate family have experience?”

To:

“Who will perform each necessary function, do they have the capability, and has the applicant secured reliable access to that capability?”

Financial Assurance

345-022-0050

To issue a site certificate, the Council must find that:

- (1) The site, taking into account mitigation, can be restored adequately to a useful, non-hazardous condition following permanent cessation of construction or operation of the facility.

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The Problem

- The existing system is highly protective but not necessarily transparent or efficient
- Existing approach is generally low financial risk for the State, but it uses:
  - inconsistent cost-estimating methods
  - limited tools for regulatory validation
  - potentially overlapping contingencies
  - potentially high annual bonding costs
  - no regular substantive recalculation of approved estimates

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What Are Asking For Now?

OAR 345-022	The Ask	The Issue
0050(1)	The applicant has demonstrated a likely ability to obtain a bond or LOC in the amount needed to restore site.	The amount is not revisited again, other than for inflationary adjustments based on the date the original bond/LOC is submitted.
0050(2)(d)	Justification of the methods and assumptions used to develop the decommissioning cost estimate.	Current ask rarely gets us the info we need.

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What Are Asking For Now?

OAR 345-022	The Ask	The Issue
0050(4)(a)(B)	The type and amount of the proposed bond or LOC	Difficult to evaluate.
0050(4)(a)(C)	Reasonable likelihood of obtaining a bond or LOC in the amount deemed satisfactory	We frequently ask for more, e.g., a comfort letter from a financial institution.
Misc	Flat administrative bump (10%) and decommissioning contingency (20%)	Not based on forecast of level of effort or hours, but arbitrary and asserted as too high by developers

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What We Want

- Reasonably accurate estimate of what it will take to decommission site
- Proof of adequate funds to do so

What Do Other States Do?

- Looking at 49 other states we see 49 different ways to do this.

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What Should We Do?

- **Require transparent disclosure of major assumptions**
  - We should be asking for the same assumptions from all applicants, e.g., labor rates, removal depths, etc.
- **Identify who prepared the estimate and why that person is qualified**
- **Require updates when the facility materially changes**
  - An estimate should be revised when an amendment materially changes the facility footprint, equipment, construction status, retirement obligations, or estimated restoration cost

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What Should We Do?

- **Standardize the information used to demonstrate that an instrument will be available**
  - The current rule requires evidence that the applicant is reasonably likely to obtain the proposed bond or letter of credit - this often results in additional information requests for a financial institution comfort letter and later requests to refresh an outdated letter.

- **Remove or relocate unrelated materials-management information**
  - OAR 345-022-0050 currently includes a materials analysis addressing industrial materials, hazardous substances, and nonhazardous waste. Those issues are not directly related to the financial assurance finding and are also addressed in other standards. The proposed rule changes could move that information to Waste Minimization or use a cross-reference rather than retaining it within R&FA.

Calculation of Costs

- **Option 1 – Retain Project Specific Estimates, but Standardize Disclosures**
  - Each applicant would continue to prepare its own project-specific estimate, but would use a required format and disclose specified quantities, unit costs, production rates, assumptions, markups, and contingencies.
  - **Pros:**
    - Preserves flexibility for unusual technologies and sites
    - Places primary responsibility on the applicant rather than requiring ODOE to maintain a statewide cost model
    - Could be implemented relatively quickly
    - Would make comparisons between estimates easier even when different methodologies are used
  - **Cons:**
    - Different consultants could still reach substantially different results
    - ODOE would continue to need expertise or benchmarks to determine whether unit costs are reasonable
    - A standardized disclosure form improves transparency but does not necessarily improve accuracy
    - Applicants and analysts may continue to spend significant time debating assumptions

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Calculation of Costs

- **Option 2 – Develop a State reference framework or component-based cost model**
  - ODOE would establish typical costs for removing major facility components and completing common restoration tasks. Applicants could use the framework directly or submit project-specific deviations supported by evidence.

  - **Pros:**
    - Provides an objective baseline for application review
    - Promotes consistency across similar projects
    - Could reduce the cost of preparing and reviewing routine estimates
    - Preserves flexibility for site-specific adjustments
    - Makes unusual estimates or assumptions easier to identify

  - **Cons:**
    - Requires initial development and ongoing maintenance by ODOE or a contractor
    - Labor, equipment, disposal, and technology costs can change rapidly
    - A framework that is not regularly updated could become less reliable than private estimates
    - Determining the proper level of detail could be difficult
    - Applicants may still dispute whether a standard assumption applies to a particular project.

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Calculation of Costs

- **Option 3 –** Adopt standardized unit costs or financial assurance rates
  - Use fixed amounts per turbine, acre, megawatt, mile of transmission line, or other unit, with possible adjustments by technology or region

  - **Pros:**
    - Produces the greatest predictability and administrative simplicity
    - Reduces reliance on proprietary consultant methodologies
    - Makes routine updates easier if the rates are indexed
    - Could substantially reduce application review time

  - **Cons:**
    - Capacity or acreage may not correlate closely with actual retirement cost
    - Could significantly oversecure some facilities and undersecure others
    - Would be difficult to apply to uncommon or mixed-technology facilities
    - May not account for project-specific restoration requirements or unusually difficult sites
    - The rates would still need periodic technical review and revision.

Where Should Mandatory Assumptions Exist?

- **Option 1 –** Put detailed assumptions directly in rule
  - E.g., removal depth, mandatory road removal, treatment of contractor overhead, etc.

  - **Pros:**
    - Provides clear and enforceable expectations
    - Reduces differences between analysts and applications
    - Gives developers greater certainty before preparing an estimate.

  - **Cons:**
    - Detailed rules can become outdated
    - A single assumption may not fit every technology, land use, or site certificate
    - Updating technical details would require formal rulemaking
    - Excessive detail could make the rule difficult to administer

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Where Should Mandatory Assumptions Exist?

- **Option 2 –** Use Department guidance or a technical manual
  - **Pros:**
    - Easier to update as costs, technologies, and practices change
    - Can include examples, templates, and technical detail that would be unwieldy in rule
    - Allows ODOE to distinguish among facility types
  - **Cons:**
    - Guidance may not provide the same certainty or enforceability as a rule
    - Applicants may dispute whether a guidance assumption is mandatory
    - A technical manual still requires resources and a defined update process
    - Past guidance and estimating tools have been difficult for ODOE to maintain

Where Should Mandatory Assumptions Exist?

- **Option 3 –** Use a hybrid structure
  - Put the core principles and minimum cost categories in rule, while placing unit costs, calculation methods, forms, and technology-specific assumptions in a periodically updated technical framework

  - **Pros:**
    - Provides enforceable minimum protections without freezing every technical detail in rule
    - Allows the technical framework to evolve
    - Could reduce disputes over whether major categories must be included.

  - **Cons:**
    - Requires a clear legal mechanism for adopting and updating the technical framework
    - Can create confusion if the rule and guidance are not carefully coordinated
    - ODOE would still need resources to maintain the technical material.

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Who can prepare estimates?

- **Option 1 –** Use Department guidance or a technical manual
- **Option 2 –** Require preparation or certification by a licensed professional engineer or similarly credentialed professional
- **Option 3** – Require independent third-party review, selected or approved by Council

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Inclusion of Administrative Overhead

- **Option 1 –** Establish fixed percentages in rule or an incorporated schedule
- **Option 2 –** Require estimate-specific administrative costs and contingency
- In any event, avoid “double counting” administrative costs where already included in original estimate.

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Salvage Value

- Previously considered and rejected as too unreliable
  - Concerns about value of materials, availability of recycling facilities that can actually take materials, and difficulty to secure value when competing with other creditors in event of default
- Broader outlook, some states allow at least some credit for salvage, but the trend is to reduce this amount or forgo it altogether
- If you want salvage credit, make your best case, otherwise it will likely not be included at this time

Recalculation of Costs

- Currently retirements cost adjustments only account for inflation
- Option 1: Require recalculation on a fixed schedule
  - Pros:
    - Predictable for certificate holders and ODOE
    - Accounts for changes in technology, labor, disposal, and retirement practices
    - Has substantial precedent in other jurisdictions
    - Prevents an estimate from remaining substantively unchanged for several decades
  - Cons:
    - Requires review even when little has changed
    - Creates recurring costs for certificate holders and ODOE
    - Could produce a large number of updates in the same year
    - Five years may be too frequent for some facilities and too infrequent for others

Recalculation of Costs

- Option 2: Require recalculation only at defined milestones or events
  - Events could include: Completion of construction or one year of operation; a material facility amendment; a transfer of the site certificate; partial retirement, etc.
  - **Pros:**
    - Targets review when the estimate is most likely to have changed
    - Avoids unnecessary routine recalculations
    - Connects the estimate to actual project conditions
  - **Cons:**
    - Some estimates could remain unchanged for long periods
    - Requires clear definitions of what changes are material
    - Events not anticipated in the rule could still make an estimate inaccurate

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Recalculation of Costs

- Option 3: Use a hybrid schedule
  - Require an update following construction or early operation, then at regular intervals, with additional updates following specified material events.
  - **Pros:**
    - An early operational update can incorporate actual facility quantities and conditions discovered during construction.
    - Reduces the chance that a material change will wait until the next scheduled review.
  - **Cons:**
    - Potential for the greatest recurring workload.
    - Needs a streamlined review process for updates that do not materially alter the amount.

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Fully Funded Timing

- Option 1: Maintain full funding before construction
  - Easy but more costly, at least early on

- Option 2: Adopt a fixed graduated schedule
  - E.g., require a stated percentage before construction or operation, increase it after a specified number of years, and require full funding by a final date.
  - Easy, but may not reflect actual risk

- Option 3: Use a risk-based or project-stage schedule
  - E.g., require enough assurance to restore the actual or maximum anticipated construction disturbance, then adjust the amount based on commissioning, operating status, facility condition, remaining useful life, and other objective risk factors.
  - More complex, but likely more accurate, as long as you have reliable information about project value and risk. Difficult to apply across technologies.

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Standard or Mandatory Condition

- **OAR 345-022-0050 could address:**
- The required findings.
- The purpose and required amount of financial assurance.
- The required scope of the retirement cost estimate.
- The basic estimating methodology.
- Required applicant evidence.
- The circumstances requiring independent review.
- The general obligation to update the estimate.

- **OAR 345-025-0006 could address:**
- When the instrument must be submitted.
- Instrument form and minimum terms.
- Maintenance, renewal, replacement, and cancellation.
- Draw authority.
- Stage-specific funding requirements.
- Ongoing reporting.
- Liability for actual costs.
- Reduction and release of financial assurance.

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Public Comments

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Next Steps

- Staff will draft language based on today's discussion and any RAC feedback submitted prior to Sept 18, 2026.
- Staff will compile feedback and prepare draft language
- Additional RAC meeting will depend on nature of feedback given. Regardless of whether we have another meeting, RAC will have chance to provide feedback on draft language prior to presentation of draft language to the Council
- If there is another RAC meeting, it will take place in October

Questions?

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THANK YOU!