

# Oregon Department of Energy Administrative Rules

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## Division 1 - General Provisions

### 345-001-0000

#### Notice of Permanent Rulemaking

- (1) Before adopting, amending or repealing any rule, the Council shall give notice of the proposed adoption, amendment or repeal as required by ORS 183.335:
- (a) In the Secretary of State's Bulletin referred to in ORS 183.360 at least 21 days before the effective date of the adoption, amendment or repeal of the rule,
  - (b) As required under ORS 183.335, by mailing a copy of the notice to the Council's mailing list of persons who have requested notice of rulemaking at least 28 days before the effective date of the rule and to certain legislators at least 49 days before the effective date of the rule, and
  - (b) By mailing or furnishing a copy of the notice to the Associated Press and the Capitol Press Room.
- (2) Notwithstanding the requirements of ORS 183.335, when the Council is required to adopt rules or regulations promulgated by an agency of the federal government and the Council has no authority to alter or amend the content or language of those rules or regulations prior to their adoption, the Council shall adopt these rules or regulations under the procedures prescribed in ORS 183.337.

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.470, 469.490

### 345-001-0005

#### Uniform and Model Rules

- (1) Except as described in this rule, the Council adopts and incorporates by reference in this chapter the following rules from the Attorney General's Uniform and Model Rules (January 1, 2006): OAR 137-001-0005 through 137- 001-0100, 137-002-0010 through 137-002-0060, 137-003-0001 through 137- 003-0092, and 137-005-0010 through 137-005-0070.
- (2) Notwithstanding the provisions of OAR 137-003-0055(1), following the issuance of notice of a contested case, the Department of Energy shall enter into the record the substance of any significant contact between a Council member and any Department staff from that point forward, concerning facts in the record.
- (3) In any conflict between the model rules and Council rules, the Council shall apply its own rules.

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.490

### 345-001-0010

#### Definitions

In this chapter, the following definitions apply unless the context requires otherwise or a term is specifically defined within a division or a rule:

- (1) “Adjusted to ISO conditions” as defined in ORS 469.503(2)(e).
- (2) “Analysis area” means the area or areas specifically described in the project order issued under 345-015-0160(1), containing resources that the proposed facility may significantly affect. The analysis area is the area for which the applicant shall describe the proposed facility’s impacts in the application for a site certificate. A proposed facility might have different analysis areas for different types of resources. For the purpose of submitting an application for a site certificate in an expedited review granted under OAR 345-015-0300 or OAR 345-015-0310, the analysis areas are the study areas defined in this rule, subject to modification in the project order.
- (3) “Applicant” as defined in ORS 469.300 or, if an application has not been submitted, a person who has submitted, or intends to submit, a notice of intent or a request for expedited review.
- (4) “Associated transmission lines” as defined in ORS 469.300.
- (5) “Average electric generating capacity” as defined in ORS 469.300.
- (6) “Background radiation” means the direct radiation (gamma) and concentrations of potential radionuclide contaminants in construction materials and the environment in the vicinity of the plant not associated with the nuclear operation and retirement of the facility. Background shall be determined as follows:
  - (a) For direct radiation, the results of any background measurements taken prior to operation of the facility shall be provided and 6 to 10 measurements shall be taken in areas in the vicinity of the site with materials and/or geological formations representative of the site that have not been affected by the operation and retirement of the facility. Background shall be calculated at the average and at the 95% confidence level.
  - (b) Environmental samples shall be taken for soil, sediment, water, and other materials present at the facility site that could have been affected by facility operations and retirement. Measurements for these samples shall be calculated at the average and 95% confidence levels, based on 6 to 10 measurements. Background environmental samples shall be taken at locations on site or in the immediate vicinity of the site which are unaffected by plant operations. Background shall be calculated at the average and 95% confidence levels, based on 6 to 10 measurements at each location.

(c) For construction material such as concrete, asphalt, block, brick and other materials used to construct the buildings and systems at the site, representative samples of materials unaffected by site operations shall be selected and surveyed. Six to ten samples of each material shall be taken to determine the level of naturally occurring and artificially induced concentrations of naturally occurring radioactivity present. Measurements shall include direct radiation (beta-gamma and alpha), wipes and qualitative and quantitative laboratory analyses. Concentrations of fission and activation products from historical fallout shall be characterized as well.

(c) All measurements shall be made using appropriate instruments, properly calibrated, and in sufficient number to determine compliance with requirements.

(7) “Base load gas plant” as defined in ORS 469.503(2)(e).

(8) “Certificate holder” means the person to whom a site certificate has been granted by the Council pursuant to this chapter.

(9) “Chair” means the chairman or chairwoman of the Energy Facility Siting Council.

(10) “Committed firm energy and capacity resources” means generating facilities or power purchase contracts that are assured to be available to the energy supplier over a defined time period. Committed firm energy and capacity resources include existing generating facilities, existing power purchase contracts and planned generating facilities that sponsors have made firm commitments to develop.

(11) “Construction” as defined in ORS 469.300.

(12) “Corridor” means a continuous area of land not more than one-half mile in width and running the entire length of a proposed transmission line or pipeline. “Micrositing corridor” is defined below in this rule.

(13) “Council” means the Energy Facility Siting Council established under ORS 469.450.

(14) “Council Secretary” means the person designated by the Director of the Oregon Department of Energy to serve as secretary to the Council.

(15) “Department” means the Office of Energy or the Department of Energy created under ORS 469.030.

(16) “Direct cost” means the discounted sum of all monetary costs to the ultimate consumer over the lifetime of the facility or resource plan or resource strategy.

(17) “Energy facility” means an energy facility as defined in ORS 469.300, including a small generating plant for which an applicant must have a site certificate according to OAR 345-001-0210.

(18) “Energy supplier” means:

- (a) A retail electric utility, a federal power marketing agency, or a local gas distribution company, or
- (b) A person or public agency generating electric energy for its own consumption, lawfully purchasing electric energy directly from a generator for its own consumption, or transmitting or distributing natural or synthetic gas from an energy facility for its own consumption.

(19) “Existing corridor” as used in ORS 469.300 and ORS 469.442, means the right-of-way of an existing transmission line, not to exceed 100 feet on either side of the physical center line of the transmission line or 100 feet from the physical center line of the outside lines if the corridor contains more than one transmission line.

(20) “Facility” as defined in ORS 469.300 or a small generating plant for which an applicant must have a site certificate according to OAR 345-001-0210 together with any related or supporting facilities.

(21) “Facility substantially similar to the proposed facility” means:

- (a) A facility that uses the same fuel and substantially similar technology, that has substantially the same in-service date, and that has a direct cost not substantially greater than that of the proposed facility; or
- (b) A facility that is demonstrated to provide as good a mix of reliability, compatibility with the power system, strategic flexibility, environmental impact and direct cost as the proposed facility taking into account reasonable trade-offs among such factors.

(22) “Fossil fuel” means natural gas, petroleum, coal and any form of solid, liquid or gaseous fuel derived from such materials that is used to produce useful energy.

(23) “Fossil-fueled power plant” as defined in ORS 469.503(2)(e).

(24) “Fuel chargeable to power heat rate” means the net heat rate of electric power production during the first twelve months of commercial operation. A fuel chargeable to power heat rate is calculated with all factors adjusted to the average temperature, barometric pressure and relative humidity at the site during the times of the year when the facility is intended to operate using the formula,  $FCP = (FI - FD) / P$ , where:

- (a)  $FCP$  = Fuel chargeable to power heat rate.

- (b) FI = Annual fuel input to the facility applicable to the cogeneration process in British thermal units (higher heating value).
- (c) FD = Annual fuel displaced in any industrial or commercial process, heating, or cooling application by supplying useful thermal energy from a cogeneration facility instead of from an alternate source, in British thermal units (higher heating value).
- (d) P = Annual net electric output of the cogeneration facility in kilowatthours.

(25) “Generating facility” as defined in ORS 469.503(2)(e).

(26) “Gross carbon dioxide emissions” as defined in ORS 469.503(2)(e). The Council shall measure the gross carbon dioxide emissions of a fossil-fueled power plant on a new and clean basis. For nongenerating energy facilities that emit carbon dioxide, the Council shall measure the gross carbon dioxide emissions as described in OAR 345-024-0620(1).

(27) “High efficiency cogeneration facility” means an energy facility, except coal and nuclear power plants, that sequentially produces electrical and useful thermal energy from the same fuel source and under normal operating conditions has a useful thermal energy output of no less than 33 percent of the total energy output or:

- (a) For an energy facility with a nominal electric generating capacity of 50 megawatts or more, a fuel chargeable to power heat rate of no greater than 5550 Btu per kilowatt-hour (higher heating value);
- (b) For an energy facility with a nominal electric generating capacity of less than 50 megawatts, a fuel chargeable to power heat rate of no greater than 6000 Btu per kilowatt-hour (higher heating value).

(28) “Land use approval” means a final quasi-judicial decision or determination made by a local government that:

- (a) Applies existing comprehensive plan provisions or land use regulations to a proposed facility;
- (b) Amends a comprehensive plan map or zoning map to accommodate a proposed facility;
- (c) Amends comprehensive plan text or land use regulations to accommodate a proposed facility;
- (d) Applies the statewide planning goals to a proposed facility; or
- (e) Takes an exception to the statewide planning goals adopted by the Land Conservation and Development Commission for a proposed facility.

- (29) “Local government” as defined in ORS 469.300.
- (30) “Micrositing corridor” means a continuous area of land within which construction of facility components may occur, subject to site certificate conditions.
- (31) “Mitigation” means taking one or more of the following actions listed in order of priority:
- (a) Avoiding the impact altogether by not taking a certain action or parts of an action;
  - (b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation;
  - (c) Partially or completely rectifying the impact by repairing, rehabilitating or restoring the affected environment;
  - (d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action by monitoring and taking appropriate corrective measures;
  - (e) Partially or completely compensating for the impact by replacing or providing comparable substitute resources or environments; or
  - (f) Implementing other measures approved by the Council.
- (32) “Natural gas” means all gas and all other fluid hydrocarbons not defined as oil in ORS 520.005(6), including condensate originally in the gaseous phase in the reservoir.
- (33) “Natural gas fired facility” means an energy facility that is intended to be fueled by natural gas except for infrequent periods when the natural gas supply is interrupted, during which an alternate fuel may be used. Such alternate fuel use shall not exceed 10 percent of expected fuel use in British thermal units, higher heating value on an annual basis.
- (34) “Net carbon dioxide emissions” as defined in ORS 469.503(2)(e).
- (35) “Net electric power output” means the electric power produced or capacity made available for use. Calculation of net electric power output subtracts losses from on-site transformers and power used for any on-site electrical loads from gross capacity as measured or estimated at the generator terminals for each generating unit.

**(36)** “New and clean basis” means the average carbon dioxide emissions rate per hour and net electric power output of the energy facility, without degradation. The site certificate holder shall determine the new and clean basis:

**(a)** By a 100-hour test at full power that the site certificate holder completes during the first 12 months of commercial operation of the energy facility, unless the Council specifies a different testing period for a non-base load power plant (or power augmentation) or a nongenerating energy facility. A 100-hour test performed for purposes of the certificate holder’s commercial acceptance of the facility may suffice in lieu of testing after beginning commercial operation;

**(b)** With the results adjusted for the average annual site condition for temperature, barometric pressure and relative humidity and use of alternative fuels unless the Council specifies that the results for a non-base load power plant (or power augmentation) or a nongenerating energy facility be adjusted for the average temperature, barometric pressure and relative humidity at the site during the times of the year when the facility is intended to operate;

**(c)** Using a rate of 117 pounds of carbon dioxide per million Btu of natural gas fuel (higher heating value); and,

**(d)** Using a rate of 161 pounds of carbon dioxide per million Btu of distillate fuel (higher heating value), if such fuel use is proposed by the applicant.

**(e)** Notwithstanding subsection (a) and including subsections (b) through (d), for a facility that employs major power generating equipment that has previously been used, the new and clean basis shall mean average carbon dioxide emissions rate and net electric power output for the first use of the equipment at the site, as determined by historical data from the previous usage or by testing on site.

**(37)** “Nominal electric generating capacity” as defined in ORS 469.300.

**(38)** “Non-base load power plant” means a fossil-fueled generating facility that is limited by the site certificate to an average number of hours of operation per year of not more than 6,600 hours. For a non-base load power plant designed to operate at variable loads, the facility’s annual hours of operation are determined by dividing the actual annual electric output of the facility in megawatt-hours by the facility’s nominal electric generating capacity in megawatts. The Council shall assume a 30-year life for the plants for purposes of determining gross carbon dioxide emissions, unless the applicant requests and the Council approves a shorter operational life in the site certificate. If the Council approves a shorter operational life, the certificate holder shall operate the facility for no longer than the approved operational life or, before the expiration of the approved operational life, shall request an amendment of the site certificate to extend the operational life.

**(39)** “Nongenerating facility” as defined in ORS 469.503(2)(e).

(40) “Office of Energy” and “Office” mean the Oregon Office of Energy and the Oregon Department of Energy.

(41) “Offset” as defined in ORS 469.503(2)(e).

(42) “Offset funds” means the amount of funds determined by the Council to satisfy the applicable carbon dioxide emissions standard pursuant to OAR 345- 024-0560(3), OAR 345-024-0600(3) or OAR 345-024-0630(2) and (4).

(43) “Owner” means owner or lessee under a capital lease.

(44) “Permit” means any permit, license, certificate or other approval required by state statute, state administrative rule or local government ordinance.

(45) “Person” as defined in ORS 469.300.

(46) “Power augmentation” means technologies that increase the capacity and the heat rate of the plant above the capacity and heat rate of the base load gas plant. These include, but are not limited to, duct burning and some forms of steam augmentation.

(47) “Project order” as defined in ORS 469.300.

(48) “Qualified organization” means an organization that:

(a) Is exempt from federal taxation under section 501(c)(3) of the Internal Revenue Code as amended and in effect on December 31, 1996;

(b) Either is incorporated in the State of Oregon or is a foreign corporation authorized to do business in the State of Oregon;

(c) Has in effect articles of incorporation that:

(A) Require that offset funds received under OAR 345-024-0710(3) are used for offsets that will result in the direct reduction, elimination, sequestration or avoidance of carbon dioxide emissions;

(B) Require that decisions on the use of such funds are made by a body composed of seven voting members of which three are appointed by the Council, three are Oregon residents appointed by the Bullitt Foundation or an alternative environmental nonprofit organization named by the body, and one is appointed by the applicants for site certificates that are subject to OAR 345-024- 0550, OAR 345-024-590, and OAR 345-024-0620 and the holders of such site certificates; and

- (c)** Require nonvoting membership on the decision-making body for holders of site certificates that have provided funds not yet disbursed under OAR 345-024-0710(3);
- (d)** Has made available on an annual basis, beginning after the first year of operation, a signed opinion of an independent certified public accountant stating that the qualified organization's use of funds pursuant to ORS 469.503 conforms with generally accepted accounting procedures except that the qualified organization shall have one year to conform with generally accepted accounting principles in the event of a nonconforming audit;
- (e)** Has to the extent applicable, except for good cause, entered into contracts obligating at least 60 percent of the offset funds to implement offsets within two years after the commencement of construction of the facility; and **(f)** Has to the extent applicable, except for good cause, complied with OAR 345-024-0710(3).
- (49)** “Related or supporting facilities” as defined in ORS 469.300. The Council interprets the terms “proposed to be built in connection with” as meaning that a structure is a related or supporting facility if it would not be built but for construction or operation of the energy facility. “Related or supporting facilities” does not include any structure existing prior to construction of the energy facility, unless such structure must be significantly modified solely to serve the energy facility.
- (50)** “Reviewing agency” means any of the following officers, agencies or tribes:
- (a)** Department of Environmental Quality
  - (b)** Water Resources Commission and the Water Resources Director through the Water Resources Department
  - (c)** Fish and Wildlife Commission through the Department of Fish and Wildlife
  - (d)** State Geologist
  - (e)** Department of Forestry
  - (f)** Public Utility Commission
  - (g)** Department of Agriculture
  - (h)** Department of Land Conservation and Development
  - (i)** Northwest Power Planning Council
  - (j)** Office of State Fire Marshal

- (k) Department of State Lands
  - (l) State Historic Preservation Office
  - (m) Any other agency identified by the Department of Energy
  - (n) Any tribe identified by the State Commission on Indian Services as affected by the proposed facility
  - (o) The governing body of any incorporated city or county in Oregon within the study area as defined in OAR 345-001-0010 for impacts to public services
  - (p) Any special advisory group designated by the Council under ORS 469.480
  - (q) The federal land management agency with jurisdiction if any part of the proposed site is on federal land
- (51) “Significant” means having an important consequence, either alone or in combination with other factors, based upon the magnitude and likelihood of the impact on the affected human population or natural resources, or on the importance of the natural resource affected, considering the context of the action or impact, its intensity and the degree to which possible impacts are caused by the proposed action. Nothing in this definition is intended to require a statistical analysis of the magnitude or likelihood of a particular impact.
- (52) “Site” as defined in ORS 469.300. “Energy facility site” means all land upon which an energy facility is located or proposed to be located. “Related or supporting facilities site” means all land upon which related or supporting facilities for an energy facility are located or proposed to be located.
- (53) “Site boundary” means the perimeter of the site of a proposed energy facility, its related or supporting facilities, all temporary laydown and staging areas and all corridors and micrositing corridors proposed by the applicant.
- (54) “Site certificate” as defined in ORS 469.300.
- (55) “Special nuclear material” means plutonium, uranium-233 or uranium enriched in the isotope 233 or in the isotope 235.
- (56) “Strategic flexibility” means the value of a resource as part of a strategy to manage variance in costs or risks caused by future uncertainty.
- (57) “Study area” means an area defined in this rule. Except as specified in subsections (f) and (g), the study area is an area that includes all the area within the site boundary and the area within the following distances from the site boundary:

- (a) For impacts to threatened and endangered plant and animal species, 5 miles.
  - (b) For impacts to scenic resources and to public services, 10 miles.
  - (c) For land use impacts and impacts to fish and wildlife habitat, one-half mile.
  - (d) For impacts to recreational opportunities, 5 miles.
  - (e) For impacts to protected areas described in OAR 345-022-0040, 20 miles.
  - (f) The distance stated in subsection (a) above does not apply to surface facilities related to an underground gas storage reservoir.
  - (g) The distances stated in subsections (a), and (d) above do not apply to pipelines or transmission lines.
- (58) “Substantial loss of steam host” means the thermal energy user associated with a high efficiency cogeneration facility has made such long-term changes in its manner and magnitude of operation as to result in the loss of one or more work shifts for at least a year, accompanied by at least a 30 percent resultant reduction in the use of thermal energy.
- (59) “Substantial loss of fuel use efficiency” means an increase in the fuel chargeable to power heat rate at a high efficiency cogeneration facility to greater than 7000 Btu per kilowatt-hour (higher heating value), or reduction of the fraction of energy output going to the thermal energy user associated with the facility to less than 20 percent, as a result of a substantial loss of steam host. Substantial loss of fuel use efficiency does not include efficiency losses due to equipment wear or condition.
- (60) “Surface facilities related to an underground gas storage reservoir” means structures or equipment adjacent to and associated with an underground gas storage reservoir that are proposed to be built in connection with an underground gas storage reservoir and include, but are not limited to:
- (a) Facilities such as stripping plants, main line dehydration stations, offices, warehouses, equipment shops, odorant storage and injection equipment and compressors;
  - (b) Pipelines, such as gathering lines and liquid collection lines; and
  - (c) Roads and road maintenance equipment housing at the reservoir site.
- (61) “Thermal power plant” as defined in ORS 469.300.
- (62) “Total energy output” means the sum of useful thermal energy output and useful electrical energy output.

(63) “Underground gas storage reservoir” as defined in ORS 469.300.

(64) “Useful thermal energy” means the verifiable thermal energy used in any industrial or commercial process, heating or cooling application;

(65) “Utility” as defined in ORS 469.300.

(66) “Vice-chair” means the vice-chairman or vice-chairwoman of the Energy Facility Siting Council.

(67) “Waste disposal facility” as defined in ORS 469.300.

Stat. Authority: ORS 469.373, ORS 469.470

Stat. Implemented: ORS 469.300 to 469.570, 469.590 to 469.619 and 469.992

### **345-001-0020**

#### **Purpose**

- (1) The purpose of the rules of this chapter is to establish application requirements, review procedures and standards for the siting, construction, operation and retirement of energy facilities, for the transport of radioactive materials, and for the disposal of radioactive waste and uranium mine overburden. These rules are to ensure that the siting, construction, operation and retirement of energy facilities and disposal facilities and the transport of radioactive materials are done consistent with protection of the public health and safety and in compliance with the energy policy and air, water, solid waste, land use and other environmental protection policies of Oregon.
- (2) Except as indicated otherwise, the Council shall use the rules of this chapter to determine whether to grant or deny a site certificate and, if the Council grants a site certificate for a facility, to oversee the construction, operation and retirement of the facility. The Council shall use the rules of this chapter in proceedings for amendment, suspension, revocation, transfer or termination of a site certificate.
- (3) When the Council deems appropriate, it may adopt additional rules on matters within its jurisdiction. The Council shall adopt any additional rules relating to site certificates sufficiently in advance of the close of testimony in a contested case proceeding on a site certificate to allow parties to address the rule, or if after the close of testimony, in sufficient time to allow the parties an opportunity to supplement their testimony to offer evidence relating to the new rule.

Stat. Authority: ORS 469.470, ORS 469.556, ORS 469.559, ORS 469.607

Stat. Implemented: ORS 469.310, ORS 469.374, ORS 469.401, ORS 469.501, ORS 469.525, ORS 469.603 to ORS 469.615

### **345-001-0030**

#### **Applicability**

The rules in this chapter apply to all matters under Council jurisdiction, except that the rules in effect before the date of adoption of this rule apply to site certificate amendment proceedings pending before the Council as of that date.

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.310, 469.320

### **345-001-0035**

#### **Electric and Magnetic Field Committee**

- (1) The chair shall appoint an Electric and Magnetic Field Committee composed of Council members and representatives of the public, utilities, manufacturers and state agencies. The chair may delegate the authority to set meeting dates and agendas to the committee.
- (2) The committee shall monitor information available and being developed on the health effects of exposure to low frequency electric and magnetic fields and report the committee's findings periodically to the Council. The Council shall report the findings of the committee to the Legislative Assembly.

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.480

### **345-001-0050**

#### **Public Records Availability and Fees for Copying**

- (1) All public records of the Council that are retained by the Department of Energy are available for public inspection and copying at the Department during usual business hours, except for records that the Department has determined to be exempt or conditionally exempt from disclosure in accordance with ORS Chapter 192. Except as protected under ORS 357.875, any permanent record of the Council kept by the State Archivist can be inspected at the State Archive building, subject to applicable rules of the Secretary of State, Archives Division.
- (2) To inspect Council records a person shall submit to the Department a written request containing the following information:
  - (a) Name, address, e-mail address and telephone number of the person requesting the record.
  - (b) A specific description of the record requested.
- (3) After receiving a request to inspect a Council record, the Department shall notify the requesting person whether the record is stored on or off the premises of the Department or is kept by the State Archivist.

- (4) If the requested record is stored on the premises of the Department, the person who requested the record may inspect it on the premises without charge.
- (5) If the requested record is stored off the premises of the Department, the Department shall charge for the staff time necessary to make the record available for inspection on the premises of the Department.
- (6) To obtain a copy of a requested record, the person who requested the record shall pay, in addition to any charges under section (5), a fee for the reproduction of the record as follows:
  - (a) A fee of fifteen cents (\$0.15) per page if the request does not require significant staff time. If the request requires significant staff time, photocopying costs may include, in addition to a per-page charge, the cost of staff time at the rate of twenty-five dollars (\$25) per hour.
  - (b) A fee of five dollars (\$5) for copies of audio tapes or digital media.
- (7) The person requesting copies of records shall pay the fees described in section (6) in advance, except that government agencies or parties in proceedings before the Council need not pay before delivery of the copies.

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.560

### **345-001-0060**

#### **Council Representation at Contested Case Hearings**

- (1) A Council member, an officer of the Department of Energy, or an employee of the Department may appear, but not make legal argument, on behalf of the Council in a hearing or in a class of contested case hearings in which the Attorney General or the Deputy Attorney General has given written consent to the Council member or to the officer or employee of the Department pursuant to ORS 183.450(7) to represent the Council. Before each contested case hearing in which the Council wishes to appear by a member or by an officer or employee of the Department, the Council shall request written consent from the Attorney General or the Deputy Attorney General for the designated representative to appear on behalf of the Council. The Department and the Department of Justice shall maintain a copy of the list of contested case hearings for which the Attorney General or the Deputy Attorney General has given such consent.
- (2) Legal argument as used in this rule has the same meaning as in OAR 137- 003-0008(1)(c) and (d).

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 183.450(8), ORS 469

### **345-001-0080**

#### **Reconsideration and Rehearing -- Orders in Other than Contested Cases**

- (1) A person entitled to judicial review under ORS 183.484 of a final order in other than a contested case may file a petition for reconsideration or rehearing with the Council within 60 days after the date of the order. A person seeking reconsideration or rehearing shall deliver or mail a copy of the petition to all other persons and agencies required by statute or rule to be notified.
- (2) The petitioner shall set forth the specified grounds for reconsideration. The petitioner may support the petition by a written argument.
- (3) The petitioner may include a request for a stay of a final order if the petition complies with the requirements of OAR 137-003-0090(2).
- (4) The Council may grant or deny a petition by summary order, and, if the Council does not take action, the petition is deemed denied as provided by ORS 183.484(2).
- (5) Any Council member may move for reconsideration of a final order in other than a contested case within 60 days after the date of the order. The Council shall grant reconsideration if approved by a majority of the Council. The procedural and substantive effect of granting reconsideration under this section is identical to the effect of granting a party's petition for reconsideration.
- (6) The Council shall not grant reconsideration after the filing of a petition for judicial review unless permitted by the court.
- (7) A final order remains in effect during reconsideration until stayed or changed.
- (8) At the conclusion of a reconsideration, the Council shall enter a new order, which may be an order affirming the existing order.

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.403

#### **(Energy Generation Areas)**

### **345-001-0200**

#### **Creation of an Energy Generation Area**

- (1) The Council shall define the boundaries of an energy generation area by rule when:
  - (a) The Council finds that a geographical area exists within which the effects of development of two or more small generating plants, as defined in OAR 345-001-0210, are likely to accumulate so the small generating plants have effects of a magnitude similar to a single generating plant with an average electric generating capacity of 35 megawatts or more;

(b) The Council finds that creation of an energy generation area is in the public interest; and

(c) The Council finds that energy resource, environmental, social, economic, public health or safety justification exists to create the energy generation area.

(2) In defining the boundaries of an energy generation area, the Council shall consider:

(a) The location of geothermal, solar or wind resources;

(b) The effect of energy facility development on wildlife or wildlife habitat;

(c) Natural geographical features; and

(d) Political and treaty boundaries.

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.300, ORS 469.320

### **345-001-0210**

#### **Effect of an Energy Generation Area**

(1) For the purpose of this rule:

(a) “Energy resource” means geothermal, solar or wind power;

(b) “Small generating plant” means one or more electric power generating devices that:

(A) Have a combined nominal electric generating capacity of more than 3 megawatts and a combined average electric generating capacity of less than 35 megawatts;

(B) Are connected to a common switching station or are constructed maintained or operated as a contiguous group of devices; and

(C) Are owned by a single person or entity or subsidiaries of a single entity;

(c) “Accumulated effects” means the effects of a proposed small generating plant or proposed expansion to a small generating plant combined with the effects of all existing small generating plants using the same energy resource within the energy generation area. “Accumulated effects” includes the effects of all related or supporting facilities;

(d) Expansion of a small generating plant includes any enlargement of the site and any increase in the small generating plant’s nominal electric generating capacity;



- (f) Significant public benefits of the proposed small generating plant or proposed expansion to a small generating plant.

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.320

**345-001-0220**

**Energy Generation Areas**

The Council may designate geothermal, solar or wind energy generation areas by rule.

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.300, ORS 469.320

## **Division 11 - Council Meetings**

### **345-011-0000**

#### **Authority and Purpose**

The purpose of the rules in this division is to provide procedures for the orderly conduct of meetings of the Council.

Stat. Auth.: ORS 183 & ORS 469.470 Stats. Implemented: ORS 192 & ORS 469.460  
Hist.: EFSC 7-1980, f. & ef. 10-9-80; EFSC 6-1986, f. & ef. 9-12-86; EFSC 1-1993, f. & cert. ef. 1-15-93; EFSC 2-1999, f. & cert. ef. 4-14-99

### **345-011-0005**

#### **Quorum and Rules of Order**

- (1) Five members of the Council constitute a quorum. The Council may meet to discuss any matter in the absence of a quorum but shall take no formal action on any matter unless a quorum is present.
- (2) A majority of the Council members present at a meeting must concur for the Council to act on any matter before it; however, in accordance with ORS 469.370(7), a Council decision to approve or reject an application for a site certificate requires the affirmative vote of at least four members.
- (3) The Council shall not vote on any proposed Council action unless a Council member has moved, and another Council member has seconded, the proposed action.
- (4) For all Council actions that result in a written order or administrative rule, the Council's action authorizes the Department of Energy to make scrivener's corrections in the written order or administrative rule.

Stat. Auth.: ORS 469.470 Stats. Implemented: ORS 174.130, 469.370 & 469.460  
Hist.: EFSC 7-1980, f. & ef. 10-9-80; EFSC 6-1986, f. & ef. 9-12-86; EFSC 1-1993, f. & cert. ef. 1-15-93; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 2-2000, f. & cert. ef. 11-20-00; EFSC 1-2007, f. & cert. ef. 5-15-07

### **345-011-0010**

#### **Officers**

- (1) The Council shall annually elect a chair and a vice-chair. The chair and vice-chair shall serve for one year or until their successors are elected. A member may serve successive full terms as chair or vice-chair. The chair or vice-chair may be removed by a unanimous vote of the other Council members.
- (2) The chair shall preside over all Council meetings, shall determine, in cooperation with the Council Secretary, the location of the Council meetings, and shall execute all written documents that must be executed in the name of the Council.

- (3) The chair may take action on behalf of the Council in emergencies that arise between meetings, subject to ratification by the Council. When practicable, the chair shall advise all members by telephone of any action proposed to be taken in an emergency.
- (4) The vice-chair shall act in lieu of the chair when the chair is unable to perform any of his or her responsibilities.

Stat. Auth.: ORS 469.470 Stats. Implemented: ORS 469.450 Hist.: EFSC 7-1980, f. & ef. 10-9-80; EFSC 2-1985, f. & ef. 2-5-85; EFSC 6-1986, f. & ef. 9-12-86; EFSC 1-1987, f. & ef. 4-21-87; EFSC 1-1993, f. & cert. ef. 1-15-93; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2007, f. & cert. ef. 5-15-07

### **345-011-0015**

#### **Meetings**

- (1) The Council shall meet periodically, as determined by the Council. The Council may vary the locations of its meetings in order to give persons throughout the state an opportunity to observe and participate in its activities. The Council Secretary, consistent with the requirements of ORS Chapter 192.610 to 192.690, shall give notice of each meeting of the Council.
- (2) The Governor or the chair may call a special Council meeting to be held at any place in this state. The person calling the meeting shall designate the time and place of the meeting and shall give at least 24 hours' notice of the meeting to each Council member and the public. In the event of an emergency, the Council may hold a meeting upon such notice as is appropriate to the circumstances, and in the minutes for such a meeting, the Council shall describe the emergency justifying less than 24 hours' notice.
- (3) The Council may hold meetings by telephone or other electronic communication. If the Council holds a meeting by telephone or other electronic means, the Council shall conduct the meeting in accordance with ORS 192.610 to 192.690.

Stat. Auth.: ORS 469.470 Stats. Implemented: ORS 192.640, 192.670, 469.460 & 469.470 Hist.: EFSC 7-1980, f. & ef. 10-9-80; EFSC 6-1986, f. & ef. 9-12-86; EFSC 1-1993, f. & cert. ef. 1-15-93; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2007, f. & cert. ef. 5-15-07

### **345-011-0020**

#### **Agendas for Regular Meetings**

- (1) The Council Secretary shall prepare an agenda for each regular Council meeting after consulting with the chair. On the agenda, the Secretary shall specify all matters scheduled to come before the Council at the meeting and shall identify the proponent of agenda items scheduled at the request of a member of the public as described in OAR 345-011-0035.

- (2) On the agenda, the Secretary may include a consent calendar, identifying items that the Secretary considers to be routine, such as minutes of previous meetings and personnel recognitions, which will be acted upon without public discussion. However, if a Council member objects to an item on the consent calendar, it will be removed from the consent calendar and placed on the regular agenda for discussion.
- (3) The Secretary shall include on each agenda a designated time period reserved for the presentation of concerns by interested citizens who wish to address the Council regarding any item within the Council's jurisdiction. The chair shall establish the duration of this period and may lengthen or shorten it at the Council meeting as the length of the meeting and timing and duration of other Council business dictate.
- (4) The Secretary shall mail the agenda, together with minutes of all previous meetings that the Council has not approved, to Council members at least one week before a regular meeting. The Secretary shall send the agenda to each person or organization on the Council's general mailing list. The "general mailing list" is the list of persons who have requested all Council meeting and facility siting mailings.

Stat. Auth.: ORS 469.470 Stats. Implemented: ORS 192.640, 469.460 & 469.470 Hist.: EFSC 7-1980, f. & ef. 10-9-80; EFSC 1-1993, f. & cert. ef. 1-15-93; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2007, f. & cert. ef. 5-15-07

### **345-011-0025**

#### **Consideration of Matters Not on Agenda**

A Council member or the Council Secretary may, with the approval of a majority of Council members, raise matters at a meeting that the Council Secretary did not place on the agenda. The Council shall not act on a matter not on the agenda unless a majority of the members present agree that the matter is so substantial and of such immediate concern that the Council should not defer action until the next regular Council meeting.

Stat. Auth.: ORS 469.470 Stats. Implemented: ORS 469.460 Hist.: EFSC 7-1980, f. & ef. 10-9-80; EFSC 1-1993, f. & cert. ef. 1-15-93; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2007, f. & cert. ef. 5-15-07

### **345-011-0030**

#### **Order of Business**

(1) The order of business of Council meetings is as follows:

- (a) Introduction of new Council members, resolutions for retiring Council members, and other personnel recognition.
- (b) Announcements.

(c) Minutes of previous Council meetings including corrections, additions and approval. If minutes have been mailed to Council members before the meeting, the Council may waive the reading of the minutes.

(d) Reports of standing and special committees.

(e) Consideration of agenda items.

(2) The chair, unless a majority of the Council disagrees, may revise the order of business and may limit debate on any item as necessary to conduct the meeting fairly and efficiently.

Stat. Auth.: ORS 469.470 Stats. Implemented: ORS 192.650 & 469.460 Hist.: EFSC 7-1980, f. & ef. 10-9-80; EFSC 6-1986, f. & ef. 9-12-86; EFSC 1-1993, f. & cert. ef. 1-15-93; EFSC 2-1999, f. & cert. ef. 4-14-99

### **345-011-0035**

#### **Requests to Place Items on the Agenda**

(1) Any person may request formal Council action on a particular subject (an "action item") by submitting a written request to the Department of Energy. With the concurrence of the chair, the Council Secretary shall place the requested matter on the agenda for discussion at the next meeting occurring at least 14 days after the request is received by the Department. The Council shall treat the matter as an information item at that meeting and may take final action on the matter if a majority of the members present agree that the request is so substantial and of such immediate concern that the Council should not defer action until a future meeting. Normally, however, the Council will defer action on the matter until a future meeting.

(2) Any person may request Council discussion of an information item by submitting a written request to the Department. With the concurrence of the chair, the Council Secretary shall place the requested matter on the agenda for discussion at the next meeting occurring at least 14 days after the request is received by the Department.

(3) The provisions of section (1) do not apply to petitions requesting the Council to initiate a rulemaking proceeding, as described in OAR 137-001-0070, or petitions requesting the Council to issue a declaratory ruling, as described in OAR 137-002-0010.

Stat. Auth.: ORS 469.470 Stats. Implemented: ORS 192.640 & 469.460 Hist.: EFSC 7-1980, f. & ef. 10-9-80; EFSC 1-1985, f. & ef. 1-7-85; EFSC 6-1986, f. & ef. 9-12-86; EFSC 1-1993, f. & cert. ef. 1-15-93, Renumbered from 345-011-0040; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2007, f. & cert. ef. 5-15-07

### **345-011-0045**

#### **Committees and Subcommittees**

- (1) The chair may appoint Council members to committees and subcommittees, alter the number of members of such committees and subcommittees, and abolish committees and subcommittees at any time unless disapproved by a majority of the Council. The individuals on such committees and subcommittees need not act as a group nor reach a consensus but may report to the Council individually.
- (2) The Council Secretary shall record the membership of the committees and subcommittees appointed by the chair in the minutes of the Council.
- (3) The Secretary, consistent with the requirements of ORS Chapter 192.610 to 192.690, shall give notice of each meeting of Council committees and subcommittees.

Stat. Auth.: ORS 469.470 Stats. Implemented: ORS 469.460 Hist.: EFSC 7-1980, f. & ef. 10-9-80; EFSC 6-1986, f. & ef. 9-12-86; EFSC 1-1993, f. & cert. ef. 1-15-93; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2007, f. & cert. ef. 5-15-07

### **345-011-0050**

#### **Council Files**

The Council Secretary shall maintain minutes of all Council meetings, Council committee meetings and other records of the Council at the Department of Energy for at least five years and thereafter shall transfer them to the State Archives. The Council Secretary shall keep a record of the location of all files.

Stat. Auth.: ORS 469.470 Stats. Implemented: ORS 192.640 & 469.460 Hist.: EFSC 7-1980, f. & ef. 10-9-80; EFSC 1-1993, f. & cert. ef. 1-15-93; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2007, f. & cert. ef. 5-15-07

### **345-011-0055**

#### **Council Communications**

- (1) Majority approval by the Council is required before the Council or the Council Secretary issues any correspondence that might materially affect policies or procedures of the Council. Members of the Council shall not communicate in the name of the Council unless authorized by a majority of the Council. In an emergency, when delay may impair the Council's ability to carry out its responsibilities, the chair may take immediate action and report such action at the next meeting of the Council. The Council Secretary shall prepare any letter issued on behalf of the Council and send a copy to each Council member.
- (2) The mailing address of the Council is Department of Energy, 625 Marion Street, NE, Salem OR, 97301-3742.

Stat. Auth.: ORS 469.470 Stats. Implemented: ORS 469.470 Hist.: EFSC 7-1980, f. & ef. 10-9-80; EFSC 6-1986, f. & ef. 9-12-86; EFSC 1-1993, f. & cert. ef. 1-15-93; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2007, f. & cert. ef. 5-15-07

### **345-011-0060**

#### **Waiver and Suspension**

Inadvertent failure by the Council to comply with the rules of this division does not invalidate any action taken by the Council. The Council may, by a majority vote of the quorum present, temporarily suspend application of the rules of this division.

Stat. Auth.: ORS 469.470Stats. Implemented: ORS 469.470Hist.: EFSC 7-1980, f. & ef. 10-9-80; EFSC 1-1985, f. & ef. 1-7-85; EFSC 6-1986, f. & ef. 9-12-86; EFSC 1-1993, f. & cert. ef. 1-15-93; EFSC 2-1999, f. & cert. ef. 4-14-99

### **345-011-0070**

#### **Council Requests for Information**

The Council may at any time request that any person subject to the Council's jurisdiction submit information to the Council about any matter within the Council's jurisdiction.

Stat. Auth.: ORS 469.470Stats. Implemented: ORS 469.470Hist.: EFSC 13, f. & ef. 6-11-76; EFSC 6-1986, f. & ef. 9-12-86; EFSC 1-1993, f. & cert. ef. 1-15-93; Renumbered from 345-10-015; EFSC 2-1999, f. & cert. ef. 4-14-99

### **345-011-0080**

#### **Unacceptable Conduct**

The chair may expel any person who engages in conduct that disrupts any Council proceeding. In any proceeding of a Council committee, the chairman or chairwoman of the committee may expel any person who engages in conduct that disrupts the proceeding.

Stat. Auth.: ORS 469.470Stats. Implemented: ORS 469.460Hist.: EFSC 13, f. & ef. 6-11-76; EFSC 4-1981, f. & ef. 3-25-81; EFSC 6-1986, f. & ef. 9-12-86; EFSC 1-1993, f. & cert. ef. 1-15-93; Renumbered from 345-10-021; EFSC 2-1999, f. & cert. ef. 4-14-99

**Division 15 - Procedures Governing Council and Department Of Energy  
Proceedings, Including Site Certificate Hearings**

**345-015-0001**

**Purpose and Authority**

The rules in this division, authorized by ORS 469.040, 469.470 and 469.440, establish procedures governing Department of Energy and Council review processes, including contested case hearings. The Council shall apply the Attorney General's Uniform and Model Rules, as specified in OAR 345-001-0005, for contested case proceedings and collaborative dispute resolution.

Stat. Auth.: ORS 469.470 Stats. Implemented: ORS 183.310-550, 469.040, 469.370, 469.405 & 469.440 Hist.: EFSC 8-1980, f. & ef. 10-31-80; EFSC 6-1986, f. & ef. 9-12-86; EFSC 1-1993, f. & cert. ef. 1-15-93; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2007, f. & cert. ef. 5-15-07

**(Procedures for the Conduct of Contested Cases)**

**345-015-0012**

**Filing and Service of Documents in a Contested Case**

- (1) The hearing officer shall specify permissible means of filing and service of any pleading or document. The methods of filing with the Council or its hearing officer and service upon any party or limited party, may include, but are not limited to personal delivery, first class or certified mail (properly addressed with postage prepaid), facsimile or other electronic means.
- (2) A party or limited party shall file a pleading or document with the Council accompanied by as many copies as required by the Council or its hearing officer and a certificate of service stating the names and addresses of the persons upon whom a true copy of the document was served and the date of service.
- (3) Upon motion by any party or limited party, the hearing officer may waive requirements for serving parties who are no longer actively participating in the proceeding and may modify the requirements for serving a limited party consistent with such party's limited interest.

Stat. Auth.: ORS 469.470 Stats. Implemented: ORS 183.415, ORS 469.370, ORS 469.405 & ORS 469.440 Hist.: EFSC 8-1980, f. & ef. 10-31-80; EFSC 1-1993, f. & cert. ef. 1-15-93; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 2-1999, f. & cert. ef. 4-14-99

**345-015-0014**

**Contested Case Notices**

- (1) The Department shall issue notices for Council contested case proceedings as provided in OAR 137-003-0001 and shall include in the notices:
  - (a) A date by which persons must request party or limited party status.

(b) The time and place of the pre-hearing conference.

(c) The time and place of the hearing.

(2) In addition to the requirements of section (1), for a contested case notice on a proposed order as described in OAR 345-015-0230 or following a Council decision to grant a contested case hearing under OAR 345-015-0310, the Department shall include in the notice a statement that participation as a party or limited party in the contested case proceeding and the opportunity to raise any issue are subject to the limitations described in OAR 345-015-0016.

(3) The Department shall send a contested case notice to the following persons:

(a) For a contested case notice on a proposed order as described in OAR 345-015-0230, to the applicant and to all persons who appeared in person or in writing at the public hearing described in OAR 345-015-0220.

(b) Following the Council's decision to grant a contested case proceeding on a proposed order on an application for a site certificate for a special criteria facility, to the applicant and to all persons who commented in person or in writing in the public hearing on the proposed order as described in OAR 345-015-0320.

(c) Following a Council decision to grant a contested case proceeding on a proposed site certificate amendment under OAR 345-027-0070, 345-027-0080 or 345-027-0090, to the certificate holder and to all persons who commented on the Department's proposed order on the amendment as described in OAR 345-027-0070(5) or 345-027-0080(5) or who requested a contested case proceeding as described in OAR 345-027-0070(6) or 345-027-0080(5).

(d) For Council contested case proceedings described under OAR 345-029-0070, 345-029-0100 or 345-060-0004, to persons who have an interest or represent a public interest in the outcome of the proceeding.

(4) The Department shall request that the applicant notify the hearing officer and the Department, by the date described in subsection (1)(a), of any issues the applicant desires to raise in the contested case proceedings described in subsections (3)(a) and (b).

Stat. Auth.: ORS 469.373 & 469.470 Stats. Implemented: ORS 183.415, 469.085, 469.370, 469.405, 469.440, 469.605, 469.615 & 469.992 Hist.: EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2002, f. & cert. ef. 4-3-02; EFSC 1-2007, f. & cert. ef. 5-15-07

**345-015-0016**  
**Requests for Party or Limited Party Status**

- (1)** Notwithstanding OAR 137-003-0005(2), a person requesting to participate as a party or limited party in a contested case proceeding shall submit a petition to the hearing officer by the date specified in the Department of Energy's contested case notice issued under OAR 345-015-0014.
- (2)** Persons who have an interest in the outcome of the Council's contested case proceeding or who represent a public interest in such result may request to participate as parties or limited parties.
- (3)** Except as described in section (4), only those persons who have commented in person or in writing on the record of the public hearing described in OAR 345-015-0220 may request to participate as a party or limited party in a contested case proceeding on an application for a site certificate. To raise an issue in a contested case proceeding, the issue must be within the jurisdiction of the Council, and the person must have raised the issue in person or in writing on the record of the public hearing, unless the Department of Energy did not follow the requirements of ORS 469.370(2) or (3) or unless the action recommended in the proposed order described in OAR 345-015-230, including any recommended conditions of approval, differs materially from the action recommended in the draft proposed order, in which case the person may raise only new issues within the jurisdiction of the Council that are related to such differences. If a person has not raised an issue at the public hearing with sufficient specificity to afford the decision maker an opportunity to respond to the issue, the hearing officer shall not consider the issue in the contested case proceeding. To have raised an issue with sufficient specificity, the person must have presented facts at the public hearing that support the person's position on the issue.
- (4)** Following a Council decision to grant a contested case hearing under OAR 345-015-0310, only those persons who have commented in person or in writing on the record of the public hearing described in OAR 345-015-0320 may request to participate as a party or limited party in a contested case proceeding on an application for a site certificate. To raise an issue in a contested case proceeding, the issue must be within the jurisdiction of the Council, and the person must have raised the issue in person or in writing on the record of the public hearing. If a person has not raised an issue at the public hearing with sufficient specificity to afford the decision maker an opportunity to respond to the issue, the hearing officer shall not consider the issue in the contested case proceeding. To have raised an issue with sufficient specificity, the person must have presented facts at the public hearing that support the person's position on the issue.
- (5)** In a petition to request party or limited party status, the person requesting such status shall include:

  - (a)** The information required under OAR 137-003-0005(3).

- (b) A short and plain statement of the issue or issues that the person desires to raise in the contested case proceeding.
  - (c) A reference to the person's comments at the public hearing showing that the person raised the issue or issues at the public hearing.
  - (d) A detailed description of the person's interest in the contested case proceeding and how that interest may be affected by the outcome of the proceeding.
- (6) The hearing officer's determination on a request to participate as a party or limited party is final unless the requesting person submits an appeal to the Council within seven days after the date of service of the hearing officer's determination.

Stat. Auth.: ORS 469.373 & 469.470 Stats. Implemented: ORS 183.415, 469.370, 469.405, 469.440, 469.605, 469.615 & 469.992 Hist.: EFSC 14, f. & ef. 10-12-76; EFSC 8-1980, f. & ef. 10-31-80; EFSC 6-1986, f. & ef. 9-12-86; EFSC 1-1993, f. & cert. ef. 1-15-93; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2002, f. & cert. ef. 4-3-02; EFSC 1-2007, f. & cert. ef. 5-15-07

### **345-015-0018**

#### **Authorized Representative**

An authorized representative may represent a party or limited party, other than a state agency, participating in a contested case proceeding before the Council as provided in OAR 137-003-0008. An authorized representative may represent a state agency participating in a contested case as a party, limited party or interested agency subject to the requirements of ORS 183.450(7) and (8).

Stat. Auth.: ORS 469.470 Stats. Implemented: ORS 183.415, ORS 469.370, ORS 469.405, ORS 469.440, ORS 469.605, ORS 469.615 & ORS 469.992 Hist.: EFSC 1-1988, f. & cert. ef. 5-11-88; EFSC 1-1993, f. & cert. ef. 1-15-93; EFSC 2-1999, f. & cert. ef. 4-14-99

### **345-015-0022**

#### **Petition for Indigent Status**

- (1) By petition to the hearing officer in a contested case submitted before the time of the prehearing conference, a party or limited party may request to be treated as an indigent. In the petition, the petitioner shall state in detail the facts demonstrating that the petitioner is indigent in the context of the financial burdens associated with full participation as a party or limited party in the contested case and the reasons why the petitioner would be prejudiced if indigent status were not granted.
- (2) The hearing officer shall issue a determination on a petition for indigent status in writing and shall state the grounds for the determination. The hearing officer's determination is final unless the petitioner submits an appeal to the Council within seven days after the date of service of the determination.

- (3)** The hearing officer may excuse a person granted indigent status from such requirements of the rules of this division as the hearing officer determines appropriate. As determined by the hearing officer, the Council may provide for the cost of service of pleadings and other documents, reasonable travel expenses of witnesses and copies of the record necessary to enable a person granted indigent status to participate fully in the contested case.

Stat. Auth.: ORS 469.470 Stats. Implemented: ORS 183.415, ORS 469.370, ORS 469.405, ORS 469.440, ORS 469.605, ORS 469.615 & ORS 469.992 Hist.: EFSC 8-1980, f. & ef. 10-31-80; EFSC 1-1993, f. & cert. ef. 1-15-93; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 2-1999, f. & cert. ef. 4-14-99

### **345-015-0023**

#### **Duties of Hearing Officer**

- (1)** The Council shall appoint a hearing officer to conduct a contested case proceeding on behalf of the Council or to compile the record and recommend resolution of objections to the record of a local land use proceeding held pursuant to ORS 469.503(2)(a). The Council may appoint a Council member, an employee of the Department of Energy, or some other person or persons as it sees fit.
- (2)** A hearing officer shall take all necessary action to:
  - (a)** Ensure a full, fair and impartial hearing;
  - (b)** Facilitate presentation of evidence;
  - (c)** Comply with statutory time limits on Council decisions;
  - (d)** Maintain order; and
  - (e)** Assist the Council in making its decision.
- (3)** At the commencement of a contested case hearing, the hearing officer shall explain the issues involved in the hearing and the matters that the parties must either prove or disprove.
- (4)** The hearing officer shall maintain a complete and current record of all motions, rulings, testimony and exhibits during the course of the hearing. The hearing officer shall keep the Council informed regularly on the status of the contested case.
- (5)** The hearing officer is authorized to carry out the responsibilities assigned in this rule, including but not limited to the authority to:
  - (a)** Administer oaths and affirmations;
  - (b)** Rule on offers of proof and receive evidence;

- (c)** Order depositions and other discovery to be taken and to issue subpoenas;
  - (d)** Order and control discovery, as provided in OAR 137-003-0025, and all other aspects of the contested case hearing, the order of proof, and the conduct of the participants;
  - (e)** Dispose of procedural matters and rule on motions;
  - (f)** Call and examine witnesses;
  - (g)** Hold conferences, including one or more prehearing conferences as provided in OAR 137-003-0035, before or during the hearing for settlement, simplification of issues, or any other purpose the hearing officer finds necessary. The hearing officer may limit the issues of the contested case including, for a contested case proceeding on an application for a site certificate, determining those issues that have been raised with sufficient specificity in the public hearing;
  - (h)** Continue the hearing from time to time;
  - (i)** Issue protective orders in accordance with the standards of Rule 36(C) of the Oregon Rules of Civil Procedure.
  - (j)** At the request of the Council, or upon motion of a party or limited party for good cause shown as provided in OAR 345-015-0062, and with reasonable notice to all parties, reopen the hearing for reception of further evidence on issues identified in the notice at any time prior to final decision by the Council;
  - (k)** Within the hearing officer's discretion, or at the request of the Council, certify any question to the Council for its consideration and disposition;
  - (l)** Prepare and serve upon the parties a proposed order addressing those issues enumerated in the request for contested case hearing and any additional issues approved by the hearing officer, including findings of fact, findings of ultimate fact and conclusions of law; and
  - (m)** Take any other action consistent with the Council's governing statutes and the Council's rules.
- (6)** Notwithstanding the provisions of OAR 137-003-0055(1), following the issuance of a notice of contested case, the hearing officer shall enter into the record the substance of any significant contact with Department staff or the parties from that point forward concerning facts in the record.
- (7)** The Council may, on its own motion or upon the motion of a party or limited party, remove a hearing officer if it determines that the hearing officer is not competent to

conduct the proceeding, is demonstrably biased for or against any party, or is otherwise unable to conduct the proceeding.

Stat. Auth.: ORS 469.470 Stats. Implemented: ORS 183.415, 469.370, 469.405, 469.440, 469.605, 469.615 & 469.992 Hist.: EFSC 8-1980, f. & ef. 10-31-80; EFSC 6-1986, f. & ef. 9-12-86; EFSC 1-1993, f. & cert. ef. 1-15-93, Renumbered from 345-015-0027; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2007, f. & cert. ef. 5-15-07

### **345-015-0024**

#### **Suspension of Hearing and Exclusion of a Party**

- (1) If any person engages in conduct that interferes with the hearing officer's duty in connection with any aspect of a contested case proceeding or fails to obey an order of the hearing officer, the hearing officer may suspend the hearing or order such person excluded from the hearing temporarily or permanently. Conduct that interferes with the hearing officer's duties includes, but is not limited to, conduct impeding discovery, hearing schedules or the conduct of the contested case hearing.
  
- (2) If the hearing officer issues an order permanently excluding a party, limited party, or legal counsel from further participation in a contested case proceeding, the hearing officer shall issue the order in writing and shall state in the order the grounds for the order. The order is final unless the person subject to the order submits an appeal to the Council within seven calendar days of service of the order.

Stat. Auth.: ORS 469.470 Stats. Implemented: ORS 183.415, ORS 469.370, ORS 469.405, ORS 469.440, ORS 469.605, ORS 469.615 & ORS 469.992 Hist.: EFSC 8-1980, f. & ef. 10-31-80; EFSC 6-1986, f. & ef. 9-12-86; EFSC 1-1993, f. & cert. ef. 1-15-93; Renumbered from 345-015-0027; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 2-1999, f. & cert. ef. 4-14-99

### **345-015-0038**

#### **Separate Hearings**

The Council or its hearing officer may order separate hearings on particular matters at issue in a contested case to conduct the entire proceeding expeditiously.

Stat. Auth.: ORS 469.470 Stats. Implemented: ORS 183.415, ORS 469.370, ORS 469.405, ORS 469.440, ORS 469.605, ORS 469.615 & ORS 469.992 Hist.: EFSC 8-1980, f. & ef. 10-31-80; EFSC 1-1993, f. & cert. ef. 1-15-93; EFSC 2-1999, f. & cert. ef. 4-14-99

### **345-015-0043**

#### **Evidence: Testimony Submitted in Writing**

A hearing officer may require parties or limited parties to submit to the hearing officer, in writing, the qualifications and direct testimony of each witness whom a party or limited party proposes to call and all exhibits that a party or limited party proposes to introduce in conjunction with the testimony of a witness. Parties and limited parties shall send to

all other parties and limited parties copies of all written materials submitted to the hearing officer under this rule.

Stat. Auth.: ORS 469.470 Stats. Implemented: ORS 183.415, ORS 469.370, ORS 469.405, ORS 469.440, ORS 469.605, ORS 469.615 & ORS 469.992 Hist.: EFSC 8-1980, f. & ef. 10-31-80; EFSC 1-1993, f. & cert. ef. 1-15-93; EFSC 2-1999, f. & cert. ef. 4-14-99

### **345-015-0046**

#### **Evidence: Official Notice**

- (1) In a contested case proceeding, the hearing officer may take official notice of the following:
  - (a) All facts of which the courts of the State of Oregon may take judicial notice;
  - (b) Administrative rulings and reports of the Council and other governmental agencies;
  - (c) Facts contained in permits and licenses issued by the Council or any other government agency;
  - (d) The factual results of the hearing officer's or the Council's personal inspection of physical conditions involved in the contested case; and
  - (e) General, technical or scientific facts within the specialized knowledge of the Council or the Department of Energy.
- (2) The hearing officer shall notify parties of facts officially noticed and shall allow parties an opportunity to contest the facts so noticed.

Stat. Auth.: ORS 469.470 Stats. Implemented: ORS 183.415, 469.370, 469.405, 469.440, 469.605, 469.615 & 469.992 Hist.: EFSC 14, f. & ef. 10-12-76; EFSC 8-1980, f. & ef. 10-31-80; EFSC 6-1986, f. & ef. 9-12-86; EFSC 1-1993, f. & cert. ef. 1-15-93; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2007, f. & cert. ef. 5-15-07

### **345-015-0051**

#### **Evidence: Resolutions of Cities, Counties and Tribes**

Upon the request of a governing body of a city, county or tribe, the Department of Energy shall offer, and the hearing officer shall receive in evidence, a certified copy of a resolution of the governing body. The hearing officer shall receive such resolutions subject to rebuttal as to the authenticity of the resolution or the circumstances surrounding its procurement. The hearing officer shall receive such resolutions only for the purpose of showing the expression of official action of the resolving body with respect to matter contained in the resolution. Such resolutions are not proof of facts related to the subject of the resolution.

Stat. Auth.: ORS 469.470 Stats. Implemented: ORS 183.415, 469.370, 469.405, 469.440, 469.605, 469.615 & 469.992 Hist.: EFSC 14, f. & ef. 10-12-76; EFSC 8-1980, f. & ef. 10-31-80; EFSC 1-1993, f. & cert. ef. 1-15-93; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2007, f. & cert. ef. 5-15-07

### **345-015-0054**

#### **Motions**

- (1) All parties, including limited parties, shall submit any motions in a contested case to the hearing officer. Unless a motion is made orally on the record during a contested case hearing, or unless the hearing officer directs otherwise, the moving party shall submit the motion in writing and shall state with particularity the grounds and relief sought. The moving party shall submit with the motion any brief, affidavit or other document relied on, and, as appropriate, a proposed form of order. The moving party shall serve the motion on all parties and limited parties to the contested case.
- (2) Within seven calendar days after the date of service of a written motion, or such other period as the hearing officer may prescribe, a party or limited party may file an answer in support of or in opposition to the motion, accompanied by affidavits or other evidence. The moving party shall have no right to reply, except as permitted by the hearing officer.
- (3) The parties shall not have oral argument on a motion unless permitted by the hearing officer. The hearing officer shall dispose of motions by written order served on all parties and limited parties or read into the hearing record.

Stat. Auth.: ORS 469.470 Stats. Implemented: ORS 183.415, ORS 469.370, ORS 469.405, ORS 469.440, ORS 469.605, ORS 469.615 & ORS 469.992 Hist.: EFSC 8-1980, f. & ef. 10-31-80; EFSC 1-1993, f. & cert. ef. 1-15-93; Renumbered from 345-015-0057 & 345-015-0059; EFSC 2-1999, f. & cert. ef. 4-14-99

### **345-015-0057**

#### **Prohibitions on Interlocutory Appeals to Council**

- (1) Except as otherwise specifically provided for in the rules of this division, a party or limited party may not take an interlocutory appeal to the Council from a ruling of the hearing officer unless such ruling would terminate that party's right to participate in the contested case proceeding.
- (2) A party or limited party shall submit an appeal involving that party's right to participate in a contested case proceeding, with supporting arguments and documents, to the Council within seven calendar days after the date of the ruling of the hearing officer.

Stat. Auth.: ORS 469.470 Stats. Implemented: ORS 183.415, ORS 469.370, ORS 469.405, ORS 469.440, ORS 469.605, ORS 469.615 & ORS 469.992 Hist.: EFSC 8-

1980, f. & ef. 10-31-80; EFSC 1-1993, f. & cert. ef. 1-15-93; Renumbered from 345-015-0054(6); EFSC 2-1999, f. & cert. ef. 4-14-99

### **345-015-0059**

#### **Prohibitions on Stays**

Unless otherwise ordered by the hearing officer, neither the filing of a motion nor the certification of a question to the Council stays a contested case proceeding or extends the time for the performance of any act.

Stat. Auth.: ORS 469.470 Stats. Implemented: ORS 183.415, ORS 469.370, ORS 469.405, ORS 469.440, ORS 469.605, ORS 469.615 & ORS 469.992 Hist.: EFSC 8-1980, f. & ef. 10-31-80; EFSC 1-1993, f. & cert. ef. 1-15-93; Renumbered from 345-015-0054(7); EFSC 2-1999, f. & cert. ef. 4-14-99

### **345-015-0062**

#### **Reopening Record Prior to Decision**

The Council or its hearing officer, on its own motion or for good cause shown, may reopen the hearing record for the taking of additional evidence while the proceeding is under advisement with the hearing officer or the Council. In addition to good cause, the moving party or limited party shall show that:

- (1) The evidence is material to the proceeding; or
- (2) The evidence would substantially affect the outcome of the proceeding.

Stat. Auth.: ORS 469.470 Stats. Implemented: ORS 183.415, ORS 469.370, ORS 469.405, ORS 469.440, ORS 469.605, ORS 469.615 & ORS 469.992 Hist.: EFSC 8-1980, f. & ef. 10-31-80; EFSC 1-1993, f. & cert. ef. 1-15-93; Renumbered from 345-015-0048; EFSC 2-1999, f. & cert. ef. 4-14-99

### **(Specific Procedures for Site Certificates Applications and Amendments of Site Certificates)**

### **345-015-0080**

#### **Participation by Government Agencies**

- (1) Any state or local government agency other than the Department of Energy may request participation in a contested case as a party, limited party or interested agency, subject to the limitations described in OAR 345-015-0016. The agency shall submit the request to the hearing officer in writing by the date specified in the Department of Energy's contested case notice issued under OAR 345-015-0014.
- (2) The Department of Energy shall participate in all contested case proceedings conducted by the Council and shall have all the rights of a party.

Stat. Auth.: ORS 469.470 Stats. Implemented: ORS 183.415, 469.370, 469.405, 469.440, 469.605, 469.615 & 469.992 Hist.: EFSC 14, f. & ef. 10-12-76; EFSC 8-1980,

f. & ef. 10-31-80; EFSC 6-1986, f. & ef. 9-12-86; EFSC 1-1993, f. & cert. ef. 1-15-93, Renumbered from 345-015-0026; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2002, f. & cert. ef. 4-3-02; EFSC 1-2007, f. & cert. ef. 5-15-07

### **345-015-0083**

#### **Prehearing Conference and Prehearing Order**

- (1) The hearing officer may cancel or reschedule any previously noticed prehearing conference.
- (2) The hearing officer may conduct one or more prehearing conferences for the purposes and in the manner described in OAR 137-003-0035. At the conclusion of the conference(s), the hearing officer shall issue a prehearing order stating the issues to be addressed in the contested case hearing and, in a contested case on an application for a site certificate, limiting parties to those issues they raised on the record of the public hearing described in OAR 345-015-0220. The hearing officer shall not receive evidence or hear legal argument on issues not identified in the prehearing order.
- (3) Failure to raise an issue in the prehearing conference(s) for the contested case hearing constitutes a waiver of that issue.

Stat. Auth.: ORS 469.470 Stats. Implemented: ORS 183.415, 469.370, 469.405, 469.440, 469.605, 469.615 & 469.992 Hist.: EFSC 1-1993, f. & cert. ef. 1-15-93; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2007, f. & cert. ef. 5-15-07

### **345-015-0085**

#### **Hearing Officer's Proposed Contested Case Order**

- (1) The hearing officer shall allow any party, including any limited party, to propose site certificate conditions that the party believes are necessary or appropriate to implement the policy of ORS 469.310 or to meet the requirements of any other applicable statute, administrative rule or local government ordinance. Parties shall submit proposed site certificate conditions to the hearing officer in writing according to a schedule set by the hearing officer.
- (2) In a contested case proceeding on an application for a site certificate or on a proposed site certificate amendment, any party or limited party may present evidence relating to the appropriateness, scope or wording of any other party's proposed site certificate conditions and may present written proposed findings of fact, briefs and other argument concerning proposed conditions.
- (3) After the hearing in a contested case proceeding on an application for a site certificate or on a proposed site certificate amendment, the hearing officer shall issue a proposed contested case order stating the hearing officer's findings of fact,

conclusions of law, and recommended site certificate conditions on the issues in the contested case. The hearing officer shall serve the proposed order on all parties and limited parties. In the proposed order, the hearing officer shall include recommended resolutions of objections to the local land use record, if any. The hearing officer's recommendations are part of the decision record for the application but are not part of the Council's order.

- (4) After the hearing in a contested case proceeding on any matter other than an application for a site certificate or proposed site certificate amendment, the hearing officer shall issue a proposed order stating the hearing officer's findings of fact and conclusions of law. The hearing officer shall serve the proposed order on all parties and limited parties.
- (5) Parties and limited parties may file exceptions to the proposed order within the time set by the hearing officer, not to exceed 30 days after the hearing officer issues the proposed order. A party filing exceptions shall serve a copy of the exceptions on all other parties and limited parties. In an exception, the party shall specifically identify the finding of fact, conclusion of law or, in contested case proceedings on an application for a site certificate or a proposed site certificate amendment, recommended site certificate condition to which the party excepts and shall state the basis for the exception.
- (6) Parties and limited parties may file responses to exceptions within the time set by the hearing officer, not to exceed 15 days after the time set for filing exceptions. A party filing responses to exceptions shall serve a copy of the responses to exceptions on all other parties and limited parties.
- (7) After the period for filing responses to exceptions, the Council shall issue a final order. The Council may adopt, modify or reject the hearing officer's proposed order.
- (8) Following a contested case proceeding on an application for a site certificate, the Council, in its final order, shall either grant or deny issuance of a site certificate. If the Council grants issuance of a site certificate, the Council shall issue a site certificate. The site certificate becomes effective upon execution by the Council and by the applicant. However, for purposes of identification, the Department may refer to a site certificate by the date of the Council action.
- (9) Following a contested case proceeding on a proposed site certificate amendment, the Council, in its final order, shall either grant or deny issuance of an amended site certificate. If the Council grants issuance of an amended site certificate, the Council shall issue an amended site certificate. The amended site certificate becomes effective upon execution by the Council and by the applicant. However, for purposes of identification, the Department may refer to a site certificate by the date of the Council action.

Stat. Auth.: ORS 469.470 Stats. Implemented: ORS 183.415, 469.370, 469.405, 469.440, 469.605, 469.615 & 469.992 Hist.: EFSC 8-1980, f. & ef. 10-31-80; EFSC 6-1986, f. & ef. 9-12-86; EFSC 1-1993, f. & cert. ef. 1-15-93, Renumbered from 345-015-0053; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2002, f. & cert. ef. 4-3-02; EFSC 1-2003, f. & cert. ef. 9-3-03; EFSC 1-2007, f. & cert. ef. 5-15-07

**(Procedures for Council and Department of Energy Review of an Application  
for a Site Certificate)**

**345-015-0110**

**Public Notice of a Notice of Intent**

- (1)** After receiving a notice of intent (NOI), the Department of Energy shall issue a public notice of the NOI by:
  - (a)** Mailing notice to persons on the Council's general mailing list as defined in OAR 345-011-0020 and any special mailing list set up for the proposed project;
  - (b)** Mailing notice to the owners of property whose names and addresses the applicant has supplied as required by OAR 345-020-0011;
  - (c)** Except as provided in subsection (d), publishing notice in a newspaper of general circulation available in the vicinity of the proposed facility; and
  - (d)** If the energy facility is a transmission line or a pipeline or has, as a related or supporting facility, a transmission line or pipeline that, by itself, is an energy facility under the definition in ORS 469.300, publishing notice in one or, if possible, two newspapers of general circulation in the vicinity of the proposed facility.
- (2)** In the public notice of the NOI, the Department shall include the following information:
  - (a)** A description of the proposed facility.
  - (b)** The location of the site of the proposed facility.
  - (c)** The date when the applicant expects to submit an application for a site certificate.
  - (d)** A brief description of the Council's review process, including an explanation of the difference between the informational meetings described in OAR 345-015-0130 and 345-015-0190(10) and the public hearing described in OAR 345-015-0220.

- (e) An explanation that the applicant may choose to meet the Council's land use standard, OAR 345-022-0030, by obtaining local land use approval from the affected local government and that, if the applicant chooses to obtain local land use approval, any person interested in land use issues should participate in that affected local government's land use process if it is not yet complete.
- (f) The date, time and location of any informational meeting on the NOI that the Department has scheduled or an explanation of how interested persons may request an informational meeting.
- (g) The final date for submission of written comments on the NOI to the Department.
- (h) For persons wanting more information about the NOI, the address of the Department.
- (i) If the applicant has identified one or more proposed corridors in Exhibit D of the NOI, as required by OAR 345-020-0011(1)(d):
  - (A) An explanation that the corridor proposed by the applicant in the NOI is subject to change and that the applicant may propose adjustments to the proposed corridor(s) in the application;
  - (B) An explanation that the applicant may present adjustments to the proposed corridor(s) at the informational meeting; and
  - (C) An explanation that, in selecting one or more corridors for analysis in the application for a site certificate, the applicant shall consider public comments on the corridor(s) proposed in the NOI and on any corridor adjustments the applicant presents at the informational meeting.
- (3) It is Council policy to encourage public participation in local land use decisions on energy facilities. To that end, the Council encourages the Department to send notice to the Council's mailing list if the Department learns that an applicant has applied for local land use approval.

Stat. Auth.: ORS 469.470 Stats. Implemented: ORS 469.330 Hist.: EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2000, f. & cert. ef. 2-2-00; EFSC 1-2002, f. & cert. ef. 4-3-02; EFSC 1-2003, f. & cert. ef. 9-3-03; EFSC 1-2007, f. & cert. ef. 5-15-07

### **345-015-0120**

#### **Memorandum on a Notice of Intent**

The Department of Energy shall prepare a memorandum to accompany the copies of the notice of intent (NOI) distributed by the applicant to the reviewing agencies as defined in OAR 345-001-0010. In the memorandum, the Department shall:

- (1) Request comments from the reviewing agency by a specified date.
- (2) Request the following information:
  - (a) The name, address and telephone number of the agency contact person assigned to review the application.
  - (b) Comments on aspects of the proposed facility that are within the particular responsibility or expertise of the reviewing agency.
  - (c) Recommendations regarding the size and location of analysis area(s).
  - (d) A list of studies that should be conducted to identify potential impacts of the proposed facility and mitigation measures.
  - (e) If the applicant has identified one or more proposed corridors in Exhibit D of the NOI as required by OAR 345-020-0011(1)(d), a discussion of the relative merits of the corridors described in the NOI and recommendations, if any, on the selection of a corridor.
  - (f) A list of statutes, administrative rules and local government ordinances administered by the agency that might apply to construction or operation of the proposed facility and a description of any information needed for determining compliance.
  - (g) A list of any permits administered by the agency that might apply to construction or operation of the proposed facility and a description of any information needed for reviewing a permit application.
  - (h) For tribes affected by the proposed facility, a list of tribal codes that the tribe recommends to the Council for its review of the application and specific information regarding the proposed facility or study areas described in the NOI that is necessary for determining compliance with those tribal codes.
- (3) State the date, location, agenda and purpose of any informational meeting that the Department has scheduled on the NOI and encourage the recipient to attend and participate in the informational meeting.

Stat. Auth.: ORS 469.470 Stats. Implemented: ORS 469.330 Hist.: EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2000, f. & cert. ef. 2-2-00; EFSC 1-2002, f. & cert. ef. 4-3-02; EFSC 1-2007, f. & cert. ef. 5-15-07

**345-015-0130**  
**Informational Meeting on a Notice of Intent**

- (1) After issuing the public notice described in OAR 345-015-0110, the Department of Energy may hold one or more informational meetings on the proposed facility in the vicinity of the site of the proposed facility. The informational meeting is not a contested case hearing.
- (2) If the Department holds an informational meeting, the Department shall present an explanation of the notice of intent (NOI) process and the application process, including the means and opportunities for the general public to participate in these processes, and an explanation of the difference between the informational meetings described in OAR 345-015-0130 and 345-015-0190(10) and the public hearing described in OAR 345-015-0220. The Department may present this information orally or by a written handout.

Stat. Auth.: ORS 469.470 Stats. Implemented: ORS 469.330 Hist.: EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2000, f. & cert. ef. 2-2-00; EFSC 1-2002, f. & cert. ef. 4-3-02; EFSC 1-2007, f. & cert. ef. 5-15-07

### **345-015-0140**

#### **Review by the Department of Energy**

The Department of Energy shall review the notice of intent (NOI) and the comments and recommendations received by the final date for submission of comments specified in the public notice described in OAR 345-015-0110 and in the memorandum described in OAR 345-015-0120. The Department shall send copies of any written comments or recommendations to the applicant.

Stat. Auth.: ORS 469.470 Stats. Implemented: ORS 469.330 Hist.: EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2000, f. & cert. ef. 2-2-00; EFSC 1-2002, f. & cert. ef. 4-3-02; EFSC 1-2007, f. & cert. ef. 5-15-07

### **345-015-0160**

#### **Project Order**

- (1) Following the review and any meeting described in OAR 345-015-0140, or, in the case of an expedited review granted under OAR 345-015-0300 or 345-015-0310, following receipt of an application for a site certificate, the Department of Energy shall send a project order to the applicant establishing the following:
  - (a) All state statutes and administrative rules containing standards or criteria that must be met for the Council to issue a site certificate for the proposed facility, including applicable standards of Divisions 22, 23 and 24 of this chapter.
  - (b) All local government ordinances applicable to the Council's decision on the proposed facility.
  - (c) All application requirements in OAR 345-021-0010 applicable to the proposed facility.

- (d) All state and local permits necessary to the construction and operation of the proposed facility and the name of each agency with the authority to issue such permits.
- (e) Any other data and information that must be included in the application for a site certificate to allow the Council to determine whether the proposed facility will comply with applicable statutes, administrative rules and local government ordinances.
- (f) The analysis area(s) for the proposed facility.
- (g) Public concerns that address matters within the jurisdiction of the Council that the applicant shall consider and discuss in the application for a site certificate, based on comments the Department has received.
- (h) If the applicant has identified one or more proposed corridors in Exhibit D of the notice of intent as required by OAR 345-020-0011(1)(d), any adjustments to the corridor(s) that the applicant shall evaluate in the corridor selection assessment described in OAR 345-021-0010(1)(b).
- (i) If the applicant chooses to demonstrate need for a proposed electric transmission line, natural gas pipeline, or liquefied natural gas storage facility under the economically reasonable rules, OAR 345-023-0030 and 345-023-0040, the alternatives the applicant must evaluate in the application for a site certificate in lieu of construction and operation of the proposed facility in addition to the alternatives described in OAR 345-021-0010(1)(n)(E) or (F), if any.
- (j) Except in the case of an expedited review granted under OAR 345-015-0300 or 345-015-0310, the expiration date of the notice of intent, according to OAR 345-020-0060(1).
- (2) In determining the application and study requirements to be included in the project order, the Department shall consider the size and type of proposed facility and significant potential impacts of the proposed facility. In the project order, the Department shall note and give the reason for any application or study requirements that the Department has waived or modified under OAR 345-015-0140(3).
- (3) The Council or the Department may amend the project order at any time.
- (4) The project order is not a final order.
- (5) Except in the case of an expedited review granted under OAR 345-015-0300 or 345-015-0310, the Department shall, to the extent practicable, issue the project order within 140 days following the date of submission of the notice of intent.

Stat. Auth.: ORS 469.373 & 469.470 Stats. Implemented: ORS 469.330 & 469.370  
Hist.: EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95; EFSC  
2-1999, f. & cert. ef. 4-14-99; EFSC 1-2000, f. & cert. ef. 2-2-00; EFSC 1-2002, f. & cert.  
ef. 4-3-02; EFSC 1-2007, f. & cert. ef. 5-15-07

### **345-015-0180**

#### **Agency Memorandum on a Site Certificate Application**

The Department of Energy shall prepare a memorandum to accompany the copies of the preliminary application distributed by the applicant as described in OAR 345-021-0050. In the memorandum, the Department shall:

- (1) Request the recipient to return comments or recommendations described in OAR 345-021-0050(2) to the Department by a specified date;
- (2) Describe the matters to be covered in the comments or recommendations as set forth in OAR 345-021-0050(2) and (4);
- (3) Explain that the recipient's written comments, recommendations and reports are part of the decision record for the application for a site certificate;
- (4) State that the reviewing agency must comment in person or in writing on the record of the public hearing described in OAR 345-015-0220 to preserve the right to participate in the contested case proceeding as a party, limited party or interested agency and the right to appeal the Council's final decision; and
- (5) For any special advisory group designated by the Council under ORS 469.480, request that the special advisory group recommend to the Council the applicable substantive criteria and explain that, as required by ORS 469.504(5), if the special advisory group does not recommend applicable substantive criteria by the specified date, the Council may either determine and apply the applicable substantive criteria or determine compliance with the statewide planning goals under ORS 469.504(1)(b)(B) or (C).

Stat. Auth.: ORS 469.470 Stats. Implemented: ORS 469.350 & 469.504 Hist.: EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2000, f. & cert. ef. 2-2-00; EFSC 1-2002, f. & cert. ef. 4-3-02; EFSC 1-2007, f. & cert. ef. 5-15-07

### **345-015-0190**

#### **Determination of Completeness**

(1) Until the Department determines the application to be complete, it is a preliminary application. Within 60 days after receipt of an application for a site certificate, the Department of Energy shall notify the applicant whether the application is complete. In the notification, the Department shall:

- (a) State that the application is complete and state the date of filing;

- (b) State that the application is incomplete, describe any information needed to complete the application, to the extent known to the Department at the time of the notification, ask the applicant to submit the needed information by the deadline described in section (4) and estimate the additional time the Department will need to make a determination of completeness; or
- (c) Explain the reasons why the Department cannot determine completeness and estimate the additional time the Department will need to make a determination of completeness.
- (2) If the Department does not notify the applicant as described in section (1), the application is deemed complete and filed 60 days after receipt of the application. Otherwise, the application is complete as determined under section (5) and the date of filing is the date determined under section (6).
- (3) If the Department finds that the applicant did not give adequate consideration to public concerns about the corridors the applicant identified in Exhibit D of the notice of intent or corridor adjustments presented at the informational hearing described in OAR 345-015-0130, the Department may find the application incomplete and notify the applicant as described under section (1)(b).
- (4) The Department may specify a date by which the applicant must submit additional information needed to complete the application. At the request of the applicant, the Department may extend the deadline for submission of the information. If the applicant does not submit the information by the deadline specified by the Department, including any allowed extension, the Council may reject the application. The rejection of an application is subject to appeal under ORS 469.403(3).
- (5) An application is complete when the Department finds that the applicant has submitted information adequate for the Council to make findings or impose conditions on all applicable Council standards. The Department may find that the application is complete without requiring the applicant to submit all information described under OAR 345-021-0000 and 345-021-0010. The Department shall notify the applicant when the Department finds that the application is complete and, if needed, shall request the application supplement described in OAR 345-021-0055.
- (6) The date of filing is the date the Department receives the application supplement described in OAR 345-021-0055 or, if no supplement is needed, the date the Department notifies the applicant that the application is complete.
- (7) The Department shall inform the public that the application is complete by publishing notice in a newspaper of general circulation available in the vicinity of the proposed facility. In addition, the Department shall mail notice to persons on the Council's general mailing list as defined in OAR 345-011-0020 and any special mailing list set

up for the proposed facility and to the property owners listed in Exhibit F of the application.

- (8) In notices described in section (7), the Department shall include the following information:
- (a) A description of the proposed facility.
  - (b) The location of the site of the proposed facility
  - (c) The date of filing.
  - (d) A description of the procedure for review of the application, including the date, time and location of any informational meeting that has been scheduled on the application and an explanation of the difference between the informational meeting and the public hearing described in OAR 345-015-0220.
  - (e) Addresses of locations where the public may review copies of the application.
  - (f) The name, address and telephone number of the Department of Energy project officer to contact for more information.
  - (g) If the applicant has elected to seek local land use approvals pursuant to ORS 469.503(2)(a), a statement of the status of the land use approvals, and the name, address and telephone number of the local governments(s) making or having made the land use determination.
  - (h) If the proposed facility is an energy facility that must comply with a carbon dioxide emissions standard adopted by the Council, a statement of the applicant's proposed means of compliance with the applicable carbon dioxide emissions standard.
- (9) After a determination that an application is complete, the Department may require additional information from the applicant if the Department identifies a need for that information during its review of the application. Submission of such information does not constitute an amendment of the application.

Stat. Auth.: ORS 469.470 Stats. Implemented: ORS 469.350 Hist.: EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2000, f. & cert. ef. 2-2-00; EFSC 1-2002, f. & cert. ef. 4-3-02; EFSC 1-2003, f. & cert. ef. 9-3-03; EFSC 1-2007, f. & cert. ef. 5-15-07

### **345-015-0200**

#### **Notice to Agencies that the Application is Complete**

After the date of filing, the Department of Energy shall provide to the applicant the notice described in this rule and a mailing list of persons, including but not limited to

those agencies listed in ORS 469.350, to whom the applicant shall send the notice and the application supplement described in OAR 345-021-0055. In the notice, the Department shall:

- (1) State the date of filing.
- (2) Explain that if a person intends to raise an issue in the contested case, the person must raise the issue in the manner described in OAR 345-015-0016.
- (3) State a date by which the Department and the applicant must receive the reports described in sections (4) through (6) below.
- (4) Request an agency report containing the following information:
  - (a) The agency's recommendations regarding any applications for permits administered by the agency that are applicable to construction or operation of the proposed facility.
  - (b) Issues significant to the agency.
  - (c) The agency's conclusions concerning the proposed facility's compliance with state statutes, administrative rules or ordinances administered by the agency.
  - (d) A list of site certificate conditions recommended by the agency.
  - (e) Any other information that the reviewing agency believes will be useful to the Council in reviewing the site certificate application.
- (5) Request a report from the affected local government regarding the proposed facility's compliance with the applicable substantive criteria for a land use decision under ORS 469.504(1)(b).
- (6) Request a report from the affected local government that describes any land use decisions made under ORS 469.504(1)(a).
- (7) Explain that the reports described in sections (4) through (6) above are part of the decision record for the application for a site certificate.

Stat. Auth.: ORS 469.470 Stats. Implemented: ORS 469.350 Hist.: EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2002, f. & cert. ef. 4-3-02; EFSC 1-2007, f. & cert. ef. 5-15-07

### **345-015-0210**

#### **Draft Proposed Order**

- (1) Following the deadline for its receipt of agency reports and final land use decisions stated under OAR 345-015-0200, the Department of Energy shall issue a draft

proposed order on the application that includes its recommendation to grant with conditions or deny a site certificate for the proposed facility and a discussion of the reasons for that recommendation. The draft proposed order may include, but is not limited to:

- (a) Draft proposed findings of fact and conclusions of law concerning the proposed facility's compliance with all state statutes and administrative rules and ordinances applicable to the issuance of a site certificate for the proposed facility;
  - (b) Draft proposed conditions for inclusion in the site certificate;
  - (c) Draft proposed monitoring plans to ensure the proposed facility's continued compliance with applicable state statutes and administrative rules and ordinances; and
  - (d) A description of the status of other applications for state permits and local government land use permits for the proposed facility.
- (2) If the applicant has elected to address the Council's land use standard under ORS 469.504(1)(a), the Department shall include in the draft proposed order the local government's land use decisions on the proposed facility, if available, including findings of fact, conclusions of law, and conditions.
- (3) If the applicant has elected to address the Council's land use standard under ORS 469.504(1)(b), the Department shall include in the draft proposed order the Department's proposed findings of fact, conclusions of law, and proposed conditions under the applicable substantive criteria from the affected local government's acknowledged comprehensive plan and land use regulations, under the applicable statewide planning goals, or under the exception criteria set forth in ORS 469.504(2).

Stat. Auth.: ORS 469.470 Stats. Implemented: ORS 469.370 Hist.: EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2007, f. & cert. ef. 5-15-07

### **345-015-0220**

#### **Public Hearing on the Draft Proposed Order**

- (1) After the issuance of the draft proposed order described in OAR 345-015-0210, the Council or its hearing officer shall conduct at least one public hearing on the draft proposed order in the vicinity of the site of the proposed facility. The public hearing is not a contested case hearing.
- (2) The Department of Energy shall, at least 20 days before the hearing:
- (a) Submit notice for publication in a newspaper of general circulation available in the vicinity of the proposed facility.



submitted to the Department of Energy before the deadline stated in the notice of the public hearing.

- (b) A person who intends to raise any issue that may be the basis for a contested case must raise the issue with sufficient specificity to afford the Council, the Department of Energy and the applicant an adequate opportunity to respond, including a statement of facts that support the person's position on the issue.
- (6) Any person may present information regarding the pending application without administration of an oath. The presiding officer shall record all presentations made during the public hearing. The presentations are part of the decision record for the application and may be rebutted in the contested case proceeding.

Stat. Auth.: ORS 469.470 Stats. Implemented: ORS 469.370 Hist.: EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2000, f. & cert. ef. 2-2-00; EFSC 1-2002, f. & cert. ef. 4-3-02; EFSC 1-2007, f. & cert. ef. 5-15-07

### **345-015-0230**

#### **Council Review and the Office of Energy's Proposed Order**

- (1) Following the final public hearing on the draft proposed order conducted under OAR 345-015-0220, the Council shall review the draft proposed order. In accordance with ORS 469.370(3), when the Council meets to review a draft proposed order, the Council does not permit the applicant, reviewing agencies or the public to comment on any issue that may be the basis for a contested case.
- (2) Following the Council's meeting to review of the draft proposed order, the Department of Energy shall issue a proposed order, taking into consideration the comments of the Council, testimony at the public hearing, written comments received by the hearing officer before the close of record at or following the final public hearing on the draft proposed order and agency consultation. In the proposed order, the Department shall recommend either granting a site certificate with conditions or denying a site certificate for the proposed facility.
- (3) Following issuance of the proposed order, the Department shall issue a notice of a contested case on the proposed order, as described in OAR 345-015-0014.
- (4) After the conclusion of the contested case proceeding, the Council will take final action on the site certificate application, as described in OAR 345-015-0085.

Stat. Auth.: ORS 469.470 Stats. Implemented: ORS 469.370 Hist.: EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2002, f. & cert. ef. 4-3-02; EFSC 1-2007, f. & cert. ef. 5-15-07

### **345-015-0240**

#### **The Decision-Making Record**

The decision-making record on an application for a site certificate includes the decision record for the Department of Energy's proposed order and the record of the contested case proceeding.

Stat. Auth.: ORS 469.470 Stats. Implemented: ORS 469.370 Hist.: EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2002, f. & cert. ef. 4-3-02; EFSC 1-2007, f. & cert. ef. 5-15-07

### **(Procedures for Expedited Review of Certain Energy Facilities)**

#### **345-015-0300**

##### **Request for Expedited Review of Small Capacity Facilities**

- (1)** In accordance with ORS 469.370(10), any person proposing to construct and operate an energy facility with an average electric generating capacity of less than 100 megawatts who chooses to request expedited review of an application for a site certificate shall submit to the Department of Energy a request for expedited review as described in section (2) with the fee required by the fee schedule established under ORS 469.441, payable to the Oregon Department of Energy. If the proposed energy facility has, as a related or supporting facility, a transmission line or pipeline that, by itself, is an energy facility under the definition in ORS 469.300, the proposed energy facility is not eligible for expedited review.
- (2)** In the request for expedited review, the applicant shall include:

  - (a)** A description of the facility and the proposed site;
  - (b)** The applicant's name and address;
  - (c)** A schedule stating when the applicant expects to submit an application for a site certificate;
  - (d)** A list of all statutes, rules and ordinances applicable to the facility;
  - (e)** A statement indicating whether the applicant intends to satisfy the Council's land use standard, OAR 345-022-0030, by obtaining local land use approval pursuant to ORS 469.504(1)(a) or by seeking a Council determination pursuant to ORS 469.504(1)(b); and
  - (f)** The reason and justification for any request for exception to an analysis area as provided under section (3).
- (3)** In an expedited review granted under this rule, the Department shall issue a project order following the applicant's submission of an application for a site certificate. For the purposes of submitting the application, the analysis areas are the study areas as defined in OAR 345-001-0010, unless the applicant requests an exception in the request for expedited review and the Department approves the exception. The Department may, in the project order, modify the analysis areas. The Department

may request additional information from the applicant, as provided in OAR 345-015-0190, before determining the application complete. Submission of the site certificate application and the Department's review of the application in all other respects are the same for expedited review as for other site certificate applications.

- (4) The Council hereby grants any request for expedited review from an applicant proposing a facility meeting the definition in section (1) if the Department determines that the request satisfies the requirements of section (2). The Department shall notify the applicant of its determination.

Stat. Auth.: ORS 469.470 Stats. Implemented: ORS 469.370 Hist.: EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 2-2000, f. & cert. ef. 11-20-00; EFSC 1-2002, f. & cert. ef. 4-3-02; EFSC 1-2007, f. & cert. ef. 5-15-07

### **345-015-0310**

#### **Request for Expedited Review of Special Criteria Facilities**

- (1) Any person who proposes to construct and operate a special criteria facility, as defined in section (2), and who chooses to request expedited review of an application for a site certificate shall submit to the Department of Energy a request for expedited review as described in section (3) with the fee required by the fee schedule established under ORS 469.441, payable to the Oregon Department of Energy.
- (2) "Special criteria facility" means a facility that meets the criteria stated in ORS 469.373(1).
- (3) In the request for expedited review, the applicant shall provide documentation that the proposed facility is a special criteria facility, as defined in section (2), and:
  - (a) A description of the facility and the proposed site.
  - (b) The applicant's name and address.
  - (c) A schedule stating when the applicant expects to submit an application for a site certificate.
  - (d) A list of all statutes, rules and ordinances applicable to the facility.
- (4) Within 14 days after receiving the request for expedited review, the Department shall determine, on a preliminary, non-binding basis, whether the proposed facility qualifies for expedited review under this rule and shall notify the applicant. The Department may decide, on a preliminary, non-binding basis, that the proposed location of associated transmission lines or new natural gas pipelines outside of existing rights of way imposes no significant impact. The Department shall provide to

the applicant a mailing list of persons including but not limited to the agencies listed in ORS 469.373(4).

- (5)** After the Department has made the determination described in section (4), the applicant may submit an application for a site certificate, as described in OAR 345-021-0000 and 345-021-0010. The applicant shall submit an original and ten copies of the application to the Department. In addition to the printed copies, the applicant shall submit the text (including appendices and graphical information to the extent practical) of the application in a non-copy-protected electronic format acceptable to the Department. The applicant shall send a copy of the application to persons on the mailing list described in section (4). The applicant shall provide additional copies of the application to the Department upon request and copies or access to copies to any person requesting copies.
- (6)** Within 30 days after receiving an application for a site certificate, the Department shall issue a project order. In the project order, the Department may make changes to the analysis areas. The project order is not a final order. The Council or the Department may amend the project order at any time.
- (7)** Within 30 days after receiving an application for a site certificate, the Department shall either:

  - (a)** Notify the applicant that the application is complete or
  - (b)** Notify the applicant that the application is not complete and describe the information needed to complete the application, to the extent known to the Department at the time of the notification.
- (8)** If additional information is needed to complete the application, the applicant shall submit the information to the Department. The Department may specify a date by which the applicant must submit additional information needed to complete the application. At the request of the applicant, the Department may extend the deadline for submission of the information. If the applicant does not submit the information by the deadline specified by the Department, including any allowed extension, the Council may reject the application. The rejection of an application is subject to appeal under ORS 469.403(3).
- (9)** An application is complete when the Department finds that the applicant has submitted information adequate for the Council to make findings or impose conditions on all applicable Council standards. The Department may find that the application is complete without requiring the applicant to submit all information described under OAR 345-021-0000 and 345-021-0010. The Department shall notify the applicant when the Department finds that the application is complete and, if needed, shall request the application supplement described in OAR 345-021-0055.

- (10)** The date of filing is the date the Department receives the application supplement described in OAR 345-021-0055 or, if no supplement is needed, the date the Department notifies the applicant that the application is complete.
- (11)** After a determination that an application is complete, the Department may require additional information from the applicant if the Department identifies a need for that information during its review of the application. Submission of such information does not constitute an amendment of the application.
- (12)** In the notification to the applicant that the application is complete, as described in section (7)(a) or (9), the Department shall instruct the applicant send a copy of the notice described in section (13) and a copy of the application supplement, if any, to specified persons including but not limited to the agencies listed in ORS 469.373(4).
- (13)** The Department shall prepare a notice that:
- (a)** States that the application is complete and specifies the date of filing,
  - (b)** Requests the agency reports as described in OAR 345-015-0200,
  - (c)** Includes the statements required by ORS 469.373(4)(a) and (b).
- (14)** At the time specified in section (15), the Department shall issue a public notice, including but not limited to:
- (a)** A description of the proposed facility and the general location of the energy facility;
  - (b)** The date, time and location of a public informational meeting on the application;
  - (c)** A statement that the application has been filed;
  - (d)** Addresses of locations where the public may review copies of the application; and
  - (e)** The name of a Department of Energy representative to contact and the telephone number at which people may obtain additional information.
- (15)** At least 14 days before the meeting described in section (16), the Department shall:
- (a)** Submit the notice described in section (14) for publication in a newspaper of general circulation available in the vicinity of the proposed facility, and
  - (b)** Mail the notice described in section (14) to persons on the Council's general mailing list as defined in OAR 345-011-0020 and to any special mailing list set up

for the proposed project, including a mailing list made up of those persons listed in Exhibit F of the site certificate application.

- (16)** The Department shall hold a public informational meeting on the application.
- (17)** Within 90 days after the date of filing, the Department shall issue a draft proposed order including, but not limited to:
- (a)** A description of the proposed facility,
  - (b)** A list of the permits, licenses and certificates that are addressed in the application and that are required for the construction or operation of the proposed facility;
  - (c)** A list of the statutes, rules and local ordinances that are the standards and criteria for approval of any permit, license or certificate addressed in the application and that are required for the construction or operation of the proposed facility, and
  - (d)** Proposed findings regarding compliance with the applicable standards and criteria for approval of a site certificate and specifying conditions that are required for the facility to comply.
- (18)** The Council shall review the draft proposed order. In accordance with ORS 469.370(3), when the Council meets to review a draft proposed order, the Council does not permit the applicant, reviewing agencies or the public to comment on any issue that may be the basis for a contested case.
- (19)** After the Council's review as described in section (18), the Department shall issue a proposed order.
- (20)** At the time specified in section (21), the Department shall issue a public notice, including but not limited to:
- (a)** A description of the facility and its general location.
  - (b)** The name of a Department of Energy representative to contact and the telephone number at which people may obtain additional information.
  - (c)** A statement that the Department has issued a proposed order and that copies of the application and proposed order are available for inspection at no cost and will be provided at reasonable cost.
  - (d)** The date, time and location of a public hearing on the proposed order.

- (e)** A statement that the record for public comment on the application will close at the conclusion of the hearing and that failure to raise an issue in person or in writing prior to the close of the record with sufficient specificity to afford the decision maker an opportunity to respond to the issue precludes consideration of the issue in a contested case or by a court on judicial review of the Council's decision.
  - (f)** A statement that to raise an issue with sufficient specificity, a person must present facts that support the person's position on the issue.
  - (g)** A statement that the hearing is the only opportunity for the public to make a factual record for review and that persons having objection to the proposed order must appear at the hearing in person or in writing and present factual evidence, including any expert testimony, and legal argument.
- (21)** At least 20 days before the hearing described in section (22), the Department shall:
- (a)** Submit the notice described in section (20) for publication in a newspaper of general circulation available in the vicinity of the proposed facility; and
  - (b)** Mail the notice described in section (20) to persons on the Council's general mailing list as defined in OAR 345-011-0020 and to any special mailing list set up for the proposed project, including a mailing list made up of those persons listed in Exhibit F of the site certificate application.
- (22)** The Council shall hold at least one public hearing on the proposed order in the area affected by the proposed facility according to the procedures described in OAR 345-015-0320.
- (23)** Before the conclusion of the hearing described in section (22), the applicant may either:
- (a)** Request an opportunity to present additional written evidence, arguments or testimony regarding the application, or
  - (b)** Request a contested case hearing on the application. Not later than 7 days after making a request in the public hearing, the applicant shall submit the request to the Council in writing, including evidence sufficient to show good cause for the contested case hearing.
- (24)** Except as described in section (27), following the close of the record of the public hearing, the Department shall issue a draft final order for the Council. In preparing the draft final order, the Department shall take into account the entire record, including the summary prepared by the hearing officer described in OAR 345-015-0320.

- (25)** Except as described in section (27), within six months after the date of filing, the Council shall make its decision on the record and the draft final order. The Council shall:
- (a)** Grant the site certificate;
  - (b)** Grant the site certificate with conditions;
  - (c)** Deny the site certificate; or
  - (d)** Determine that the proposed facility is not a special criteria facility as defined in section (2) and is not eligible for expedited review under this rule.
- (26)** The Council shall issue a site certificate for the proposed facility if the Council determines that the proposed facility, with any required conditions to the site certificate, will comply with:
- (a)** The requirements for expedited review as specified in this rule.
  - (b)** The standards adopted by the Council pursuant to ORS 469.501(1)(a), (c) to (e), (g), (h) and (L) to (o).
  - (c)** The requirements of ORS 469.503(3).
  - (d)** The requirements of ORS 469.504(1)(b).
- (27)** If the applicant requests a contested case hearing as described in section (23)(b), the Council, after considering the request in a public meeting, may grant the request if the Council finds that the applicant has shown good cause for a contested case hearing.
- (28)** If the Council grants the request for a contested case hearing, the Department shall issue a notice of a contested case on the proposed order as described in OAR 345-015-0014. The Council shall then consider the application under the same contested case procedures used for a nonexpedited application for a site certificate.
- (29)** If, as described in section (25), the Council determines that the proposed facility is not a special criteria facility and is not eligible for expedited review under this rule, then the Council shall consider the application under the same review procedures used for a nonexpedited application from the point of the applicant's submission of an application. The Department shall treat the application before the Council at the time of the determination as a preliminary application for the purpose of review under OAR 345-015-0190, except that within 30 days after the Council's determination, the Department shall determine whether the application is complete. The Department shall notify the applicant as described in OAR 345-015-0190(1) and the Department shall issue an amended project order that includes the Council

standards that were not applicable under expedited review. For the purpose of the land use standard, the applicant must obtain a Council determination as described under OAR 345-022-0030(2)(b), and the Council shall apply the applicable substantive criteria in effect on the date the application was originally submitted under section (5).

- (30)** The applicant may withdraw its request for expedited review under this rule at any time and request that the Council consider its application under the same review procedures used for a nonexpedited application. After such a request, the Department shall treat the application as a preliminary application for the purpose of review under OAR 345-015-0190 as described in section (29). For the purpose of the land use standard, the applicant must obtain a Council determination as described under OAR 345-022-0030(2)(b), and the Council shall apply the applicable substantive criteria in effect on the date the application was originally submitted under section (5).

[ED. NOTE: Exhibits referenced are available from the agency.]

Stat. Auth.: ORS 469.373 & 469.470

Stats. Implemented: ORS 469.370

Hist.: EFSC 1-2002, f. & cert. ef. 4-3-02; EFSC 1-2003, f. & cert. ef. 9-3-03; EFSC 1-2007, f. & cert. ef. 5-15-07

### **345-015-0320**

#### **Public Hearing Procedures for Special Criteria Facilities**

- (1)** The Council shall appoint a hearing officer to conduct the public hearing described in OAR 345-015-0310(22). The Council may appoint a Council member, an employee of the Department of Energy or other person.
- (2)** The duties of the hearing officer are to:
- (a)** Ensure a full, fair and impartial hearing.
  - (b)** Facilitate presentation of evidence.
  - (c)** Comply with statutory time limits on Council decisions.
  - (d)** Maintain order.
  - (e)** Assist the Council in making its decision.
  - (f)** Prepare a summary of the evidence presented on the record of the public hearing addressing the factual and legal issues raised in the hearing, including findings related to the credibility of witnesses, as necessary. The hearing officer shall submit the summary and the record of the hearing to the Council within 7 days after the close of the record.

- (3)** During the public hearing, the Department shall present the following information either orally or by written handout:
  - (a)** A description of the proposed facility.
  - (b)** A description of the Council standards, including those standards on which the Council may base site certificate conditions.
  - (c)** An explanation of the application process, including the means and opportunities for the general public to participate in the process.
- (4)** At the commencement of the public hearing, the hearing officer shall state that:
  - (a)** The record for public comment on the application will close at the conclusion of the hearing and that failure to raise an issue in person or in writing prior to the close of the record with sufficient specificity to afford the decision maker an opportunity to respond to the issue, precludes consideration of the issue in a contested case or by a court on judicial review of the Council's decision.
  - (b)** To raise an issue with sufficient specificity, a person must present facts that support the person's position on the issue.
  - (c)** The hearing is the only opportunity for the public to make a factual record for review and that persons having objection to the proposed order must appear at the hearing in person or in writing and present factual evidence, including any expert testimony, and legal argument.
- (5)** Any person may present information regarding the pending application without administration of an oath.
- (6)** The hearing officer shall record all presentations made during the public hearing, and the presentations are part of the decision record for the application. The hearing officer shall maintain a record of all exhibits received and any rulings made during the course of the hearing.
- (7)** If the applicant requests an opportunity to present written evidence, arguments or testimony as described in OAR 345-015-0310, the hearing officer shall leave the record open for that purpose only for a specified period not to exceed 14 days after the date of the hearing or any continuance.
- (8)** The hearing officer is authorized to carry out the duties assigned in this rule, including but not limited to:
  - (a)** Adopting special rules of procedure to govern the proceeding.
  - (b)** Setting reasonable time limits for oral presentations.

- (c)** Receiving evidence and ruling on offers of proof.
  - (d)** Requiring persons to submit written testimony in lieu of oral testimony if the hearing officer determines that a reasonable opportunity for oral presentation has been provided.
  - (e)** Asking questions of commenters.
  - (f)** Requiring expert witnesses to submit a statement of qualifications in writing
  - (g)** Continuing the hearing during a period not exceeding 7 days from the commencement of the hearing. Notwithstanding this time limit, the hearing officer shall leave the record open for the purpose described in section (7).
  - (h)** Continuing the hearing beyond any continuance allowed under subsection (g) for the limited purpose of allowing the applicant reasonable time to review written material submitted to the record before making the request described in section (7).
  - (i)** Taking any other action consistent with the statutes governing expedited review of special criteria facilities and the applicable Council's rules.
- (9)** A request by the applicant for a contested case as provided in OAR 345-015-0310(23)(b) does not suspend the public hearing, and the hearing officer shall continue to accept evidence from interested persons until the close of the hearing.
- (10)** Notwithstanding the provisions of OAR 137-003-0055(1), following the issuance of a notice of the public hearing, the hearing officer shall enter into the record the substance of any significant contact with the applicant, the Department of Energy staff or a commenter from that point forward concerning facts in the record.
- (11)** The Council may remove a hearing officer if it determines that the hearing officer is not competent, is biased or is otherwise unable to conduct the proceeding.
- (12)** If any person engages in conduct that interferes with the hearing officer's duty in connection with any aspect of a public hearing or fails to obey an order of the hearing officer, the hearing officer may suspend the hearing or order such person excluded from the hearing temporarily or permanently. If the hearing officer issues an order permanently excluding a person from further participation in a public hearing, the hearing officer shall issue the order in writing and shall state in the order the grounds for the order. The order is final unless the person subject to the order submits an appeal to the Council within seven days after the date of the order.
- (13)** Upon the request of a governing body of a city, county or tribe, the Department of Energy shall offer, and the hearing officer shall receive in evidence, a certified copy

of a resolution of the governing body. The hearing officer shall receive such resolutions subject to rebuttal as to the authenticity of the resolution or the circumstances surrounding its procurement. The hearing officer shall receive such resolutions only for the purpose of showing the expression of official action of the resolving body with respect to matter contained in the resolution. Such resolutions are not proof of facts related to the subject of the resolution.

Stat. Auth.: ORS 469.373 & 469.470

Stats. Implemented: ORS 469.370

Hist.: EFSC 1-2002, f. & cert. ef. 4-3-02; EFSC 1-2003, f. & cert. ef. 9-3-03; EFSC 1-2007, f. & cert. ef. 5-15-07

### **(Exemptions from Council Jurisdiction)**

#### **345-015-0350**

##### **Council Determination of Exemption**

The Council shall, upon request, determine whether a proposed facility or proposed expansion of a facility is exempt from the requirement to obtain a site certificate. A site certificate is not required for:

- (1)** A facility for which no site certificate has been issued that, on August 2, 1993, had operable electric generating equipment for a modification that uses the same fuel type and increases electric generating capacity, if the site is not enlarged and:
  - (a)** The ability of the facility to use fuel for electricity production under peak steady state operating conditions is not more than 200 million Btu per hour (higher heating value) greater than it was on August 2, 1993; or
  - (b)** The facility expansion is called for in the short-term plan of action of an energy resource plan that has been acknowledged by the Public Utility Commission of Oregon.
- (2)** Construction or expansion of any interstate natural gas pipeline or associated underground natural gas storage facility authorized by and subject to the continuing regulation of the Federal Energy Regulatory commission or successor agency.
- (3)** A high efficiency cogeneration facility, as defined in OAR 345-001-0010.
- (4)** A small generating plant or an expansion to a small generating plant, as defined in OAR 345-001-0210, if the Council finds that the accumulated effects do not have a magnitude similar to a single generating plant with an average electric generating capacity of 35 megawatts or more, as described in OAR 345-001-0210(3).
- (5)** An energy facility as defined in ORS 469.300(11)(a)(G), if the facility meets the requirements of ORS 469.320(2)(f).

**(6)** A standby generation facility as defined under ORS 469.320.

Stat. Auth.: ORS 469.470 Stats. Implemented: ORS 469.320 Hist.: EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 4-1999(Temp), f. & cert. ef. 10-15-99 thru 4-11-00; EFSC 1-2000, f. & cert. ef. 2-2-00; EFSC 1-2002, f. & cert. ef. 4-3-02; EFSC 1-2003, f. & cert. ef. 9-3-03; EFSC 1-2007, f. & cert. ef. 5-15-07

### **345-015-0360**

#### **Contents of Request for Exemption**

- (1)** Any person wishing to construct and operate a facility exempt from Council jurisdiction shall submit a request for exemption to the Department of Energy before beginning construction. A person shall not construct or expand a facility as defined in OAR 345-001-0010 unless the Council has granted an exemption as described in OAR 345-015-0370 or has issued a site certificate or an amendment to an existing site certificate.
  
- (2)** In a request for an exemption under OAR 345-015-0350(1)(a) for a modification of a facility for which no site certificate has been issued that will not increase the ability of the facility to use fuel for electricity production under peak steady state operating conditions to more than 200 million Btu per hour (higher heating value) greater than it was on August 2, 1993, the person shall provide the following information in support of the request:
  - (a)** A detailed description of the proposed upgrade or expansion;
  - (b)** The proposed and current facility fuel use;
  - (c)** The proposed and current nominal electric generating capacity;
  - (d)** The proposed and current related or supporting facilities and site boundary;
  - (e)** The proposed and current heat rate; and
  - (f)** Verification that the facility had operable electric generating equipment on August 2, 1993.
  
- (3)** In a request for an exemption under OAR 345-015-0350(1)(b) for modification of a facility for which no site certificate has been issued that is called for in the short-term plan of action of an energy resource plan that has been acknowledged by the Public Utility Commission of Oregon, the person shall provide the following information in support of the request:
  - (a)** The information described in subsections (2)(a) through (f) of this rule;





planning goals and applicable rules of the Land Conservation and Development Commission.

- (d) Verification, as described in ORS 469.320(2), that the standby generators have been approved by the Department of Environmental Quality as having complied with all applicable air and water quality requirements.
- (e) Verification, as described in ORS 469.320(2), that the standby generators are electrically incapable of being interconnected to the transmission grid.

Stat. Auth.: ORS 469.470 Stats. Implemented: ORS 469.320 Hist.: EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 4-1999(Temp), f. & cert. ef. 10-15-99 thru 4-11-00; EFSC 1-2000, f. & cert. ef. 2-2-00; EFSC 2-2000, f. & cert. ef. 11-20-00; EFSC 1-2002, f. & cert. ef. 4-3-02; EFSC 1-2003, f. & cert. ef. 9-3-03; EFSC 1-2007, f. & cert. ef. 5-15-07

### **345-015-0370**

#### **Consideration of Request for Exemption**

- (1) Except as described in section (2), within 45 days after receipt of a request for exemption, the Department of Energy shall review the request for exemption for completeness and provide the requestor with either a notice of filing of the request for exemption or a request for additional information. When the Department finds the submitted request for exemption is complete, the Department shall issue a notice of filing. Within 60 days after issuing the notice of filing, the Department shall review the request, prepare a proposed order for Council action and bring the matter before the Council for action.
- (2) When submitting a request for exemption, the requestor shall submit the fee established by the Council as described in ORS 469.441. The requestor is liable for reimbursement of any review expenses beyond the initial fee that are incurred by the Department of Energy and Council relating to the review and decision by the Council.

Stat. Auth.: ORS 469.470 Stats. Implemented: ORS 469.320, 469.421 & 469.441 Hist.: EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2002, f. & cert. ef. 4-3-02; EFSC 1-2007, f. & cert. ef. 5-15-07

### **345-015-0380**

#### **Loss of Exemption**

- (1) In accordance with ORS 469.320(6), any person operating a facility for which the Council previously granted an exemption under ORS 469.320(2)(c) and that has experienced a substantial loss of steam host resulting in a substantial loss in fuel use efficiency must submit an application for a site certificate within 12 months of the loss.

- (2) Any person proposing to enlarge the site of a facility previously determined to be exempt under 469.320(2)(a) must submit an application for a site certificate.
- (3) Any person submitting an application for a site certificate under section (1) or (2) may request expedited review as described in OAR 345-015-0300 or 345-015-0310 if the average electric generating capacity of the energy facility is less than 100 megawatts.
- (4) Any person operating a plant that the Council has determined exempt under OAR 345-015-0350(5) must apply for a site certificate before making any change in the operation of the plant such that the plant would no longer meet the requirements of ORS 469.320(2)(f).

Stat. Auth.: ORS 469.373 & 469.470 Stats. Implemented: ORS 469.320 Hist.: EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 4-1999(Temp), f. & cert. ef. 10-15-99 thru 4-11-00; EFSC 1-2000, f. & cert. ef. 2-2-00; EFSC 1-2002, f. & cert. ef. 4-3-02; EFSC 1-2007, f. & cert. ef. 5-15-07

### **(Confidentiality and Inadmissibility of Mediation Communications)**

#### **345-015-0500**

#### **Confidentiality and Inadmissibility of Mediation Communications**

- (1) The words and phrases used in this rule have the same meaning as given to them in ORS 36.110 and 36.234.
- (2) Nothing in this rule affects any confidentiality created by other law. Nothing in this rule relieves a public body from complying with the Public Meetings Law, ORS 192.610 to 192.690. Whether or not they are confidential under this or other rules of the agency, mediation communications are exempt from disclosure under the Public Records Law to the extent provided in ORS 192.410 to 192.505.
- (3) This rule applies only to mediations in which the agency is a party or is mediating a dispute as to which the agency has regulatory authority. This rule does not apply when the agency is acting as the "mediator" in a matter in which the agency also is a party as defined in ORS 36.234.
- (4) To the extent mediation communications would otherwise be compromise negotiations under ORS 40.190 (OEC Rule 408), those mediation communications are not admissible as provided in ORS 40.190 (OEC Rule 408), notwithstanding any provisions to the contrary in section (9) of this rule.
- (5) Mediations Excluded. Sections (6)–(10) of this rule do not apply to:
  - (a) Mediation of workplace interpersonal disputes involving the interpersonal relationships between this agency's employees, officials or employees and

officials, unless a formal grievance under a labor contract, a tort claim notice or a lawsuit has been filed; or

**(b)** Mediation in which the person acting as the mediator will also act as the hearings officer in a contested case involving some or all of the same matters;

**(c)** Mediation in which the only parties are public bodies;

**(d)** Mediation involving two or more public bodies and a private party if the laws, rule or policies governing mediation confidentiality for at least one of the public bodies provide that mediation communications in the mediation are not confidential; or

**(e)** Mediation involving 15 or more parties if the agency has designated that another mediation confidentiality rule adopted by the agency may apply to that mediation;

**(6)** Disclosures by Mediator. A mediator may not disclose or be compelled to disclose mediation communications in a mediation and, if disclosed, such communications may not be introduced into evidence in any subsequent administrative, judicial or arbitration proceeding unless:

**(a)** All the parties to the mediation and the mediator agree in writing to the disclosure; or

**(b)** The mediation communication may be disclosed or introduced into evidence in a subsequent proceeding as provided in subsections (c)–(d), (j)–(l) or (o)–(p) of section (9) of this rule; or

**(7)** Confidentiality and Inadmissibility of Mediation Communications. Except as provided in sections (8)–(9) of this rule, mediation communications are confidential and may not be disclosed to any other person, are not admissible in any subsequent administrative, judicial or arbitration proceeding and may not be disclosed during testimony in, or during any discovery conducted as part of a subsequent proceeding, or introduced as evidence by the parties or the mediator in any subsequent proceeding.

**(8)** Written Agreement. Section (7) of this rule does not apply to a mediation unless the parties to the mediation agree in writing, as provided in this section, that the mediation communications in the mediation will be confidential and/or nondiscoverable and inadmissible. If the mediator is the employee of and acting on behalf of a state agency, the mediator or an authorized agency representative must also sign the agreement. The parties' agreement to participate in a confidential mediation must be in substantially the following form. This form may be used separately or incorporated into an "agreement to mediate." [Form not included. See ED. NOTE.]

**(9)** Exceptions to confidentiality and inadmissibility.

- (a)** Any statements, memoranda, work products, documents and other materials, otherwise subject to discovery that were not prepared specifically for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding.
- (b)** Any mediation communications that are public records, as defined in ORS 192.410(4), and were not specifically prepared for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential or privileged under state or federal law.
- (c)** A mediation communication is not confidential and may be disclosed by any person receiving the communication to the extent that person reasonably believes that disclosing the communication is necessary to prevent the commission of a crime that is likely to result in death or bodily injury to any person. A mediation communication is not confidential and may be disclosed in a subsequent proceeding to the extent its disclosure may further the investigation or prosecution of a felony crime involving physical violence to a person.
- (d)** Any mediation communication related to the conduct of a licensed professional that is made to or in the presence of a person who, as a condition of his or her professional license, is obligated to report such communication by law or court rule is not confidential and may be disclosed to the extent necessary to make such a report.
- (e)** The parties to the mediation may agree in writing that all or part of the mediation communications are not confidential or that all or part of the mediation communications may be disclosed and may be introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential, privileged or otherwise prohibited from disclosure under state or federal law.
- (f)** A party to the mediation may disclose confidential mediation communications to a person if the party's communication with that person is privileged under ORS chapter 40 or other provision of law. A party to the mediation may disclose confidential mediation communications to a person for the purpose of obtaining advice concerning the subject matter of the mediation, if all the parties agree.
- (g)** An employee of the agency may disclose confidential mediation communications to another agency employee so long as the disclosure is necessary to conduct authorized activities of the agency. An employee receiving a confidential mediation communication under this subsection is bound by the same confidentiality requirements as apply to the parties to the mediation.
- (h)** A written mediation communication may be disclosed or introduced as evidence in a subsequent proceeding at the discretion of the party who prepared the

communication so long as the communication is not otherwise confidential under state or federal law and does not contain confidential information from the mediator or another party who does not agree to the disclosure.

- (i)** In any proceeding to enforce, modify or set aside a mediation agreement, a party to the mediation may disclose mediation communications and such communications may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of mediation communications or agreements to persons other than the parties to the agreement.
- (j)** In an action for damages or other relief between a party to the mediation and a mediator or mediation program, mediation communications are not confidential and may be disclosed and may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of the mediation communications or agreements.
- (k)** When a mediation is conducted as part of the negotiation of a collective bargaining agreement, the following mediation communications are not confidential and such communications may be introduced into evidence in a subsequent administrative, judicial or arbitration proceeding:

  - (A)** A request for mediation; or
  - (B)** A communication from the Employment Relations Board Conciliation Service establishing the time and place of mediation; or
  - (C)** A final offer submitted by the parties to the mediator pursuant to ORS 243.712; or
  - (D)** A strike notice submitted to the Employment Relations Board.
- (l)** To the extent a mediation communication contains information the substance of which is required to be disclosed by Oregon statute, other than ORS 192.410 to 192.505, that portion of the communication may be disclosed as required by statute.
- (m)** Written mediation communications prepared by or for the agency or its attorney are not confidential and may be disclosed and may be introduced as evidence in any subsequent administrative, judicial or arbitration proceeding to the extent the communication does not contain confidential information from the mediator or another party, except for those written mediation communications that are:

- (A)** Attorney-client privileged communications so long as they have been disclosed to no one other than the mediator in the course of the mediation or to persons as to whom disclosure of the communication would not waive the privilege; or
  - (B)** Attorney work product prepared in anticipation of litigation or for trial, or
  - (C)** Prepared exclusively for the mediator or in a caucus session and not given to another party in the mediation other than a state agency; or
  - (D)** Prepared in response to the written request of the mediator for specific documents or information and given to another party in the mediation; or
  - (E)** Settlement concepts or proposals, shared with the mediator or other parties.
- (n)** A mediation communication made to the agency may be disclosed and may be admitted into evidence to the extent the chair of the Council determines that disclosure of the communication is necessary to prevent or mitigate a serious danger to the public's health or safety, and the communication is not otherwise confidential or privileged under state or federal law.
  - (o)** The terms of any mediation agreement are not confidential and may be introduced as evidence in a subsequent proceeding, except to the extent the terms of the agreement are exempt from disclosure under ORS 192.410 to 192.505, a court has ordered the terms to be confidential under ORS 17.095 or state or federal law requires the terms to be confidential.
  - (p)** The mediator may report the disposition of a mediation to the agency at the conclusion of the mediation so long as the report does not disclose specific confidential mediation communications. The agency or the mediator may use or disclose confidential mediation communications for research, training or educational purposes, subject to the provisions of ORS 36.232(4).
- (10)** When a mediation is subject to section (7) of this rule, the agency will provide to all parties to the mediation and the mediator a copy of this rule or a citation to the rule and an explanation of where a copy of the rule may be obtained. Violation of this provision does not waive confidentiality or inadmissibility.

Stat. Auth.: ORS 36.224 Stats. Implemented: ORS 36.224, ORS 36.228, ORS 36.230 & ORS 36.232 Hist.: EFSC 2-1999, f. & cert. ef. 4-14-99

## Division 20 - Notice of Intent

### 345-020-0006

#### Submission of a Notice of Intent

- (1) The purpose of the notice of intent (NOI) is to notify the Department of Energy and the Council of a proposed facility and to provide information about the site and the characteristics of the facility sufficient for the preparation of the project order described in OAR 345-015-0160. Any person who intends to apply for a site certificate for a facility shall submit an NOI to the Department with the fee required by the fee schedule established under ORS 469.441, payable to the Oregon Department of Energy.
- (2) Notwithstanding section (1), an applicant granted expedited review under OAR 345-015-0300 or OAR 345-015-0310 need not submit an NOI.
- (3) Notwithstanding the definition of “energy facility.” a person may elect to apply for a site certificate for an electric power generating plant with an average electric generating capacity of less than 35 megawatts from wind energy. If such person chooses not to request expedited review under OAR 345-015-0300 or if expedited review is not granted, the person shall submit an NOI to the Department with the fee required by the fee schedule established under ORS 469.441, payable to the Oregon Department of Energy. An election to obtain a site certificate is final upon submission of the application.

Stat. Authority: ORS 469.370, ORS 469.470

Stat. Implemented: ORS 469.330

### 345-020-0011

#### Contents of a Notice of Intent

- (1) The applicant shall, to the extent reasonably practicable, include in the notice of intent (NOI) the information described in the following subsections. If the applicant proposes alternative sites, the applicant shall describe each alternative separately. The applicant shall designate the information with the appropriate exhibit label identified in the following subsections.
  - (a) **Exhibit A. Information about the applicant and participating persons**, including:
    - (A) The name and address of the applicant including all co-owners of the proposed facility, the name, mailing address and telephone number of the contact person for the NOI, and if there is a contact person other than the applicant, the name, title, mailing address and telephone number of that person;
    - (B) The contact name, address and telephone number of all participating persons, other than individuals, including but not limited to any parent corporation of the applicant, persons upon whom the applicant will rely for

third-party permits or approvals related to the facility, and persons upon whom the applicant will rely in meeting any facility standard adopted by the Council.

- (C)** If the applicant is a corporation, it shall give:
- (i)** The full name, official designation, mailing address and telephone number of the officer responsible for submitting the NOI;
  - (ii)** The date and place of its incorporation;
  - (iii)** A copy of its articles of incorporation and its authorization for submitting the NOI; and
  - (iv)** In the case of a corporation not incorporated in Oregon, the name and address of the resident attorney-in-fact in this state and proof of registration to do business in Oregon.
- (D)** If the applicant is a wholly owned subsidiary of a company, corporation or other business entity, in addition to the information required by paragraph (C), it shall give the full name and business address of each of the applicant's full or partial owners;
- (E)** If the person submitting the NOI is an association of citizens, a joint venture or a partnership, it shall give:
- (i)** The full name, official designation, mailing address and telephone number of the person responsible for submitting the NOI;
  - (ii)** The name, business address and telephone number of each person participating in the association, joint venture or partnership and the percentage interest held by each;
  - (iii)** Proof of registration to do business in Oregon;
  - (iv)** A copy of its articles of association, joint venture agreement or partnership agreement and a list of its members and their cities of residence; and
  - (v)** If there are no articles of association, joint venture agreement or partnership agreement, the applicant shall state that fact over the signature of each member;
- (F)** If the applicant is a public or governmental entity, it shall give:

- (i) The full name, official designation, mailing address and telephone number of the person responsible for submitting the NOI; and
  - (ii) Written authorization from the entity's governing body to submit an NOI;
- (G) If the applicant is an individual, the individual shall give his or her mailing address and telephone number;

**(b) Exhibit B. Information about the proposed facility, including:**

**(A) A description of the proposed energy facility, including as applicable:**

- (i) The nominal electric generating capacity and the average electrical generating capacity, as defined in ORS 469.300.
- (ii) Major components, structures and systems, including a description of the size, type and configuration of equipment used to generate electricity and useful thermal energy.
- (iii) Methods for waste management and waste disposal, including, to the extent known, the amount of wastewater the applicant anticipates, the applicant's plans for disposal of wastewater and storm water, and the location of disposal;
- (iii) For thermal power plants:
  - (I) A discussion of the source, quantity and availability of all fuels proposed to be used in the facility to generate electricity or useful thermal energy.
  - (II) Methods for disposal of waste heat.
- (iv) For transmission lines, approximate transmission line voltage, load carrying capacity and type of current.
- (v) For pipelines, approximate operating pressure and delivery capacity in thousand cubic feet per day.
- (vi) For surface facilities related to underground gas storage, estimated daily injection and withdrawal rates, horsepower compression required to operate at design injection or withdrawal rates, operating pressure range and fuel type of compressors.
- (vii) For facilities to store liquefied natural gas, the approximate volume, maximum pressure, liquefaction and gasification capacity in thousand cubic feet per hour.

**(B)** A description of major components, structures and systems of each related or supporting facility.

**(C)** The approximate dimensions of major facility structures and visible features.

**(c) Exhibit C.** A description of the location of the proposed energy facility site and the proposed site of each related or supporting facility and all areas that might be temporarily disturbed during construction of the facility, including the approximate land area of each.

**(d) Exhibit D.** If the proposed energy facility is a pipeline or a transmission line or has, as a related or supporting facility, a transmission line or pipeline that, by itself, is an energy facility under the definition in ORS 469.300, identification of at least two proposed corridors, as defined in OAR 345-001-0010, or identification of a single proposed corridor with an explanation of why alternate corridors are unlikely to better meet the applicant's needs and satisfy the Council's standards. The applicant shall include an explanation of the basis for selecting the proposed corridor(s) and, for each proposed corridor, the information described in subsections (e), (g), (i), (j), (k), (n) and (p) that is available from existing maps, aerial photographs, and a search of readily available literature.

**(e) Exhibit E.** Identification of all federal, state and local government permits needed before construction and operation the proposed facility, legal citation of the statute, rule or ordinance governing each permit, and the name, address and telephone number of the agency or office responsible for each permit.

**(f) Exhibit F.** A list of the names and mailing addresses of all owners of record, as shown on the most recent property tax assessment roll, of property located within or adjacent to the site boundary as defined in OAR 345-001-0010. In addition to incorporating the list in the NOI, the applicant shall submit the list to the Department of Energy in electronic format acceptable to the Department for the production of mailing labels. Property adjacent to the site boundary means property that is:

**(A)** Within 100 feet of the site boundary where the site, corridor or microsite corridor is within an urban growth boundary;

**(B)** Within 250 feet of the site boundary where the site, corridor or microsite corridor is outside an urban growth boundary and not within a farm or forest zone; and

**(C)** Within 500 feet of the site boundary where the site, corridor or microsite corridor is within a farm or forest zone;

**(g) Exhibit G.** A map or maps showing:

- (A) The proposed locations of the energy facility site, all related or supporting facility sites and all areas that might be temporarily disturbed during construction of the facility in relation to major roads, water bodies, cities and towns, important landmarks and topographic features;
  - (B) The proposed locations of the corridors the applicant has identified under subsection (d) in relation to major roads, water bodies, cities and towns, important landmarks and topographic features;
  - (C) The study area(s) for the proposed facility as defined in OAR 345-001-0010;
  - (D) The topography of the study area(s) including streams, rivers, lakes, major roads and contour lines;
  - (E) All protected areas in the study area as defined in OAR 345-001-0010 for impacts to protected areas; and
  - (F) The location of any potential waters of the state or waters of the United States that are on or adjacent to the site.
- (h) **Exhibit H.** If the proposed facility is a non-generating energy facility for which the applicant must demonstrate need under OAR 345-023-0005, identification of the rule in Division 23 of this chapter under which the applicant intends to demonstrate need and a summary statement of the need and justification for the proposed facility.
- (i) **Exhibit I.** A statement indicating whether the applicant intends to satisfy the Council's land use standard, OAR 345-022-0030, by obtaining local land use approval under ORS 469.504(1)(a) or by seeking a Council determination under ORS 469.504(1)(b).
- (j) **Exhibit J.** Identification of significant potential environmental impacts of construction and operation of the proposed facility on the study areas, including those impacts affecting air quality, surface and ground water quality and availability, wildlife and wildlife habitat, threatened and endangered plant and animal species, historic, cultural and archaeological resources, scenic and aesthetic areas, recreation, and land use.
- (k) **Exhibit K.** Information about significant potential adverse impacts of construction and operation of the proposed facility on the ability of communities in the study area to provide the services listed in OAR 345-022-0110.
- (L) **Exhibit L.** Information about anticipated water use during construction and operation of the proposed facility, including:

- (A) A description of each source of water and the applicant's estimate of the amount of water the facility will need from each source;
  - (B) If a new water right is required, the approximate location of the points of diversion and the estimated quantity of water to be taken at each point;
  - (C) For operation, the source of cooling water and the estimated consumptive use of cooling water, based on annual average conditions.
- (m) **Exhibit M.** If the proposed facility would emit carbon dioxide, an estimate of the gross rate of carbon dioxide emissions, a table listing all the factors that form the basis for calculating the estimate, and a statement of the means by which the applicant intends to comply with the applicable carbon dioxide emissions standard under OAR 345-024-560, OAR 345-024-600, or OAR 345-024-630.
- (n) **Exhibit N.** Identification, by legal citation, of all state statutes and administrative rules and local government ordinances containing standards or criteria that the proposed facility must meet for the Council to issue a site certificate, other than statutes, rules and ordinances identified in Exhibit E, and identification of the agencies administering those statutes, administrative rules and ordinances. The applicant shall analyze and describe any problems the applicant foresees in satisfying the requirements of any such statute, rule or ordinance.
- (o) **Exhibit O.** A schedule stating when the applicant expects to submit an application for a site certificate.
- (p) **Exhibit P.** Evidence of consultation with the State Commission on Indian Services to identify each appropriate tribe to consult with regarding the proposed facility's possible effects on Indian historic and cultural resources.
- (2) Documents prepared in connection with an environmental assessment or environmental impact statement for the proposed facility under the National Environmental Policy Act of 1970, if any, may contain some of the information required by section (1) of this rule. The applicant may copy relevant sections of such documents into the appropriate exhibits of the NOI. The applicant may otherwise submit full copies of those documents and include, in the appropriate exhibits of the NOI, cross-references to the relevant sections of those documents. The applicant may use such documents only to avoid duplication. The applicant shall include additional information in the NOI as needed to meet the requirements of section (1) of this rule.
- (3) The applicant shall include a table of contents in the NOI identifying the location of each exhibit required by this rule. The applicant shall submit an original and ten copies of the NOI to the Department and shall prepare and distribute additional copies of the NOI as required by OAR 345-020-0040. In addition to the printed copies, the applicant shall submit the text (and graphical information to the extent

practical) of the NOI in a non-copy-protected electronic format acceptable to the Department.

- (4) The applicant or the applicant's representative shall attend all public informational meetings on the NOI as described in OAR 345-015-0130 to discuss the proposed facility and to answer questions from the public. If the applicant has identified one or more proposed corridors in Exhibit D of the NOI as required by section (1)(d), the applicant may present adjustments to the proposed corridor(s) at any public informational meeting. An adjustment is any change that is outside the boundaries of the corridors proposed in the NOI and may include an entirely new corridor.

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.330

### **345-020-0016**

#### **Amendment of a Notice of Intent**

- (1) The applicant may amend the notice of intent (NOI). The applicant shall submit the original and ten copies of the amended NOI to the Department of Energy. In addition to the printed copies, the applicant shall submit the text (including appendices and graphical information to the extent practical) of the amended NOI in a non-copy-protected electronic format acceptable to the Department.
- (2) The Department shall inform the public, in the manner described in OAR 345-015-0110, of any amendment that:
  - (a) Significantly changes the proposed site boundary or location of the proposed energy facility or related or supporting facility;
  - (b) Changes the proposed fuel type, significantly increases the generating capacity of the proposed energy facility, increases the voltage of a proposed transmission line, or significantly increases the capacity or operating pressure of a proposed pipeline;
  - (c) Increases water consumption or disposal by more than 5 percent;
  - (d) Changes the source of water; or
  - (e) Significantly changes the means of compliance with the carbon dioxide standard, if applicable.
- (3) The applicant shall deliver copies of the amended NOI to the reviewing agencies as defined in OAR 345-001-0010.
- (4) Submission of an amended NOI does not extend the expiration date of the NOI. The applicant, however, may petition the Council to extend the duration of the NOI as provided in OAR 345-020-0060.

Stat. Authority: ORS 469.470  
Stat. Implemented: ORS 469.330

### **345-020-0040**

#### **Distribution of a Notice of Intent**

- (1) As soon as is practical after the submission of the notice of intent (NOI), the applicant shall distribute, by hand delivery or mailing, copies of the NOI to the reviewing agencies as defined in OAR 345-001-0010.
- (2) The applicant shall attach the memorandum from the Department described in OAR 345-015-0120 to the copies of the NOI distributed according to section (1).
- (3) The applicant shall provide additional copies of the NOI to the Department upon request and copies or access to copies to any person requesting copies.

Stat. Authority: ORS 469.470  
Stat. Implemented: ORS 469.330

### **345-020-0060**

#### **Expiration of a Notice of Intent**

- (1) A notice of intent (NOI) expires two years after the applicant submits the NOI unless, not less than 45 days before the expiration date, the applicant submits a petition to the Council to extend the expiration date. If the Council finds that the petition shows good cause, the Council may extend the expiration date for a period of up to one year. The applicant's submission of a timely petition for an extension under this rule stays the expiration of the NOI until the Council's decision to grant or deny the extension.
- (2) If the applicant does not submit an application for a site certificate for the facility described in an NOI before the expiration of the NOI or any extension period granted by the Council, the applicant must submit a new NOI to satisfy ORS 469.330.

Stat. Authority: ORS 469.470  
Stat. Implemented: ORS 469.330

## **Division 21 - Application for a Site Certificate**

### **345-021-0000**

#### **General Requirements**

- (1)** Except for facilities that the Council has determined exempt as described in OAR 345-015-0350 to OAR 345-015-0370 or for which a separate site certificate is not required according to ORS 469.320(5), a person shall not construct or expand a facility unless the Council has granted a site certificate or an amendment to an existing site certificate.
- (2)** Notwithstanding the definition of “energy facility,” a person may elect to apply for a site certificate for an electric power generating plant with an average electric generating capacity of less than 35 megawatts from wind energy.
- (3)** An applicant shall not submit an application for a site certificate before the Department of Energy has issued a project order for the proposed facility as described in OAR 345-015-0160. The applicant may submit a draft application before the issuance of a project order. The applicant must submit the application before the expiration of the notice of intent.
- (4)** For an expedited review granted under OAR 345-015-0300 or OAR 345-015-0310, section (3) does not apply and the applicant may submit an application for a site certificate any time after the Department determines the request for expedited review satisfies the requirements for expedited review as described in those rules.
- (5)** If the applicant submits a written request for waiver or modification of requirements in OAR 345-021-0010 to the Department, the Department may waive or modify those requirements that the Department determines are not applicable to the proposed facility.
- (6)** If there are any state or local government agency permits, licenses or certificates that are subject to the Council's siting decision, the applicant shall include within the site certificate application all information that would otherwise be required by the state or local government agency in an application for such permit, license or certificate.
- (7)** If there are any federally-delegated permits that apply to the construction or operation of the proposed facility, the applicant shall submit to the Department one copy of each federally-delegated permit application. The applicant may submit the site certificate application before submitting a copy of a federally-delegated permit application if the applicant submits a schedule of the date by which the applicant intends to submit the federally-delegated permit application. The Department may not find the site certificate application to be complete before receiving copies of all federally-delegated permit applications and a letter or other indication from each agency responsible for issuing a federally-delegated permit stating that the agency has received the permit application, identifying any additional information the agency

is likely to need from the applicant and estimating the date when the agency will complete its review and issue a permit decision.

- (8) If the proposed facility is a non-generating facility for which the applicant must demonstrate need under OAR 345-023-0005, in addition to the application for a site certificate described in OAR 345-021-0010, the applicant shall submit to the Department three copies of each energy resource plan or combination of plans on which the applicant relies to demonstrate need under OAR 345-023-0020, unless the applicant chooses to incorporate copies of the plan(s) as part of the application for a site certificate. The applicant shall submit the plan(s) to the Department with the site certificate application. The Department may not find the site certificate application to be complete before receiving copies of the plan(s). The plan or plans described in this section are part of the decision record for the Department's proposed order, described in OAR 345-015-0230.
- (9) The applicant shall submit an application for a site certificate to the Department with 25 percent of the fee the Department determines necessary for review of the application under ORS 469.421(3), payable to the Oregon Department of Energy. The applicant shall pay the balance of the fee periodically, as specified by the Department.
- (10) Until the Department determines the application to be complete as described in OAR 345-015-0190 or OAR 345-015-0310, it is a preliminary application. For the purpose of determining the applicable substantive criteria under ORS 469.504(1)(b)(A), the date the preliminary application is received by the Department is the date the application is submitted.

Stat. Authority: ORS 469.373, ORS 469.470

Stat. Implemented: ORS 469.350, ORS 469.370, ORS 469.421

### **345-021-0010**

#### **Contents of an Application**

- (1) The project order described in OAR 345-15-160(1) identifies the provisions of this rule applicable to the application for the proposed facility, including any appropriate modifications to applicable provisions of this rule. The applicant shall include in its application for a site certificate information that addresses each provision of this rule identified in the project order. The applicant shall designate the information with the appropriate exhibit label identified in the following subsections. If the same information is required in each of several exhibits the applicant may provide the required information in one exhibit and include appropriate references in the others. For the purpose of submitting an application for a site certificate in an expedited review granted under OAR 345-015-0300 or OAR 345-015-0310, the applicant shall include information that addresses all provisions of this rule. In such expedited reviews, analysis areas addressed in this rule are the study areas defined in OAR 345-001-0010, subject to later modification in the project order.

**(a) Exhibit A.** Information about the applicant and participating persons, including:

- (A)** The name and address of the applicant including all co-owners of the proposed facility, the name, mailing address and telephone number of the contact person for the application, and if there is a contact person other than the applicant, the name, title, mailing address and telephone number of that person;
- (B)** The contact name, address and telephone number of all participating persons, other than individuals, including but not limited to any parent corporation of the applicant, persons upon whom the applicant will rely for third-party permits or approvals related to the facility, and, if known, other persons upon whom the applicant will rely in meeting any facility standard adopted by the Council.
- (C)** If the applicant is a corporation, it shall give:
  - (i)** The full name, official designation, mailing address and telephone number of the officer responsible for submitting the application;
  - (ii)** The date and place of its incorporation;
  - (iii)** A copy of its articles of incorporation and its authorization for submitting the application; and
  - (iv)** In the case of a corporation not incorporated in Oregon, the name and address of the resident attorney-in-fact in this state and proof of registration to do business in Oregon.
- (D)** If the applicant is a wholly owned subsidiary of a company, corporation or other business entity, in addition to the information required by paragraph (C), it shall give the full name and business address of each of the applicant's full or partial owners;
- (E)** If the applicant is an association of citizens, a joint venture or a partnership, it shall give:
  - (i)** The full name, official designation, mailing address and telephone number of the person responsible for submitting the application;
  - (ii)** The name, business address and telephone number of each person participating in the association, joint venture or partnership and the percentage interest held by each;
  - (iii)** Proof of registration to do business in Oregon;

- (iv) A copy of its articles of association, joint venture agreement or partnership agreement and a list of its members and their cities of residence; and
  - (v) If there are no articles of association, joint venture agreement or partnership agreement, the applicant shall state that fact over the signature of each member;
- (F) If the applicant is a public or governmental entity, it shall give:
- (i) The full name, official designation, mailing address and telephone number of the person responsible for submitting the application; and
  - (ii) Written authorization from the entity's governing body to submit an application;
- (G) If the applicant is an individual, the individual shall give his or her mailing address and telephone number;
- (b) Exhibit B.** Information about the proposed facility, construction schedule and temporary disturbances of the site, including:
- (A) A description of the proposed energy facility, including as applicable:
- (i) The nominal electric generating capacity and the average electrical generating capacity, as defined in ORS 469.300.
  - (ii) Major components, structures and systems, including a description of the size, type and configuration of equipment used to generate electricity and useful thermal energy.
  - (iii) A site plan and general arrangement of buildings, equipment and structures.
  - (iv) Fuel and chemical storage facilities, including structures and systems for spill containment
  - (v) Equipment and systems for fire prevention and control.
  - (vi) For thermal power plants:
    - (l) A discussion of the source, quantity and availability of all fuels proposed to be used in the facility to generate electricity or useful thermal energy.



- (iv)** Least percentage of the total length of the pipeline or transmission line that would be located within lands that require zone changes, variances or exceptions;
  - (v)** Least percentage of the total length of the pipeline or transmission line that would be located in a protected area as described in OAR 345-022-0040;
  - (vi)** Least disturbance to areas where historical, cultural or archaeological resources are likely to exist; and
  - (vii)** Greatest percentage of the total length of the pipeline or transmission line that would be located to avoid seismic, geological and soils hazards;
  - (viii)** Least percentage of the total length of the pipeline or transmission line that would be located within lands zoned for exclusive farm use;
- (E)** For any pipeline or transmission line, regardless of size:
- (i)** The length of the pipeline or transmission line.
  - (ii)** The proposed right-of-way width of the pipeline or transmission line, including to what extent new right-of-way will be required or existing right-of-way will be widened.
  - (iii)** If the proposed corridor follows or includes public right-of-way, a description of where the facility would be located within the public right-of-way, to the extent known. If the applicant proposes to locate all or part of a pipeline or transmission line adjacent to but not within the public right-of-way, describe the reasons for locating the facility outside the public right-of-way. The applicant must include a set of clear and objective criteria and a description of the type of evidence that would support locating the facility outside the public right-of-way, based on those criteria.
  - (iv)** For pipelines, the operating pressure and delivery capacity in thousand cubic feet per day and the diameter and location, above or below ground, of each pipeline.
  - (v)** For transmission lines, the rated voltage, load carrying capacity, and type of current and a description of transmission line structures and their dimensions.
- (F)** A construction schedule including the date by which the applicant proposes to begin construction and the date by which the applicant proposes to complete construction. Construction is defined in OAR 345-001-0010. The applicant shall describe in this exhibit all work on the site that the applicant intends to

begin before the Council issues a site certificate. The applicant shall include an estimate of the cost of that work. For the purpose of this exhibit, "work on the site" means any work within a site or corridor, other than surveying, exploration or other activities to define or characterize the site or corridor, that the applicant anticipates or has performed as of the time of submitting the application.

**(c) Exhibit C.** Information about the location of the proposed facility, including:

**(A)** A map or maps showing the proposed locations of the energy facility site, all related or supporting facility sites and all areas that might be temporarily disturbed during construction of the facility in relation to major roads, water bodies, cities and towns, important landmarks and topographic features, using a scale of 1 inch = 2000 feet or smaller when necessary to show detail; and

**(B)** A description of the location of the proposed energy facility site, the proposed site of each related or supporting facility and areas of temporary disturbance, including the approximate land area of each. If a proposed pipeline or transmission line is to follow an existing road, pipeline or transmission line, the applicant shall state to which side of the existing road, pipeline or transmission line the proposed facility will run, to the extent this is known;

**(d) Exhibit D.** Information about the organizational expertise of the applicant to construct and operate the proposed facility, providing evidence to support a finding by the Council as required by OAR 345-022-0010, including:

**(A)** The applicant's previous experience, if any, in constructing and operating similar facilities;

**(B)** The qualifications of the applicant's personnel who will be responsible for constructing and operating the facility, to the extent that the identities of such personnel are known when the application is submitted;

**(C)** The qualifications of any architect, engineer, major component vendor, or prime contractor upon whom the applicant will rely in constructing and operating the facility, to the extent that the identities of such persons are known when the application is submitted;

**(D)** The past performance of the applicant, including but not limited to the number and severity of any regulatory citations in constructing or operating a facility, type of equipment, or process similar to the proposed facility;

**(E)** If the applicant has no previous experience in constructing or operating similar facilities and has not identified a prime contractor for construction or operation of the proposed facility, other evidence that the applicant can

successfully construct and operate the proposed facility. The applicant may include, as evidence, a warranty that it will, through contracts, secure the necessary expertise; and

**(F)** If the applicant has an ISO 9000 or ISO 14000 certified program and proposes to design, construct and operate the facility according to that program, a description of the program;

**(G)** If the applicant relies on mitigation to demonstrate compliance with any standards of Division 22 or 24 of this chapter, evidence that the applicant can successfully complete such proposed mitigation, including past experience with other projects and the qualifications and experience of personnel upon whom the applicant will rely, to the extent that the identities of such persons are known at the date of submittal.

**(e) Exhibit E.** Information about permits needed for construction and operation of the facility, including:

**(A)** Identification of all federal, state and local government permits needed before construction and operation of the proposed facility, legal citation of the statute, rule or ordinance governing each permit, and the name, address and telephone number of the agency or office responsible for each permit.

**(B)** A description of each permit and the reasons the permit is needed for construction or operation of the facility.

**(C)** For any state or local government agency permits, licenses or certificates that are subject to the Council's siting decision, evidence to support findings by the Council that construction and operation of the proposed facility will comply with the statutes, rules and standards applicable to the permit. The applicant may show this evidence:

**(i)** In Exhibit J for permits related to wetlands;

**(ii)** In Exhibit O for permits related to water rights.

**(D)** For federally-delegated permit applications, evidence that the responsible agency has received a permit application and the estimated date when the responsible agency will complete its review and issue a permit decision.

**(E)** If the applicant relies on a state or local government permit or approval issued to a third party, identification of any such third-party permit and for each:

- (i) Evidence that the applicant has, or has a reasonable likelihood of entering into, a contract or other agreement with the third party for access to the resource or service to be secured by that permit;
  - (ii) Evidence that the third party has, or has a reasonable likelihood of obtaining, the necessary permit; and
  - (iii) An assessment of the impact of the proposed facility on any permits that a third party has obtained and on which the applicant relies to comply with any applicable Council standard.
- (F)** If the applicant relies on a federally-delegated permit issued to a third party, identification of any such third-party permit and for each:
- (i) Evidence that the applicant has, or has a reasonable likelihood of entering into, a contract or other agreement with the third party for access to the resource or service to be secured by that permit;
  - (ii) Evidence that the responsible agency has received a permit application; and
  - (iii) The estimated the date when the responsible agency will complete its review and issue a permit decision.
- (G)** The applicant's proposed monitoring program, if any, for compliance with permit conditions.
- (f) Exhibit F.** A list of the names and mailing addresses of all owners of record, as shown on the most recent property tax assessment roll, of property located within or adjacent to the site boundary as defined in OAR 345-001-0010. The applicant shall submit an updated list of property owners as requested by the Department before the Department issues notice of any public hearing on the application for a site certificate as described in OAR 345-015-0220. In addition to incorporating the list in the application for a site certificate, the applicant shall submit the list to the Department in electronic format acceptable to the Department for the production of mailing labels. Property adjacent to the site boundary means property that is:
- (A)** Within 100 feet of the site boundary where the site, corridor or micrositing corridor is within an urban growth boundary;
  - (B)** Within 250 feet of the site boundary where the site, corridor or micrositing corridor is outside an urban growth boundary and not within a farm or forest zone; and

(C) Within 500 feet of the site boundary where the site, corridor or micro-siting corridor is within a farm or forest zone;

(g) **Exhibit G.** A materials analysis including:

(A) An inventory of substantial quantities of industrial materials flowing into and out of the proposed facility during construction and operation;

(B) The applicant's plans to manage hazardous substances during construction and operation, including measures to prevent and contain spills; and

(C) The applicant's plans to manage non-hazardous waste materials during construction and operation;

(h) **Exhibit H.** Information from reasonably available sources regarding the geological and soil stability within the analysis area, providing evidence to support findings by the Council as required by OAR 345-022-0020, including:

(A) A geologic report meeting the guidance in Oregon Department of Geology and Mineral Industries open file report 00-04 "Guidelines for Engineering Geologic reports and Site-Specific Seismic Hazard Reports."

(B) A description and schedule of site-specific geotechnical work that will be performed before construction for inclusion in the site certificate as conditions.

(C) Evidence of consultation with the Oregon Department of Geology and Mineral Industries regarding the appropriate site-specific geotechnical work that must be performed before submitting the application for the Department to determine that the application is complete.

(D) For all transmission lines, a description of locations along the proposed route where the applicant proposes to perform site specific geotechnical work, including but not limited to railroad crossings, major road crossings, river crossings, dead ends, corners, and portions of the proposed route where geologic reconnaissance and other site specific studies provide evidence of existing landslides or marginally stable slopes that could be made unstable by the planned construction.

(E) For all pipelines that would carry explosive, flammable or hazardous materials, a description of locations along the proposed route where the applicant proposes to perform site specific geotechnical work, including but not limited to railroad crossings, major road crossings, river crossings and portions of the proposed alignment where geologic reconnaissance and other site specific studies provide evidence of existing landslides or marginally stable slopes that could be made unstable by the planned construction.

- (F)** An assessment of seismic hazards. For the purposes of this assessment, the maximum probable earthquake (MPE) is the maximum earthquake that could occur under the known tectonic framework with a 10 percent chance of being exceeded in a 50 year period. If seismic sources are not mapped sufficiently to identify the ground motions above, the applicant shall provide a probabilistic seismic hazard analysis to identify the peak ground accelerations expected at the site for a 500 year recurrence interval and a 5000 year recurrence interval. In the assessment, the applicant shall include:
- (i)** Identification of the Maximum Considered Earthquake Ground Motion shown at International Building Code (2003 edition) Section 1615 for the site.
  - (ii)** Identification and characterization of all earthquake sources capable of generating median peak ground accelerations greater than 0.05g on rock at the site. For each earthquake source, the applicant shall assess the magnitude and minimum epicentral distance of the maximum credible earthquake (MCE).
  - (iii)** A description of any recorded earthquakes within 50 miles of the site and of recorded earthquakes greater than 50 miles from the site that caused ground shaking at the site more intense than the Modified Mercalli III intensity. The applicant shall include the date of occurrence and a description of the earthquake that includes its magnitude and highest intensity and its epicenter location or region of highest intensity.
  - (iv)** Assessment of the median ground response spectrum from the MCE and the MPE and identification of the spectral accelerations greater than the design spectrum provided in the Oregon Structural Specialty Code (2004 edition). The applicant shall include a description of the probable behavior of the subsurface materials and amplification by subsurface materials and any topographic or subsurface conditions that could result in expected ground motions greater than those characteristic of the Maximum Considered Earthquake Ground Motion identified above.
  - (v)** An assessment of seismic hazards expected to result from reasonably probable seismic events. As used in this rule “seismic hazard” includes ground shaking, ground failure, landslide, lateral spreading, liquefaction, tsunami inundation, fault displacement and subsidence.
- (G)** An assessment of soil-related hazards such as landslides, flooding and erosion which could, in the absence of a seismic event, adversely affect or be aggravated by the construction or operation of the facility.
- (H)** An explanation of how the applicant will design, engineer and construct the facility to avoid dangers to human safety from the seismic hazards identified

in paragraph (F). The applicant shall include proposed design and engineering features, applicable construction codes, and any monitoring for seismic hazards.

- (I) An explanation of how the applicant will design, engineer and construct the facility to adequately avoid dangers to human safety presented by the hazards identified in paragraph (G).
- (i) **Exhibit I.** Information from reasonably available sources regarding soil conditions and uses in the analysis area, providing evidence to support findings by the Council as required by OAR 345-022-0022, including:
  - (A) Identification and description of the major soil types in the analysis area.
  - (B) Identification and description of current land uses in the analysis area, such as growing crops, that require or depend on productive soils.
  - (C) Identification and assessment of significant potential adverse impact to soils from construction, operation and retirement of the facility, including, but not limited to, erosion and chemical factors such as salt deposition from cooling towers, land application of liquid effluent, and chemical spills.
  - (D) A description of any measures the applicant proposes to avoid or mitigate adverse impact to soils.
  - (E) The applicant's proposed monitoring program, if any, for adverse impact to soils during construction and operation.
- (j) **Exhibit J.** Information based on literature and field study, as appropriate, about waters of the state or waters of the United States, including:
  - (A) A description of all areas within the site boundary that might be waters of the state or waters of the United States and a map showing the location of these features.
  - (B) An analysis of whether construction or operation of the proposed facility would adversely affect any waters of the state, as defined under OAR 141-085-0010, or waters of the United States, as defined under Section 404 of the Clean Water Act.
  - (C) A description of the significance of potential adverse impacts to each feature identified in (A), including the nature and amount of material the applicant would remove from or place in the waters analyzed in (B).
  - (D) If the proposed facility would not need a removal-fill authorization as described under OAR 141-085-0018, an explanation of why no such

authorization is required for the construction and operation of the proposed facility.

**(E)** If the proposed facility would need a removal-fill authorization, information to support a determination by the Council that the Oregon Department of State Lands should issue a removal-fill permit, including information in the form required by the Department of State Lands under OAR Chapter 141 Division 85.

**(F)** A description of proposed actions to mitigate adverse impacts to the features identified in (A) and the applicant's proposed monitoring program, if any, for such impacts.

**(k) Exhibit K.** Information about the proposed facility's compliance with the statewide planning goals adopted by the Land Conservation and Development Commission, providing evidence to support a finding by the Council as required by OAR 345-022-0030. The applicant shall state whether the applicant elects to address the Council's land use standard by obtaining local land use approvals under ORS 469.504(1)(a) or by obtaining a Council determination under ORS 504(1)(b). An applicant may elect different processes for an energy facility and a related or supporting facility but may not otherwise combine the two processes. Notwithstanding OAR 345-021-0090(2), once the applicant has made an election, the applicant may not amend the application to make a different election. In this subsection, "affected local government" means a local government that has land use jurisdiction over any part of the proposed site of the facility. In the application, the applicant shall:

**(A)** Include a map showing the comprehensive plan designations and land use zones in the analysis area;

**(B)** If the applicant elects to obtain local land use approvals:

**(i)** Identify the affected local government(s) from which land use approvals will be sought;

**(ii)** Describe the land use approvals required in order to satisfy the Council's land use standard;

**(iii)** Describe the status of the applicant's application for each land use approval; and

**(iv)** Provide an estimate of time for issuance of local land use approvals;

**(C)** If the applicant elects to obtain a Council determination on land use:

**(i)** Identify the affected local government(s);

- (ii) Identify the applicable substantive criteria from the affected local government's acknowledged comprehensive plan and land use regulations that are required by the statewide planning goals and that are in effect on the date the application is submitted and describe how the proposed facility complies with those criteria;
  - (iii) Identify all Land Conservation and Development Commission administrative rules, statewide planning goals and land use statutes directly applicable to the facility under ORS 197.646(3) and describe how the proposed facility complies with those rules, goals and statutes;
  - (iv) If the proposed facility might not comply with all applicable substantive criteria, identify the applicable statewide planning goals and describe how the proposed facility complies with those goals; and
  - (v) If the proposed facility might not comply with all applicable substantive criteria or applicable statewide planning goals, describe why an exception to any applicable statewide planning goal is justified, providing evidence to support all findings by the Council required under ORS 469.504(2); and
- (D) If the proposed facility will be located on federal land:
  - (i) Identify the applicable land management plan adopted by the federal agency with jurisdiction over the federal land;
  - (ii) Explain any differences between state or local land use requirements and federal land management requirements;
  - (iii) Describe how the proposed facility complies with the applicable federal land management plan;
  - (iv) Describe any federal land use approvals required for the proposed facility and the status of application for each required federal land use approval;
  - (v) Provide an estimate of time for issuance of federal land use approvals; and
  - (vi) If federal law or the land management plan conflicts with any applicable state or local land use requirements, explain the differences in the conflicting requirements, state whether the applicant requests Council waiver of the land use standard described under paragraph (B) or (C) of this subsection and explain the basis for a waiver;

**(L) Exhibit L.** Information about the proposed facility's impact on protected areas, providing evidence to support a finding by the Council as required by OAR 345-022-0040, including:

**(A)** A list of the protected areas within the analysis area showing the distance and direction from the proposed facility and the basis for protection by reference to a specific subsection under OAR 345-022-0040(1).

**(B)** A map showing the location of the proposed facility in relation to the protected areas listed in OAR 345-022-0040 located within the analysis area.

**(C)** A description of significant potential impacts of the proposed facility, if any, on the protected areas including, but not limited to, potential impacts such as:

**(i)** Noise resulting from facility construction or operation;

**(ii)** Increased traffic resulting from facility construction or operation;

**(iii)** Water use during facility construction or operation;

**(iv)** Wastewater disposal resulting from facility construction or operation;

**(v)** Visual impacts of facility structures or plumes.

**(vi)** Visual impacts from air emissions resulting from facility construction or operation, including, but not limited to, impacts on Class 1 Areas as described in OAR 340-204-0050.

**(m) Exhibit M.** Information about the applicant's financial capability, providing evidence to support a finding by the Council as required by OAR 345-022-0050(2). Nothing in this subsection shall require the disclosure of information or records protected from public disclosure by any provision of state or federal law. The applicant shall include:

**(A)** An opinion or opinions from legal counsel stating that, to counsel's best knowledge, the applicant has the legal authority to construct and operate the facility without violating its bond indenture provisions, articles of incorporation, common stock covenants, or similar agreements;

**(B)** The type and amount of the applicant's proposed bond or letter of credit to meet the requirements of OAR 345-022-0050; and

**(C)** Evidence that the applicant has a reasonable likelihood of obtaining the proposed bond or letter of credit in the amount proposed in paragraph (B), before beginning construction of the facility;

- (n) Exhibit N.** If the proposed facility is a non-generating facility for which the applicant must demonstrate need under OAR 345-023-0005, information about the need for the facility, providing evidence to support a finding by the Council as required by OAR 345-023-0005, including:
- (A)** Identification of the rule in Division 23 of this chapter under which the applicant chooses to demonstrate need;
  - (B)** If the applicant chooses to demonstrate need for the proposed facility under OAR 345-023-0020(1), the least-cost plan rule:
    - (i)** Identification of the energy resource plan or combination of plans on which the applicant relies to demonstrate need;
    - (ii)** The name, address and telephone number of the person responsible for preparing each energy resource plan identified in subparagraph (i);
    - (iii)** For each plan reviewed by a regulatory agency, the agency's findings and final decision, including:
      - (I)** For a plan reviewed by the Oregon Public Utility Commission, the acknowledgment order; or
      - (II)** For a plan reviewed by any other regulatory agency, a summary of the public process including evidence to support a finding by the Council that the agency's decision process included a full, fair and open public participation and comment process as required by OAR 345-023-0020(1)(L), and the location of and means by which the Department can obtain a complete copy of the public record;
    - (iv)** Identification of the section(s) of the short-term action plan(s) that call(s) for the acquisition of the proposed facility or, as defined in OAR 345-001-0010, a facility substantially similar to the proposed facility; and
    - (v)** The attributes of the proposed facility that qualify it as one called for in the short-term action plan of the energy resource plan or combination of plans identified in subparagraph (i) or a demonstration that, as defined in OAR 345-001-0010, a facility substantially similar to the proposed facility is called for in the plan(s);
  - (C)** In addition to the information described in paragraph (B), if the applicant chooses to demonstrate need for the proposed facility under OAR 345-023-0020(1), the least-cost plan rule, and relies on an energy resource plan not acknowledged by the Public Utility Commission of Oregon:

- (i) The names, addresses and telephone numbers of members of any public advisory groups that participated in the preparation and review of each plan identified in paragraph (B);
  - (ii) A discussion of how the plan or combination of plans conforms to the standards in OAR 345-023-0020(1)(a) through (L) including citations to relevant portions of the plan documents or other supporting evidence; and
  - (iii) The expected annual emissions in tons of nitrogen oxides, PM-10 particulate, sulfur dioxide, carbon dioxide and mercury and a discussion of other environmental impacts, as compared to resources in the applicable energy resource plan;
- (D) In addition to the information described in paragraphs (B) and (C), if the applicant chooses to demonstrate need for a proposed natural gas pipeline or storage facility for liquefied natural gas under OAR 345-023-0020(1), the least-cost plan rule, and relies on an energy resource plan not acknowledged by the Public Utility Commission of Oregon, the applicant shall include the information described in paragraph (G) of this subsection if the energy resource plan or combination of plans does not contain that information. If the energy resource plan or combination of plans contains the information described in paragraph (G), the applicant shall provide a list of citations to the sections of the energy resource plan(s) that contain the information;
- (E) In addition to the information described in paragraphs (B) and (C), if the applicant chooses to demonstrate need for a proposed electric transmission line under OAR 345-023-0020(1), the least-cost plan rule and relies on an energy resource plan not acknowledged by the Public Utility Commission of Oregon, the applicant shall include the information described in paragraph (F) of this subsection if the energy resource plan or combination of plans does not contain that information. If the energy resource plan or combination of plans contains the information described in paragraph (F), the applicant shall provide a list of citations to the sections of the energy resource plan(s) that contain the information;
- (F) If the applicant chooses to demonstrate need for a proposed electric transmission line under OAR 345-023-0030, the system reliability rule:
  - (i) Load-resource balance tables for the area to be served by the proposed facility. In the tables, the applicant shall include firm capacity demands and existing and committed firm resources for each of the years from the date of submission of the application to at least five years after the expected in-service date of the facility.
  - (ii) Within the tables described in subparagraph (i), a forecast of firm capacity demands for electricity and firm annual electricity sales for the area to be

served by the proposed facility. The applicant shall separate firm capacity demands and firm annual electricity sales into loads of retail customers, system losses, reserve margins and each wholesale contract for firm sale. In the forecast, the applicant shall include a discussion of how the forecast incorporates reductions in firm capacity demand and firm annual electricity sales resulting from:

- (I)** Existing federal, state or local building codes, and equipment standards and conservation programs required by law for the area to be served by the proposed facility;
  - (II)** Conservation programs provided by the energy supplier, as defined in OAR 345-001-0010;
  - (III)** Conservation that results from responses to price; and
  - (IV)** Retail customer fuel choice;
- (iii)** Within the tables described in subparagraph (i), a forecast of existing and committed firm resources used to meet the demands described in subparagraph (ii). The applicant shall include, as existing and committed firm resources, existing generation and transmission facilities, firm contract resources and committed new resources minus expected resource retirements or displacement. In the forecast, the applicant shall list each resource separately;
  - (iv)** A discussion of the reasons each resource is being retired or displaced if the forecast described in subparagraph (iii) includes expected retirements or displacements;
  - (v)** A discussion of the annual capacity factors assumed for any generating facilities listed in the forecast described in subparagraph (iii);
  - (vi)** A discussion of the reliability criteria the applicant uses to demonstrate the proposed facility is needed, considering the load carrying capability of existing transmission system facilities supporting the area to be served by the proposed facility; and
  - (vii)** A discussion of reasons why the proposed facility is economically reasonable compared to the alternatives described below. In the discussion, the applicant shall include a table showing the amounts of firm capacity and firm annual electricity available from the proposed facility and each alternative and the estimated direct cost, as defined in OAR 345-001-0010, of the proposed facility and each alternative. The applicant shall include documentation of assumptions and calculations supporting the

table. The applicant shall evaluate alternatives to construction and operation of the proposed facility that include, but are not limited to:

- (I)** Implementation of cost-effective conservation, peak load management and voluntary customer interruption as a substitute for the proposed facility;
  - (II)** Construction and operation of electric generating facilities as a substitute for the proposed facility;
  - (III)** Direct use of natural gas, solar or geothermal resources at retail loads as a substitute for use of electricity transmitted by the proposed facility; and
  - (IV)** Adding standard sized smaller or larger transmission line capacity;
  - (viii)** The earliest and latest expected in-service dates of the facility and a discussion of the circumstances of the energy supplier, as defined in OAR 345-001-0010, that determine these dates; and
- (G)** If the applicant chooses to demonstrate need for a proposed natural gas pipeline or a proposed facility for storing liquefied natural gas under OAR 345-023-0040, the economically reasonable rule:
- (i)** Load-resource balance tables for the area to be served by the proposed facility. In the tables, the applicant shall include firm demands and resource availability for each of the years from the date of submission of the application to at least five years after the expected in-service date of the proposed facility. In the tables, the applicant shall list flowing supply and storage supply separately;
  - (ii)** Within the tables described in subparagraph (i), a forecast of firm capacity demands for the area to be served by the proposed facility. The applicant shall separate firm capacity demands into firm demands of retail customers, system losses and each wholesale contract for firm sale. The applicant shall accompany the tables with load duration curves of firm capacity and interruptible demands for the most recent historical year, the year the facility is expected to be placed in service and the fifth year after the expected in-service date. In the forecast of firm capacity demands, the applicant shall include a discussion of how the forecast incorporates reductions in firm capacity demand resulting from:
    - (I)** Existing federal, state or local building codes and equipment standards and conservation programs required by law for the area to be served by the proposed facility;

- (II)** Conservation programs provided by the energy supplier, as defined in OAR 345-001-0010;
  - (III)** Conservation that results from responses to price; and
  - (IV)** Retail customer fuel choice;
- (iii)** Within the tables described in subparagraph (i), a forecast of existing and committed firm resources used to meet the demands described in subparagraph (ii). The applicant shall include, as existing and committed firm capacity resources, existing pipelines, storage facilities, and scheduled and budgeted new facilities minus expected resource retirements or displacement. In the forecast, the applicant shall list each committed resource separately;
  - (iv)** A discussion of the reasons each resource is being retired or displaced if the forecast described in subparagraph (iii) includes expected retirements or displacements;
  - (v)** A discussion of the capacity factors assumed for any storage facilities listed in the forecast described in subparagraph (iii);
  - (vi)** A discussion of the reliability criteria the applicant uses to demonstrate the proposed facility is needed, considering the capacity of existing gas system facilities supporting the area to be served by the proposed facility;
  - (vii)** A discussion of reasons why the proposed facility is economically reasonable compared to the alternatives described in subparagraphs (viii) or (ix). In the discussion, the applicant shall include a table showing the amounts of firm capacity available from the proposed facility and each alternative and the estimated direct cost, as defined in OAR 345-001-0010, of the proposed facility and each alternative. The applicant shall include documentation of assumptions and calculations supporting the table;
  - (viii)** In an application for a proposed natural gas pipeline, an evaluation of alternatives to construction and operation of the proposed facility including, but not limited to:
    - (I)** Implementation of cost-effective conservation, peak load management and voluntary customer interruption as a substitute for the proposed facility;
    - (II)** Installation of propane storage systems, facilities to store liquefied natural gas and underground gas storage reservoirs as a substitute for the proposed facility;



- (D) For thermal power plants, a water balance diagram, including the source of cooling water and the estimated consumptive use of cooling water during operation, based on annual average conditions.
- (E) If the proposed facility would not need a groundwater permit, a surface water permit or a water right transfer, an explanation of why no such permit or transfer is required for the construction and operation of the proposed facility.
- (F) If the proposed facility would need a groundwater permit, a surface water permit or a water right transfer, information to support a determination by the Council that the Water Resources Department should issue the permit or transfer of a water use, including information in the form required by the Water Resources Department under OAR Chapter 690, Divisions 310 and 380.
- (G) A description of proposed actions to mitigate the adverse impacts of water use on affected resources.
- (p) **Exhibit P.** Information about the fish and wildlife habitat and the fish and wildlife species, other than the species addressed in subsection (q) that could be affected by the proposed facility, providing evidence to support a finding by the Council as required by OAR 345-022-0060. The applicant shall include:
  - (A) A description of biological and botanical surveys performed that support the information in this exhibit, including a discussion of the timing and scope of each survey.
  - (B) Identification of all fish and wildlife habitat in the analysis area, classified by the habitat categories as set forth in OAR 635-415-0025 and a description of the characteristics and condition of that habitat in the analysis area.
  - (C) A map showing the locations of the habitat identified in (B).
  - (D) Based on consultation with the Oregon Department of Fish and Wildlife (ODFW) and appropriate field study and literature review, identification of all State Sensitive Species that might be present in the analysis area and a discussion of any site-specific issues of concern to ODFW.
  - (E) A baseline survey of the use of habitat in the analysis area by species identified in (D) performed according to a protocol approved by the Department and ODFW.
  - (F) A description of the nature, extent and duration of potential adverse impacts on the habitat identified in (B) and species identified in (D) that could result from construction, operation and retirement of the proposed facility.

**(G)** A description of any measures proposed by the applicant to avoid, reduce or mitigate the potential adverse impacts described in (F) in accordance with the ODFW mitigation goals described in OAR 635-415-0025 and a discussion of how the proposed measures would achieve those goals.

**(H)** A description of the applicant's proposed monitoring plans to evaluate the success of the measures described in (G).

**(q) Exhibit Q.** Information about threatened and endangered plant and animal species that may be affected by the proposed facility, providing evidence to support a finding by the Council as required by OAR 345-022-0070. The applicant shall include:

**(A)** Based on appropriate literature and field study, identification of all threatened or endangered species listed under ORS 496.172(2), ORS 564.105(2) or 16 USC § 1533 that may be affected by the proposed facility;

**(B)** For each species identified under (A), a description of the nature, extent, locations and timing of its occurrence in the analysis area and how the facility might adversely affect it;

**(C)** For each species identified under (A), a description of measures proposed by the applicant, if any, to avoid or reduce adverse impact;

**(D)** For each plant species identified under (A), a description of how the proposed facility, including any mitigation measures, complies with the protection and conservation program, if any, that the Oregon Department of Agriculture has adopted under ORS 564.105(3);

**(E)** For each plant species identified under paragraph (A), if the Oregon Department of Agriculture has not adopted a protection and conservation program under ORS 564.105(3), a description of significant potential impacts of the proposed facility on the continued existence of the species and on the critical habitat of such species and evidence that the proposed facility, including any mitigation measures, is not likely to cause a significant reduction in the likelihood of survival or recovery of the species;

**(F)** For each animal species identified under (A), a description of significant potential impacts of the proposed facility on the continued existence of such species and on the critical habitat of such species and evidence that the proposed facility, including any mitigation measures, is not likely to cause a significant reduction in the likelihood of survival or recovery of the species; and

**(G)** The applicant's proposed monitoring program, if any, for impacts to threatened and endangered species;

**(r) Exhibit R.** An analysis of significant potential impacts of the proposed facility, if any, on scenic resources identified as significant or important in local land use plans, tribal land management plans and federal land management plans for any lands located within the analysis area, providing evidence to support a finding by the Council as required by OAR 345-022-0080, including:

**(A)** A list of the local, tribal and federal plans that address lands within the analysis area.

**(B)** Identification and description of the scenic resources identified as significant or important in the plans listed in (A).

**(C)** A description of significant potential adverse impacts to the scenic resources identified in (B), including, but not limited to, impacts such as:

**(i)** Loss of vegetation or alteration of the landscape as a result of construction or operation; and

**(ii)** Visual impacts of facility structures or plumes.

**(D)** The measures the applicant proposes to avoid, reduce or otherwise mitigate any significant adverse impacts.

**(E)** A map or maps showing the location of the scenic resources described under (B).

**(F)** The applicant's proposed monitoring program, if any, for impacts to scenic resources.

**(s) Exhibit S.** Information about historic, cultural and archaeological resources. Information concerning the location of archaeological sites or objects may be exempt from public disclosure under ORS 192.502(4) or ORS 192.501(11). The applicant shall submit such information separately, clearly marked as "confidential," and shall request that the Department and the Council keep the information confidential to the extent permitted by law. The applicant shall include information in Exhibit S or in confidential submissions providing evidence to support a finding by the Council as required by OAR 345-022-0090, including:

**(A)** Historic and cultural resources within the analysis area that have been listed, or would likely be eligible for listing, on the National Register of Historic Places;

**(B)** For private lands, archaeological objects, as defined in ORS 358.905(1)(a), and archaeological sites, as defined in ORS 358.905(1)(c), within the analysis area;

- (C)** For public lands, archaeological sites, as defined in ORS 358.905(1)(c), within the analysis area;
- (D)** The significant potential impacts, if any, of the construction, operation and retirement of the proposed facility on the resources described in paragraphs (A), (B) and (C) and a plan for protection of those resources that includes at least the following:
  - (i)** A description of any discovery measures, such as surveys, inventories, and limited subsurface testing work, recommended by the State Historic Preservation Officer or the National Park Service of the U.S. Department of Interior for the purpose of locating, identifying and assessing the significance of resources listed in paragraphs (A), (B) and (C).
  - (ii)** The results of the discovery measures described in subparagraph (i), together with an explanation by the applicant of any variations from the survey, inventory, or testing recommended.
  - (iii)** A list of measures to prevent destruction of the resources identified during surveys, inventories and subsurface testing referred to in subparagraph (i) or discovered during construction.
  - (iv)** A completed copy of any permit applications submitted pursuant to ORS 358.920.
- (E)** The applicant's proposed monitoring program, if any, for impacts to historic, cultural and archaeological resources during construction and operation of the proposed facility.
- (t) Exhibit T.** Information about the impacts the proposed facility would have on important recreational opportunities in the analysis area, providing evidence to support a finding by the Council as required by OAR 345-022-0100, including:
  - (A)** A description of important recreational opportunities in the analysis area considering the criteria in OAR 345-022-0100 including information on the factors listed in OAR 345-022-0100(1).
  - (B)** A description of significant potential adverse impacts to the opportunities identified in (A) including, but not limited to, potential impacts such as:
    - (i)** Direct or indirect loss of an opportunity as a result of construction or operation.
    - (ii)** Noise resulting from facility construction or operation.
    - (iii)** Increased traffic resulting from facility construction or operation.

- (iv) Visual impacts of facility structures or plumes.
  - (C) A description of any measures the applicant proposes to avoid, reduce or otherwise mitigate the significant adverse impacts identified in (B).
  - (D) A map of the analysis area showing the locations of important recreational opportunities identified in (A).
  - (E) The applicant's proposed monitoring program, if any, for impacts to important recreational opportunities.
- (u) Exhibit U.** Information about significant potential adverse impacts of construction and operation of the proposed facility on the ability of public and private providers in the analysis area to provide the services listed in OAR 345-022-0110, providing evidence to support a finding by the Council as required by OAR 345-022-0110. The applicant shall include:
- (A) The important assumptions the applicant used to evaluate potential impacts;
  - (B) Identification of the public and private providers in the analysis area that would likely be affected;
  - (C) A description of any likely adverse impact to the ability of the providers identified in (B) to provide the services listed in OAR 345-022-0110;
  - (D) Evidence that adverse impacts described in (C) are not likely to be significant, taking into account any measures the applicant proposes to avoid, reduce or otherwise mitigate the impacts; and
  - (E) The applicant's proposed monitoring program, if any, for impacts to the ability of the providers identified in (B) to provide the services listed in OAR 345-022-0110;
- (v) Exhibit V.** Information about the applicant's plans to minimize the generation of solid waste and wastewater and to recycle or reuse solid waste and wastewater, providing evidence to support a finding by the Council as required by OAR 345-022-0120. The applicant shall include:
- (A) A description of the major types of solid waste and wastewater that construction, operation and retirement of the facility are likely to generate, including an estimate of the amount of solid waste and wastewater.
  - (B) A description of any structures, systems and equipment for management and disposal of solid waste, wastewater and storm water.

- (C) A discussion of any actions or restrictions proposed by the applicant to reduce consumptive water use during construction and operation of the facility.
  - (D) The applicant's plans to minimize, recycle or reuse the solid waste and wastewater described in (A).
  - (E) A description of any adverse impact on surrounding and adjacent areas from the accumulation, storage, disposal and transportation of solid waste, wastewater and stormwater during construction and operation of the facility.
  - (F) Evidence that adverse impacts described in (D) are likely to be minimal, taking into account any measures the applicant proposes to avoid, reduce or otherwise mitigate the impacts.
  - (G) The applicant's proposed monitoring program, if any, for minimization of solid waste and wastewater impacts.
- (w) **Exhibit W.** Information about site restoration, providing evidence to support a finding by the Council as required by OAR 345-022-0050(1). The applicant shall include:
- (A) The estimated useful life of the proposed facility.
  - (B) Specific actions and tasks to restore the site to a useful, non-hazardous condition.
  - (C) An estimate, in current dollars, of the total and unit costs of restoring the site to a useful, non-hazardous condition.
  - (D) A discussion and justification of the methods and assumptions used to estimate site restoration costs.
  - (E) For facilities that might produce site contamination by hazardous materials, a proposed monitoring plan, such as periodic environmental site assessment and reporting, or an explanation why a monitoring plan is unnecessary.
- (x) **Exhibit X.** Information about noise generated by construction and operation of the proposed facility, providing evidence to support a finding by the Council that the proposed facility complies with the Oregon Department of Environmental Quality's noise control standards in OAR 340-35-0035. The applicant shall include:
- (A) Predicted noise levels resulting from construction and operation of the proposed facility.

- (B) An analysis of the proposed facility's compliance with the applicable noise regulations in OAR 340-35-0035, including a discussion and justification of the methods and assumptions used in the analysis.
  - (C) Any measures the applicant proposes to reduce noise levels or noise impacts or to address public complaints about noise from the facility.
  - (D) Any measures the applicant proposes to monitor noise generated by operation of the facility;
- (y) **Exhibit Y.** If the facility is a base load gas plant, a non-base load power plant, or a nongenerating energy facility that emits carbon dioxide, a statement of the means by which the applicant elects to comply with the applicable carbon dioxide emissions standard under OAR 345-024-0560, OAR 345-024-0600, or OAR 345-024-0630 and information, showing detailed calculations, about the carbon dioxide emissions of the energy facility. The applicant may present the calculations in tabular form. The applicant shall include the following information and calculations:
- (A) Fuel cycle and usage including the maximum hourly fuel use at net electrical power output at average annual conditions for a base load gas plant and the maximum hourly fuel use at nominal electric generating capacity for a non-base load power plant or a base load gas plant with power augmentation technologies, as applicable;
  - (B) The gross capacity as estimated at the generator output terminals for each generating unit. For a base load gas plant, gross capacity is based on the average annual ambient conditions for temperature, barometric pressure and relative humidity. For a non-base load plant, gross capacity is based on the average temperature, barometric pressure and relative humidity at the site during the times of year when the facility is intended to operate. For a baseload gas plant with power augmentation, gross capacity in that mode is based on the average temperature, barometric pressure and relative humidity at the site during the times of year when the facility is intended to operate with power augmentation.
  - (C) A table showing a reasonable estimate of all on-site electrical loads and losses greater than 50 kilowatts, including losses from on-site transformers, plus a factor for incidental loads, that are required for the normal operation of the plant when the plant is at its designed full power operation.
  - (D) The maximum number of hours per year and energy content (Btu per year, higher heating value) of alternate fuel use;

- (E)** The total gross carbon dioxide emissions for 30 years, unless an applicant for a non-base load power plant or nongenerating energy facility proposes to limit operation to a shorter time;
- (F)** The gross carbon dioxide emissions rate expressed as:
- (i)** Pounds of carbon dioxide per kilowatt-hour of net electric power output for a base load gas plant, including operation with or without power augmentation, as appropriate, or for a non-base load power plant;
  - (ii)** Pounds of carbon dioxide per horsepower hour for nongenerating facilities for which the output is ordinarily measured in horsepower; or
  - (iii)** A rate comparable to pounds of carbon dioxide per kilowatt-hour of net electric power output for nongenerating facilities other than those measured in horsepower;
- (G)** The total excess carbon dioxide emissions for 30 years, unless an applicant for a non-base load power plant or a nongenerating energy facility proposes to limit operation to a shorter time;
- (H)** The excess carbon dioxide emissions rate, using the same measure as required for paragraph (F);
- (I)** The average annual site conditions, including temperature, barometric pressure and relative humidity, together with a citation of the source and location of the data collection devices;
- (J)** For a non-base load power plant (or when using power augmentation), the average temperature, barometric pressure and relative humidity at the site during the times of the year when the facility is intended to operate, together with a citation of the source and location of the data collection devices;
- (K)** The annual fuel input in British thermal units, higher heating value, to the facility for each type of fuel the facility will use, assuming:
- (i)** For a base load gas plant, a 100-percent capacity factor on a new and clean basis and the maximum number of hours annually that the applicant proposes to use alternative fuels;
  - (ii)** For a non-base load power plant, the applicant's proposed annual hours of operation on a new and clean basis, the maximum number of hours annually that the applicant proposes to use alternative fuels and, if the calculation is based on an operational life of fewer than 30 years, the proposed operational life of the facility;

- (iii) For a nongenerating energy facility, the reasonably likely operation of the facility based on one year, 5-year, 15-year, and 30-year averages, unless an applicant proposes to limit operation to a shorter time;
- (L) For each type of fuel a base load gas plant or a non-base load power plant will use, the estimated heat rate and capacity of the facility measured on a new and clean basis with no thermal energy to cogeneration, consistent with the data supplied in Exhibit B;
- (M) For each type of fuel a nongenerating energy facility will use, the estimated efficiency and capacity of the facility with no thermal energy to cogeneration;
- (N) If the facility provides thermal energy for cogeneration to lower its net carbon dioxide emissions rate, the applicant shall include:
  - (i) The estimated annual useful thermal energy available from the facility for non-electric processes, annual useful thermal energy used by non-electric processes, and annual thermal energy rejected as waste heat;
  - (ii) For a base load gas plant or non-base load power plant, the estimated annual net electric power output and annual fuel input in British thermal units higher heating value for the facility for each type of fuel the facility will use and the basis of such estimates;
  - (iii) A description of the non-electric thermal processes, the names and addresses of the persons intending to use the non-electric thermal energy, and a description and an estimate of the fuel displaced by cogeneration, including supporting assumptions;
  - (iv) A description of the products produced and thermal energy needed for production of the primary products made by the persons intending to use the non-electric thermal energy produced by the proposed facility, supported by fuel use and steam production records or estimates, if the production facility is new;
  - (v) The efficiency of each boiler that the thermal energy will displace;
  - (vi) For each boiler, the annual fossil fuel displaced in million Btu, higher heating value, by type of fuel that will be displaced by the thermal energy;
  - (vii) The annual carbon dioxide offset by the cogeneration host, using a rate of 117 pounds of carbon dioxide per million Btu of natural gas fuel (higher heating value) and a rate of 161 pounds of carbon dioxide per million Btu of distillate fuel (higher heating value);

- (viii)** The cumulative carbon dioxide offset by the steam host through the thirtieth year of facility operation, or for a shorter period if an applicant for a nongenerating facility proposes a shorter operational period;
  - (ix)** A copy of the contractual agreement between the applicant and the cogeneration host for the use of the thermal energy;
  - (x)** A description of the guarantees of offsets that the applicant shall provide for cogeneration projects, pursuant to OAR 345-024-0560(1) and OAR 345-024-0600(1);
  - (xi)** A proposed monitoring and evaluation plan and an independent verification plan, pursuant to subparagraphs (O)(xix) and (O)(xx);
  - (xii)** A copy of the instrument by which the certificate holder will transfer the offsets to the Council for it to hold in trust;
- (O)** If the applicant proposes to offset carbon dioxide emissions as described in OAR 345-024-0550(3), OAR 345-024-0560(2), OAR 345-024-0590(3), OAR 345-024-0600(2), OAR 345-024-0620(3) or OAR 345-024-0630(1), the applicant shall include:
- (i)** A description of each offset project;
  - (ii)** A description of who will implement the offset project, including qualifications and experience;
  - (iii)** Detailed estimates of the of carbon dioxide offset, measured in short tons, that the offset projects will achieve over the life of the project;
  - (iv)** For each offset project, an explanation of how the applicant quantified its carbon dioxide estimates to a degree of certainty acceptable to the Council though a transparent and replicable calculation methodology;
  - (v)** For each offset project, evidence that the offset project would not likely have been implemented if not for the applicant's activities or funding;
  - (vi)** For each offset project, a description of a "Baseline" projection that does not include the proposed project and a "Project Case" projection that does. The historic Baseline shall use reliable emissions data or pre-project data available for the most recent three years unless the applicant can demonstrate that a different period more closely represents historical operations or unless it can demonstrate that another method provides a more reasonable estimate. The applicant shall show how the Baseline projection changes over time if changes from business-as-usual could be reasonably anticipated during the project life;

- (vii)** For each offset project, a description, in a transparent and realistic manner, of the assumptions and methodologies used to quantify the Baseline and the Project Case projections, including a description of key parameters and data sources. This shall include a description of the formulae used to estimate carbon dioxide emissions or sequestration within the project boundary and a net change of carbon dioxide emissions or sequestration that occurs outside of the project boundary that is measurable and attributable to the project activity;
- (viii)** For projects that avoid conventional electricity generation, a description of a Baseline that calculates the carbon dioxide emissions per kilowatt hour in two steps: (1) for the first five years of operation, a description of the rate based on dispatch data or models or, absent that, a weighted average of all resources in a power pool except zero-fuel-cost or must-run facilities, and (2) a description of the rate for any subsequent years based on a group of similar facilities built within the prior five years or under construction in the electrical distribution region of the project or the three most recent plants built in the region, whichever rate is lower;
- (ix)** For projects that avoid conventional electricity generation, a description of avoided transmission and distribution losses, using average grid area or national losses;
- (x)** A description of any guarantee for offsets from projects that the applicant proposes pursuant to OAR 345-024-0560(2), OAR 345-024-0600(2), and OAR 345-024-630(1), if the applicant chooses to offer a guarantee;
- (xi)** A description of the offset project boundary. The boundary shall encompass all carbon dioxide emissions under the control of the project that are significant and reasonably attributable to the project activity. If the project is being conducted by one part of a corporation, the boundary shall include the emissions and reductions of the whole corporate entity and the carbon dioxide emissions resulting from processes and facilities that are related to the project, with identification of subsidiaries that are affected by the project;
- (xii)** A description of significant risks and risk mitigation strategies, including an estimate of the range of uncertainty around the expected carbon dioxide offsets;
- (xiii)** For biological sequestration projects, an assessment of the risk of climate change to natural systems that are sequestering the carbon dioxide, including, if appropriate, the risks from forest fires, pest and other unplanned releases of carbon from sequestration;

- (xiv)** A description of whether the offset project will permanently avoid or displace emissions of carbon dioxide. If a project only temporarily sequesters carbon, an indication of the duration of sequestration or storage;
- (xv)** A description of the amount of funding the applicant will provide for each offset project it proposes;
- (xvi)** If the applicant anticipates that a project will have funding sources in addition to itself, identification of the sources of those funds, the amount of other funding that is required to implement a project, the amount of funds other parties have committed, and the risks of other funds not being available;
- (xvii)** If the applicant proposes that a project will have funding sources in addition to itself, a description of how ownership of the offsets will be allocated among the several funding sources;
- (xviii)** A copy of the instrument by which the certificate holder will transfer all the offsets to the Council for it to hold in trust;
- (xix)** A description of a transparent and replicable methodology for the applicant's monitoring and evaluation plan and for an independent verification plan, including (1) procedures the applicant and the independent entity will employ, (2) how the applicant will assure funds for ongoing monitoring, evaluation and verification, (3) the time frame and frequency over which the applicant will conduct monitoring and evaluation and over which the independent entity will conduct verification, including the frequency of site visits, if applicable, (4) the reporting procedures and guidelines for the plans, and (5) whether the applicant has identified the independent entity that will perform the verification;
- (xx)** The monitoring and evaluation plan and the verification plan shall identify the data needs and data quality with regard to accuracy, comparability, completeness and validity. It shall include methodologies to be used for data collection, monitoring, storage, reporting and management, including quality assurance and quality control provisions. It shall provide complete calculations used to calculate and estimate carbon dioxide emissions from activity within the project boundary. It shall show any formulae and assumptions the applicant used to calculate offset project leakage;
- (xxi)** A description of reasonably likely, significant undesirable long-term environmental impacts from the implementation of an offset project; and

**(P)** If the applicant elects to comply with the applicable carbon dioxide emissions standard by using the monetary path under OAR 345-024-0560(3), OAR 345-024-0600(3) or OAR 345-024-0630(2), the applicant shall include:

**(i)** A statement of the applicant's election to use the monetary path;

**(ii)** The amount of carbon dioxide reduction, in tons, for which the applicant is taking credit by using the monetary path;

**(iii)** The qualified organization to whom the applicant will provide offset funds and funds for the cost of selecting and contracting for offsets. The applicant shall include evidence that the organization meets the definition of a qualified organization under OAR 345-001-0010. The applicant may identify an organization that has applied for, but has not received, an exemption from federal income taxation, but the Council shall not find that the organization is a qualified organization unless the organization is exempt from federal taxation under section 501(c)(3) of the Internal Revenue Code as amended and in effect on December 31, 1996; and

**(iv)** A statement of whether the applicant intends to provide a bond or letter of credit to secure the funds it must provide to the qualified organization or whether it requests the option of providing either a bond or a letter of credit.

**(z) Exhibit Z.** If the proposed facility has an evaporative cooling tower, information about the cooling tower plume, including:

**(A)** The predicted size and frequency of occurrence of a visible plume and an assessment of its visual impact;

**(B)** The predicted locations and frequency of occurrence of ice formation on surfaces and ground level fogging and an assessment of significant potential adverse impacts, including, but not limited to, traffic hazards on public roads;

**(C)** The predicted locations and rates of deposition of solids released from the cooling tower (cooling tower drift) and an assessment of significant potential adverse impacts to soils, vegetation and other land uses;

**(D)** Any measures the applicant proposes to reduce adverse impacts from the cooling tower plume or drift;

**(E)** The assumptions and methods used in the plume analysis; and

**(F)** The applicant's proposed monitoring program, if any, for cooling tower plume impacts;

**(aa) Exhibit AA.** If the proposed facility includes an electric transmission line:

**(A)** Information about the expected electric and magnetic fields, including:

- (i)** The distance in feet from the proposed center line of each proposed transmission line to the edge of the right-of-way;
- (ii)** The type of each occupied structure, including but not limited to residences, commercial establishments, industrial facilities, schools, daycare centers and hospitals, within 200 feet on each side of the proposed center line of each proposed transmission line;
- (iii)** The approximate distance in feet from the proposed center line to each structure identified in (A);
- (iv)** At representative locations along each proposed transmission line, a graph of the predicted electric and magnetic fields levels from the proposed center line to 200 feet on each side of the proposed center line;
- (v)** Any measures the applicant proposes to reduce electric or magnetic field levels;
- (vi)** The assumptions and methods used in the electric and magnetic field analysis, including the current in amperes on each proposed transmission line; and
- (vii)** The applicant's proposed monitoring program, if any, for actual electric and magnetic field levels; and

**(B)** An evaluation of alternate methods and costs of reducing radio interference likely to be caused by the transmission line in the primary reception area near interstate, U.S. and state highways;

**(bb) Exhibit BB.** Any other information that the Department requests in the project order or in a notification regarding expedited review;

**(cc) Exhibit CC.** Identification, by legal citation, of all state statutes and administrative rules and local government ordinances containing standards or criteria that the proposed facility must meet for the Council to issue a site certificate, other than statutes, rules and ordinances identified in Exhibit E, and identification of the agencies administering those statutes, administrative rules and ordinances. The applicant shall identify all statutes, administrative rules and ordinances that the applicant knows to be applicable to the proposed facility, whether or not identified in the project order. To the extent not addressed by other materials in the application, the applicant shall include a discussion of how

the proposed facility meets the requirements of the applicable statutes, administrative rules and ordinances.

**(dd) Exhibit DD.** If the proposed facility is a facility for which the Council has adopted specific standards, information about the facility providing evidence to support findings by the Council as required by the following rules:

**(A)** For wind energy facilities, OAR 345-024-0010 and -0015.

**(B)** For surface facilities related to underground gas storage reservoirs, OAR 345-024-0030, including information required by OAR 345-021-0020.

**(C)** For any transmission line under Council jurisdiction, OAR 345-024-0090.

**(2)** Documents prepared in connection with an environmental assessment or environmental impact statement for the proposed facility under the National Environmental Policy Act of 1970, if any, may contain some of the information required under section (1) of this rule. The applicant may copy relevant sections of such documents into the appropriate exhibits of the site certificate application. The applicant may otherwise submit full copies of those documents and include, in the appropriate exhibits of the site certificate application, cross-references to the relevant sections of those documents. The applicant may use such documents only to avoid duplication. The applicant shall include additional information in the site certificate application as needed to meet the requirements of section (1) of this rule.

**(3)** The applicant shall include a table of contents in the application identifying the location of each exhibit required by this rule. The applicant shall submit an original and ten copies of the application to the Department and shall prepare and distribute additional copies of the application as required by OAR 345-021-0050. In addition to the printed copies, the applicant shall submit the text (including appendices and graphical information to the extent practical) in a non-copy-protected electronic format acceptable to the Department.

Stat. Authority: ORS 469.373, ORS 469.470

Stat. Implemented: ORS 469.350, ORS 469.370, ORS 469.501, ORS 469.503, ORS 469.504

### **345-021-0020**

#### **Specific Application Requirements for Siting of Surface Facilities Related to Underground Gas Storage Reservoirs**

In addition to the requirements of OAR 345-021-0010, in an application for a site certificate for a surface facility related to an underground storage reservoir, the applicant shall include the following information:

- (1) The design rates of natural or synthetic gas injection or withdrawal;
- (2) The compression horsepower required to operate at design injection or withdrawal rates;
- (3) The fuel type of the compressor;
- (4) The estimated carbon dioxide emissions from the compressor for the projected life of the facility; and
- (5) The proposed location of all wells.

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.350, ORS 469.503

### **345-021-0050**

#### **Distribution of a Preliminary Application**

- (1) Until the Department determines the application to be complete as described in OAR 345-015-0190 or OAR 345-015-0310, it is a preliminary application. When the applicant submits a preliminary application to the Department of Energy, the applicant shall send a copy of the preliminary application to the reviewing agencies as defined in OAR 345-001-0010 accompanied by a memorandum from the Department as described in OAR 345-015-0180. If the applicant obtains written consent from the reviewing agency and provides a copy of that written consent to the Department, the applicant may send specified parts of the preliminary application or an electronic copy of all or specified parts of the preliminary application to the reviewing agency instead of sending a full printed copy.
- (2) Upon receipt of the preliminary application, each reviewing agency shall submit written comments or recommendations to the Department that:
  - (a) State whether the reviewing agency needs any additional information from the applicant to review the application under the statutes, administrative rules or ordinances administered by the reviewing agency and describe such information; and
  - (b) Describe the status of applications for permits, if any, that the applicant has submitted to the reviewing agency and that are necessary for the construction and operation of the proposed facility.
- (3) The Department shall, as soon as practicable, send the applicant copies of all comments submitted under section (2) that identify a need for additional information.
- (4)

- (a) If the applicant has elected to demonstrate compliance with the Council's land use standard under ORS 469.504(1)(a), each local government with land use jurisdiction over the proposed facility shall, in the comments or recommendations submitted to the Department under section (2), describe the status of the local land use proceedings and state the date when the local government expects to issue a final land use decision.
- (b) If the applicant has elected to obtain a Council determination of compliance with the Council's land use standard under ORS 469.504(1)(b), each local government with land use jurisdiction over the proposed facility shall, in the comments or recommendations submitted to the Department under section (2), include:
- (A) A complete list of applicable substantive criteria from the local government's acknowledged comprehensive plan and land use regulations that are required by the statewide planning goals and that are in effect on the date the application was submitted. "Applicable substantive criteria" means the criteria and standards that the local government would apply in making all land use decisions necessary to site the proposed facility in the absence of a Council proceeding;
  - (B) A complete list of Land Conservation and Development Commission administrative rules, statewide planning goals and land use statutes directly applicable to the facility under ORS 197.646(3);
  - (C) Copies of the criteria listed in (A) and any interpretations of ambiguous terms and matters arising from the local government's land use regulations; and
  - (D) An assessment of the accuracy and completeness of the applicable substantive criteria the applicant identified in the site certificate application;
- (c) The local government may submit its recommendations, comments and interpretations as described in subsection (b) in the form of a resolution adopted by the local governing body.
- (5) The applicant shall provide additional copies of the preliminary application to the Department upon request, and copies or access to copies to any person requesting copies.

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.350

### **345-021-0055**

#### **Distribution of a Complete Application**

- (1) After receiving notification from the Department of Energy that the application is complete, the applicant shall prepare an application supplement that includes all

amendments to the preliminary application and all additional information requested by the Department before the determination of completeness. The supplement may consist of a total revision of the application when necessary to provide a clear presentation of new information. The applicant shall submit an original and ten copies of the application supplement to the Department. In addition to the printed copies, the applicant shall submit the text (including appendices and graphical information to the extent practical) in a non-copy-protected electronic format acceptable to the Department. Except as described in OAR 345-015-0310, the applicant shall send a copy of the supplement to persons on a mailing list provided by the Department, accompanied by the notice from the Department described in OAR 345-015-0200. If the applicant obtains written consent from a person named on the mailing list and provides a copy of that written consent to the Department, the applicant may send specified parts of the supplement or an electronic copy of all or specified parts of the supplement to that person instead of sending a full printed copy.

- (2) A “complete application” consists of the preliminary application together with the supplement described in section (1).
- (3) The applicant shall provide additional copies of the complete application to the Department upon request and copies or access to copies to any person requesting copies.

Stat. Authority: ORS 469.373, ORS 469.470

Stat. Implemented: ORS 469.350

### **345-021-0080**

#### **Agency Coordination**

Each agency with legal authority to implement or enforce state statutes, state administrative rules or local government ordinances that must be satisfied in order for the Council to issue a site certificate for a proposed facility is encouraged to conduct its review of the application for a site certificate and other permit applications for the proposed facility filed with the agency on a time line and in a manner that enables the agency to:

- (1) Make recommendations to the Department of Energy and Council about compliance of the applications with the state statutes, administrative rules or ordinances administered by the agency.
- (2) Recommend conditions for inclusion in the site certificate that will ensure compliance with such statutes, rules and ordinances.
- (3) Present testimony and evidence at the contested case hearing on the site certificate application.

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.350

### **345-021-0090**

#### **Amendment of an Application**

- (1) When the applicant is preparing to submit an amended application, the applicant shall notify the Department of Energy.
- (2) The applicant may amend a preliminary application at any time.
- (3) If the applicant submits an amended application after the date of filing as determined under OAR 345-015-0190 or OAR 345-015-0310, the Department may withdraw the filing of the application until the Department has reviewed the amended application for completeness as described under OAR 345-015-0190 or OAR 345-015-0310.
- (4) If the applicant submits an amended application after issuance of a contested case notice under OAR 345-015-0014, the Department may, by motion, request that the contested case proceeding be terminated and the Council's hearing officer may issue an order terminating the proceeding. Upon issuance of the order, the Department may withdraw the filing of the application until the Department has reviewed the amended application for completeness as described under OAR 345-015-0190 or OAR 345-015-0310.
- (5) The applicant shall submit the original and ten copies of the amended application to the Department. In addition to the printed copies, the applicant shall submit the text (and graphical information to the extent practical) in a non-copy-protected electronic format acceptable to the Department.

Stat. Authority: ORS 469.373, ORS 469.470

Stat. Implemented: ORS 469.350

### **345-021-0100**

#### **Contested Case Proceeding on the Application -- Burden of Proof**

- (1) After the issuance of a notice of contested case as described in OAR 345-015-0230, the hearing officer shall conduct a contested case proceeding on the application according to the provisions of OAR Chapter 345, Division 15.
- (2) The applicant has the burden of proving, by a preponderance of the evidence in the decision record, that the facility complies with all applicable statutes, administrative rules and applicable local government ordinances.

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.370

## Division 22 - General Standards For Siting Facilities

### 345-022-0000

#### General Standard of Review

(1) To issue a site certificate for a proposed facility or to amend a site certificate, the Council shall determine that the preponderance of evidence on the record supports the following conclusions:

(a) The facility complies with the requirements of the Oregon Energy Facility Siting statutes, ORS 469.300 to ORS 469.570 and 469.590 to 469.619, and the standards adopted by the Council pursuant to ORS 469.501 or the overall public benefits of the facility outweigh the damage to the resources protected by the standards the facility does not meet as described in section (2);

(b) Except as provided in OAR 345-022-0030 for land use compliance and except for those statutes and rules for which the decision on compliance has been delegated by the federal government to a state agency other than the Council, the facility complies with all other Oregon statutes and administrative rules identified in the project order, as amended, as applicable to the issuance of a site certificate for the proposed facility. If the Council finds that applicable Oregon statutes and rules, other than those involving federally delegated programs, would impose conflicting requirements, the Council shall resolve the conflict consistent with the public interest. In resolving the conflict, the Council cannot waive any applicable state statute.

(2) The Council may issue or amend a site certificate for a facility that does not meet one or more of the standards adopted under ORS 469.501 if the Council determines that the overall public benefits of the facility outweigh the damage to the resources protected by the standards the facility does not meet. The Council shall make this balancing determination only when the applicant has shown that the proposed facility cannot meet Council standards or has shown, to the satisfaction of the Council, that there is no reasonable way to meet the Council standards through mitigation or avoidance of the damage to the protected resources. The applicant has the burden to show that the overall public benefits outweigh the damage to the resources, and the burden increases proportionately with the degree of damage to the resources. The Council shall weigh overall public benefits and damage to the resources as follows:

(a) The Council shall evaluate the damage to the resources by considering factors including, but not limited to, the following:

(A) The uniqueness and significance of the resource that would be affected;

(B) The degree to which current or future development may damage the resource, if the proposed facility is not built;



- (4) In making determinations regarding compliance with statutes, rules and ordinances normally administered by other agencies or compliance with requirements of the Council statutes if other agencies have special expertise, the Department of Energy shall consult with such other agencies during the notice of intent, site certificate application and site certificate amendment processes. Nothing in these rules is intended to interfere with the state's implementation of programs delegated to it by the federal government.

Stat. Authority: ORS 469.470, ORS 469.501

Stat. Implemented: ORS 469.501, ORS 469.503, ORS 469.504, ORS 469.505

### **345-022-0010**

#### **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.
- (2) The Council may base its findings under section (1) on a rebuttable presumption that an applicant has organizational, managerial and technical expertise, if the applicant has an ISO 9000 or ISO 14000 certified program and proposes to design, construct and operate the facility according to that program.
- (3) If the applicant does not itself obtain a state or local government permit or approval for which the Council would ordinarily determine compliance but instead relies on a permit or approval issued to a third party, the Council, to issue a site certificate, must find that the third party has, or has a reasonable likelihood of obtaining, the necessary permit or approval, and that the applicant has, or has a reasonable likelihood of entering into, a contractual or other arrangement with the third party for access to the resource or service secured by that permit or approval.
- (4) If the applicant relies on a permit or approval issued to a third party and the third party does not have the necessary permit or approval at the time the Council issues the site certificate, the Council may issue the site certificate subject to the condition that the certificate holder shall not commence construction or operation as appropriate until the third party has obtained the necessary permit or approval and the applicant has a contract or other arrangement for access to the resource or service secured by that permit or approval.

Stat. Authority: ORS 469.470, ORS 469.501  
Stat. Implemented: ORS 469.501

### **345-022-0020**

#### **Structural Standard**

- (1) Except for facilities described in sections (2) and (3), to issue a site certificate, the Council must find that:
- (a) The applicant, through appropriate site-specific study, has adequately characterized the site as to Maximum Considered Earthquake Ground Motion identified at International Building Code (2003 edition) Section 1615 and maximum probable ground motion, taking into account ground failure and amplification for the site specific soil profile under the maximum credible and maximum probable seismic events; and
  - (b) The applicant can design, engineer, and construct the facility to avoid dangers to human safety presented by seismic hazards affecting the site that are expected to result from maximum probable ground motion events. As used in this rule “seismic hazard” includes ground shaking, ground failure, landslide, liquefaction, lateral spreading, tsunami inundation, fault displacement, and subsidence;
  - (b) The applicant, through appropriate site-specific study, has adequately characterized the potential geological and soils hazards of the site and its vicinity that could, in the absence of a seismic event, adversely affect, or be aggravated by, the construction and operation of the proposed facility; and
  - (d) The applicant can design, engineer and construct the facility to avoid dangers to human safety presented by the hazards identified in subsection (c).
- (2) The Council may issue a site certificate for a facility that would produce power from wind, solar or geothermal energy without making the findings described in section (1). However, the Council may apply the requirements of section (1) to impose conditions on a site certificate issued for such a facility.
- (3) The Council may issue a site certificate for a special criteria facility under OAR 345-015-0310 without making the findings described in section (1). However, the Council may apply the requirements of section (1) to impose conditions on a site certificate issued for such a facility.

Stat. Authority: ORS 469.470, ORS 469.501  
Stat. Implemented: ORS 469.501

### **345-022-0022**

#### **Soil Protection**

To issue a site certificate, the Council must find that the design, construction and operation of the facility, taking into account mitigation, are not likely to result in a

significant adverse impact to soils including, but not limited to, erosion and chemical factors such as salt deposition from cooling towers, land application of liquid effluent, and chemical spills.

Stat. Authority: ORS 469.470, ORS 469.501

Stat. Implemented: ORS 469.501

### **345-022-0030**

#### **Land Use**

- (1)** To issue a site certificate, the Council must find that the proposed facility complies with the statewide planning goals adopted by the Land Conservation and Development Commission.
  
- (2)** The Council shall find that a proposed facility complies with section (1) if:
  - (a)** The applicant elects to obtain local land use approvals under ORS 469.504(1)(a) and the Council finds that the facility has received local land use approval under the acknowledged comprehensive plan and land use regulations of the affected local government; or
  
  - (b)** The applicant elects to obtain a Council determination under ORS 469.504(1)(b) and the Council determines that:
    - (A)** The proposed facility complies with applicable substantive criteria as described in section (3) and the facility complies with any Land Conservation and Development Commission administrative rules and goals and any land use statutes directly applicable to the facility under ORS 197.646(3);
  
    - (B)** For a proposed facility that does not comply with one or more of the applicable substantive criteria as described in section (3), the facility otherwise complies with the statewide planning goals or an exception to any applicable statewide planning goal is justified under section (4); or
  
    - (C)** For a proposed facility that the Council decides, under sections (3) or (6), to evaluate against the statewide planning goals, the proposed facility complies with the applicable statewide planning goals or that an exception to any applicable statewide planning goal is justified under section (4).
  
- (3)** As used in this rule, the “applicable substantive criteria” are criteria from the affected local government’s acknowledged comprehensive plan and land use ordinances that are required by the statewide planning goals and that are in effect on the date the applicant submits the application. If the special advisory group recommends applicable substantive criteria, as described under OAR 345-021-0050, the Council shall apply them. If the special advisory group does not recommend applicable substantive criteria, the Council shall decide either to make its own determination of

the applicable substantive criteria and apply them or to evaluate the proposed facility against the statewide planning goals.

- (4)** The Council may find goal compliance for a proposed facility that does not otherwise comply with one or more statewide planning goals by taking an exception to the applicable goal. Notwithstanding the requirements of ORS 197.732, the statewide planning goal pertaining to the exception process or any rules of the Land Conservation and Development Commission pertaining to the exception process, the Council may take an exception to a goal if the Council finds:
  - (a)** The land subject to the exception is physically developed to the extent that the land is no longer available for uses allowed by the applicable goal;
  - (b)** The land subject to the exception is irrevocably committed as described by the rules of the Land Conservation and Development Commission to uses not allowed by the applicable goal because existing adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable; or
  - (c)** The following standards are met:
    - (A)** Reasons justify why the state policy embodied in the applicable goal should not apply;
    - (B)** The significant environmental, economic, social and energy consequences anticipated as a result of the proposed facility have been identified and adverse impacts will be mitigated in accordance with rules of the Council applicable to the siting of the proposed facility; and
    - (C)** The proposed facility is compatible with other adjacent uses or will be made compatible through measures designed to reduce adverse impacts.
- (5)** If the Council finds that applicable substantive local criteria and applicable statutes and state administrative rules would impose conflicting requirements, the Council shall resolve the conflict consistent with the public interest. In resolving the conflict, the Council cannot waive any applicable state statute.
- (6)** If the special advisory group recommends applicable substantive criteria for an energy facility described in ORS 469.300(10)(a)(C) to (E) or for a related or supporting facility that does not pass through more than one local government jurisdiction or more than three zones in any one jurisdiction, the Council shall apply the criteria recommended by the special advisory group. If the special advisory group recommends applicable substantive criteria for an energy facility described in ORS 469.300(10)(a)(C) to (E) or a related or supporting facility that passes through more than one jurisdiction or more than three zones in any one jurisdiction, the Council shall review the recommended criteria and decide whether to evaluate the proposed facility against the applicable substantive criteria recommended by the

special advisory group, against the statewide planning goals or against a combination of the applicable substantive criteria and statewide planning goals. In making the decision, the Council shall consult with the special advisory group, and shall consider:

- (a) The number of jurisdictions and zones in question;
- (b) The degree to which the applicable substantive criteria reflect local government consideration of energy facilities in the planning process; and
- (c) The level of consistence of the applicable substantive criteria from the various zones and jurisdictions.

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.504

### **345-022-0040**

#### **Protected Areas**

- (1) Except as provided in sections (2) and (3), the Council shall not issue a site certificate for a proposed facility located in the areas listed below. To issue a site certificate for a proposed facility located outside the areas listed below, the Council must find that, taking into account mitigation, the design, construction and operation of the facility are not likely to result in significant adverse impact to the areas listed below. References in this rule to protected areas designated under federal or state statutes or regulations are to the designations in effect as of May 11, 2007:
  - (a) National parks, including but not limited to Crater Lake National Park and Fort Clatsop National Memorial;
  - (b) National monuments, including but not limited to John Day Fossil Bed National Monument, Newberry National Volcanic Monument and Oregon Caves National Monument;
  - (c) Wilderness areas established pursuant to The Wilderness Act, 16 U.S.C. 1131 et seq. and areas recommended for designation as wilderness areas pursuant to 43 U.S.C. 1782;
  - (d) National and state wildlife refuges, including but not limited to Ankeny, Bandon Marsh, Baskett Slough, Bear Valley, Cape Meares, Cold Springs, Deer Flat, Hart Mountain, Julia Butler Hansen, Klamath Forest, Lewis and Clark, Lower Klamath, Malheur, McKay Creek, Oregon Islands, Sheldon, Three Arch Rocks, Umatilla, Upper Klamath, and William L. Finley;
  - (e) National coordination areas, including but not limited to Government Island, Ochoco and Summer Lake;

- (f) National and state fish hatcheries, including but not limited to Eagle Creek and Warm Springs;
- (g) National recreation and scenic areas, including but not limited to Oregon Dunes National Recreation Area, Hell's Canyon National Recreation Area, and the Oregon Cascades Recreation Area, and Columbia River Gorge National Scenic Area;
- (h) State parks and waysides as listed by the Oregon Department of Parks and Recreation and the Willamette River Greenway;
- (i) State natural heritage areas listed in the Oregon Register of Natural Heritage Areas pursuant to ORS 273.581;
- (j) State estuarine sanctuaries, including but not limited to South Slough Estuarine Sanctuary, OAR Chapter 142;
- (k) Scenic waterways designated pursuant to ORS 390.826, wild or scenic rivers designated pursuant to 16 U.S.C. 1271 et seq., and those waterways and rivers listed as potentials for designation;
- (L) Experimental areas established by the Rangeland Resources Program, College of Agriculture, Oregon State University: the Prineville site, the Burns (Squaw Butte) site, the Starkey site and the Union site;
- (m) Agricultural experimental stations established by the College of Agriculture, Oregon State University, including but not limited to:
  - Coastal Oregon Marine Experiment Station, Astoria
  - Mid-Columbia Agriculture Research and Extension Center, Hood River
  - Agriculture Research and Extension Center, Hermiston
  - Columbia Basin Agriculture Research Center, Pendleton
  - Columbia Basin Agriculture Research Center, Moro
  - North Willamette Research and Extension Center, Aurora
  - East Oregon Agriculture Research Center, Union
  - Malheur Experiment Station, Ontario
  - Eastern Oregon Agriculture Research Center, Burns
  - Eastern Oregon Agriculture Research Center, Squaw Butte
  - Central Oregon Experiment Station, Madras
  - Central Oregon Experiment Station, Powell Butte
  - Central Oregon Experiment Station, Redmond
  - Central Station, Corvallis
  - Coastal Oregon Marine Experiment Station, Newport
  - Southern Oregon Experiment Station, Medford
  - Klamath Experiment Station, Klamath Falls;

- (n) Research forests established by the College of Forestry, Oregon State University, including but not limited to McDonald Forest, Paul M. Dunn Forest, the Blodgett Tract in Columbia County, the Spaulding Tract in the Mary's Peak area and the Marchel Tract;
- (o) Bureau of Land Management areas of critical environmental concern, outstanding natural areas and research natural areas;
- (p) State wildlife areas and management areas identified in OAR chapter 635, Division 8.

- (2) Notwithstanding section (1), the Council may issue a site certificate for a transmission line or a natural gas pipeline or for a facility located outside a protected area that includes a transmission line or natural gas or water pipeline as a related or supporting facility located in a protected area identified in section (1), if other alternative routes or sites have been studied and determined by the Council to have greater impacts. Notwithstanding section (1), the Council may issue a site certificate for surface facilities related to an underground gas storage reservoir that have pipelines and injection, withdrawal or monitoring wells and individual wellhead equipment and pumps located in a protected area, if other alternative routes or sites have been studied and determined by the Council to be unsuitable.
- (3) The provisions of section (1) do not apply to transmission lines or natural gas pipelines routed within 500 feet of an existing utility right-of-way containing at least one transmission line with a voltage rating of 115 kilovolts or higher or containing at least one natural gas pipeline of 8 inches or greater diameter that is operated at a pressure of 125 psig.

Stat. Authority: ORS 469.470, ORS 469.501  
Stat. Implemented: ORS 469.501

### **345-022-0050**

#### **Retirement and Financial Assurance**

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.
- (2) The applicant has a reasonable likelihood of obtaining a bond or letter of credit in a form and amount satisfactory to the Council to restore the site to a useful, non-hazardous condition.

Stat. Authority: ORS 469.470, ORS 469.501  
Stat. Implemented: ORS 469.501

### **345-022-0060**

### **Fish and Wildlife Habitat**

To issue a site certificate, the Council must find that the design, construction and operation of the facility, taking into account mitigation, are consistent with the fish and wildlife habitat mitigation goals and standards of OAR 635-415-0025 in effect as of September 1, 2000.

Stat. Authority: ORS 469.470, ORS 469.501

Stat. Implemented: ORS 469.501

### **345-022-0070**

#### **Threatened and Endangered Species**

To issue a site certificate, the Council, after consultation with appropriate state agencies, must find that:

- (1)** For plant species that the Oregon Department of Agriculture has listed as threatened or endangered under ORS 564.105(2), the design, construction and operation of the proposed facility, taking into account mitigation:
  - (a)** Are consistent with the protection and conservation program, if any, that the Oregon Department of Agriculture has adopted under ORS 564.105(3); or
  - (b)** If the Oregon Department of Agriculture has not adopted a protection and conservation program, are not likely to cause a significant reduction in the likelihood of survival or recovery of the species; and
- (2)** For wildlife species that the Oregon Fish and Wildlife Commission has listed as threatened or endangered under ORS 496.172(2), the design, construction and operation of the proposed facility, taking into account mitigation, are not likely to cause a significant reduction in the likelihood of survival or recovery of the species.

Stat. Authority: ORS 469.470, ORS 469.501

Stat. Implemented: ORS 469.501

### **345-022-0080**

#### **Scenic Resources**

- (1)** Except for facilities described in section (2), to issue a site certificate, the Council must find that the design, construction and operation of the facility, taking into account mitigation, are not likely to result in significant adverse impact to scenic resources and values identified as significant or important in local land use plans, tribal land management plans and federal land management plans for any lands located within the analysis area described in the project order.
- (2)** The Council may issue a site certificate for a special criteria facility under OAR 345-015-0310 without making the findings described in section (1). However, the Council may apply the requirements of section (1) to impose conditions on a site certificate issued for such a facility.

Stat. Authority: ORS 469.470, ORS 469.501  
Stat. Implemented: ORS 469.501

### **345-022-0090**

#### **Historic, Cultural and Archaeological Resources**

- (1) Except for facilities described in sections (2) and (3), to issue a site certificate, the Council must find that the construction and operation of the facility, taking into account mitigation, are not likely to result in significant adverse impacts to:
- (a) Historic, cultural or archaeological resources that have been listed on, or would likely be listed on the National Register of Historic Places;
  - (b) For a facility on private land, archaeological objects, as defined in ORS 358.905(1)(a), or archaeological sites, as defined in ORS 358.905(1)(c); and
  - (c) For a facility on public land, archaeological sites, as defined in ORS 358.905(1)(c).
- (2) The Council may issue a site certificate for a facility that would produce power from wind, solar or geothermal energy without making the findings described in section (1). However, the Council may apply the requirements of section (1) to impose conditions on a site certificate issued for such a facility.
- (3) The Council may issue a site certificate for a special criteria facility under OAR 345-015-0310 without making the findings described in section (1). However, the Council may apply the requirements of section (1) to impose conditions on a site certificate issued for such a facility.

Stat. Authority: ORS 469.470, ORS 469.501  
Stat. Implemented: ORS 469.501

### **345-022-0100**

#### **Recreation**

- (1) Except for facilities described in section (2), to issue a site certificate, the Council must find that the design, construction and operation of a facility, taking into account mitigation, are not likely to result in a significant adverse impact to important recreational opportunities in the analysis area as described in the project order. The Council shall consider the following factors in judging the importance of a recreational opportunity:
- (a) Any special designation or management of the location;
  - (b) The degree of demand;
  - (c) Outstanding or unusual qualities;

(d) Availability or rareness;

(e) Irreplaceability or irretrievability of the opportunity.

- (2) The Council may issue a site certificate for a special criteria facility under OAR 345-015-0310 without making the findings described in section (1). However, the Council may apply the requirements of section (1) to impose conditions on a site certificate issued for such a facility.

Stat. Authority: ORS 469.470, ORS 469.501

Stat. Implemented: ORS 469.501

### **345-022-0110**

#### **Public Services**

- (1) Except for facilities described in sections (2) and (3), to issue a site certificate, the Council must find that the construction and operation of the facility, taking into account mitigation, are not likely to result in significant adverse impact to the ability of public and private providers within the analysis area described in the project order to provide: sewers and sewage treatment, water, storm water drainage, solid waste management, housing, traffic safety, police and fire protection, health care and schools.

- (2) The Council may issue a site certificate for a facility that would produce power from wind, solar or geothermal energy without making the findings described in section (1). However, the Council may apply the requirements of section (1) to impose conditions on a site certificate issued for such a facility.

- (3) The Council may issue a site certificate for a special criteria facility under OAR 345-015-0310 without making the findings described in section (1). However, the Council may apply the requirements of section (1) to impose conditions on a site certificate issued for such a facility.

Stat. Authority: ORS 469.470, ORS 469.501

Stat. Implemented: ORS 469.501

### **345-022-0120**

#### **Waste Minimization**

- (1) Except for facilities described in sections (2) and (3), to issue a site certificate, the Council must find that, to the extent reasonably practicable:

- (a) The applicant's solid waste and wastewater plans are likely to minimize generation of solid waste and wastewater in the construction and operation of the facility, and when solid waste or wastewater is generated, to result in recycling and reuse of such wastes;

**(b)** The applicant's plans to manage the accumulation, storage, disposal and transportation of waste generated by the construction and operation of the facility are likely to result in minimal adverse impact on surrounding and adjacent areas.

**(2)** The Council may issue a site certificate for a facility that would produce power from wind, solar or geothermal energy without making the findings described in section (1). However, the Council may apply the requirements of section (1) to impose conditions on a site certificate issued for such a facility.

**(3)** The Council may issue a site certificate for a special criteria facility under OAR 345-015-0310 without making the findings described in section (1). However, the Council may apply the requirements of section (1) to impose conditions on a site certificate issued for such a facility.

Stat. Authority: ORS 469.470, ORS 469.501

Stat. Implemented: ORS 469.501

## **Division 23 - Need Standard for Non-Generating Facilities**

### **345-023-0005**

#### **Need for a Facility**

This division applies to nongenerating facilities as defined in OAR 345-001-0010, except nongenerating facilities that are related or supporting facilities. To issue a site certificate for a facility described in sections (1) through (3), the Council must find that the applicant has demonstrated the need for the facility. The Council may adopt need standards for other nongenerating facilities. This division describes the methods the applicant shall use to demonstrate need. In accordance with ORS 469.501(1)(L), the Council has no standard requiring a showing of need or cost-effectiveness for generating facilities. The applicant shall demonstrate need:

- (1)** For electric transmission lines under the least-cost plan rule, OAR 345-023-0020(1), or the system reliability rule for transmission lines, OAR 345-023-0030, or by demonstrating that the transmission line is proposed to be located within a “National Interest Electric Transmission Corridor” designated by the U.S. Department of Energy under Section 216 of the Federal Power Act;
- (2)** For natural gas pipelines under the least-cost plan rule, OAR 345-023-0020(1), or the economically reasonable rule for natural gas pipelines, OAR 345-023-0040;
- (3)** For storage facilities for liquefied natural gas with storage capacity of three million gallons or greater under the least-cost plan rule, OAR 345-023-0020(1), or the economically reasonable rule for liquefied natural gas storage facilities, OAR 345-023-0040.

Stat. Authority: ORS 469.470, ORS 469.501

Stat. Implemented: ORS 469.501, ORS 469.503

### **345-023-0020**

#### **Least-Cost Plan Rule**

- (1)** The Council shall find that the applicant has demonstrated need for the facility if the capacity of the proposed facility or a facility substantially similar to the proposed facility, as defined by OAR 345-001-0010, is identified for acquisition in the short-term plan of action of an energy resource plan or combination of plans adopted, approved or acknowledged by a municipal utility, people's utility district, electrical cooperative, other governmental body that makes or implements energy policy, or electric transmission system operator that has a governance that is independent of owners and users of the system and if the energy resource plan or combination of plans:
  - (a)** Includes a range of forecasts of firm energy and capacity demands and committed firm energy and capacity resources, as defined in OAR 345-001-0010, over the planning period using a reasonable method of forecasting;

- (b)** Considers and evaluates a reasonable range of practicable demand and supply resource alternatives over the planning period on a consistent and comparable basis. Practicable alternatives are those that are demonstrated to be technically and economically achievable within the time frame considered to meet potential energy or capacity needs;
- (c)** Uses financial assumptions, including discount rates and treatment of resource lifetimes and end effects that are consistent and comparable between resources;
- (d)** For electric transmission line facilities, considers alternatives that include but are not limited to:
  - (A)** Implementation of cost-effective conservation, peak load management and voluntary customer interruption as a substitute for the proposed facility;
  - (B)** Construction and operation of electric generating facilities as a substitute for the proposed facility;
  - (C)** Direct use of natural gas, solar or geothermal resources at retail loads as a substitute for use of electricity transmitted by the proposed facility; and
  - (D)** Adding standard sized smaller or larger transmission line capacity;
- (e)** For natural gas pipeline facilities, considers alternatives that include but are not limited to:
  - (A)** Implementation of cost-effective conservation, peak load management and voluntary customer interruption as a substitute for the proposed facility;
  - (B)** Installation of propane storage systems, facilities to store liquefied natural gas and underground gas storage reservoirs as a substitute for the proposed facility;
  - (C)** Direct use of electricity, solar or geothermal resources at retail loads as a substitute for use of natural gas supplied by the proposed facility; and
  - (D)** Adding standard sized smaller or larger pipeline capacity;
- (f)** For storage facilities for liquefied natural gas, considers alternatives that include, but are not limited, to:
  - (A)** Implementation of cost-effective conservation, peak load management and voluntary customer interruption as a substitute for the proposed facility;
  - (B)** Installation of propane storage systems, natural gas pipelines and underground gas storage facilities as a substitute for the proposed facility;

- (C)** Direct use of electricity, solar or geothermal resources at retail loads as a substitute for use of natural gas supplied by the proposed facility; and
  - (D)** Adding smaller or larger liquefied natural gas storage capacity;
  - (g)** Includes the development and evaluation of alternative resource plans to meet forecast energy or capacity needs over the planning time period;
  - (h)** Analyzes the uncertainties associated with alternative resource plans or strategies. The range of uncertainties about the future must be sufficient to test the performance of each alternative resource strategy. The criteria used to evaluate performance of alternative resource strategies must be broad enough to judge the merits of a strategy from a societal perspective;
  - (i)** Aims to minimize long-run total resource costs while taking into account reliability, compatibility with the energy system, strategic flexibility, as defined in OAR 345-001-0010, and external environmental costs and benefits. The value provided by reliability, compatibility with the energy system, strategic flexibility and external environmental costs and benefits may justify actions that increase the total resource cost of the plan. The Council finds that the goals of a least-cost plan are to minimize expected total resource costs for society and the variance in those costs due to uncertainty about future conditions;
  - (j)** Includes a short-term plan of action;
  - (k)** Is consistent with the energy policy of the state as set forth in ORS 469.010. An energy resource plan is consistent with the energy policy of the state if its short-term plan of action describes actions that must be taken within a two to three year time frame to provide a reasonable assurance that future energy or capacity demands can be met while aiming to minimize total resource cost; and
  - (L)** Was adopted, approved or acknowledged after a full, fair and open public participation and comment process. Such a process is one in which the public has reasonable and timely access to the decision-maker and to information and records legally available to the public.
- (2)** The Council shall find that a least-cost plan meets the criteria of an energy resource plan described in section (1) if the Public Utility Commission of Oregon has acknowledged the least cost plan.

Stat. Authority: ORS 469.470, ORS 469.501  
Stat. Implemented: ORS 469.501

### **345-023-0030**

#### **System Reliability Rule for Electric Transmission Lines**

The Council shall find that the applicant has demonstrated need for an electric transmission line that is an energy facility under the definition in ORS 469.300(9) if the Council finds that:

- (1)** The facility is needed to enable the transmission system of which it is to be a part to meet firm capacity demands for electricity or firm annual electricity sales that are reasonably expected to occur within five years of the facility's proposed in-service date based on weather conditions that have at least a 5 percent chance of occurrence in any year in the area to be served by the facility;
- (2)** The facility is consistent with the minimum operating reliability criteria contained in the Western System Coordinating Council Bulk Power Supply Program 1997-2007, dated April 1, 1998, as it applies either internally or externally to a utility system; and
- (3)** Construction and operation of the facility is an economically reasonable method of meeting the requirements of sections (1) and (2) compared to the alternatives evaluated in the application for a site certificate.

Stat. Authority: ORS 469.470, ORS 469.501

Stat. Implemented: ORS 469.501

### **345-023-0040**

#### **Economically Reasonable Rule for Natural Gas Pipelines or Liquefied Natural Gas Storage Facilities**

The Council shall find the applicant has demonstrated need for a natural gas pipeline that is an energy facility under the definition in ORS 469.300(9) or a facility that stores liquefied natural gas, if the Council finds that:

- (1)** The facility is needed to enable the natural gas supply system of which it is to be a part to meet firm capacity demands for natural gas that are reasonably expected to occur within five years following the facility's proposed in-service date based on weather conditions that have at least a 5 percent chance of occurrence in any year in the area to be served by the proposed facility; and
- (2)** Construction and operation of the facility is an economically reasonable method of meeting the demands described in section (1) compared to the alternatives evaluated in the application for a site certificate.

Stat. Authority: ORS 469.470, ORS 469.501

Stat. Implemented: ORS 469.501

## **Division 24 - Specific Standards For Siting Facilities**

### **(Specific Standards for Wind Facilities)**

#### **345-024-0010**

##### **Public Health and Safety Standards for Wind Energy Facilities**

To issue a site certificate for a proposed wind energy facility, the Council must find that the applicant:

- (1)** Can design, construct and operate the facility to exclude members of the public from close proximity to the turbine blades and electrical equipment.
- (2)** Can design, construct and operate the facility to preclude structural failure of the tower or blades that could endanger the public safety and to have adequate safety devices and testing procedures designed to warn of impending failure and to minimize the consequences of such failure.

Stat. Authority: ORS 469.470, ORS 469.501

Stat. Implemented: ORS 469.501

#### **345-024-0015**

##### **Siting Standards for Wind Energy Facilities**

To issue a site certificate for a proposed wind energy facility, the Council must find that the applicant can design and construct the facility to reduce cumulative adverse environmental effects in the vicinity by practicable measures including, but not limited to, the following:

- (1)** Using existing roads to provide access to the facility site, or if new roads are needed, minimizing the amount of land used for new roads and locating them to reduce adverse environmental impacts.
- (2)** Using underground transmission lines and combining transmission routes.
- (3)** Connecting the facility to existing substations, or if new substations are needed, minimizing the number of new substations.
- (4)** Designing the facility to reduce the risk of injury to raptors or other vulnerable wildlife in areas near turbines or electrical equipment.
- (5)** Designing the components of the facility to minimize adverse visual features.
- (6)** Using the minimum lighting necessary for safety and security purposes and using techniques to prevent casting glare from the site, except as otherwise required by the Federal Aviation Administration or the Oregon Department of Aviation.

Stat. Authority: ORS 469.470, ORS 469.501

Stat. Implemented: ORS 469.501

**(Specific Standards for Surface Facilities Related to  
Underground Gas Storage Reservoirs)**

**345-024-0030**

**Public Health and Safety Standards for Surface Facilities Related to  
Underground Gas Storage Reservoirs**

To issue a site certificate for a proposed surface facility related to an underground gas storage reservoir, the Council must make the following findings:

- (1) The proposed facility is located at distances in accordance with the schedule below from any existing permanent habitable dwelling:
  - (a) Major facilities, such as compressor stations, stripping plants and main line dehydration stations -- 700 feet.
  - (b) Minor facilities, such as offices, warehouses, equipment shops and odorant storage and injection equipment -- 50 feet.
  - (c) Compressors rated less than 1,000 horsepower -- 350 feet.
  - (d) Roads and road maintenance equipment housing -- 50 feet.
- (2) The applicant has developed a program using technology that is both practicable and reliable to monitor the facility to ensure the public health and safety.

Stat. Authority: ORS 469.470, ORS 469.501

Stat. Implemented: ORS 469.501

**(Specific Standards for Transmission Lines)**

**345-024-0090**

**Siting Standards for Transmission Lines**

To issue a site certificate for a facility that includes any transmission line under Council jurisdiction, the Council must find that the applicant:

- (1) Can design, construct and operate the proposed transmission line so that alternating current electric fields do not exceed 9 kV per meter at one meter above the ground surface in areas accessible to the public;
- (2) Can design, construct and operate the proposed transmission line so that induced currents resulting from the transmission line and related or supporting facilities will be as low as reasonably achievable.

Stat. Authority: ORS 469.470, ORS 469.501  
Stat. Implemented: ORS 469.501

### **(Standards for Energy Facilities That Emit Carbon Dioxide)**

#### **345-024-0500**

##### **General**

To issue a site certificate, the Council must find that the energy facility complies with any applicable carbon dioxide emissions standard adopted by the Council or enacted by statute. The Council shall adopt standards for fossil-fueled power plants and may adopt carbon dioxide emission standards for other energy facilities that emit carbon dioxide.

Stat. Authority: ORS 469.470  
Stat. Implemented: ORS 469.501, ORS 469.503

#### **345-024-0510**

##### **Principles for the Adoption of New Standards for Fossil-Fueled Power Plants**

The council shall adopt carbon dioxide emissions standards for fossil-fueled power plants by rule. In adopting or amending such carbon dioxide emissions standards, the Council shall consider and balance at least the following principles. In the rule-making record, the Council shall include findings on these principles:

- (1)** Promote facility fuel efficiency;
- (2)** Promote efficiency in the resource mix;
- (3)** Reduce net carbon dioxide emissions;
- (4)** Promote cogeneration that reduces net carbon dioxide emissions;
- (5)** Promote innovative technologies and creative approaches to mitigating, reducing or avoiding carbon dioxide emissions;
- (6)** Minimize transaction costs;
- (7)** Include an alternative process that separates decisions on the form and implementation of offsets from the final decision on granting a site certificate;
- (8)** Allow either the applicant or third parties to implement offsets;
- (9)** Be attainable and economically achievable for various types of power plants;
- (10)** Promote public participation in the selection and review of offsets;
- (11)** Promote prompt implementation of offset projects;

(12) Provide for monitoring and evaluation of the performance of offsets;

(13) Promote reliability of the regional electric system.

Stat. Authority: ORS 469.470, ORS 469.503

Stat. Implemented: ORS 469.503

### **345-024-0550**

#### **Standard for Base Load Gas Plants**

To issue a site certificate for a base load gas plant, the Council must find that the net carbon dioxide emissions rate of the proposed facility does not exceed 0.675 pounds of carbon dioxide per kilowatt-hour of net electric power output, with carbon dioxide emissions and net electric power output measured on a new and clean basis. For a base load gas plant designed with power or augmentation technology as defined in OAR 345-001-0010, the Council shall apply the standard for a non-base load power plant, as described in OAR 345-024-0590, to the incremental carbon dioxide emissions from the designed operation of the power augmentation technology. The Council shall determine whether the base load carbon dioxide emissions standard is met as follows:

- (1) The Council shall determine the gross carbon dioxide emissions that are reasonably likely to result from the operation of the proposed energy facility. The Council shall base such determination on the proposed design of the energy facility. The Council shall adopt site certificate conditions to ensure that the predicted carbon dioxide emissions are not exceeded on a new and clean basis;
- (2) For any remaining emissions reduction necessary to meet the applicable standard, the applicant may elect to use any of the means described in OAR 345-024-0560, or any combination thereof. The Council shall determine the amount of carbon dioxide emissions reduction that is reasonably likely to result from the applicant's offsets and whether the resulting net carbon dioxide emissions meet the applicable carbon dioxide emissions standard;
- (3) If the applicant elects to comply with the standard using the means described in OAR 345-024-0560(2), the Council shall determine the amount of carbon dioxide emissions reduction that is reasonably likely to result from each of the proposed offsets. In making this determination, the Council shall not allow credit for offsets that have already been allocated or awarded credit for carbon dioxide emissions reduction in another regulatory setting. The fact that an applicant or other parties involved with an offset may derive benefits from the offset other than the reduction of carbon dioxide emissions is not, by itself, a basis for withholding credit for an offset. The Council shall base its determination of the amount of carbon dioxide emission reduction on the following criteria and as provided in OAR 345-024-0680:
  - (a) The degree of certainty that the predicted quantity of carbon dioxide emissions reduction will be achieved by the offset;

- (b) The ability of the Council to determine the actual quantity of carbon dioxide emissions reduction resulting from the offset, taking into consideration any proposed measurement, monitoring and evaluation of mitigation measure performance;
  - (c) The extent to which the reduction of carbon dioxide emissions would occur in the absence of the offsets;
- (4) Before beginning construction, the certificate holder shall notify the Department of Energy in writing of its final selection of a gas turbine vendor and shall submit a written design information report to the Department sufficient to verify the facility's designed new and clean heat rate and its nominal electric generating capacity at average annual site conditions for each fuel type. In the report, the certificate holder shall include the proposed limits on the annual average number of hours of facility operation on distillate fuel oil, if applicable. In the site certificate, the Council may specify other information to be included in the report. The Department shall use the information the certificate holder provides in the report as the basis for calculating, according to the site certificate, the amount of carbon dioxide emissions reductions the certificate holder must provide under OAR 345-024-0560.

Stat. Authority: ORS 469.470, ORS 469.503

Stat. Implemented: ORS 469.503

### **345-024-0560**

#### **Means of Compliance for Base Load Gas Plants**

The applicant may elect to use any of the following means, or any combination thereof, to comply with the carbon dioxide emissions standard for base load gas plants. For a base load gas plant designed with power augmentation technology, the applicant shall comply with the standard for a non-base load power plant in the manner as described in OAR 345-024-0600 for the incremental carbon dioxide emissions from the designed operation of the power augmentation technology.

- (1) Designing and operating the facility to produce electrical and thermal energy sequentially from the same fuel source and using the thermal energy to displace another source of carbon dioxide emissions from fossil fuel that would have otherwise continued to occur. The Council shall adopt site certificate conditions ensuring that the carbon dioxide emissions reduction will be achieved;
- (2) Implementing offset projects directly or through a third party, pursuant to OAR 345-024-0680. The Council may adopt site certificate conditions ensuring that the proposed offset projects are implemented by the date specified in the site certificate, but shall not require that predicted levels of avoidance, displacement or sequestration of carbon dioxide emissions be achieved;

- (3) Providing offset funds, directly or through a third party, in an amount deemed sufficient to produce the reduction in carbon dioxide emissions necessary to meet the applicable carbon dioxide emissions standard. The applicant or third party shall use the funds as specified in OAR 345-024-0710. The Council shall deem the payment of the monetary offset rate, pursuant to OAR 345-024-0580, to result in a reduction of one ton of carbon dioxide emissions. The Council shall determine the offset funds using the monetary offset rate and the level of emissions reduction required to meet the applicable standard. If the Council issues a site certificate based on this section, the Council may not adjust the amount of the offset funds based on the actual performance of offsets;
- (4) Any other means that the Council adopts by rule for demonstrating compliance with the carbon dioxide emissions standard;
- (5) If the Council or a court on judicial review concludes that the applicant has not demonstrated compliance with the applicable carbon dioxide emissions standard under sections (1), (2) or (4) of this rule, or any combination thereof, and the applicant agrees to meet the requirements of section (3) for any efficiency, the Council or a court shall find compliance based on such agreement.

Stat. Authority: ORS 469.470, ORS 469.503

Stat. Implemented: ORS 469.503

### **345-024-0570**

#### **Modification of the Standard for Base Load Gas Plants**

Notwithstanding the net carbon dioxide emissions rate in OAR 345-024-0550, no sooner than two years after January 28, 2000, the Council may by rule modify the carbon dioxide emissions standard for base load gas plants if the Council finds that the most efficient stand-alone combined cycle, combustion turbine, natural gas-fired energy facility that is commercially demonstrated and operating in the United States has a net heat rate of less than 6,955 Btu per kilowatt hour higher heating value adjusted to ISO conditions. In modifying the carbon dioxide emission standard, the Council shall determine the rate of carbon dioxide emissions per kilowatt hour of net electric output of such energy facility, adjusted to ISO conditions and reset the carbon dioxide emissions standard at 17 percent below this rate.

Stat. Authority: ORS 469.470, ORS 469.503

Stat. Implemented: ORS 469.503

### **345-024-0580**

#### **Monetary Offset Rate**

The monetary offset rate is \$1.27 per ton of carbon dioxide emissions. After two years from June 1, 2007, the Council may by rule increase or decrease the monetary offset rate, subject to the requirements of ORS 469.503.

Stat. Authority: ORS 469.470, ORS 469.503

Stat. Implemented: ORS 469.503

### **345-024-0590**

#### **Standard for Non-Base Load Power Plants**

To issue a site certificate for a non-base load power plant, the Council must find that the net carbon dioxide emissions rate of the proposed facility does not exceed 0.675 pounds of carbon dioxide per kilowatt-hour of net electric power output, with carbon dioxide emissions and net electric power output measured on a new and clean basis. For a base load gas plant designed with power augmentation technology as defined in OAR 345-001-0010, the Council shall apply this standard to the incremental carbon dioxide emissions from the designed operation of the power augmentation technology. The Council shall determine whether the carbon dioxide emissions standard is met as follows:

- (1)** The Council shall determine the gross carbon dioxide emissions that are reasonably likely to result from the operation of the proposed energy facility. The Council shall base such determination on the proposed design of the energy facility, the limitation on the hours of generation for each fuel type and the average temperature, barometric pressure and relative humidity at the site during the times of the year when the facility is intended to operate. For a base load gas plant designed with power augmentation technology, the Council shall base its determination of the incremental carbon dioxide emissions on the proposed design of the facility, the proposed limitation on the hours of generation using the power augmentation technology and the average temperature, barometric pressure and relative humidity at the site during the times of the year when the facility is intended to operate with power augmentation technology. The Council shall adopt site certificate conditions to ensure that the predicted carbon dioxide emissions are not exceeded on a new and clean basis; however, the Council may modify the parameters of the new and clean basis to accommodate average conditions at the times when the facility is intended to operate and technical limitations, including operational considerations, of a non-base load power plant or power augmentation technology or for other cause;
- (2)** For any remaining emissions reduction necessary to meet the applicable standard, the applicant may elect to use any of the means described in OAR 345-024-0600 or any combination thereof. The Council shall determine the amount of carbon dioxide emissions reduction that is reasonably likely to result from the applicant's offsets and whether the resulting net carbon dioxide emissions meet the applicable carbon dioxide emissions standard;
- (3)** If the applicant elects to comply with the standard using the means described in OAR 345-024-0600(2), the Council shall determine the amount of carbon dioxide emissions reduction that is reasonably likely to result from each of the proposed offsets. In making this determination, the Council shall not allow credit for offsets that have already been allocated or awarded credit for carbon dioxide emissions reduction in another regulatory setting. The fact that an applicant or other parties involved with an offset may derive benefits from the offset other than the reduction of

carbon dioxide emissions is not, by itself, a basis for withholding credit for an offset. The Council shall base its determination of the amount of carbon dioxide emission reduction on the following criteria and as provided in OAR 345-024-0680:

- (a) The degree of certainty that the predicted quantity of carbon dioxide emissions reduction will be achieved by the offset;
  - (b) The ability of the Council to determine the actual quantity of carbon dioxide emissions reduction resulting from the offset, taking into consideration any proposed measurement, monitoring and evaluation of mitigation measure performance;
  - (c) The extent to which the reduction of carbon dioxide emissions would occur in the absence of the offsets;
- (4) Before beginning construction, the certificate holder shall notify the Department of Energy in writing of its final selection of an equipment vendor and shall submit a written design information report to the Department sufficient to verify the facility's designed new and clean heat rate and its nominal electric generating capacity at average annual site conditions for each fuel type. For a base load gas plant designed with power augmentation technology, the certificate holder shall include in the report information sufficient to verify the facility's designed new and clean heat rate, tested under parameters the Council orders pursuant to section (1), and the nominal electric generating capacity at average site conditions during the intended use for each fuel type from the operation of the proposed facility using the power augmentation technology. The certificate holder shall include the proposed limit on the annual average number of hours for each fuel used, if applicable. The certificate holder shall include the proposed total number of hours of operation for all fuels, subject to the limitation that the total annual average number of hours of operation per year is not more than 6,600 hours. In the site certificate, the Council may specify other information to be included in the report. The Department shall use the information the certificate holder provides in the report as the basis for calculating, according to the site certificate, the gross carbon dioxide emissions from the facility and the amount of carbon dioxide emissions reductions the certificate holder must provide under OAR 345-024-0600;
- (5)
- (a) Every five years after commencing commercial operation, the certificate holder shall report to the Council the facility's gross carbon dioxide emissions. The certificate holder shall calculate actual gross carbon dioxide emissions using the new and clean heat rate and the actual hours of operation on each fuel during the five-year period or shall report to the Council the actual measured or calculated carbon dioxide emissions as reported to either the Oregon Department of Environmental Quality or the U.S. Environmental Protection Agency pursuant to a mandatory carbon dioxide emissions reporting requirement.

(b) The certificate holder shall specify its election of method used to measure or calculate carbon dioxide emissions in the notification report described at section (4) of this rule. That election, once made, shall apply for each five year period unless the site certificate is amended to allow a different election. If the certificate holder calculates actual carbon dioxide emissions using the new and clean heat rate and the actual hours of operation, the certificate holder shall also report to the Council the facility's actual annual hours of operation by fuel type. If the actual gross carbon dioxide emissions exceed the projected gross carbon dioxide emissions for the five-year period calculated under section (4), the certificate holder shall offset any excess emissions for that period and shall offset estimated future excess carbon dioxide emissions using the monetary path as described in OAR 345-024-0600(3) and (4) or as approved by the Council.

(6) For a base load gas plant designed with power augmentation technology, every five years after commencing commercial operation, the certificate holder shall report to the Council the facility's actual hours of operation using the power augmentations technology for each fuel type. If the actual gross carbon dioxide emissions, calculated using the new and clean heat rate, tested under parameters the Council orders pursuant to section (1), and the actual hours of operation using the power augmentation technology on each fuel during the five-year period exceed the projected gross carbon dioxide emissions for the five-year period calculated under section (4), the certificate holder shall offset any excess emissions for that period and shall offset estimated future excess carbon dioxide emissions using the monetary path as described in OAR 345- 024-0600(3) and (4) or as approved by the Council.

Stat. Authority: ORS 469.470, ORS 469.503

Stat. Implemented: ORS 469.501, ORS 469.503

### **345-024-0600**

#### **Means of Compliance for Non-Base Load Power Plants**

The applicant may elect to use any of the following means, or any combination thereof, to comply with the carbon dioxide emissions standard for non-base load power plants or for the incremental carbon dioxide emissions from the operation of a base load gas plant with power augmentation technology:

- (1) Designing and operating the facility to produce electrical and thermal energy sequentially from the same fuel source and using the thermal energy to displace another source of carbon dioxide emissions from fossil fuels that would have otherwise continued to occur. The Council shall adopt site certificate conditions ensuring that the carbon dioxide emissions reduction will be achieved;
- (2) Implementing offset projects directly or through a third party, pursuant to OAR 345-024-0680. The Council may adopt site certificate conditions ensuring that the proposed offset projects are implemented by the date specified in the site certificate,

but shall not require that predicted levels of avoidance, displacement or sequestration of carbon dioxide emissions be achieved;

- (3)** Providing offset funds, directly or through a third party, in an amount deemed sufficient to produce the reduction in carbon dioxide emissions necessary to meet the applicable carbon dioxide emissions standard. The applicant or third party shall use the funds as specified in OAR 345-024-0710. The Council shall deem the payment of the monetary offset rate, pursuant to OAR 345-024-0580, to result in a reduction of one ton of carbon dioxide emissions. The Council shall determine the offset funds using the monetary offset rate and the level of emissions reduction required to meet the applicable standard. If the Council issues a site certificate based on this section, the Council may not adjust the amount of the offset funds based on the actual performance of offsets;
- (4)** Notwithstanding sections (1), (2) or (3), if the certificate holder exceeds the projected gross carbon dioxide emissions calculated under OAR 345-024-0590(4) during any five-year reporting period described in OAR 345-024-0590(5) and (6), the certificate holder shall offset excess emissions for the specific reporting period according to subsection (a) and shall offset the estimated future excess emissions according to subsection (b). The certificate holder shall offset excess emissions using the monetary path as described in subsection (c) and OAR 345-024-0710 or as approved by the Council;

  - (a)** In determining the excess carbon dioxide emissions that the certificate holder must offset for a five-year period, the Council shall credit the certificate holder with offsets equal to the difference between the carbon dioxide emissions allowed by the site certificate in previous periods and actual emissions, if actual emissions were lower than allowed. Once a certificate holder has used a credit, the certificate holder shall not use it again.
  - (b)** The Council shall specify in the site certificate a methodology for estimating future excess carbon dioxide emissions. The Department of Energy shall calculate estimated future excess emissions. To estimate excess emissions for the remaining period of the deemed life of the facility, the Department shall use the annual average number of hours of operation during the five-year period in which the certificate holder exceeded the estimated gross carbon dioxide emissions described in OAR 345-024-0590(5) and the new and clean heat rate and capacity for the facility, adjusted for the average temperature, barometric pressure and relative humidity at the site during the times of the year when the facility is intended to operate. If the annual average hours exceed 6,600, the Department shall estimate emissions at 100 percent capacity for the remaining period of a deemed 30-year life of the facility. At the request of the certificate holder, the Council may, by amendment of the site certificate, use an alternative methodology to estimate future excess carbon dioxide emissions;

(c) The certificate holder shall pay for the net excess carbon dioxide emissions calculated pursuant to subsections (a) and (b) at the monetary path offset rate in real dollars for the quarter and year in which the Council issued the final order that applied the carbon dioxide standard. The Council shall specify in the site certificate the methodology for calculating the real dollar value of the monetary offset rate. The Department shall calculate the net excess carbon dioxide emissions and notify the certificate holder of the amount of the monetary path payment required to offset them. The certificate holder shall pay fully the required amount to the qualified organization within 60 days of notification by the Department of the amount. The certificate holder shall not be eligible for a refund of any monetary path payments due to the calculations in this rule.

(5) Any other means that the Council adopts by rule for demonstrating compliance with the carbon dioxide emissions standard;

(6) If the Council or a court on judicial review concludes that the applicant has not demonstrated compliance with the applicable carbon dioxide emissions standard under sections (1), (2) or (5) of this rule, or any combination thereof, and the applicant agrees to meet the requirements of sections (3) and (4) for any deficiency, the Council or a court shall find compliance based on such agreement.

Stat. Authority: ORS 469.470, ORS 469.503

Stat. Implemented: ORS 469.501, ORS 469.503

### **345-024-0610**

#### **Modification of the Standard for Non-Base Load Power Plants**

Notwithstanding the net carbon dioxide emissions rate specified in OAR 345-024-0590, the Council may by rule modify the carbon dioxide emissions standard for non-base load power plants so that the standard remains equivalent to the standard for the net carbon dioxide emissions rate of a base load gas plant, subject to the principles described in OAR 345-024-0510.

Stat. Authority: ORS 469.470, ORS 469.503

Stat. Implemented: ORS 469.501, ORS 469.503

### **345-024-0620**

#### **Standard for Nongenerating Energy Facilities**

To issue a site certificate for a nongenerating energy facility that emits carbon dioxide, the Council must find that the net carbon dioxide emissions rate of the proposed facility does not exceed 0.504 pounds of carbon dioxide per horsepower hour. The Council shall determine whether the carbon dioxide emissions standard is met as follows:

(1) The Council shall determine the gross carbon dioxide emissions that are reasonably likely to result from the operation of the proposed energy facility. The Council shall base such determination on the proposed design of the energy facility. In determining gross carbon dioxide emissions for a nongenerating facility, the Council shall calculate carbon dioxide emissions for a 30-year period unless the applicant

requests, and the Council adopts in the site certificate, a different period. The Council shall determine gross carbon dioxide emissions based on its findings of the reasonably likely operation of the energy facility. The Council shall use a rate of 117 pounds of carbon dioxide per million Btu of natural gas fuel (higher heating value) and a rate of 161 pounds of carbon dioxide per million Btu of distillate fuel (higher heating value), if the applicant proposes to use such fuel. If the applicant proposes to use any other fossil fuel, the Council shall adopt by rule an appropriate carbon dioxide content rate for the fuel;

- (2)** For any remaining emissions reduction necessary to meet the applicable standard, the applicant may elect to use any of the means described in OAR 345- 024-0630 or any combination thereof. The Council shall determine the amount of carbon dioxide emissions reduction that is reasonably likely to result from the applicant's offsets and whether the resulting net carbon dioxide emissions meet the applicable carbon dioxide emissions standard;
- (3)** If the applicant elects to comply with the standard using the means described in OAR 345-024-0630(1), the Council shall determine the amount of carbon dioxide emissions reduction that is reasonably likely to result from each of the proposed offsets. In making this determination, the Council shall not allow credit for offsets that have already been allocated or awarded credit for carbon dioxide emissions reduction in another regulatory setting. The fact that an applicant or other parties involved with an offset may derive benefits from the offset other than the reduction of carbon dioxide emissions is not, by itself, a basis for withholding credit for an offset. The Council shall base its determination of the amount of carbon dioxide emission reduction on the following criteria and as provided in OAR 345-024-0680:

  - (a)** The degree of certainty that the predicted quantity of carbon dioxide emissions reduction will be achieved by the offset;
  - (b)** The ability of the Council to determine the actual quantity of carbon dioxide emissions reduction resulting from the offset, taking into consideration any proposed measurement, monitoring and evaluation of mitigation measure performance;
  - (c)** The extent to which the reduction of carbon dioxide emissions would occur in the absence of the offsets;
- (4)** Before beginning construction, the certificate holder shall notify the Department of Energy in writing of its final selection of an equipment manufacturer and shall submit a written design information report to the Department sufficient to verify the facility's designed rate of fuel use and its nominal capacity for each fuel type. In the site certificate, the Council may specify other information to be included in the report. The Department shall use the information the certificate holder provides in the report as the basis for calculating, according to the site certificate, the amount of carbon

dioxide emissions reductions the certificate holder must provide under OAR 345-024-0630;

- (5) In the site certificate, the Council shall specify the schedule by which the certificate holder shall provide carbon dioxide emission offsets. In the schedule, the Council shall specify the amount and timing of offsets the certificate holder must provide to a carbon dioxide emissions offset credit account. In determining the amount and timing of offsets, the Council may consider the estimate of total offsets that may be required for the facility and the minimum amount of offsets needed for effective offset projects. The Department shall maintain the record of the offset credit account.

Stat. Authority: ORS 469.470, ORS 469.501

Stat. Implemented: ORS 469.501, ORS 469.503

### **345-024-0630**

#### **Means of Compliance for Nongenerating Energy Facilities**

The applicant may elect to use any of the following means, or any combination thereof, to comply with the carbon dioxide emissions standard for nongenerating energy facilities:

- (1) Implementing offset projects directly or through a third party, pursuant to OAR 345-024-0680. The Council may adopt site certificate conditions ensuring that the proposed offset projects are implemented by the date specified in the site certificate, but shall not require that predicted levels of avoidance, displacement or sequestration of carbon dioxide emissions be achieved;
- (2) Providing offset funds, directly or through a third party, in an amount deemed sufficient to produce the reduction in carbon dioxide emissions necessary to meet the applicable carbon dioxide emissions standard according to the schedule set forth pursuant to OAR 345-024-0620(5). The applicant or third party shall use the funds as specified in OAR 345-024-0710. The Council shall deem the payment of the monetary offset rate, pursuant to OAR 345-024-0580, to result in a reduction of one ton of carbon dioxide emissions. The Council shall determine the offset funds using the monetary offset rate and the level of emissions reduction required to meet the applicable standard. If the Council issues a site certificate based on this section, the Council may not adjust the amount of the offset funds based on the actual performance of offsets;
- (3) Any other means that the Council adopts by rule for demonstrating compliance with the carbon dioxide emissions standard;
- (4) Each year after beginning commercial operation, the certificate holder shall report to the Department of Energy data showing the amount and type of fossil fuels used by the facility and its horsepower-hours of operation. The Council shall specify in the site certificate how the Department shall use those data to calculate the gross carbon dioxide emissions from the facility during the report year and the net

emissions in excess of the carbon dioxide emissions standard. The Department shall then subtract excess emissions from the carbon dioxide emissions offset credit account. The Council shall specify in the site certificate the minimum amount of carbon dioxide offset credits that a certificate holder shall provide to establish the offset credit account. The Council may specify an amount of offset credits equal to the total offsets required for the facility. The Council shall specify the minimum amount of carbon dioxide offset credits that a certificate holder must maintain in the account and the minimum amount of carbon dioxide offset credits the certificate holder shall provide to replenish the account. The Department shall notify the certificate holder when it must replenish its offset credit account according to the conditions in the site certificate. The certificate holder shall maintain a positive balance in the offset credit account for 30 years, unless the Council specifies a different period in the site certificate;

- (5) If the certificate holder is replenishing its offset credit account by meeting the monetary path payment requirement described in OAR 345-024-710, the certificate holder may replenish its offset credit account without amending the site certificate by using the calculation methodology detailed in conditions that the Council adopts in the site certificate;
- (6) If the certificate holder proposes to replenish the offset credit account under OAR 345-024-0630(1), the Council may amend the site certificate conditions to ensure that the proposed offset projects are implemented;
- (7) If the Council or a court on judicial review concludes that the applicant has not demonstrated compliance with the applicable carbon dioxide emissions standard under sections (1), (3) or (6) of this rule, or any combination thereof, and the applicant agrees to meet the requirements of section (2) for any deficiency, the Council or a court shall find compliance based on such agreement.

Stat. Authority: ORS 469.470, ORS 469.501

Stat. Implemented: ORS 469.501, ORS 469.503

### **345-024-0640**

#### **Modification of the Standard for Nongenerating Energy Facilities**

Notwithstanding the net carbon dioxide emissions rate specified in OAR 345-024-0620, the Council may by rule modify the carbon dioxide emissions standard for nongenerating energy facility so that it remains equivalent to the standard for the net carbon dioxide emissions rate of a base load power plant.

Stat. Authority: ORS 469.470, ORS 469.501

Stat. Implemented: ORS 469.501, ORS 469.503

### **345-024-0680**

#### **Carbon Dioxide Offset Projects**

This rule applies if the applicant elects to meet the applicable carbon dioxide emissions standard in whole or in part under OAR 345-024-0550(3), OAR 345-024-0560(2), OAR 345-024-0590(3), OAR 345-024-0600(2), OAR 345-024-0620(3), or OAR 345-024-0630(1).

- (1)** Types of offset projects include, but are not limited to: energy efficiency, including demand-side management measures for electricity and natural gas; electricity generation from renewable energy; fuel switching; carbon dioxide sequestration through afforestation, reforestation, forest management and forest conservation; flue gas carbon dioxide sequestration; electricity generation from landfill and biogas methane (animal waste and waste water) or from fugitive methane emissions from existing or abandoned coal mines; and, vehicle carbon dioxide emissions reductions.
- (2)** In order to approve an offset project, the Council must find that:
  - (a)** The offset project is likely to result in an avoidance, reduction or displacement of actual carbon dioxide emissions from fossil fuels or the sequestration of carbon dioxide emissions resulting from a specific and identifiable action(s);
  - (b)** The Council can quantify the amount of carbon dioxide offsets, taking into consideration any proposed measurement, monitoring, evaluation and verification of offset project measure performance;
  - (c)** The offsets are not susceptible to double-counting. For offsets from demand-side management measures reducing use of utility-provided electricity or natural gas, it may suffice that the certificate holder or its agent notify the utility that the certificate holder claims ownership of the carbon dioxide reductions;
  - (d)** The applicant will own all carbon dioxide offsets that it proposes to provide;
  - (e)** The applicant has provided a form of the instrument, satisfactory to the Council, through which the applicant will transfer all offsets from a project that an applicant will own to the Council for the Council to hold in trust;
  - (f)** The applicant has the financial and institutional capability to deliver the project for its duration; and
  - (g)** The applicant has provided an adequate monitoring and evaluation plan and an adequate plan for independent verification of the offsets. The monitoring and evaluation plan and the verification plan shall detail the recordkeeping, data collection, data storage, data management program, and reporting guidelines and procedures.
- (3)** If the applicant proposes to implement a project in partnership with other parties or through contracts with other parties, the Council must find that:

- (a) The other parties have the financial and institutional capability to deliver the project; and
  - (b) The applicant has a firm commitment from the other parties to participate in the project.
- (4) If the applicant is proposing an offset project in another country, the Council must find that the host country has approved the transfer of the ownership carbon dioxide offsets to the applicant for the Council to hold in trust.
- (5) The Council shall adjust its estimates of offsets to account for leakage, which is the extent to which events occurring outside the offset project boundary affect an offset project's total carbon dioxide emissions.
- (6) The Council shall not consider any offsets related to nuclear power.
- (7) The Council shall consider reasonably likely, significant undesirable long-term environmental impacts from the implementation of an offset project that the applicant proposes.
- (8) The applicant may propose offset projects that provide offsets for up to 30 years after beginning commercial operation of a facility, or if an applicant proposes to provide offsets for more than 30 years after the beginning of commercial operation of a facility, the Council must find that:
  - (a) There will be a viable organization that will continue to manage an offset project for a longer period than the duration of the site certificate;
  - (b) The Council can maintain oversight of the project and hold the responsible organization to the requirements of the site certificate; and
  - (c) The responsible organization will transfer offsets to the Council after the certificate holder retires the energy facility.
- (9) The certificate holder shall begin implementation of projects approved in the site certificate before beginning construction of its facility, and:
  - (a) The certificate holder shall provide the Council copies of executed contracts or binding agreements with offset providers, including steam hosts for cogeneration if proposed, before beginning construction of its facility, and
  - (b) The certificate holder shall ensure that offset project implementation begins immediately upon execution of a contract or binding agreement with an offset provider and that the measures are fully implemented within five years, unless the Council approves a longer implementation period through a site certificate condition.

- (10) The certificate holder shall not sell or trade its carbon dioxide offsets or allow any other entity to report or use the offsets.
- (11) The Council shall hold the offsets in trust for the benefit of the State of Oregon.
- (12) If the Council approves, a certificate holder may use offsets in a future national regulatory regimen if the Council determines that such use does not undermine the integrity of the Council's carbon dioxide standard. Such approval shall not require an amendment of the site certificate.
- (13) The site certificate holder shall report to the Council annually on the performance of offset projects, pursuant to the monitoring and evaluation plan and to the verification plan, and shall explain changes from the offset benefits projected in the Council's analysis of the offset projects.
- (14) The certificate holder shall provide copies of all monitoring and evaluation reports and any verification reports from the independent entity to the Department of Energy.
- (15) The certificate holder shall provide any raw data upon the request of the Department.
- (16) The site certificate holder shall make its offset project financial records available for the life of the facility for auditing by the Council or by a party that the Council designates.

Stat. Authority: ORS 469.470, ORS 469.501

Stat. Implemented: ORS 469.501, ORS 469.503

### **345-024-0710**

#### **Monetary Path Payment Requirement**

- (1) If the applicant elects to meet the applicable carbon dioxide emissions standard in whole or in part under OAR 345-024-0560(3), OAR 345-024-0600(3) or OAR 345-024-0630(2), (4) and (5), the applicant shall provide a bond or letter of credit in a form reasonably acceptable to the Council to ensure the payment of the offset funds and the additional funds required under section (4). The applicant shall provide such security by the date specified in the site certificate. In the site certificate, the Council shall specify a date no later than the commencement of construction of the facility for base load gas plants and non-base load power plants. For nongenerating facilities, the Council shall specify a date no later than the commencement of construction of the facility for providing the initial bond or letter of credit, and the Council shall specify conditions for providing subsequent incremental payments to meeting the monetary path payment requirement. The certificate holder for a nongenerating facility must meet its incremental monetary path payment requirements before exhausting its offset credit account, as described in OAR 345-024-0630(4). In no

case shall the applicant diminish the bond or letter of credit or receive a refund from a qualified organization based on the calculations of the facility's emissions on a new and clean basis for a fossil-fueled power plant or any other measure for a nongenerating energy facility. A qualified organization shall not refund any offset funds to a certificate holder based on the operation or performance of a non-base load power plant during any five-year period reported under OAR 345-024-0590(5) or, for a nongenerating facility, on any offset credits the certificate holder provided under OAR 345-024-0620(5).

- (2) In the site certificate, the Council shall require the certificate holder to disburse the offset funds and other funds required as specified in sections (3) and (4), unless the Council finds that no qualified organization exists, in which case the Council shall require the certificate holder to disburse the offset funds as specified in OAR 345-024-0720(2).
- (3) When the certificate holder receives written notice from the qualified organization certifying that the qualified organization is contractually obligated to pay any funds to implement offsets using the offset funds, the certificate holder shall make the requested amount available to the qualified organization unless the total of the amount requested and any amounts previously requested exceeds the offset funds, in which case the certificate holder shall make available only the remaining amount of the offset funds. The qualified organization shall use at least 80 percent of the offset funds for contracts to implement offsets. The qualified organization may use up to 20 percent of the offset funds for monitoring, evaluation, administration and enforcement of contracts to implement offsets.
- (4) At the request of the qualified organization and in addition to the offset funds, the certificate holder shall pay the qualified organization an amount equal to 10 percent of the first \$500,000 of the offset funds and 4.286 percent of any offset funds in excess of \$500,000. The certificate holder for a base load gas plant shall pay not less than \$50,000, unless the Council specifies a lesser amount in the site certificate. In the site certificate, the Council may specify a minimum amount that other fossil-fueled power plants or nongenerating energy facilities must pay. This payment compensates the qualified organization for its costs of selecting offsets and contracting for the implementation of offsets.
- (5) Notwithstanding any provision to the contrary, a certificate holder subject to this rule has no obligation with regard to offsets, the offset funds or the funds required by section (4) other than to make available to the qualified organization the total amount required under OAR 345-024-0560(3), OAR 345-024-0600(3) and (4), OAR 345-024-0630(2), (4) and (5), and section (4) of this rule. The Council shall not base a revocation of the site certificate or any other enforcement action with respect to the certificate holder on any nonperformance, negligence or misconduct by the qualified organization.

**(6)** For monetary path payments a certificate holder must make before beginning construction, the certificate holder shall make all offset fund payments and all payments required by section (4) to the qualifying organization in real dollars of the year in which the Council issues a final order applying the carbon dioxide emissions standard to the energy facility. In the site certificate, the Council shall specify an appropriate inflation index for calculating real dollars. For a non-base load power plant, if a certificate holder must make a payment as described in OAR 345-024-0600(4), the certificate holder shall make a payment that has the same present value per ton of carbon dioxide as the monetary path offset rate of the year in which the Council issued the final order applying the carbon dioxide standard. In the site certificate, the Council shall specify the methodology for calculating present value. If the certificate holder of a nongenerating facility must make payments as described in OAR 345-024-0630(4) and (5), the Council shall specify in the site certificate the method for calculating the rate for the dollar value per ton of carbon dioxide offsets required according to subsection (a) or (b) below:

**(a)** Unless the applicant and the Council agree to the methodology in subsection (b), the certificate holder shall make payments that have the same present value per ton of carbon dioxide as the monetary path offset rate of the year in which the Council issued the final order applying the carbon dioxide standard. The Council shall set an appropriate discount rate for calculating the present value, using the cost of capital most recently approved by a state utility regulatory commission for that utility or a similar utility as a guide; or

**(b)** If the applicant requests and the Council agrees, the certificate holder shall make payments at the monetary path offset rate in effect on the date the certificate holder makes the payment.

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.501, ORS 469.503

### **345-024-0720**

#### **Qualified Organization**

**(1)** If the applicant elects to meet the applicable carbon dioxide emissions standard in whole or in part under OAR 345-024-0560(3), OAR 345-024-0600(3) and (4), or OAR 345-024-0630(2), (4) and (5), the applicant shall identify the qualified organization. The applicant may identify an organization that has applied for, but has not received, an exemption from federal income taxation, but the Council may not find that the organization is a qualified organization unless the organization is exempt from federal taxation under section 501(c)(3) of the Internal Revenue Code as amended and in effect on December 31, 1996.

**(2)** If the Council finds there is no qualified organization, the certificate holder shall disburse the offset funds according to one or more contracts for implementation of offsets as determined by the following process:

- (a)** The Council shall establish criteria for selection of offsets, based on the reduction of net carbon dioxide emissions and the criteria set forth in OAR 345-024-0550(3) for base load plants, OAR 345-024-0590(3) for non-base load power plants and OAR 345-024-0620(3) for nongenerating facilities. The Council may consider the costs of particular types of offsets in relation to the expected benefits of such offsets. In establishing criteria, the Council shall not require the certificate holder to select particular offsets and shall allow the certificate holder a reasonable range of choices in selecting offsets;
- (b)** Based on the criteria established by the Council, the certificate holder shall select one or more offsets. The certificate holder shall give written notice of its selections to the Council and to any person requesting notice. For the purposes of this rule, the date of notice is the date the certificate holder places the notice in the United States mail, with first-class postage prepaid;
- (c)** On petition by the Department of Energy or by any person adversely affected or aggrieved by the certificate holder's selection of offsets, or on the Council's own motion, the Council may review the selection. The petition must be received by the Council within 30 days of the date of notice;
- (d)** The Council shall approve the certificate holder's selection unless it finds that the selection is not consistent with criteria established under subsection (a);
- (e)** The certificate holder shall execute one or more contracts to implement the selected offsets within 18 months after commencing construction of the facility unless the Council allows additional time based on a showing of good cause by the certificate holder. If a certificate holder would have made a payment to a qualified organization as described in OAR 345-024-0600(4) or OAR 345-024-0630(4) or (5), the certificate holder shall instead execute one or more contracts to implement the selected offsets, by a method acceptable to the Council, within 18 months after reporting to the Council as described in OAR 345-024-0590(5) or within 18 months after the Department notifies the certificate holder that the certificate holder must replenish the offset credit account as described in OAR 345-024-0630(4). The certificate holder shall, under such contracts, obligate the expenditure of at least 85 percent of the offset funds for the implementation of offsets. The certificate holder may spend no more than 15 percent of the offset funds on monitoring, evaluation and enforcement of such contracts;
- (f)** Notwithstanding any provision to the contrary, the certificate holder shall have no financial liability for implementation, monitoring, evaluation and enforcement of offsets under this section beyond the amount contractually obligated and the amount of any remaining offset funds not already contractually obligated. The Council shall not base a revocation of the site certificate or any other enforcement action with respect to the certificate holder on any nonperformance,

negligence or misconduct by the person or persons implementing, monitoring or evaluating the selected offsets.

- (3)** Every qualified organization that has received funds under this rule shall, at five-year intervals beginning on the date of receipt of such funds, provide the Council with the information the Council requests about the qualified organization's performance. The Council shall evaluate the information requested and, based on such information, may make recommendations to the Legislative Assembly.

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.501, ORS 469.503

## **Division 26 - Construction And Operation Rules For Facilities**

### **(General Rules)**

#### **345-026-0005**

##### **Purpose**

The purpose of the rules in this division is to ensure that the construction, operation and retirement of facilities are accomplished in a manner consistent with the protection of the public health, safety and welfare and the protection of the environment.

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.310, ORS 469.410, ORS 469.430, ORS 469.507

#### **345-026-0010**

##### **Legislative Authority**

- (1) Under ORS 469.430, the Council has continuing authority over the site for which a site certificate is issued and may inspect, direct the Department of Energy to inspect, or ask another state agency or local government to inspect, the site at any time to ensure that the certificate holder is operating the facility in compliance with the terms and conditions of the site certificate.
- (2) For facilities subject to ORS 469.410 as having been built prior to July 2, 1975, the Council has continuing authority over the site for which a site certificate is issued and may inspect, or direct the Department to inspect, or ask another state agency or local government to inspect, the site at any time to ensure that the facility is being operated in compliance with the terms and conditions of the site certificate and any applicable health or safety standards.
- (3) According to ORS 469.410, the Council shall establish programs for monitoring the environmental and ecological effects of the operation and decommissioning of energy facilities subject to site certificates issued prior to July 2, 1975, to ensure continued compliance with the terms and conditions of the site certificate and any applicable health or safety standards.

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.310, ORS 469.410, ORS 469.430, ORS 469.507

#### **345-026-0015**

##### **Scope and Construction**

- (1) To the extent that any rules in this division conflict or are inconsistent with administrative rules lawfully adopted by other state agencies, these rules are controlling, except as prohibited by law. The Council shall resolve such conflicts in consultation with the affected agencies and in a manner consistent with the public interest.
- (2) To the extent that any rules in this division conflict or are inconsistent with a condition contained in a site certificate (or amendment thereto), the latter is

controlling. (3) Certificate holders shall comply with all applicable lawful rules and requirements of federal agencies.

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.401, ORS 469.503, ORS 469.504

### **345-026-0048**

#### **Compliance Plans**

Following receipt of a site certificate or an amended site certificate, the certificate holder shall implement a plan that verifies compliance with all site certificate terms and conditions and applicable statutes and rules. As a part of the compliance plan, to verify compliance with the requirement to begin construction by the date specified in the site certificate, the certificate holder shall report promptly to the Department of Energy when construction begins. Construction is defined in OAR 345-001-0010. In reporting the beginning of construction, the certificate holder shall describe all work on the site performed before beginning construction, including work performed before the Council issued the site certificate, and shall state the cost of that work. For the purpose of this exhibit, "work on the site" means any work within a site or corridor, other than surveying, exploration or other activities to define or characterize the site or corridor. The certificate holder shall document the compliance plan and maintain it for inspection by the Department or the Council.

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.310, ORS 469.410, ORS 469.430, ORS 469.507

### **345-026-0050**

#### **Inspections**

##### **(1) General provisions:**

- (a)** Each certificate holder shall allow properly identified representatives of the Council or Department of Energy to inspect the facility during construction, operation and retirement, including all materials, activities, related or supporting facilities, premises and records pertaining to design, construction, operation or retirement of the facility at any time.
- (b)** The certificate holder's representative may accompany Council or Department inspectors during an inspection.
- (c)** Council or Department inspectors may refuse to permit any individual who deliberately interferes with a fair and orderly inspection to be present during an inspection.
- (d)** The Department shall maintain written records of facility inspections. If the inspector finds any potential violations of state, federal or local law, Council rules, a Council order or site certificate conditions, the inspector shall promptly notify the certificate holder's onsite manager or designee.

- (e)** If the inspector finds any actual or potential violations of state, federal or local law, Council rules, a Council order, or site certificate conditions or warranties, the inspector shall notify the Council secretary, the Council and the certificate holder. The Council secretary shall be responsible for reporting all pertinent findings to the Council at its next scheduled meeting.

**(2)** Requests for inspections:

- (a)** Any person may request Department inspection of a facility if the requestor believes:
  - (A)** That a violation of a Council order or a site certificate condition or warranty has occurred or may imminently occur; or
  - (B)** A situation exists that may lead to unnecessary exposure of an individual to hazardous materials or unsafe or dangerous conditions.
- (b)** The person submitting a request for inspection shall describe, in writing, the specific grounds for the request. The requestor shall submit the request to the Department, or, during an inspection, to the Department's representative. A requestor who is employed directly or indirectly by the certificate holder may ask that his or her name not be disclosed in any manner except where disclosure is required by law.
- (c)** The Department shall promptly notify the certificate holder of the request and nature of the alleged violation or other basis for the inspection.
- (d)** If the request concerns matters of state, federal or local law or rule not administered by the Council, the Department shall forward the request to the appropriate agency.
- (e)** The Department shall make a prompt evaluation of allegations related to matters under Council jurisdiction. If the Department concludes that there are reasonable grounds to believe that the alleged violation has occurred or is imminent or that a situation exists that may lead to unnecessary exposure of an individual to hazardous materials or to unsafe or dangerous conditions, the Department shall cause an inspection to be made as soon as practicable.
- (f)** If the Department determines that an inspection is not warranted, it shall give written notice of that conclusion to the requestor, stating its reasons. The requestor may then submit a written request for review to the Council. The Council shall send a copy of the request to the certificate holder by certified mail. The certificate holder may submit a written statement of its position to the Council, and the Council shall provide a copy of the statement, if any, to the requestor by certified mail. At its discretion, the Council may hold an informal

conference to discuss the merits of the request. The Council shall affirm, modify or reverse the determination made by the Department. The Council shall send written notification of its decision and reasoning to the requestor and the certificate holder.

- (g) Inspections conducted under subsection (e) need not be limited to matters referred to in the request for inspection.
- (h) No certificate holder shall discharge or in any manner discriminate against any employee because he or she submitted a request for inspection, provided information to a Council or Department representative or otherwise exercised options afforded to the worker under these rules.

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.310, ORS 469.410, ORS 469.430, ORS 469.507

### **345-026-0080**

#### **Reporting Requirements for Energy Facilities**

(1) General reporting obligation for energy facilities under construction or operating:

- (a) Within six months after beginning construction, and every six months thereafter during construction of the energy facility and related or supporting facilities, the certificate holder shall submit a semiannual construction progress report to the Department of Energy. In each construction progress report, the certificate holder shall describe any significant changes to major milestones for construction. The certificate holder shall include such information related to construction as specified in the site certificate. When the reporting date coincides, the certificate holder may include the construction progress report within the annual report described in this rule.
- (b) By April 30 of each year after beginning construction, the certificate holder shall submit an annual report to the Department addressing the subjects listed in this rule. The Council Secretary and the certificate holder may, by mutual agreement, change the reporting date.
- (c) To the extent that information required by this rule is contained in reports the certificate holder submits to other state, federal or local agencies, the certificate holder may submit excerpts from such other reports to satisfy this rule. The Council reserves the right to request full copies of such excerpted reports.

(2) In the annual report, the certificate holder shall include the following information for the calendar year preceding the date of the report:

- (a) Facility Status: An overview of site conditions, the status of facilities under construction and a summary of the operating experience of facilities that are in

operation. In this section of the annual report, the certificate holder shall describe any unusual events, such as earthquakes, extraordinary windstorms, major accidents or the like that occurred during the year and that had a significant adverse impact on the facility.

- (b) Reliability and Efficiency of Power Production:** For electric power plants, the plant availability and capacity factors for the reporting year. The certificate holder shall describe any equipment failures or plant breakdowns that had a significant impact on those factors and shall describe any actions taken to prevent the recurrence of such problems.
- (c) Fuel Use:** For thermal power plants:

  - (A)** The efficiency with which the power plant converts fuel into electric energy. If the fuel chargeable to power heat rate was evaluated when the facility was sited, the certificate holder shall calculate efficiency using the same formula and assumptions, but using actual data; and
  - (B)** The facility's annual hours of operation by fuel type and, every five years after beginning operation, a summary of the annual hours of operation by fuel type as described in OAR 345-024-0590(5).
- (d) Status of Surety Information:** Documentation demonstrating that bonds or letters of credit as described in the site certificate are in full force and effect and will remain in full force and effect for the term of the next reporting period.
- (e) Monitoring Report:** A list and description of all significant monitoring and mitigation activities performed during the previous year in accordance with site certificate terms and conditions, a summary of the results of those activities and a discussion of any significant changes to any monitoring or mitigation program, including the reason for any such changes.
- (f) Compliance Report:** A description of all instances of noncompliance with a site certificate condition. For ease of review, the certificate holder shall, in this section of the report, use numbered subparagraphs corresponding to the applicable sections of the site certificate.
- (g) Facility Modification Report:** A summary of changes to the facility that the certificate holder has determined do not require a site certificate amendment in accordance with OAR 345-027-0050.
- (h) Nongenerating Facility Carbon Dioxide Emissions:** For nongenerating facilities that emit carbon dioxide, a report of the annual fuel use by fuel type and annual hours of operation of the carbon dioxide emitting equipment as described in OAR 345-024-0630(4).

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.310, ORS 469.410, ORS 469.430, ORS 469.501, ORS 469.507

### **345-026-0105**

#### **Correspondence With Other State or Federal Agencies**

The certificate holder and the Department of Energy shall exchange copies of all correspondence or summaries of correspondence related to compliance with statutes, rules and local ordinances on which the Council determined compliance, except for material withheld from public disclosure under state or federal law or under Council rules. The certificate holder may submit abstracts of reports in place of full reports; however, the certificate holder shall provide full copies of abstracted reports and any summarized correspondence at the request of the Department.

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.310, ORS 469.410, ORS 469.430, ORS 469.507

### **345-026-0170**

#### **Notification of Incidents**

(1) The certificate holder shall notify the Department of Energy within 72 hours of any occurrence involving the facility if:

(a) There is an attempt by anyone to interfere with its safe operation;

(b) A natural event such as an earthquake, flood, tsunami or tornado, or a human-caused event such as a fire or explosion affects or threatens to affect the public health and safety or the environment; or

(c) There is any fatal injury at the facility.

(2) For the Trojan Independent Spent Fuel Storage Installation:

(a) In the event of incidents or accidents requiring notification of the Nuclear Regulatory Commission by telephone, the certificate holder also shall notify the Department on the same time schedule.

(b) The certificate holder shall notify the Department of all incidents in accordance with the Emergency Plan, Security Plan, and other agreements as established.

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.310, ORS 469.410, ORS 469.430, ORS 469.507, ORS 469.530

### **(Rules for Nuclear Installations)**

### **345-026-0300**

### **Regulations Applicable to Nuclear Installations**

- (1) The requirements of OAR 345-026-0300 through 0390 apply exclusively to nuclear installations in Oregon as defined in ORS 469.300.
- (2) OAR 345-026-0300 through 0390 do not apply to research reactors as described in OAR 345-030-0005.

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.501

### **345-026-0330**

#### **Radiological Environmental and Effluent Monitoring**

- (1) The certificate holder shall establish a radiological environmental monitoring program.
- (2) The certificate holder shall maintain a written radiological environmental monitoring program that describes applicable quality assurance measures.
- (3) The certificate holder shall not make any changes to the radiological environmental monitoring program that involve a reduction in the number of environmental monitoring locations or associated monitoring data collection periodicity as approved in the Department of Energy "Staff Evaluation of Holtec Design for Portland General Electric's Independent Spent Nuclear Fuel Installation (ISFSI)," September 2002, without Department approval prior to implementation.
- (4) Except as required by section (3), the certificate holder may make modifications to the radiological environmental monitoring program without prior Department approval. The certificate holder shall notify the Department of these changes within 60 days after implementation of the change. The Department shall promptly notify the Council of any such changes at a scheduled meeting of the Council.

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.501, ORS 469.507

### **345-026-0340**

#### **Security Plans for Nuclear Installations**

- (1) The operator of a nuclear installation shall establish and maintain a security plan with capabilities for protection of special nuclear material.
- (2) Upon assurance satisfactory to the Council and the certificate holder that confidentiality can be maintained, the certificate holder shall make the security plan for nuclear installations available to authorized Council representatives in accordance with U.S. Nuclear Regulatory Commission regulation 10 CFR §73.21(c)(1)(iii).

- (3) The certificate holder shall not make modifications to the security plan that involve a reduction in the ability to detect or prevent unauthorized entry, or a reduction in the ability to detect or prevent the introduction of unauthorized material into a Protected Area or otherwise lessen the effectiveness of the physical security plan without written Department approval prior to implementation.
- (4) Except as required by section (3), the certificate holder may make modifications to the plan without prior Department approval. The certificate holder shall notify the Department of these modifications within 60 days of their implementation and shall make the revised plan available to authorized Department representatives following implementation of the changes. The Department shall promptly notify the Council of the plan modifications at a scheduled Council meeting, subject to U.S. Nuclear Regulatory Commission regulation 10 CFR §73.21(c)(1)(iii).

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.501, ORS 469.530

### **345-026-0350**

#### **Emergency Planning for Nuclear Installations**

- (1) The operator of a nuclear installation shall prepare, comply with, and maintain in readiness an emergency plan. The plan must ensure adequate measures will be taken in the event of a radiological emergency.
- (2) Proposed modifications to the emergency plan that involve one of the following require Council approval prior to implementation:
  - (a) A change (other than editorial) in the Emergency Action Levels; or
  - (b) A decrease in the planned staff augmentation capabilities; or
  - (c) A reduction in the plan requirements for notification of off-site agencies.
- (3) Except as required by section (2), the certificate holder may make modifications to the plan without prior Council approval. The certificate holder shall submit copies of the revised plan to the Department within 30 days after the implementation date. The Department shall promptly notify the Council of the modifications at a scheduled Council meeting.

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.501, ORS 469.530, ORS 469.533

### **345-026-0370**

#### **Standards for Council Approval of the Decommissioning Plan**

- (1) The operator of the Trojan Independent Spent Fuel Storage Installation (ISFSI) shall submit 15 copies of a plan for decommissioning the ISFSI to the Department for Council approval. The plan shall be submitted to the Council on a schedule

consistent with that required by the U.S. Nuclear Regulatory Commission. When the Department receives a decommissioning plan, the Department shall:

- (a)** Issue notice to the Council's mailing list that the decommissioning plan has been submitted. The notice shall include:
    - (A)** The time and place of at least one informational hearing,
    - (B)** The locations where copies of the proposed plan may be reviewed by the public, and
    - (C)** A contact name for further information.
  - (b)** Perform a technical review, and produce a staff report containing the Department's technical conclusions and recommendations on specific issues raised in the proposed plan,
  - (c)** To the extent practicable, coordinate its technical review with that of the U.S. Nuclear Regulatory Commission,
  - (d)** Issue notice of availability of the Department report to the Council mailing list. The notice shall include:
    - (A)** A summary of the Department's recommendations;
    - (B)** Time and place of a hearing on the staff report;
    - (C)** Places where the Department's staff report may be reviewed by the public; and
    - (D)** A contact for additional information and copies of the staff report.
- (2)** The Council shall review the proposed decommissioning plan to verify that the proposed activities will not adversely affect the health and safety of the public or the environment. The Council will ensure the following when evaluating acceptability of a proposed decommissioning plan:
- (a)** The plan contains the radiological criteria for unrestricted release and use of the site as set forth in Title 10 of the Code of Federal Regulations, Part 20, Section 1402 (10 CFR 20.1402) in effect August 20, 1997.
  - (b)** The plan contains provisions that require removal from the site of all radioactive waste as defined in ORS 469.300 on a schedule acceptable to the Council.

- (c) The plan contains a program for radiological monitoring to ensure the environment is not being adversely affected. This program may be incorporated by reference if it has previously been approved by the Department.
  - (d) The plan contains provisions for removal or control of hazardous waste that are consistent with applicable federal and state regulations.
- (3) The certificate holder shall include in the plan an estimate of funding necessary for implementation. The Council shall determine whether provisions for funding are adequate to implement the plan.
- (4) The certificate holder shall not implement significant revisions to the decommissioning plan unless the Council has reviewed and approved the revisions. A revision is significant if it involves one of the following items:
  - (a) The potential to prevent the release of the site for unrestricted use;
  - (b) A change in the criteria for site release;
  - (c) A departure in the methodology for determining background radiation levels to a method not generally accepted by the industry;
  - (d) A change in the provisions made for hazardous or radioactive waste material removal;
  - (e) A significant change in the types or significant increase in the amounts of any effluents that may be released offsite; or,
  - (f) A significant increase in radiological or hazardous material exposure to site workers or to members of the public, including exposure due to transport of radioactive or hazardous material.
- (5) The certificate holder shall evaluate revisions to the decommissioning plan by the criteria listed in section (4) of this rule. The certificate holder shall maintain records of all changes and associated evaluations for audit by the Department. The certificate holder shall notify the Department of revisions to the plan that are not significant within 30 days after implementation of the revision. The Department shall promptly notify the Council of such revisions at a regularly scheduled meeting.
- (6) Changes to the decommissioning plan that are mandated by the federal government may be implemented without prior Council approval.

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.410, ORS 469.501

**345-026-0390**

## **Spent Nuclear Fuel Storage**

### **(1) Purpose:**

- (a)** Storage of spent nuclear fuel and related radioactive material and waste at a nuclear installation is an interim measure; otherwise utilities and residents of Oregon would face the financial burden of maintaining, operating, and safeguarding the on-site storage facilities indefinitely;
- (b)** The purpose of this rule is to cooperate with the federal government in accordance with Oregon's siting policy in ORS 469.310 to ensure the safety of interim on-site storage and to ensure spent nuclear fuel and related radioactive materials and waste will not be an undue financial burden to utilities or people of Oregon.

### **(2) Capacity and Safety Standards:** The certificate holder may store a maximum of 791 complete and partial fuel assemblies and storage of containers with nuclear fuel materials. Storage of spent nuclear fuel and related radioactive material and waste at the site of a nuclear installation by a certificate holder who has executed a contract with the United States of America pursuant to the Nuclear Waste Policy Act, shall be deemed a permitted use of the site pending transfer of spent nuclear fuel to the U.S. Department of Energy provided that:

- (a)** Storage facilities are designed to maintain discharges within the limits specified in applicable licenses authorized under the Atomic Energy Act of 1954, as amended, and any applicable permits issued under the National Pollutant Discharge Elimination System;
- (b)** Storage facilities are designed such that in case of accidents off-site radiation exposures will not exceed the Environmental Protection Agency Protective Action Guidelines (October, 1991) for off-site protective actions; and
- (c)** The facility is not used to store any spent nuclear fuel or radioactive materials and wastes other than that generated or used in the operation of the former Trojan Nuclear Plant.

### **(3)** The certificate holder shall perform activities related to transfer, storage and handling of fuel and other radioactive waste in accordance with a radiation protection program that complies with 10 CFR 20, including a program to maintain personnel radiation exposure As Low As Reasonably Achievable (ALARA) as that term is defined in 10 CFR 20.

### **(4)** Except as required for accident mitigation as described in the Safety Analysis Report, the certificate holder shall not transfer spent fuel from an interim spent fuel storage installation to new casks or shipping containers without approval by the Council prior to the transfer.

- (5) Reporting Requirements: The operator of an interim spent fuel storage facility shall submit every ten years and, in addition, no later than September 3, 2038, a report containing the actual or expected date when the Federal government will accept the High Level Waste and an analysis of the facility's continued acceptability for use if a Federally licensed High level Waste site remains unavailable. This report need not be submitted if the Council or its successor determines that a Federally licensed high level waste site is available and that spent nuclear fuel from the facility will be accepted prior to September 3, 2043.
- (6) The Council approves the plan, as may be amended under Part (c) below, for an Independent Spent Fuel Storage Installation (ISFSI) as described in the ISFSI Safety Analysis Report (SAR) (PGE-1069), Revision 2. In addition to the criteria in OAR 345-026-0390(2)(a), (b), and (c), and (3) and (4), the plan is subject to the following criteria:
- (a) Programs: Portland General Electric (PGE) shall establish and maintain programs for Temperature Monitoring and Air Vent Inspection and Structural Inspection that are consistent with maintaining exposures to ionizing radiation As Low As Reasonably Achievable (ALARA) and with the assumptions and conclusions in the Department "Staff Evaluation of Holtec Design for Portland General Electric's Independent Spent Nuclear Fuel Installation (ISFSI)," September 2002.
- (b) Contingency Plans: PGE shall establish and maintain a plan for maintaining equipment onsite and having equipment available within a reasonable time period to respond to credible accident scenarios and a plan for construction of new concrete casks.
- (c) Changes to Commitments: PGE may make changes to the ISFSI as described in the Safety Analysis Report without prior Council approval if such changes do not reduce commitments or change the assumptions and conclusions in the Department "Staff Evaluation of Holtec Design for Portland General Electric's Independent Spent Nuclear Fuel Installation (ISFSI)," September 2002. If proposed changes would reduce commitments or change the assumptions or conclusions of the Department "Staff Evaluation of Holtec Design for Portland General Electric's Independent Spent Nuclear Fuel Installation (ISFSI)," September 2002, PGE shall obtain prior approval from the Department. Prior Department approval is not required when the proposed change would not have the above effects, is required for compliance with the regulations or orders of the U.S. Nuclear Regulatory Commission or is necessary to protect the health and safety of the public when there is insufficient time to obtain prior Department approval.
- (d) Reporting requirements: In lieu of the requirements described in OAR 345-026-0080, within one year of the first cask loading and biennially thereafter, PGE shall provide a written report to the Council on the status of the ISFSI. The report shall

include, at a minimum, the results of radiation monitoring programs, a summary of personnel exposure related to ISFSI storage operations, a statement of expenses related to ISFSI storage operations, a statement of the estimated costs of continuing ISFSI storage operations through decommissioning and the estimated costs of decommissioning, including a discussion of the methods and assumptions used to estimate operations and decommissioning costs, an estimate of funds available for continuing ISFSI storage operations through decommissioning and funds available for ISFSI decommissioning, and a statement of any significant developments regarding the opening of a Federally licensed High Level Waste facility.

**(e) Frequency of Temperature Monitoring and Air Vent Inspection:** The Temperature Monitoring and Air Vent Inspection Program established by PGE pursuant to Section (6)(a) of this rule shall include daily readings of Concrete Cask air outlet and ambient temperatures. The program shall include provisions for more frequent measurements if temperatures approach Technical Specification limits. The program shall also include a requirement to check air inlet and outlet vents for blockage weekly. PGE may reduce these surveillance frequencies with Department approval. PGE may apply extensions of up to 25 percent of individual surveillance intervals to accommodate minor variations in work scheduling.

**(f) Contractors:** PGE shall require contractors who perform portions of the ISFSI storage or transporting operations to adhere to all applicable provisions of OAR 345-026-0390.

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.410, ORS 469.501

**Division 27 –  
Site Certificate Conditions, Amendment, Transfer And Termination And  
Department Of Energy Approval Of Gas Storage Testing Pipelines**

**345-027-0000**

**Certificate Expiration**

If the certificate holder does not begin construction of the facility, the site certificate expires on the construction beginning date specified by the Council in the site certificate or in an amendment of the site certificate granted according to the rules of this division.

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.370, ORS 469.501

**345-027-0011**

**Applicability**

The rules in this division do not apply to facilities covered by ORS 469.410(1), including the Trojan energy facility.

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.501

**345-027-0020**

**Mandatory Conditions In Site Certificates**

The Council shall impose the following conditions in every site certificate. The Council may impose additional conditions.

- (1) The Council shall not change the conditions of the site certificate except as provided for in this division.
- (2) The certificate holder shall submit a legal description of the site to the Department of Energy within 90 days after beginning operation of the facility. The legal description required by this rule means a description of metes and bounds or a description of the site by reference to a map and geographic data that clearly and specifically identifies the outer boundaries that contain all parts of the facility.
- (3) The certificate holder shall design, construct, operate and retire the facility:
  - (a) Substantially as described in the site certificate;
  - (b) In compliance with the requirements of ORS Chapter 469, applicable Council rules, and applicable state and local laws, rules and ordinances in effect at the time the site certificate is issued; and
  - (c) In compliance with all applicable permit requirements of other state agencies.

- (4) The certificate holder shall begin and complete construction of the facility by the dates specified in the site certificate.
- (5) Except as necessary for the initial survey or as otherwise allowed for wind energy facilities, transmission lines or pipelines under this section, the certificate holder shall not begin construction, as defined in OAR 345-001-0010, or create a clearing on any part of the site until the certificate holder has construction rights on all parts of the site. For the purpose of this rule, “construction rights” means the legal right to engage in construction activities. For wind energy facilities, transmission lines or pipelines, if the certificate holder does not have construction rights on all parts of the site, the certificate holder may nevertheless begin construction, as defined in OAR 345-001-0010, or create a clearing on a part of the site if the certificate holder has construction rights on that part of the site and:

  - (a) The certificate holder would construct and operate part of the facility on that part of the site even if a change in the planned route of a transmission line or pipeline occurs during the certificate holder’s negotiations to acquire construction rights on another part of the site; or
  - (b) The certificate holder would construct and operate part of a wind energy facility on that part of the site even if other parts of the facility were modified by amendment of the site certificate or were not built.
- (6) If the Council requires mitigation based on an affirmative finding under any standards of Division 22 or Division 24 of this chapter, the certificate holder shall consult with affected state agencies and local governments designated by the Council and shall develop specific mitigation plans consistent with Council findings under the relevant standards. The certificate holder must submit the mitigation plans to the Office and receive Office approval before beginning construction or, as appropriate, operation of the facility.
- (7) The certificate holder shall prevent the development of any conditions on the site that would preclude restoration of the site to a useful, non-hazardous condition to the extent that prevention of such site conditions is within the control of the certificate holder.
- (8) Before beginning construction of the facility, the certificate holder shall submit to the State of Oregon, through the Council, a bond or letter of credit in a form and amount satisfactory to the Council to restore the site to a useful, non-hazardous condition. The certificate holder shall maintain a bond or letter of credit in effect at all times until the facility has been retired. The Council may specify different amounts for the bond or letter of credit during construction and during operation of the facility.
- (9) The certificate holder shall retire the facility if the certificate holder permanently ceases construction or operation of the facility. The certificate holder shall retire the

facility according to a final retirement plan approved by the Council, as described in OAR 345-027-0110. The certificate holder shall pay the actual cost to restore the site to a useful, non-hazardous condition at the time of retirement, notwithstanding the Council's approval in the site certificate of an estimated amount required to restore the site.

- (10)** The Council shall include as conditions in the site certificate all representations in the site certificate application and supporting record the Council deems to be binding commitments made by the applicant.
- (11)** Upon completion of construction, the certificate holder shall restore vegetation to the extent practicable and shall landscape all areas disturbed by construction in a manner compatible with the surroundings and proposed use. Upon completion of construction, the certificate holder shall remove all temporary structures not required for facility operation and dispose of all timber, brush, refuse and flammable or combustible material resulting from clearing of land and construction of the facility.
- (12)** The certificate holder shall design, engineer and construct the facility to avoid dangers to human safety presented by seismic hazards affecting the site that are expected to result from all maximum probable seismic events. As used in this rule "seismic hazard" includes ground shaking, landslide, liquefaction, lateral spreading, tsunami inundation, fault displacement and subsidence.
- (13)** The certificate holder shall notify the Department, the State Building Codes Division and the Department of Geology and Mineral Industries promptly if site investigations or trenching reveal that conditions in the foundation rocks differ significantly from those described in the application for a site certificate. After the Department receives the notice, the Council may require the certificate holder to consult with the Department of Geology and Mineral Industries and the Building Codes Division and to propose mitigation actions.
- (14)** The certificate holder shall notify the Department, the State Building Codes Division and the Department of Geology and Mineral Industries promptly if shear zones, artesian aquifers, deformations or clastic dikes are found at or in the vicinity of the site.
- (15)** Before any transfer of ownership of the facility or ownership of the site certificate holder, the certificate holder shall inform the Department of the proposed new owners. The requirements of OAR 345-027-0100 apply to any transfer of ownership that requires a transfer of the site certificate.
- (16)** If the Council finds that the certificate holder has permanently ceased construction or operation of the facility without retiring the facility according to a final retirement plan approved by the Council, as described in OAR 345-027-0110, the Council shall notify the certificate holder and request that the certificate holder submit a proposed final retirement plan to the Office within a reasonable time not to exceed 90 days. If

the certificate holder does not submit a proposed final retirement plan by the specified date, the Council may direct the Department to prepare a proposed a final retirement plan for the Council's approval. Upon the Council's approval of the final retirement plan, the Council may draw on the bond or letter of credit described in section (8) to restore the site to a useful, non-hazardous condition according to the final retirement plan, in addition to any penalties the Council may impose under OAR Chapter 345, Division 29. If the amount of the bond or letter of credit is insufficient to pay the actual cost of retirement, the certificate holder shall pay any additional cost necessary to restore the site to a useful, non-hazardous condition. After completion of site restoration, the Council shall issue an order to terminate the site certificate if the Council finds that the facility has been retired according to the approved final retirement plan.

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.401, ORS 469.501

### **345-027-0023**

#### **Site Specific Conditions**

The Council may include the following conditions, as appropriate, in the site certificate:

- (1)** If the facility uses coal, the certificate holder shall take all necessary steps to ensure that surface and groundwater are not contaminated by run-off or seepage associated with coal or ash storage, transport or disposal. The certificate holder shall handle coal and ash so as to minimize the likelihood of coal dust and ash being windblown and causing an environmental or public health problem. If the certificate holder permanently disposes of ash on the facility site, the certificate holder shall cover the ash with a layer of topsoil and revegetate the area.
- (2)** If the energy facility or related or supporting facility is a natural gas pipeline, the certificate holder shall submit to the Department copies of all incident reports involving the pipeline required under 49 CFR §191.15.
- (3)** If the facility includes any pipeline under Council jurisdiction:
  - (a)** The certificate holder shall design, construct and operate the pipeline in accordance with the requirements of the U.S. Department of Transportation as set forth in Title 49, Code of Federal Regulations, Part 192, in effect as of the date of this rule; and
  - (b)** The certificate holder shall develop and implement a program using the best available practicable technology to monitor the proposed pipeline to ensure protection of public health and safety.
- (4)** If the facility includes any transmission line under Council jurisdiction:

- (a) The certificate holder shall design, construct and operate the transmission line in accordance with the requirements of the National Electrical Safety Code (American National Standards Institute, Section C2, 1997 Edition); and
  - (b) The certificate holder shall develop and implement a program that provides reasonable assurance that all fences, gates, cattle guards, trailers, or other objects or structures of a permanent nature that could become inadvertently charged with electricity are grounded or bonded throughout the life of the line.
- (5) If the proposed energy facility is a pipeline or a transmission line or has, as a related or supporting facility, a pipeline or transmission line, the Council shall specify an approved corridor in the site certificate and shall allow the certificate holder to construct the pipeline or transmission line anywhere within the corridor, subject to the conditions of the site certificate. If the applicant has analyzed more than one corridor in its application for a site certificate, the Council may, subject to the Council's standards, approve more than one corridor.
- (6) If the facility is a surface facility related to an underground gas storage reservoir, the Council shall, in the site certificate, specify the site boundary and total permitted daily throughput of the facility.
- (7) If the facility is subject to a carbon dioxide emissions standard adopted by the Council or enacted by statute, the Council shall include in the site certificate appropriate conditions as described in OAR 345-024-0550, OAR 345-024-0560, OAR 345-024-0590, OAR 345-024-0600, OAR 345-024-0620, OAR 345-024-0630 and OAR 345-024-0710.

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.401, ORS 469.501, ORS 469.503

### **345-027-0028**

#### **Monitoring Conditions**

In the site certificate, the Council shall identify the monitoring programs appropriate to the facility and shall include the following monitoring conditions:

- (1) The certificate holder shall consult with affected state agencies, local governments and tribes and shall develop specific monitoring programs for impacts to resources protected by the standards of Divisions 22 and 24 of this chapter and resources addressed by applicable statutes, administrative rules and local ordinances. The certificate holder must submit the monitoring programs to the Department of Energy and receive Department approval before beginning construction or, as appropriate, operation of the facility.
- (2) The certificate holder shall implement the approved monitoring programs described in section (1) and monitoring programs required by permitting agencies and local governments.

- (3) For each monitoring program described in sections (1) and (2), the certificate holder shall have quality assurance measures approved by the Department before beginning construction or, as appropriate, before beginning commercial operation.
- (4) If the certificate holder becomes aware of a significant environmental change or impact attributable to the facility, the certificate holder shall, as soon as possible, submit a written report to the Department describing the impact on the facility and any affected site certificate conditions.

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.401, ORS 469.501, ORS 469.503, ORS 469.507

### **345-027-0030**

#### **Amendment to Extend Construction Beginning and Completion Deadlines**

- (1) The certificate holder may request an amendment to extend the deadlines for beginning or completing construction of the facility that the Council has specified in a site certificate or an amended site certificate. The certificate holder shall submit a request that conforms to the requirements of 345-027-0060 no later than six months before the date of the applicable deadline, or, if the certificate holder demonstrates good cause for the delay in submitting the request, no later than the applicable deadline.
- (2) A request within the time allowed in section (1) to extend the deadlines for beginning or completing construction suspends those deadlines until the Council acts on the request.
- (3) The Council shall review the request for amendment as described in OAR 345-027-0070.
- (4) If the Council grants an amendment under this rule, the Council shall specify new deadlines for beginning or completing construction that are not more than two years from the deadlines in effect before the Council grants the amendment.
- (5) To grant an amendment extending the deadline for beginning or completing construction of an energy facility subject to OAR 345-024-0550, OAR 345-024-0590, or OAR 345-024-0620, the Council must find that the facility complies with the carbon dioxide standard in effect at the time of the Council's order on the amendment.

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.370, ORS 469.405, ORS 469.503

### **345-027-0050**

#### **When an Amendment is Required**

- (1)** Except as allowed under sections (2) and (6), the certificate holder must submit a request to amend the site certificate to design, construct or operate a facility in a manner different from the description in the site certificate if the proposed change:
  - (a)** Could result in a significant adverse impact that the Council has not addressed in an earlier order and the impact affects a resource protected by Council standards;
  - (b)** Could impair the certificate holder's ability to comply with a site certificate condition; or
  - (c)** Could require a new condition or a change to a condition in the site certificate.
- (2)** A site certificate amendment is not required if a proposed change in the design, construction or operation of a facility is in substantial compliance with the terms and conditions of the site certificate and is a change:
  - (a)** To an electrical generation facility that would increase the electrical generating capacity and would not increase the number of electric generators at the site, change fuel type, increase fuel consumption by more than 10 percent or enlarge the facility site;
  - (b)** To the number or location of pipelines for a surface facility related to an underground gas storage reservoir that would not result in the facility exceeding permitted daily throughput or enlarge the facility site;
  - (c)** To the number, size or location of pipelines for a geothermal energy facility that would not enlarge the facility site;
  - (d)** To a pipeline or transmission line that is a related or supporting facility that would extend or modify the pipeline or transmission line or expand the right-of-way, when the change is to serve customers other than the energy facility; or
  - (e)** To an aspect or feature of the facility, operating procedures or management structures not addressed in the site certificate.
- (3)** If the certificate holder concludes that a site certificate amendment is not required based on the criteria in section (2), the certificate holder shall, nevertheless, complete an investigation sufficient to demonstrate that the proposed change in the design, construction or operation of the facility would comply with applicable Council standards. The certificate holder shall complete the investigation before implementing the proposed change. The certificate holder shall prepare a written evaluation describing the investigation and shall make the evaluation available to the Department for inspection at any time.

- (4) In the annual report required by OAR 345-026-0080, the certificate holder shall describe all significant changes made to the design, construction and operation of the facility without an amendment of the site certificate. The certificate holder shall keep a written record of the basis for concluding that an amendment of the site certificate was not required. The Department, at any time, may inspect the changes made to the facility and may inspect the certificate holder's written record of the basis for concluding that an amendment of the site certificate was not required.
- (5) A certificate holder may ask the Department to determine whether a proposed change requires a site certificate amendment by submitting a written description of the proposed change, the certificate holder's analysis of the proposed change under sections (1) and (2) and the written evaluation described in section (3). The Department shall respond in writing as promptly as possible. The Department may refer its determination to the Council for concurrence, modification or rejection. At the request of the certificate holder or a Council member, the Department must refer its determination to the Council for concurrence, modification or rejection.
- (6) A site certificate amendment is not required for the construction of a pipeline less than 16 inches in diameter and less than five miles in length that is proposed to be constructed to test or maintain an underground gas storage reservoir. If the proposed pipeline would connect to a surface facility related to an underground gas storage reservoir for which the Council has issued a site certificate or to a gas pipeline for which the Council has issued a site certificate, the certificate holder must obtain, prior to construction, the approval of the Department for the construction, operation and retirement of the proposed pipeline. To obtain Department approval, the certificate holder shall submit a request as described in OAR 345-027-0210 through OAR 345-027-0240.

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.405

### **345-027-0060**

#### **Request to Amend Certificate**

- (1) To request an amendment of a site certificate, the certificate holder shall submit a written request to the Department of Energy that includes the information described in section (2) and the following:

  - (a) The name and mailing address of the certificate holder and the name, mailing address and phone number of the individual responsible for submitting the request.
  - (b) A description of the facility including its location and other information relevant to the proposed change.
  - (c) A detailed description of the proposed change and the certificate holder's analysis of

the proposed change under the criteria of OAR 345-027-0050(1).

**(d)** The specific language of the site certificate, including affected conditions, that the certificate holder proposes to change, add or delete by an amendment.

**(e)** A list of the Council standards relevant to the proposed change.

**(f)** An analysis of whether the facility, with the proposed change, would comply with the requirements of ORS Chapter 469, applicable Council rules, and applicable state and local laws, rules and ordinances if the Council amends the site certificate as requested. For the purpose of this rule, a law, rule or ordinance is “applicable” if the Council would apply or consider the law, rule or ordinance under OAR 345-027-0070(10).

**(g)** If the amendment would change the site boundary, extend the deadlines for beginning or completing construction or change the legal description of the facility, an updated list of the owners of property located within or adjacent to the site of the facility, as described in OAR 345-021-0010(1)(f).

**(2)** In a request to amend a site certificate, the certificate holder shall provide the information described in applicable subsections of OAR 345-021-0010(1). The certificate holder may incorporate by reference relevant information that the certificate holder has previously submitted to the Department or that is otherwise included in the Department’s administrative record on the facility.

**(3)** Before submitting a request to amend a site certificate, the certificate holder may prepare a draft request and may confer with the Department about the content of the request. Although the Council does not require the certificate holder to prepare a draft request and confer with the Department, the Council recommends that the certificate holder follow this procedure.

**(4)** The certificate holder shall submit an original and ten copies of the amendment request to the Department. In addition to the printed copies, the certificate holder shall submit the text (including appendices and graphical information to the extent practical) of the amendment request in a non-copy-protected electronic format acceptable to the Department. The certificate holder shall provide additional copies of the amendment request to the Department upon request and copies or access to copies to any person requesting copies. If requested by the Department, the certificate holder shall send copies of the request to persons on a mailing list provided by the Department.

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.405

### **345-027-0070**

#### **Review of a Request for Amendment**

Except as specified in OAR 345-027-0080, the Council shall review a request for amendment of a site certificate as follows:

- (1)** Within 15 days after receiving a request to amend a site certificate, the Department of Energy shall determine whether the amendment requires extended review based on the criteria in section (2) and:
  - (a)** Send copies of the request, or instruct the certificate holder to send copies of the request, to the reviewing agencies as defined in OAR 345-001-0010 and ask those agencies to comment on the request by a specified date;
  - (b)** Send a notice of the amendment request to all persons on the Council's general mailing list as defined in OAR 345-011-0020, to any special list established for the facility and to the most recently received list of property owners or the updated list supplied by the certificate holder under OAR 345-027-0060(1)(g) and specify a date by which comments on the request are due; and
  - (c)** Send a notice to the certificate holder specifying a date for issuance of a proposed order. The Department shall specify a date that is no later than 60 days after the date of the notice unless the Department has determined that the amendment requires extended review. For extended review, the Department shall explain the basis of its determination and specify a date that is not more than 180 days after the date of the notice. Within 10 days after the Department sends notification that an amendment requires extended review, the certificate holder may request Council review of the determination. Upon a request for Council review, the Department shall refer its determination to the Council for concurrence, modification or rejection.
- (2)** The Department may determine that an amendment requires extended review if:
  - (a)** The certificate holder requests extended review;
  - (b)** The Department finds that the amendment request does not contain the information required by OAR 345-027-0060 or does not contain information sufficient for the Department to prepare a proposed order;
  - (c)** The Department needs to hire a consultant to assist in reviewing the request;
  - (d)** The amendment:
    - (A)** Would require construction on land zoned residential or exclusive farm use;
    - (B)** Would require construction in a zone for which the use is not permitted;
    - (C)** Would require construction on land that may qualify as Habitat Category 1 or 2 land as described in OAR 635-415-0025;

**(D)** Would result in incremental carbon dioxide emissions that the certificate holder elects to offset, in compliance with the applicable carbon dioxide emissions standard, by a means other than by payments described under OAR 345-024-0560(3), OAR 345-024-0600(3) and (4) or OAR 345-024-0630(2), (4) and (5); or

**(E)** Could require the Council to determine, according to OAR 345-022-0000(2), that the overall public benefits of the facility outweigh the damage to the resource that is protected by a standard the facility would not meet if the amendment is approved; or

**(e)** The Department anticipates a high volume of public comment.

**(3)** The Office may hold one or more public meetings during the review of a request for amendment of the site certificate.

**(4)** Except as otherwise provided in this section, no later than the date the Department has specified in the notice described in subsection (1)(c), the Department shall issue a proposed order, recommending approval, modification or disapproval of the requested amendment. If the Department needs additional time to prepare the proposed order, the Department may issue the proposed order at a later date, but the Department shall, no later than the date the Department has specified in the notice, notify the certificate holder in writing of the circumstances that justify the delay.

**(5)** After issuing the proposed order, the Department shall send a notice of the proposed order to the persons on the Council's general mailing list as defined in OAR 345-011-0020, to any special list established for the facility and to the most recently received list of property owners or the updated list supplied by the certificate holder under OAR 345-027-0060(1)(g). In the notice, the Department shall specify a deadline for submission of written public comments that is at least 30 days from the date of the notice.

**(6)** Any person may, by written request submitted to the Department no later than the deadline described in section (5), ask the Council to hold a contested case proceeding on the proposed order. For the purpose of this rule, the request is submitted when it is received by the Department. In the request, the person shall provide a description of the issues to be contested, a statement of the facts believed to be at issue and the person's mailing address.

**(7)** To determine that an issue justifies a contested case proceeding under section (8), the Council must find that the request raises a significant issue of fact or law that may affect the Council's determination that the facility, with the change proposed by the amendment, meets an applicable standard. If the Council finds that the request would not affect the Council's determination if the alleged facts were found to be true

but that those facts could affect a site certificate condition, the Council may deny the request and may adopt appropriate conditions. If the Council does not have jurisdiction over the issue raised in the request, the Council must deny the request.

- (8)** The Council shall determine whether any issue identified in a request for a contested case proceeding justifies a contested case proceeding, and:
- (a)** If the Council finds that the request identifies one or more issues that justify a contested case proceeding, the Council shall conduct a contested case proceeding according to the applicable provisions of OAR 345-015-0012 to OAR 345-015-0085 limited to the issues that the Council found sufficient to justify the proceeding.
  - (b)** If the Council finds that the request identifies one or more issues that an amendment of the proposed order would settle in a manner satisfactory to the Council, the Council may deny the request as to those issues and direct the Department to amend the proposed order and send a notice of the amended proposed order to the persons described in section (5). Any person may, by written request submitted to the Department within 30 days after the Department issues the notice of the amended proposed order, ask the Council to hold a contested case proceeding limited to issues raised by the amendment to the proposed order. For the purpose of this rule, the request is submitted when it is received by the Department. In the request, the person shall provide a description of the issues to be contested, a statement of the facts believed to be at issue and the person's mailing address. As described in this section, the Council shall determine whether any issue identified in the request for a contested case proceeding justifies a contested case proceeding.
  - (c)** If the Council finds that the request does not identify any issue that justifies a contested case proceeding, the Council shall deny the request. In a written order denying the request, the Council shall state the basis for the denial. The Council shall then adopt, modify or reject the proposed order based on the considerations described in section (10). In a written order, the Council shall either grant or deny issuance of an amended site certificate. If the Council grants issuance of an amended site certificate, the Council shall issue an amended site certificate, which is effective upon execution by the Council Chair and by the applicant.
- (9)** If there is no request for a contested case proceeding as described in section (6) or subsection (8)(b), the Council, may adopt, modify or reject the proposed order based on the considerations described in section (10). In a written order, the Council shall either grant or deny issuance of an amended site certificate. If the Council grants issuance of an amended site certificate, the Council shall issue an amended site certificate, which is effective upon execution by the Council Chair and by the applicant.

- (10)** In making a decision to grant or deny issuance of an amended site certificate, the Council shall apply the applicable substantive criteria, as described in OAR 345-022-0030, in effect on the date the certificate holder submitted the request for amendment and all other state statutes, administrative rules, and local government ordinances in effect on the date the Council makes its decision. The Council shall consider the following:
- (a)** For an amendment that would change the site boundary or the legal description of the site, the Council shall consider, for the area added to the site by the amendment, whether the facility complies with all Council standards;
  - (b)** For an amendment that extends the deadlines for beginning or completing construction, the Council shall consider:
    - (A)** Whether the Council has previously granted an extension of the deadline;
    - (B)** Whether there has been any change of circumstances that affects a previous Council finding that was required for issuance of a site certificate or amended site certificate; and
    - (C)** Whether the facility complies with all Council standards, except that the Council may choose not to apply a standard if the Council finds that:
      - (i)** The certificate holder has spent more than 50 percent of the budgeted costs on construction of the facility;
      - (ii)** The inability of the certificate holder to complete the construction of the facility by the deadline in effect before the amendment is the result of unforeseen circumstances that are outside the control of the certificate holder;
      - (iii)** The standard, if applied, would result in an unreasonable financial burden on the certificate holder; and
      - (iv)** The Council does not need to apply the standard to avoid a significant threat to the public health, safety or the environment;
  - (c)** For any amendment not described above, the Council shall consider whether the amendment would affect any finding made by the Council in an earlier order.
  - (d)** For all amendments, the Council shall consider whether the amount of the bond or letter of credit required under OAR 345-022-0050 is adequate.

Stat. Authority: ORS 469.470  
Stat. Implemented: ORS 469.405

### **345-027-0080**

#### **Review of a Request by a Certificate Holder for Expedited Amendment**

- (1)** A certificate holder may ask the Council Chair to grant expedited review of an amendment request. The certificate holder shall submit a request for expedited review to the Department of Energy in writing and, in addition, the certificate holder shall submit the text (including appendices and graphical information to the extent practical) of the amendment request in a non-copy-protected electronic format acceptable to the Department. The certificate holder shall include in the request:

  - (a)** The information listed in OAR 345-027-0060(1) and (2), and
  - (b)** Reasons why the certificate holder needs expedited review of its request and an explanation of why the need for expedited review arose and could not have reasonably been foreseen by the certificate holder.
- (2)** The Chair may grant a request for expedited review if a delay would unduly harm the certificate holder and if the facility, with the proposed change, would not likely result in a significant adverse impact. If the Chair decides not to grant the request for expedited review, the Chair shall issue a written decision as soon as is reasonably practicable. In a written decision denying the request, the Chair shall give an explanation of the reasons for the denial.
- (3)** Within 7 days after the Chair grants expedited review, the Department shall:

  - (a)** Send copies of the amendment request to the reviewing agencies as defined in OAR 345-001-0010 and ask those agencies to comment on the request within not more than 21 days after the date of the notice.
  - (b)** Send a notice of the amendment request to all persons on the Council's general mailing list as defined in OAR 345-011-0020, to any special list established for the facility and to the most recently received list of property owners specifying a date, not more than 21 days after the date of the notice, by which comments are due.
- (4)** Within 60 days after the Chair grants expedited review, the Department shall issue a proposed order, recommending approval, modification or disapproval of the requested amendment. If the Department recommends approval, the Department shall include in the proposed order any new or modified conditions it recommends and shall explain why expedited Council action was warranted.
- (5)** The Department shall send a notice of the proposed order to the persons on the Council's general mailing list, to any special list established for the facility and to the most recently received list of property owners. In the notice, the Department shall include information on the availability of the proposed order, the date of the Council meeting when the Council will consider the proposed order and issue a temporary order as described in section (5), a date by which comments on the proposed order

are due and the deadline for any person to request a contested case proceeding on the Council's temporary order.

- (6)** After considering the proposed order, the Council may issue an order temporarily amending the site certificate. In making a decision whether to issue a temporary order under this rule, the Council shall consider the factors listed in OAR 345-027-0070(10). The Council shall apply the applicable substantive criteria, as described in OAR 345-022-0030, in effect on the date the certificate holder submitted the request for amendment and all other state statutes, administrative rules, and local government ordinances in effect on the date the Council issues the temporary order.
- (7)** Before implementing any change approved by the Council's temporary order, the certificate holder must submit an authorized acknowledgement that the certificate holder accepts all terms and conditions of the temporary order. The acknowledgement may be submitted to the Department by fax if the certificate holder promptly submits a signed original to the Department by mail or hand delivery.
- (8)** Any person may, by written request submitted to the Department within 15 days after the date the Council issues the temporary order described in section (5), ask the Council to hold a contested case proceeding on the temporary order. For the purpose of this rule, the request is submitted when it is received by the Department. In the request, the person shall provide a description of the issues to be contested, a statement of the facts believed to be at issue and the person's mailing address.
- (9)** The Council shall determine whether any issue identified in a request for a contested case proceeding justifies a contested case proceeding.

  - (a)** If the Council finds that the request identifies one or more issues that justify a contested case proceeding, the Council shall conduct a contested case proceeding according to the applicable provisions of OAR 345-015-0012 to OAR 345-015-0085 limited to the issues that the Council found sufficient to justify the proceeding.
  - (b)** If the Council finds that the request does not identify any issue that justifies a contested case proceeding, the Council shall deny the request. In a written order denying the request, the Council shall state the basis for the denial. The Council shall adopt the temporary order as a final order. In the final order, the Council may modify the language of the temporary order, consistent with due process. In the final order, the Council shall either grant or deny issuance of an amended site certificate. If the Council grants issuance of an amended site certificate, the Council shall issue an amended site certificate, which is effective upon execution by the Council Chair and by the applicant.
- (10)** If there is no request for a contested case proceeding as described in section (8), the Council shall adopt the temporary order as a final order. In the final order, the

Council may modify the language of the temporary order, consistent with due process. In the final order, the Council shall either grant or deny issuance of an amended site certificate. If the Council grants issuance of an amended site certificate, the Council shall issue an amended site certificate, which is effective upon execution by the Council Chair and by the applicant.

**(11)** The certificate holder shall not abuse this rule by failing to make timely application for an amendment and thus creating the need for expedited review.

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.405

### **345-027-0090**

#### **Request by Any Person for Amendment to Apply Subsequent Laws or Rules**

**(1)** Any person may submit to the Department of Energy a request for an amendment of a site certificate to apply a local government ordinance, statute or Council rule adopted after the date the site certificate was executed. The Department itself may initiate such a request.

**(2)** In an amendment request under this rule, the person shall include the following:

**(a)** The name and address of the person submitting the request;

**(b)** The name and address of the certificate holder;

**(c)** Identification of the facility for which the site certificate in question was granted and its location;

**(d)** Identification of the local government ordinance, statute or Council rule that the person seeks to apply to the facility;

**(e)** The particular facts that the person believes demonstrate that failure to apply the ordinance, statute or rule identified in subsection (d) presents a significant threat to the public health or safety or to the environment; and

**(f)** The specific language of the site certificate that the person proposes to change, delete or add by an amendment.

**(3)** If the Department receives a request to amend a site certificate as described in this rule from any person other than the certificate holder, the Department shall send a copy of the request to the certificate holder with a notice stating the date by which the certificate holder must submit a response.

**(4)** The Council shall review the request for amendment as described in OAR 345-027-0070, except that:

- (a) After receiving the certificate holder's response as requested under (3), the Department may ask the Council to determine whether the request demonstrates that failure to apply the ordinance, statute or rule identified in subsection (2)(d) presents a significant threat to the public health or safety or to the environment. If the Council determines that applying the ordinance, statute or rule is not justified by a significant threat to the public health or safety or to the environment, then the Council may deny the amendment request.
- (b) Within 15 days after receiving the certificate holder's response as requested under (3) or within 15 days after a Council determination under (a) that applying the ordinance, statute or rule is justified by a significant threat to the public health or safety or to the environment, the Department shall determine whether the amendment request requires expedited review, based on the criteria in OAR 345-027-0070(2), and shall send the notices described in OAR 345-027-0070(1)(a), (b) and (c).
- (c) If the Department recommends approval or modification of the requested amendment, the Department shall include in the proposed order described in OAR 345-027-0070(4) any new or modified site certificate conditions necessary to assure compliance with the statutes, Council rules, and local government ordinances applied to the facility under the proposed order;
- (d) Notwithstanding OAR 345-027-0070(7)(c), if the Department in its proposed order recommends approval or modification of the requested amendment, the certificate holder may, by written request submitted to the Department within 30 days after the Department issues the proposed order, ask the Council to hold a contested case proceeding on the proposed order. For the purpose of this rule, the request is submitted when it is received by the Department. In the request, the certificate holder shall provide a description of the issues to be contested and a statement of the facts believed to be at issue. If the site certificate holder requests a contested case proceeding, the Council shall conduct a contested case proceeding according to the applicable provisions of OAR 345-015-0012 to OAR 345-015-0085 limited to the issues stated by the certificate holder; and
- (e) The Council shall include new conditions in a site certificate amended under this rule only if the certificate holder agrees to the new conditions or the Council finds that the conditions are necessary based upon a clear showing of a significant threat to the public health, safety or the environment.

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.401, ORS 469.405

### **345-027-0100**

#### **Transfer of a Site Certificate**

(1) For the purpose of this rule:

- (a)** A transfer of ownership requires a transfer of the site certificate when the person who will have the legal right to possession and control of the site or the facility does not have authority under the site certificate to construct, operate or retire the facility;
- (b)** “Transferee” means the person who will become the new applicant and site certificate holder.
- (2)** When a certificate holder has knowledge that any transfer of ownership of the facility that requires a transfer of the site certificate is or may be pending, the certificate holder shall notify the Department of Energy. In the notice, the certificate holder shall include, if known, the name, mailing address and telephone number of the transferee and the date of the transfer of ownership. If possible, the certificate holder shall notify the Department at least 60 days before the date of the transfer of ownership.
- (3)** The transferee is not allowed to construct or operate the facility until an amended site certificate as described in section (10) or a temporary amended site certificate as described in section (11) becomes effective.
- (4)** To request a transfer of the site certificate, the transferee shall submit a written request to the Department that includes the information described in OAR 345-021-0010(1)(a), (d) and (m), a certification that the transferee agrees to abide by all terms and conditions of the site certificate currently in effect and, if known, the date of the transfer of ownership. If applicable, the transferee shall include in the request the information described in OAR 345-021-0010(1)(y)(O)(iv).
- (5)** The Department may require the transferee to submit a written statement from the current certificate holder, or a certified copy of an order or judgment of a court of competent jurisdiction, verifying the transferee’s right, subject to the provisions of ORS Chapter 469 and the rules of this chapter, to possession of the site or the facility.
- (6)** Within 15 days after receiving a request to transfer a site certificate, the Department shall mail a notice of the request to the reviewing agencies as defined in OAR 345-001-0010, to all persons on the Council's general mailing list as defined in OAR 345-011-0020, to any special list established for the facility and to the most recently received list of property owners. In the notice, the Department shall describe the transfer request, specify a date by which comments are due and specify the date of the Council's informational hearing.
- (7)** Before acting on the transfer request, the Council shall hold an informational hearing. The informational hearing is not a contested case hearing.
- (8)** At the conclusion of the informational hearing or at a later meeting, the Council may issue an order approving the transfer request if the Council finds that:

- (a) The transferee complies with the standards described in OAR 345-022-0010, OAR 345-022-0050 and, if applicable, OAR 345-024-0710(1); and
  - (b) The transferee is lawfully entitled to possession or control of the site or the facility described in the site certificate.
- (9) Except as described in section (12), the Council shall not otherwise change the terms and conditions of the site certificate in an order approving the transfer request.
- (10) Upon issuing the order described in section (8), the Council shall issue an amended site certificate that names the transferee as the new certificate holder. The amended site certificate is effective upon execution by the Council chair and the transferee.
- (11) If the Council chair determines that special circumstances justify emergency action, the Council chair may, upon a written request from the transferee that includes a showing that the transferee can meet the requirements of section (8), issue a temporary amended site certificate that names the transferee as the new certificate holder. The temporary amended site certificate is effective upon execution by the Council chair and the transferee. The temporary amended site certificate expires when an amended site certificate as described in section (10) becomes effective or as the Council otherwise orders.
- (12) The Council may act concurrently on a request to transfer a site certificate and any other amendment request subject to the procedures described in this rule for the transfer request and:
- (a) The procedures described in OAR 345-027-0030 for an amendment to extend construction beginning and completion deadlines.
  - (b) The procedures described in OAR 345-027-0090 for an amendment to apply subsequent laws or rules.
  - (c) The procedures described in OAR 345-027-0060 and OAR 345-027-0070 for any amendment request not described in (a) or (b).

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.401, ORS 469.405

### **345-027-0110**

#### **Termination of a Site Certificate**

- (1) A certificate holder may apply to the Council to terminate a site certificate at any time, subject to the requirements of this rule.

- (2)** A certificate holder must apply to the Council to terminate a site certificate within two years following cessation of construction or operation of the facility.
- (3)** If the certificate holder fails to apply to the Council to terminate the site certificate and the Council finds that the certificate holder has permanently ceased construction or operation of the facility, then the Council may terminate the site certificate according to the procedure described in OAR 345-027-0020(16).
- (4)** In an application for termination of the site certificate, the certificate holder shall include a proposed final retirement plan for the facility and site.
- (5)** In the proposed final retirement plan, the certificate holder shall include:
  - (a)** A plan for retirement that provides for completion of retirement without significant delay and that protects public health, safety and the environment;
  - (b)** A description of actions the certificate holder proposes to take to restore the site to a useful, non-hazardous condition, including information on how impacts to fish, wildlife and the environment would be minimized during the retirement process;
  - (c)** A current detailed cost estimate and a plan for ensuring the availability of adequate funds for completion of retirement.
- (6)** Within 15 days after receiving an application for termination of a site certificate, the Department of Energy shall mail a notice of the application to all persons on the Council's general mailing list as defined in OAR 345-011-0020, to any special list established for the facility and to the most recently received list of property owners specifying a date by which comments on the application are due. The Department shall send copies of the application for termination to the reviewing agencies as defined in OAR 345-001-0010 and shall ask those agencies to comment by a specified date.
- (7)** The Council shall review the proposed final retirement plan and shall consider any comments received from the public and the reviewing agencies. The Council may approve the proposed final retirement plan or modify the plan to comply with the rules of this chapter and applicable conditions in the site certificate. The Council shall issue an order authorizing retirement according to the approved or modified final retirement plan and subject any conditions the Council finds appropriate. The Council's order may be appealed as described in ORS 183.480.
- (8)** When the Council finds that the certificate holder has completed the retirement of the facility according to the Council's order authorizing retirement, the Council shall issue an order terminating the site certificate.

- (9) When the Council finds that the site certificate has expired as described in OAR 345-027-0000, the Council shall issue an order terminating the site certificate.

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.405, ORS 469.501

## Department of Energy Approval of Gas Storage Testing Pipelines

### 345-027-0210

#### General

- (1) A person shall not construct a gas storage testing pipeline unless the certificate holder of the Council certified facility to which the pipeline would connect obtains, before construction, the approval of the Department of Energy for the construction, operation and retirement of the proposed pipeline.
- (2) For the purposes of OAR 345-027-0210 through OAR 345-027-0240:
- (a) “Gas storage testing pipeline” means a pipeline, but not a temporary pipeline, that is less than 16 inches in diameter and less than five miles in length, that is used to test or maintain an underground gas storage reservoir and that would connect to a Council certified facility if the storage reservoir proves feasible for operational use;
  - (b) “Temporary pipeline” means a pipeline that has no potential for operational use;
  - (c) “Council certified facility” means an energy facility for which the Council has issued a site certificate that is either a surface facility related to an underground gas storage reservoir or a gas pipeline;
  - (d) “Connect” means join for the purpose of operational use;
  - (e) “Test or maintain” means transporting gas to an underground gas storage reservoir for the purposes of determining whether the reservoir is feasible for operational use or maintaining the gas storage capacity of the reservoir but does not include operational use;
  - (f) “Operational use” means transporting gas to an underground gas storage reservoir for the purpose of storing gas until it is needed for sale or for withdrawing gas from an underground gas storage reservoir for the purpose of sale;
  - (g) “Council substantive standards” means the following standards:
    - (A) Structural Standard, OAR 345-022-0020;
    - (B) Soil Protection, OAR 345-022-0022;

- (C) Protected Areas, OAR 345-022-0040(1) but excluding (2) and (3);
- (D) Retirement and Financial Assurance, OAR 345-022-0050;
- (E) Fish and Wildlife Habitat, OAR 345-022-0060;
- (F) Threatened and Endangered Species, OAR 345-022-0070
- (G) Scenic Resources, OAR 345-022-0080;
- (H) Historic, Cultural and Archaeological Resources, OAR 345-022-0090;
- (I) Recreation, 345-022-0100;
- (J) Public Services, OAR 345-022-0110;
- (K) Waste Minimization, OAR 345-022-0120; and
- (L) Public Health and Safety, OAR 345-024-0030(2), (3) and (4);

(h) "Information requirements" means information that would support the findings described in OAR 345-024-0030(2) and the information described in OAR 345-021-0010(1)(h), (i), (j), (L), (m), (p), (q), (r), (s), (t), (u), (v), and (w).

Stat. Authority: ORS 469.405

Stat. Implemented: ORS 469.405

### **345-027-0220**

#### **Request for Approval**

- (1) Before submitting a request for approval to construct, operate and retire a gas storage testing pipeline, the certificate holder shall:
  - (a) Inform the Department of Energy of the proposed pipeline, including its diameter, length, location, capacity and maximum operating pressure; and
  - (b) Provide to the Department a map showing the location of the proposed pipeline.
- (2) After receiving the information described in section (1), the Department shall confer with the certificate holder about the Council substantive standards and information requirements that might apply to the proposed pipeline and any extraordinary circumstances that might affect the time requirements for completing the approval process. Within 7 days after conferring with the certificate holder, the Department shall send a letter to the certificate holder that includes the following:

- (a) Identification of the Council substantive standards that are applicable to the request for approval of the proposed pipeline;
  - (b) Identification of the information requirements that are applicable to the request for approval of the proposed pipeline;
  - (c) The time requirements for the approval process, if different from the time requirements described in OAR 345-027-0230.
- (3) The certificate holder shall submit to the Department a written request for approval to construct, operate and retire a gas storage testing pipeline with the fee required by the fee schedule established under ORS 469.441. The certificate holder shall submit the original request and seven copies to the Department. The certificate holder shall provide additional copies to the Department upon request and copies or access to copies to any person requesting copies. In addition to the printed copies of the request for approval, the certificate holder shall submit the text (and graphical information to the extent practical) in a non-copy-protected electronic format acceptable to the Department.
- (4) In a request for approval, the certificate holder shall include:
  - (a) The name and mailing address of the certificate holder and the name, mailing address and phone number of the individual responsible for submitting the request;
  - (b) A description of the purpose and operation of the proposed pipeline and a discussion of whether the use of the gas storage testing pipeline for reservoir testing or maintenance will require an increase in the compression available in the Council certified facility to which the proposed pipeline would connect in addition to the compression that is permitted under the site certificate;
  - (c) Identification of the Council certified facility to which the proposed pipeline would connect;
  - (d) A description of the proposed pipeline, including its diameter, length, location, capacity and maximum operating pressure;
  - (e) A map showing the location of the proposed pipeline;
  - (f) A list of the names and mailing addresses of all owners of record, as shown on the most recent property tax assessment role, of property where the proposed pipeline is located and within 500 feet of the location of the proposed pipeline;
  - (g) The information that the Department has identified in the letter described in section (2); and

- (h) Any other information that the Department requests as needed to make the findings described in the applicable standards.

Stat. Authority: ORS 469.405

Stat. Implemented: ORS 469.405, 469.421, 469.441

### **345-027-0230**

#### **Review of a Request for Approval**

- (1) Within 7 days after receiving a request for approval to construct, operate and retire a gas storage testing pipeline, the Department of Energy shall:

- (a) Send copies of the request to the following agencies with a notice asking the agencies to submit written comments on the request within 14 days from the date of the notice:

- (A) Oregon Department of Fish and Wildlife;

- (B) Oregon Department of Geology and Mineral Industries;

- (C) Oregon Public Utility Commission;

- (D) Oregon Department of Agriculture;

- (E) Division of State Lands; and

- (F) State Historic Preservation Office;

- (b) Send a notice of the request, including a map showing the location of the proposed pipeline, to the following stating that the agencies and planning authority may submit written comments on the request within 14 days from the date of the notice:

- (A) Oregon Department of Forestry;

- (B) Oregon Department of Environmental Quality; and

- (C) The planning authority of the county or counties where the proposed pipeline is located;

- (c) Send a notice of the request, including a map showing the location of the proposed pipeline, to the property owners the certificate holder has listed in the request stating that property owners may submit written comments on the request within 14 days from the date of the notice.

- (2) Within 21 days from the deadline for comments described in section (1) or such longer period as the Department has specified in the letter described in OAR 345-

027-0220(2), the Department shall issue a final order stating its findings on the applicable Council substantive standards and its approval or disapproval of the request. In an order approving a request, the Department shall include conditions that the Department finds necessary to ensure compliance with the applicable standards and conditions required by OAR 345-027-0240.

- (3) The Department shall send a notice of the final order to the certificate holder, to the property owners the certificate holder listed in the request and to any person who commented on the request. In the notice, the Department shall state that judicial review of the order is as provided in ORS 469.403.
- (4) The Department may amend an order approving the construction, operation and retirement of a gas storage testing pipeline.
- (5) Notwithstanding ORS 469.503(3), the Department shall not review the proposed pipeline for compliance with other state standards.
- (6) Notwithstanding ORS 469.401(3), the approval of a gas storage testing pipeline by the Department does not bind any state or local agency.

Stat. Authority: ORS 469.405

Stat. Implemented: ORS 469.405, 469.992

### **345-027-0240**

#### **Conditions**

In an order approving the construction, operation and retirement of a gas storage testing pipeline, the Department may impose conditions it finds necessary to ensure compliance with the Council substantive standards it identified as applicable in the letter described in OAR 345-027-0220(2). In addition, the Department shall impose the following conditions:

- (1) The certificate holder shall design, construct, operate and retire the gas storage testing pipeline in compliance with applicable Council rules and applicable federal, state and local laws, rules and ordinances in effect at the time the Department issues the order;
- (2) The certificate shall design, construct, operate and retire the gas storage testing pipeline substantially as described in representations in the request for approval and supporting record that the Department finds to be binding commitments made by the certificate holder;
- (3) The certificate holder shall prevent the development of any conditions in the area of the gas storage testing pipeline that would preclude restoration of the area to a useful, non-hazardous condition to the extent that prevention of such conditions is within the control of the certificate holder;

- (4)** Upon completion of construction of the pipeline, the certificate holder shall dispose of all refuse and remove all temporary structures not needed to test or maintain an underground gas storage reservoir;
- (5)** The certificate holder shall notify the Department of Energy, the State Building Codes Division and the Department of Geology and Mineral Industries promptly if investigations or trenching in the area of the pipeline reveal soil or geological conditions that differ significantly from those described in the request for approval;
- (6)** The certificate holder shall submit to the Department copies of all incident reports involving the gas storage testing pipeline required under 49 CFR §191.15;
- (7)** The certificate holder shall allow properly identified representatives of the Council or Department of Energy to inspect the pipeline at any time, including all materials, activities, premises and records pertaining to design, construction, operation or retirement of the pipeline;
- (8)** The certificate holder shall notify the Department when it begins construction, shall keep the Department informed of construction progress and any unusual events or circumstances and shall notify the Department when it begins to use the pipeline for reservoir testing or maintenance;
- (9)** The certificate holder shall notify the Department if it terminates use of the gas storage testing pipeline; and
- (10)** If the certificate holder decides to convert the gas storage testing pipeline to operational use, the certificate holder shall notify the Department and, if required under OAR 345-027-0050, submit a request to amend the site certificate.

Stat. Authority: ORS 469.405

Stat. Implemented: ORS 469.405, 469.992

## Notice Of Violation, Civil Penalties, Revocation Or Suspension

**345-029-0000**

### Policy

- (1) The purpose of the Council enforcement program is to protect the health and safety of the public and the environment by ensuring compliance with the terms and conditions of site certificates, Department of Energy orders as described in OAR 345-027-0230, Radioactive Materials Transport Permits and applicable statutes, rules and orders of the Council and by obtaining prompt correction of violations. The Department of Energy or the Council may impose a sanction for:
- (a) A violation of any term or condition of a site certificate or a Radioactive Materials Transport permit;
  - (b) A violation of any applicable provision of ORS Chapter 469, any rule promulgated or administered by the Council, or any order of the Council;
  - (c) A violation of a Department of Energy order as described in OAR 345-027-0230; or
  - (d) A history of non-compliance by the certificate holder with applicable rules or license requirements of more than one other state agency having enforcement jurisdiction.
- (2) The Council secretary has discretion to issue a notice of violation, except that the Council may instruct the secretary to issue a notice of violation. Factors the Council or Council secretary shall consider in deciding whether conditions or circumstances warrant issuing a notice of violation are:
- (a) Did the responsible party report the conditions or circumstances in a timely manner?
  - (b) Are the conditions or circumstances limited to the possible violation of a reporting requirement?
  - (c) Are the conditions or circumstances the result of ambiguous language in the requirement in question?
  - (d) Are the conditions or circumstances the result of a change to the design, construction, operation or retirement of a facility for which a site certificate has been issued, and did the certificate holder decide that no amendment of the site certificate was required, based on a reasonable analysis of the criteria in OAR 345-027-0050(2)?
  - (e) Has the violation in question been cited by any other state agency having jurisdiction?

(f) Are the conditions or circumstances within the control of the responsible party?

Stat. Authority: ORS 469.470, ORS 469.607, ORS 469.992

Stat. Implemented: ORS 469.085, ORS 469.470, ORS 469.607, ORS 469.992

### **345-029-0005**

#### **Definitions**

As used in this division, the following definitions apply:

(1) "Responsible party" means:

(a) A certificate holder;

(b) A radioactive materials transport permit holder;

(c) A person to whom the Council has granted an exemption from the site certificate requirement under OAR 345-015-0350 to OAR 345-015-0370; or

(d) Any person otherwise subject to the requirements of this chapter.

(2) "Compliance audit" means a program established by the responsible party to evaluate and ensure compliance with applicable rules, statutes, site certificate conditions or Radioactive Materials Transport Permit requirements.

Stat. Authority: ORS 469.470, ORS 469.605

Stat. Implemented: ORS 469.085, ORS 469.440

### **345-029-0010**

#### **Report by a Responsible Party**

The responsible party shall make reports as specified in these rules and in the site certificate or Radioactive Materials Transport Permit. Whenever a responsible party becomes aware of conditions or circumstances that may violate the terms or conditions of a site certificate, the terms or conditions of any order of the Council, the terms or conditions of a Department of Energy order as described in OAR 345-027-0230, the requirements of OAR 345 Division 50 or the requirements of a Radioactive Materials Transport Permit, the responsible party shall:

(1) As soon as reasonably possible, notify the Department of the conditions or circumstances that may constitute a violation, giving all pertinent facts including an estimate of how long the conditions or circumstances have existed, how long they are expected to continue before they can be corrected, and whether the conditions or circumstances were discovered as a result of a regularly scheduled compliance audit.

- (2)** As soon as reasonably possible, initiate and complete appropriate action to correct the conditions or circumstances and to minimize the possibility of recurrence.
- (3)** Submit to the Department a written report within 30 days of discovery. The report shall contain:
  - (a)** A discussion of the cause of the reported conditions or circumstances;
  - (b)** The date of discovery of the conditions or circumstances by the responsible party;
  - (c)** A description of immediate actions taken to correct the reported conditions or circumstances;
  - (d)** A description of actions taken or planned to minimize the possibility of recurrence; and
  - (e)** For conditions or circumstances that may violate the terms or conditions of a site certificate, an assessment of the impact on the resources considered under the standards of divisions 22 and 24 of this chapter as a result of the reported conditions or circumstances.

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.440

### **345-029-0020**

#### **Notice of Violation**

- (1)** If the Department of Energy determines upon inspection as provided for in OAR 345-026-0050 or OAR 345-060-0007, upon receipt of a report from the responsible party under OAR 345-029-0010 or by other means that there has been a violation for which sanctions may be imposed as described in OAR 345-029-0000, the Department may serve a notice of violation upon the responsible party. The Department shall serve the notice of violation by personal service or by first class, certified or registered mail.
- (2)** In the notice of violation, the Department shall include:
  - (a)** A reference to the statute, administrative rule, Council order, Department of Energy order, or term or condition of a site certificate or Radioactive Material Transport Permit violated as determined by the Department;
  - (b)** A statement of the facts upon which the Department based its determination that a violation occurred, including the date of discovery;
  - (c)** A requirement for the responsible party to provide a written response to the notice of violation within 30 days or other specified time;

- (d) A statement of the responsible party's right to a hearing as provided for in OAR 345-029-0070 if the Department later issues a notice of assessment of civil penalty as described under OAR 345-029-0060; and
- (e) The Department of Energy's classification of the violation, including a statement of the consideration given to the following factors:
  - (A) The performance of the responsible party in taking necessary or appropriate action to correct or prevent the violation;
  - (B) Any similar or related violations by the certificate holder or Radioactive Material Transport Permit holder in the previous 36 months;
  - (C) Any adverse impact of the violation on public health and safety; and
  - (D) For a violation of the terms or conditions of a site certificate, any adverse impact of the violation on resources protected by Council standards or site certificate conditions.

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.085, ORS 469.440, ORS 469.

### **345-029-0030**

#### **Classification of Violations**

The Department of Energy shall determine the classification of a violation based upon severity and considering the guidelines in this rule. The Department may issue a notice of violation for Class I or Class II violations. The Department may, if special circumstances warrant, determine a classification at variance from the guidelines listed below:

(1) In general, the following violations are classified as Class I violations:

- (a) Violation of a term or condition of a site certificate or Radioactive Material Transport Permit;
- (b) Violation of an order of the Council;
- (c) Violation of any applicable rule in divisions 22 through 60 of this chapter;
- (d) Violation of a Department of Energy order as described in OAR 345-027-0230; or
- (e) Violation of any applicable provision of ORS Chapter 469.

(2) In general, the Department may escalate any Class I violation to a Class II violation. Factors the Department may consider in escalating a Class I violation to Class II include whether the responsible party reported the conditions or circumstances of the violation, the duration of the violation, whether the responsible party

implemented prompt and effective corrective actions, the impact on public health and safety or on resources protected by Council standards, and the past performance of the responsible party. To escalate a violation to Class II, the Department must find that the violation meets one of the following criteria:

- (a) It is a repeated violation. The Department shall consider whether the successive violation could reasonably have been prevented by the responsible party by taking appropriate corrective actions for a prior violation;
- (b) It resulted from the same underlying cause or problem as a prior violation;
- (c) It is a willful violation; or
- (d) The violation results in a significant adverse impact on the health and safety of the public or on the environment.

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.085, ORS 469.440, ORS 469.992

### **345-029-0040**

#### **Response to Notice of Violation**

In the written response required by OAR 345-029-0020(2)(c), the responsible party shall include, as a minimum, the following:

- (1) Admission or denial of the violation;
- (2) If the responsible party admits the violation and can determine suitable corrective action:
  - (a) The corrective action taken, and results achieved;
  - (b) Corrective action that the responsible party plans to take to minimize the possibility of recurrence; and
  - (c) The date by which the responsible party expects to achieve full compliance; and
- (3) If the responsible party admits the violation and cannot determine suitable corrective actions within the 30-day or other time period specified in the notice of violation, a preliminary response that includes a date by which the responsible party will submit a final response that includes all information described in section (2).

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.085, ORS 469.440, ORS 469.992

### **345-029-0050**

#### **Enforcement Conference**

- (1) After issuing a notice of violation for a Class II violation, the Department of Energy shall provide the responsible party an opportunity for an enforcement conference to discuss the cause and consequences of the violation and to describe the corrective actions taken. The Department may use information discussed at the conference in determining the appropriate enforcement action.
- (2) Following the enforcement conference, if any, the Department shall confirm or amend the classification of the violation and shall issue an amended notice of violation, if appropriate.

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.085, ORS 469.440, ORS 469.992

### **345-029-0060**

#### **Civil Penalties**

- (1) Following the responsible party's response to the notice of violation described under OAR 345-029-0040, and any enforcement conference, the Department of Energy may assess a civil penalty for a Class II violation. The Department shall determine the amount of the civil penalty, if any, as follows:

**(a)** Base amount:

- (A)** \$1000 per day from the date of discovery for a violation of site certificate terms or conditions or violation of a Department of Energy order as described in OAR 345-027-0230, or \$2000 per day from the date of discovery for such violation if the Department finds that substantially the same violation occurred within the preceding 36 months; or
- (B)** \$100 per day from the date of discovery of a violation of a Radioactive Material Transport Permit or of the rules of divisions 50 and 60 of this Chapter; or
- (C)** \$2000 per day from the date of discovery for a violation of an enforcement order of the Council, or \$5000 per day from the date of discovery for such violation if the Department finds that substantially the same violation occurred within the preceding 36 months;

**(b)** The Department may multiply the base amount by a factor of:

- (A)** 3.0 if the Department finds the violation was intentional or reckless; or
- (B)** 5.0 if the Department finds the violation was intentional or reckless and the violation involved a requirement relating to public health, safety or the environment;

(c) The Department may multiply the base amount by either or both of the following factors:

(A) 0.75 if the responsible party corrected the violation within the time required to respond to the notice of violation and the responsible party has submitted a plan adequate to minimize the possibility of recurrence; and

(B) 0.8 if the responsible party reported the conditions or circumstances of the violation as a result of a routine audit conducted as part of an ongoing comprehensive compliance audit program; and

(d) The Department shall not reduce the base amount under subsection (c) above if the Department determines an increase in the base amount is warranted under subsection (b).

(2) In a notice of assessment of the civil penalty, the Department shall include:

(a) An analysis of the violation(s) in light of the criteria described in section (1);

(b) The amount of the assessment;

(c) A proposed order assessing the civil penalty; and

(d) A statement of the responsible party's right to a contested case proceeding as provided for in OAR 345-029-0070.

(3) The Department shall serve the notice of assessment of civil penalty by personal service and by certified or registered mail.

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.085, ORS 469.992

### **345-029-0070**

#### **Contested Case Proceeding**

(1) Within 20 days after the date of mailing of the notice of assessment of a civil penalty, the responsible party may submit to the Department of Energy a written request for a contested case proceeding. For the purpose of this rule, the request is submitted when it is received by the Department.

(2) If the responsible party requests a contested case proceeding within the time stated in section (1), the Council shall conduct the proceeding under the provisions of OAR 345-015-0002 to 345-015-0085.

(3) If the responsible party does not request a contested case proceeding within the time stated in section (1), the Department of Energy's proposed order assessing a civil penalty, described under OAR 345-029-0060(2), automatically becomes final.

(4) If the responsible party requests a contested case proceeding but fails to appear, the Department of Energy's proposed order assessing a civil penalty, described under OAR 345-029-0060(2), becomes final upon a prima facie case made on the record of the Department.

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 183.415, ORS 469.085, ORS 469.992

### **345-029-0080**

#### **Payment of Penalty**

A civil penalty imposed under this division becomes due and payable 10 days after the order imposing the civil penalty becomes final by operation of law or on appeal. If the amount of the penalty is not paid within 10 days after the order becomes final, the order may be recorded with the county clerk in any county of this state. The clerk shall thereupon record the name of the person incurring the penalty and the amount of the penalty in the County Clerk Lien Record.

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.085, ORS 469.992

### **345-029-0090**

#### **Council Consideration of Mitigating Factors**

Notwithstanding OAR 345-029-0080, the Council in its order after a contested case proceeding initiated under OAR 345-029-0070 may rescind or reduce a civil penalty imposed under this division upon a showing by the responsible party incurring the penalty that imposition of the penalty would be an unreasonable economic and financial hardship, that the responsible party has taken prompt and effective action to correct the violation and ensure that it will not be repeated, or that the responsible party reported the conditions or circumstances of the violation as a result of a routine audit conducted as part of an ongoing comprehensive compliance audit program.

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.085, ORS 469.992

### **345-029-0100**

#### **Revocation or Suspension of Site Certificate**

The Council may revoke or suspend any site certificate after conducting a contested case proceeding on the revocation or suspension under the provisions of OAR 345-015-0012 through 0085. A majority vote of the Council or a request from the Department of Energy initiates a contested case proceeding on a revocation or suspension. The Council shall base revocation or suspension on any of the following grounds:

(1) The certificate holder made a material false statement in an application for a site certificate or in supplemental or additional statements of fact or studies required of

an applicant when a true answer would have warranted denial of a site certificate by the Council;

- (2)** The certificate holder failed to comply with a term or condition of the site certificate;
- (3)** The certificate holder violated a Department of Energy order as described in OAR 345-027-0230;
- (4)** The certificate holder violated any provision of ORS 469.300 to 469.570, 469.590 to 469.621, 469.930 and 469.992, any administrative rule adopted under those statutes, including but not limited to rules contained in OAR Chapter 345, or any order of the Council; or
- (5)** For a site certificate subject to ORS 469.410, having been executed prior to July 2, 1975, the certificate holder violated any the provision of ORS 469.300 to 469.520 or failed to comply with applicable health or safety standards.

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.440