



**NOTICE OF PROPOSED RULEMAKING**  
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 345  
DEPARTMENT OF ENERGY  
ENERGY FACILITY SITING COUNCIL

**FILED**  
06/23/2023 11:00 AM  
ARCHIVES DIVISION  
SECRETARY OF STATE

FILING CAPTION: Reorganization of rules for the site certificate application process

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 08/18/2023 5:00 PM

*The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.*

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Filed By:  
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HEARING(S)

*Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.*

DATE: 07/26/2023

TIME: 10:00 AM

OFFICER: Tom Jackman

REMOTE MEETING DETAILS

MEETING URL: [Click here to join the meeting](#)

PHONE NUMBER: 1-408-418-9388

CONFERENCE ID: 23419287121

SPECIAL INSTRUCTIONS:

Password for web access: EFSC

Access code for dial in: 2341 928 7121

NEED FOR THE RULE(S)

The legislature established the Energy Facility Siting Council to oversee a comprehensive program for the siting, monitoring and regulation of energy facilities in Oregon. To this end, the Council must establish rules and standards to ensure that the siting, construction and operation of energy facilities is accomplished in a manner consistent with the protection of public health and safety and in compliance with Oregon's energy, land use, and environmental protection policies.

This rulemaking effort is part one of a multipart effort to revise the rules governing the energy facility siting application process. This rulemaking is needed to improve the clarity and organization of the rules in the following ways:

(1) Standardize the structure of the application process related rules. This was done by organizing similar rules in similar ways, such as making sure that the notice requirements for each phase of the siting process are presented to the reader in the same fashion.

(2) Improve how the process rules are organized. This rule update moves, where possible, all rules governing the department throughout the siting process to Division 15.

(3) Implement minor clarifications. Minor tweaks and updates were made to remove redundancies and to make the rules easier to understand.

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#### DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

Staff Report and Supporting Materials for Agenda Item F of the March 24, 2023 Energy Facility Siting Council Meeting, available from: <https://www.oregon.gov/energy/facilities-safety/facilities/Pages/Council-Meetings.aspx>

Staff Report and Supporting Materials for Agenda Item B of the June 23, 2023 Energy Facility Siting Council Meeting, available from: <https://www.oregon.gov/energy/facilities-safety/facilities/Pages/Council-Meetings.aspx>

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#### STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

The adoption and amendment of the rules herein are intended to increase the clarity and readability of the energy siting process related rules. It is not clear that this rulemaking would have a direct impact on racial equity in this state.

Energy facilities subject to the Council's jurisdiction are typically located in rural areas east of the Cascade Mountain Range. While these areas generally have similar demographics as the statewide population, some Counties that have seen significant levels of energy development, such as Wasco, Jefferson, Umatilla, and Klamath Counties also contain tribal lands and, according to 2021 data from the US Census Bureau Population Estimates Program, have higher percentages of people who identify as American Indian than the statewide population. Some counties which contain numerous energy facilities, including Morrow and Umatilla Counties, also have a higher percentage of people that identify as Hispanic or Latino than the statewide population.

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#### FISCAL AND ECONOMIC IMPACT:

Stakeholders consulted said there would be no fiscal impact as these changes are designed to be non-substantive in nature. These changes are primarily about making the rules that govern the siting process clearer. The rules are thus not expected to create additional expenditures or revenues for state agencies or units of local government. Efficiencies created by these changes could reduce application costs for some applicants, but these changes are not expected to be significant.

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#### COST OF COMPLIANCE:

*(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).*

These rules will apply to persons applying for an energy facility site certificate and certificate holders who wish to amend their site certificate. Typically, applicants and certificate holders include electric and natural gas utilities, independent power producers, and energy developers. Because the analysis under the proposed rules is substantively the same as that required under the current rules, there is no anticipated cost increase, and indeed there is potentially a cost savings as a result of having rules that are easier to follow.

No direct fiscal impacts or administrative costs to state agencies or units of local government are expected to result from these rules.

Based on comments made by the Fiscal Impact Advisory Committee appointed for this rulemaking, we estimate that

there may be approximately 12-15 energy developers operating in Oregon that have 50 or fewer employees, although to our understanding, many of these companies utilize parent companies or affiliates as a core part of their business model and thus may not qualify as small businesses. However, assuming they all qualify as small businesses, and assuming all were to apply for a site certificate in the future (which is not expected), our best estimate is that there are potentially 12-15 small businesses that could be affected by the proposed rules.

If a small business were to apply for a site certificate in the future, the impacts would be identical to those experienced by other applicants and certificate holders. Such impacts are not expected to be significant nor disproportionately affect small businesses as compared to other businesses because the impact of the rules is not related to the size of the business proposing a project but to the size and location of the project being proposed.

The expected reporting, recordkeeping and administrative activities and other costs required to comply with the rules would be similar to those required under the current rules. We note that as part of the siting process, applicants must demonstrate that they have 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 as well as the ability to restore the site to a useful, non-hazardous condition. We note that a business that has this ability, or access to the technical expertise needed to demonstrate this ability, should not be disproportionately burdened by this rule regardless of its size. Because the proposed rules would only potentially affect a small number of small businesses, would only result in relatively small changes in costs of compliance, and would affect large and small energy developers equally, we do not expect the proposed rules to have an adverse impact on small businesses.

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DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

Small business were not specifically consulted during the development of these rules.

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WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

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RULES PROPOSED:

345-001-0010, 345-015-0110, 345-015-0115, 345-015-0120, 345-015-0130, 345-015-0160, 345-015-0171, 345-015-0180, 345-015-0190, 345-015-0194, 345-015-0198, 345-015-0200, 345-015-0220, 345-015-0230, 345-015-0310, 345-020-0006, 345-020-0011, 345-020-0016, 345-020-0040, 345-021-0010, 345-021-0050, 345-021-0055, 345-021-0080, 345-022-0005

AMEND: 345-001-0010

RULE SUMMARY: OAR 345-001-0010 contains the definitions for OAR Chapter 345. This amendment changes the reference to "special advisory group" found in OAR Chapter 345-001-0010(28)(q) to reflect the new rule found in OAR 345-015-0115, which specifies that the Department designates the special advisory group.

CHANGES TO RULE:

345-001-0010

Definitions ¶¶

In this chapter, unless the context requires otherwise or a term is specifically defined within a division or a rule, terms have the meaning provided in ORS 469.300 and the following definitions:¶¶

(1) "Analysis area" means the area or areas specifically described in the project order issued under OAR 345-015-0160(1), containing resources that the proposed facility may significantly affect. The analysis area is the area for which the applicant must 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 345-015-0300 or 345-015-

- 0310, the analysis areas are the study areas defined in this rule, subject to modification in the project order.¶
- (2) "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.¶
- (3) "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 must be determined as follows:¶
- (a) For direct radiation, the results of any background measurements taken prior to operation of the facility must be provided and 6 to 10 measurements must 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 must be calculated at the average and at the 95% confidence level.¶
- (b) Environmental samples must 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 must be calculated at the average and 95% confidence levels, based on 6 to 10 measurements. Background environmental samples must be taken at locations on site or in the immediate vicinity of the site which are unaffected by plant operations. Background must 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 must be selected and surveyed. Six to ten samples of each material must be taken to determine the level of naturally occurring and artificially induced concentrations of naturally occurring radioactivity present. Measurements must include direct radiation (beta-gamma and alpha), wipes and qualitative and quantitative laboratory analyses. Concentrations of fission and activation products from historical fallout must be characterized as well.¶
- (d) All measurements must be made using appropriate instruments, properly calibrated, and in sufficient number to determine compliance with requirements.¶
- (4) "Certificate holder" means the person to whom a site certificate has been granted by the Council pursuant to this chapter.¶
- (5) "Chair" means the chair of the Energy Facility Siting Council.¶
- (6) "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.¶
- (7) "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.¶
- (8) "Council" means the Energy Facility Siting Council established under ORS 469.450.¶
- (9) "Council Secretary" means the person designated by the Director of the Oregon Department of Energy to serve as secretary to the Council.¶
- (10) "Department" means the Oregon Department of Energy created under ORS 469.030.¶
- (11) "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.¶
- (12) "Energy facility" includes:¶
- (a) An energy facility as defined in ORS 469.300; ¶
- (b) A small generating plant for which an applicant must have a site certificate according to OAR 345-001-0210; and¶
- (c) A facility for which a developer or governing body has elected to defer regulatory authority to the Council under ORS 469.320(8).¶
- (13) "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.¶
- (14) "Existing corridor," as used in ORS 469.300 and 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.¶
- (15) "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.¶
- (16) "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.¶

(17) "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.¶

(18) "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 kilowatt-hours.¶

(19) "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 average annual operating conditions:¶

(a) Has a nominal electric generating capacity of less than 50 megawatts and the fuel chargeable to power heat rate value is not greater than 5550 Btu per kilowatt-hour (higher heating value); or¶

(b) Has a nominal electric generating capacity of 50 megawatts or more and the fuel chargeable to power heat rate value is not greater than 6000 Btu per kilowatt-hour (higher heating value).¶

(20) "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.¶

(21) "Micrositing corridor" means a continuous area of land within which construction of facility components may occur, subject to site certificate conditions.¶

(22) "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.¶

(23) "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.¶

(24) "Owner" means owner or lessee under a capital lease.¶

(25) "Permit" means any permit, license, certificate or other approval required by federal law, state statute, state administrative rule or local government ordinance.¶

(26) "Protected Area" means an area designated as one or more of the following:¶

(a) A National Park or other unit of the National Park System described under 54 U.S.C. 100501;¶

(b) A National Monument established under 54 U.S.C. 320301 or by an act of Congress;¶

(c) A Wilderness Area established under 16 U.S.C 1131 et seq. or by an act of Congress; ¶

(d) A Wild, Scenic, or Recreational River included in the National Wild and Scenic River System under 16 U.S.C. 1271 et seq.;¶

(e) A National Wildlife Refuge included in the National Wildlife Refuge System described under 16 U.S.C. 668dd;¶

(f) A National Fish Hatchery established under 16 U.S.C. 760aa;¶

(g) A National Recreation area, National Scenic area, or Special Resources Management Unit established by an act of Congress;¶

(h) A Wilderness Study Area established under 43 U.S.C. 1782;¶

(i) Land designated in a federal land management plan or by an act of Congress as:¶

- (A) An Area of Critical Environmental Concern;¶
- (B) An Outstanding Natural Area;¶
- (C) A Research Natural Area;¶
- (D) An Experimental Forest or Range; or¶
- (E) A Special Interest Area designated for scenic, geologic, botanic, zoologic, paleontological, archaeological, historic, or recreational values, or combinations of these values;¶
- (j) A state park, wayside, corridor, monument, historic, or recreation area under the jurisdiction of the Oregon Parks and Recreation Department;¶
- (k) The Willamette River Greenway created under ORS 390.310 to 390.368;¶
- (L) A natural area listed in the Oregon Register of Natural Areas under ORS 273.581;¶
- (m) The South Slough National Estuarine Research Reserve, described under ORS 273.553;¶
- (n) A State Scenic Waterway designated under ORS 390.805 to 390.925 and related adjacent lands;¶
- (o) A state wildlife refuge or management area identified in OAR chapter 635, division 008;¶
- (p) A fish hatchery operated by the Oregon Department of Fish and Wildlife;¶
- (q) An agricultural experiment station, experimental area, or research center established by Oregon State University under ORS chapter 567; or¶
- (r) A research forest established by Oregon State University under ORS 526.215.¶
- (27) "Related or supporting facilities" as defined in ORS 469.300. The Council interprets the terms "proposed to be constructed in connection with" to mean 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 substantially modified solely to serve the energy facility.¶
- (28) "Reviewing agency" means any of the following officers, agencies or tribes:¶
  - (a) The Department of Environmental Quality;¶
  - (b) The Water Resources Commission and the Water Resources Director through the Water Resources Department;¶
  - (c) The Fish and Wildlife Commission through the Oregon Department of Fish and Wildlife;¶
  - (d) The State Geologist;¶
  - (e) The Department of Forestry;¶
  - (f) The Public Utility Commission of Oregon;¶
  - (g) The Oregon Department of Agriculture;¶
  - (h) The Department of Land Conservation and Development;¶
  - (i) The Oregon Department of Aviation;¶
  - (j) The Pacific Northwest Electric Power and Conservation Planning Council;¶
  - (k) The Office of State Fire Marshal;¶
  - (l) The Department of State Lands;¶
  - (m) The State Historic Preservation Office;¶
  - (n) Any other agency identified by the Department;¶
  - (o) Any tribe identified by the Legislative Commission on Indian Services as affected by the proposed facility;¶
  - (p) 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;¶
  - (q) Any special advisory group designated by the ~~Council under ORS 469.480~~Department under OAR 345-015-0115; and¶
  - (r) The federal land management agency with jurisdiction if any part of the proposed site is on federal land.¶
- (29) "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.¶
- (30) "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.¶
- (31) "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 micro-siting corridors proposed by the applicant.¶
- (32) "Solar photovoltaic power generation facility" includes, but is not limited to, an assembly of equipment that converts sunlight into electricity and then stores or transfers that electricity. This includes photovoltaic modules, mounting and tracking equipment, posts, electrical cabling, inverters, transformers, collection systems, fencing, and other components.¶

- (a) For the purposes of applying the acreage standards of ORS 469.300(11)(a)(D), the land used by a solar photovoltaic power generation facility includes the land occupied by its related or supporting facilities. Related or supporting facilities are not otherwise considered to be components of the solar photovoltaic power generation facility;¶¶
- (b) A proposed solar photovoltaic power generation project may be determined to be an expansion of any existing or proposed solar photovoltaic power generation facility that is:¶¶
- (A) Within one mile of the proposed project; and¶¶
- (B) Determined to be under common ownership with the proposed project. Projects connected to the same parent company or individuals will be considered to be in common ownership, regardless of the operating business structure;¶¶
- (c) As used in this rule and OAR 345-001-0250, a "proposed solar photovoltaic power generation project" means:¶¶
- (A) The proposed development of a separate and independent solar photovoltaic power generation facility; or¶¶
- (B) The proposed expansion or modification of a proposed or existing solar photovoltaic power generation facility.¶¶
- (33) "Special nuclear material" means plutonium, uranium-233 or uranium enriched in the isotope 233 or in the isotope 235.¶¶
- (34) "Strategic flexibility" means the value of a resource as part of a strategy to manage variance in costs or risks caused by future uncertainty.¶¶
- (35) "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, wildfire risk, 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.¶¶
- (36) "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.¶¶
- (37) "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.¶¶
- (38) "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.¶¶
- (39) "Total energy output" means the sum of useful thermal energy output and useful electrical energy output.¶¶
- (40) "Useful thermal energy" means the verifiable thermal energy used in any industrial or commercial process, heating or cooling application;¶¶
- (41) "Vice-chair" means the vice-chair of the Energy Facility Siting Council.
- Statutory/Other Authority: ORS 469.470, ORS 469.503
- Statutes/Other Implemented: ORS 469.300-469.570, ORS 469.590-469.619, ORS 469.992, ORS 469.480

AMEND: 345-015-0110

RULE SUMMARY: This amendment inserts a new 345-015-0110(1)(c), which adds land management agencies who have jurisdiction over the protected areas at issue in the site certificate application to the list of those who receive mandatory notice of the Notice of Intent.

This amendment also adds 345-015-0110(4), which was moved from 345-020-0016(2) as part of the rulemaking's effort to unify Department responsibilities into Division 15.

CHANGES TO RULE:

345-015-0110

Public Notice of a Notice of Intent ¶

(1) After receiving a notice of intent (NOI), the Department must issue public notice of the NOI by:¶

(a) Sending notice by mail or email 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) Sending notice by mail to the property owners listed in Exhibit F of the NOI;¶

(c) Sending notice by mail or email to the land management agency or organization with jurisdiction over the protected areas identified in Exhibit L of the NOI;¶

(d) Except as provided in subsection (de), publishing notice in a newspaper of general circulation available in the vicinity of the proposed facility; and¶

(de) 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 must 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 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. If the Department has scheduled an informational meeting, the Department must state in the notice that public comments on the NOI may be given in person at the meeting;¶

(g) A explanation that written comments on the NOI must be submitted by a specified date and may be submitted by regular mail, email or fax;¶

(h) The name, address, email address and telephone number of a Department representative to contact for additional information; and¶

(i) If the applicant has identified one or more proposed corridors in Exhibit D of the NOI, as required by 345-020-0011(1)(d):¶

(A) An explanation that the corridors proposed by the applicant in the NOI are subject to change and that the applicant may propose adjustments to any proposed corridor in the application;¶

(B) An explanation that the applicant may present adjustments to any proposed corridors 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 must consider public comments on the corridors proposed in the NOI and on any corridor adjustments the applicant presents at the informational meeting.¶

(3) If the Department learns that an applicant has applied for local land use approval, the Department must post a notice of the local land use proceeding on its website.¶

4) The Department must issue public notice in accordance with section (1) through (3) of this rule of any amended notice of intent that:¶

(a) Significantly changes the proposed site boundary or location of the proposed energy facility or related or



supporting facility;

(b) Significantly increases;

(A) The estimated quantity of fuel that will be used or produced by the proposed facility, or changes the proposed fuel type or source;

(B) The generating capacity of the proposed energy facility;

(C) The voltage of a proposed transmission line;

(D) The capacity or operating pressure of a proposed pipeline; or

(E) The estimated gross carbon dioxide emissions that are reasonably likely to result from the operation of the proposed facility, or the proposed means of compliance with any applicable carbon dioxide standard emissions standard;

(c) Increases water consumption or disposal by more than 5 percent; or

(d) Changes the source of water.

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 469.330

ADOPT: 345-015-0115

RULE SUMMARY: Implements ORS 469.480.

Delegates the authority to designate special advisory groups to the Department.

CHANGES TO RULE:

345-015-0115

Appointment of Special Advisory Groups

After receiving the notice of intent, the Department shall designate as a special advisory group the governing body of any local government within whose jurisdiction the facility is proposed to be located.

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 469.480

AMEND: 345-015-0120

RULE SUMMARY: The rule name has been modified to make it clear who prepares the memorandum on the notice of intent.

Deletes reference to 345-020-0040.

The amended language in (3) is to conform to similar language in OAR 345-015-0110(2)(f).

Inserts language from 345-020-0040 in (4) and (5).

The amended language in (5) requires the Department to ensure that the applicant provides printed copies.

CHANGES TO RULE:

345-015-0120

Agency Memorandum on a Notice of Intent ¶¶

After receiving a notice of intent (NOI), the Department must prepare a memorandum for distribution as ~~described in OAR 345-020-0040~~ to the reviewing agencies for the proposed facility. In the memorandum, the Department must:¶¶

(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 areas;¶¶

(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; and¶¶

(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, time, 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.¶¶

(4) The Department must mail or email the memorandum and NOI to each person on the distribution list before the distribution date.¶¶

(5) If any person on the distribution list requests all or part of the NOI, the Department will ensure that the applicant provides a printed copy.

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 469.330

AMEND: 345-015-0130

RULE SUMMARY: Removing an internal rule reference to itself as unnecessary to help the rule read more easily.

CHANGES TO RULE:

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 345-015-0220. The Department may present this information orally or by a written handout.

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 469.330

AMEND: 345-015-0160

RULE SUMMARY: Changing "send" to "issue" in (1) to conform rule to language found in ORS 469.330.

CHANGES TO RULE:

345-015-0160

Project Order ¶¶

(1) Following the review of a notice of intent or, in the case of an expedited review, following receipt of a preliminary application for a site certificate, the Department of Energy shall ~~send~~issue 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 in writing or at any informational meeting held under OAR 345-015-0130.¶¶

(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 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, any alternatives to construction and operation of the proposed facility that the applicant must evaluate in the application in addition to the alternatives described in 345-021-0010(1)(n)(F) or (G).¶¶

(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 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.¶¶

(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.

Statutory/Other Authority: ORS 469.373, ORS 469.470

Statutes/Other Implemented: ORS 469.330, ORS 469.370

ADOPT: 345-015-0171

RULE SUMMARY: Establishes public notice requirements from OAR 345-021-0050(7).

CHANGES TO RULE:

345-015-0171

Public Notice of a Preliminary Application

After receiving the preliminary application, the Department must post an announcement on its website to notify the public that a preliminary application has been received. The Department must include the addresses of locations where the public may review copies of the preliminary application in the announcement. The announcement may include the preliminary application or sections of the preliminary application that may be viewed or downloaded. The announcement may include a link to the applicant's website, if any, where the preliminary application may be viewed or downloaded.

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 469.350

AMEND: 345-015-0180

RULE SUMMARY: Combined existing language in OAR 345-015-0180 with what was a companion rule in OAR 345-021-0050.

Modified OAR 345-015-0180(2) to establish the Department as the sole agent for handling distribution of its own memorandum.

Modified the language throughout the amended rule, including the removal of now duplicative language to help with clarity and flow as a result of combining the two rules together.

CHANGES TO RULE:

345-015-0180

Agency Memorandum on a ~~Site Certificate~~ Preliminary Application ¶

~~After receiving (1) Until the Department determines the application to be complete as described in OAR 345-015-0190 or 345-015-0310, it is a preliminary application, ¶~~

~~(2) The Department must prepare a mail or email the memorandum for distribution under OAR 345-021-0050 described under (3) to the reviewing agencies. ¶~~

~~(3) In the memorandum, the Department must: ¶~~

~~(1a) Request the recipient to return comments or recommendations described in OAR 345-021-0050(2) to the Department by a specified date; comments or recommendations regarding the preliminary application on the following: ¶~~

~~(A) 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 ¶~~

~~(2B) Describe the status of applications for permits, if any, that the applicant has submitted 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 reviewing agency and that are necessary for the construction and operation of the proposed facility. ¶~~

~~(b) For any special advisory group designated by the Department under OAR 345-015-0115, 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 decision record for the application for a site certificate; terminate and apply the applicable substantive criteria or determine compliance with the statewide planning goals under ORS 469.504(1)(b)(B) or (C); ¶~~

~~(c) Set a deadline for the response to (3)(a)-(b). ¶~~

~~(4d) 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; ¶~~

~~(e) Explain that the recipient's written comments, recommendations and reports are part of the decision record for the application for a site certificate; ¶~~

~~(4)(a) If the applicant has elected to demonstrate compliance with the Council's land use standard 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 504(1)(a), each local government with land use jurisdiction over the proposed facility must, in the comments or recommendations submitted to the Department under section (3)(a), 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 must, in the comments or recommendations submitted to the Department under section (3)(a), include: ¶~~

~~(A) A complete list of applicable substantive criteria by from the specified date, the Council may either 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. For the purpose of this rule, the application is submitted on the date that the Department receives the preliminary application. "Applicable substantive criteria or determine compliance with the statewide planning goals under~~

ORS 469.504(1)(b)(B) or (C)" 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.¶

(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.¶

(6) The Department must, as soon as practicable, send the applicant copies of all comments submitted under section (3)(a) that identify a need for additional information.

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 469.350, ORS 469.504



AMEND: 345-015-0190

RULE SUMMARY: Removed language in (1) as duplicative of language that is now included in 345-015-0180(1).

Section (7)-(8) removed and made its own rule as 345-015-0194.

CHANGES TO RULE:

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 a preliminary application for a site certificate, the Department must notify the applicant whether the application is complete. In the notification, the Department must:¶¶~~

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

~~(b) State that the application is incomplete, and:¶¶~~

~~(A) Describe any information needed to complete the application to the extent known to the Department at the time of the notification;¶¶~~

~~(B) Ask the applicant to submit the needed information by the deadline described in section (4); and¶¶~~

~~(C) 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 preliminary 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. If follow-up requests for additional information are needed, the Department may specify dates by which the applicant must submit the information. At the request of the applicant, the Department may allow additional time 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 must notify the applicant when the Department finds that the application is complete and, if needed, may 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 must 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 must send notice by mail or email to all persons on:¶¶~~

~~(a) The Council's general mailing list as defined in OAR 345-011-0020;¶¶~~

~~(b) Any special mailing list set up for the proposed facility; and¶¶~~

~~(c) The list of property owners provided in Exhibit F of the application.¶¶~~

~~(8) In notices described in section (7), the Department must 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, email address, and telephone number of the Department's representative 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; and¶~~

~~(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 applicant must submit additional information to the Department 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.~~

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 469.350

ADOPT: 345-015-0194

RULE SUMMARY: Created from language removed from OAR 345-015-0190(7)-(8).

This amendment adds in (1)(d) land management agencies who have jurisdiction over the protected areas at issue in the site certificate application to the list of those who receive mandatory notice of the Complete Application for Site Certificate.

CHANGES TO RULE:

345-015-0194

Public Notice of Complete Application for Site Certificate

(1) The Department must 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 must send notice by mail or email to all persons on:

(a) The Council's general mailing list as defined in OAR 345-011-0020;

(b) Any special mailing list set up for the proposed facility; and

(c) The list of property owners provided in Exhibit F of the application.

(d) The land management agency or organization with jurisdiction over the protected areas identified in the application.

(2) In notices described in section (1), the Department must 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, email address, and telephone number of the Department's representative 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; and

(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.

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 469.350

ADOPT: 345-015-0198

RULE SUMMARY: Creates rule for informational meetings from other locations.

Clarifies that the applicant or their representative must be present at all public informational meetings.

CHANGES TO RULE:

345-015-0198

Informational Meeting on a Complete Application

(1) After issuing the public notice described in OAR 345-015-0194, 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 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 meeting and the public hearing described in OAR 345-015-0220. The Department may present this information orally or by a written handout.¶

(3) The applicant or the applicant's representative must attend all public informational meetings described in this rule.

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 469.350

AMEND: 345-015-0200

RULE SUMMARY: Rule combined with companion language in OAR 345-021-0055 to simplify and streamline rules and consolidate Department responsibilities into Division 15.

Language updated to improve clarity and remove redundancy.

CHANGES TO RULE:

345-015-0200

~~Notice to Agencies that the Application is Complete~~

Distribution of a Complete Application

(1) After receiving notification from the Department that the application is complete, the applicant must 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.

(2) The applicant must submit to the Department, two printed copies of the application supplement, and an electronic version of the application supplement in a non-copy-protected format acceptable to the Department. The applicant must submit additional printed copies of the application supplement to the Department upon request.

(3) After receiving the application supplement, the Department must determine a distribution date and prepare a distribution list that includes, but is not limited to, the reviewing agencies for the application.

(4) Except as described in OAR 345-015-0310, and unless the Department directs otherwise, the applicant must mail or email an electronic copy of the application supplement to each person on the distribution list provided by the Department on or before the distribution date. The applicant must provide a printed copy of all or part of the application supplement to a person on the mailing list upon request.

(5) If the Department determines it is necessary to present the amendments and additional information described in section (1) of this rule clearly, the Department may require the applicant to provide a complete revision of the preliminary application in place of the application supplement under section (2) and (4) of this rule.

(6) After the date of filing, the Department must prepare a notice for distribution under OAR 345-021-0055. In the notice, the Department must:

(1a) State the date of filing;

(2b) 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;

(3c) State a date by which the Department and the applicant must receive the reports described in sections (4d) through (6f) below;

(4d) 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; and

(e) Any other information that the reviewing agency believes will be useful to the Council in reviewing the site certificate application.

(5e) 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).

(6f) Request a report from the affected local government that describes any land use decisions made under ORS 469.504(1)(a).

(7g) Explain that the reports described in sections (4d) through (6f) above are part of the decision record for the application for a site certificate.

Statutory/Other Authority: ORS 469.470, ORS 469.373

Statutes/Other Implemented: ORS 469.350

AMEND: 345-015-0220

RULE SUMMARY: Updating title for clarity.

CHANGES TO RULE:

345-015-0220

Public Hearing and Notice 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 must 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. If there is more than one public hearing, the "close of the record of the public hearing" means the close of the record of the final public hearing.¶¶

(2) The Department must, 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; and¶¶

(b) Send notice of the hearing by mail or email to:¶¶

(A) Persons on the Council's general mailing list as defined in OAR 345-011-0020;¶¶

(B) Persons on any special mailing list set up for the proposed project; and¶¶

(C) The property owners listed in Exhibit F of the application, as updated by the applicant upon the request of the Department.¶¶

(3) In the notices described in subsections (2)(a) and (2)(b), the Department must include:¶¶

(a) The date, time and location of the public hearing;¶¶

(b) A description of the facility and the facility's general location;¶¶

(c) The name, address, email address, and telephone number of the Department's representative to contact for additional information;¶¶

(d) The addresses of locations where the public may inspect copies of the complete application and the website where the application may be found;¶¶

(e) The website where the draft proposed order may be found;¶¶

(f) The deadline for the public to submit written comments to be included in the record of the public hearing and a statement that such comments should be submitted to the presiding officer in care of the Department;¶¶

(g) A statement that to raise an issue on the record of the public hearing, a person must raise the issue in person at the public hearing or in a written comment submitted after the date of the notice and received by the Department before the deadline;¶¶

(h) A statement that failure to raise an issue in person or in writing on the record of the public hearing with sufficient specificity to afford the decision maker an opportunity to respond to the issue precludes consideration of the issue in a contested case;¶¶

(i) A statement that to raise an issue with sufficient specificity, a person must present facts that support the person's position on the issue; and¶¶

(j) A statement that the Council will not accept or consider any further public comment on the site certificate application or on the draft proposed order after the close of the record of the public hearing.¶¶

(4) During the public hearing, the Department must explain the application process, including the means and opportunities for the general public to participate in the process. The Department may provide this explanation by a written handout.¶¶

(5) At the commencement of the public hearing, the presiding officer must state that:¶¶

(a) A person who intends to raise any issue that may be the basis for a contested case must raise the issue in person at the hearing or in a written comment submitted to the Department before the deadline stated in the notice of the public hearing; and¶¶

(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, and the applicant an adequate opportunity to respond, including a statement of facts that support the person's position on the issue.¶¶

(6) At the public hearing, any person may present information regarding the pending application without administration of an oath. The presiding officer must 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.

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 469.370

AMEND: 345-015-0230

RULE SUMMARY: This amendment adds land management agencies who have jurisdiction over the protected areas at issue in the site certificate application to the list of those who receive mandatory notice of the proposed order. See (3)(b)(E).

Removed (5) as redundant.

CHANGES TO RULE:

345-015-0230

Council Review and the Department of Energys Proposed Order ¶¶

(1) Following the close of the record of the public hearing conducted under OAR 345-015-0220, the Council must review the draft proposed order. In accordance with ORS 469.370(3), when the Council meets to review a draft proposed order, the Council may 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 the draft proposed order, the Department must issue a proposed order in accordance with ORS 469.370(4), taking into consideration the comments of the Council, any public comments made at a public hearing, written comments received before the close of the record of the public hearing, and agency consultation. In the proposed order, the Department must 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 must issue a public notice of the proposed order, subject to the following:¶¶

(a) The public notice of the proposed order must include:¶¶

(A) A description of the facility and the facility's general location;¶¶

(B) A summary of the recommendations included in the Proposed Order;¶¶

(C) A description of the process and deadline for requests to participate as a party or limited party in the contested case under OAR 345-015-0016;¶¶

(D) The date of the prehearing conference, if any; and¶¶

(E) The date of the hearing; and¶¶

(b) The Department must send the notice by mail or email to:¶¶

(A) All persons on the Council's general mailing list;¶¶

(B) All persons on any special mailing list set up for the proposed project;¶¶

(C) All persons who commented in person or in writing on the record of the public hearing conducted under OAR 345-015-0220; and¶¶

(D) The property owners listed in Exhibit F of the site certificate application, as updated by the applicant upon the request of the Department; and¶¶

(E) The land management agency or organizations with jurisdiction over the protected areas identified in the proposed order.¶¶

(4) On the same date as notice is issued under section (3) of this rule, the Department must notify the applicant that the applicant must notify the hearing officer and the Department of any issues the applicant intends to raise in the contested case proceedings by the date established in paragraph (3)(a)(C) of this rule.¶¶

~~(5) 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.~~

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 469.370

AMEND: 345-015-0310

RULE SUMMARY: This amendment adds land management agencies who have jurisdiction over the protected areas at issue in the site certificate application to the list of those who receive mandatory notice of the public informational meeting on an application for a site certificate and also the proposed order in an expedited review.

CHANGES TO RULE:

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 must submit to the Department 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 must 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; and¶¶
  - (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 must determine, on a preliminary, non-binding basis, whether the proposed facility qualifies for expedited review under this rule and must 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 must 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 a preliminary application for a site certificate, as described in OAR 345-021-0000 and 345-021-0010, subject to the following:¶¶
  - (a) The applicant must submit, to the Department, two printed copies of the preliminary application, and an electronic version of the preliminary application in a non-copy-protected format acceptable to the Department. The applicant must submit additional printed copies of the preliminary application to the Department upon request; and¶¶
  - (b) Unless the Department directs otherwise, the applicant must send an electronic copy of the preliminary application to each person on the mailing list described in section (4). The applicant must provide a printed copy of all or part of the preliminary application to any person on the mailing list upon request.¶¶
- (6) Within 30 days after receiving a preliminary application for a site certificate, the Department must 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 a preliminary application for a site certificate, the Department must 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 must submit the information to the Department. If follow-up requests for additional information are needed, the Department may specify dates by which the applicant must submit the information. The Department may specify the dates 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 must notify the applicant when the Department finds that the application is complete and, if needed, may 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 must 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 must 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; and¶

(c) Includes the statements required by ORS 469.373(4)(a) and (b).¶

(14) At the time specified in section (15), the Department must 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, address, email address, and telephone number of the Department's representative to contact for more information.¶

(15) At least 14 days before the meeting described in section (16), the Department must:¶

(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) Send the notice described in section (14) by mail or email to all persons on:¶

(A) The Council's general mailing list as defined in OAR 345-011-0020;¶

(B) Any special mailing list set up for the proposed project; and¶

(C) The list of property owners provided in Exhibit F of the application; and¶

(D) The land management agencies or organizations with jurisdiction over the protected areas identified in the application.¶

(16) The Department must hold a public informational meeting on the application.¶

(17) Within 90 days after the date of filing, the Department must 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 must review the draft proposed order. In accordance with ORS 469.370(3), when the Council meets to review a draft proposed order, the Council may 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 must issue a proposed order.¶

(20) At the time specified in section (21), the Department must issue a public notice, including but not limited to:¶

(a) A description of the facility and its general location;¶

(b) The name, address, email address, and telephone number of the Department's representative to contact for more 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; and¶

(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 must:¶

(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) Send the notice described in section (20) by mail or email to all persons on:¶

(A) The Council's general mailing list as defined in OAR 345-011-0020; and¶

(B) Any special mailing list set up for the proposed project; and¶

(C) The list of property owners provided in Exhibit F of the application; and¶

(D) The land management agencies or organizations with jurisdiction over the protected areas identified in the application.¶

(22) The Council must 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 must 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 must issue a draft final order for the Council. In preparing the draft final order, the Department must 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 must make its decision on the record and the draft final order. The Council must:¶

(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 must 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); and¶

(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 must issue a notice of a contested case on the proposed order as described in OAR 345-015-0014. The Council must 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 must 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 must 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 must determine whether the application is complete. The Department must notify the applicant as described in OAR 345-015-0190(1) and the Department must 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 must 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 must 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 must apply the applicable substantive criteria in effect on the date the application was originally submitted under section (5).  
Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 469.373

AMEND: 345-020-0006

RULE SUMMARY: The language in (2) was moved here from 345-020-0011(4) for clarity and consistency as it deals with the submission of a notice of intent.

CHANGES TO RULE:

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) The applicant must submit, to the Department, two printed copies of the NOI, and an electronic version of the NOI in a non-copy-protected format acceptable to the Department. The applicant must submit additional printed copies of the NOI to the Department upon request. The applicant must prepare and distribute additional copies of the NOI as required by OAR 345-020-0040.¶¶

(3) Notwithstanding section (1) and (2), an applicant granted expedited review under OAR 345-015-0300 or 345-015-0310 need not submit an NOI.

Statutory/Other Authority: ORS 469.370, 469.470

Statutes/Other Implemented: ORS 469.330

AMEND: 345-020-0011

RULE SUMMARY: The language in (4) was moved to OAR 345-20-0006 as it deals not with the content, but the process for submitting a notice of intent.

CHANGES TO RULE:

345-020-0011

Contents of a Notice of Intent ¶¶

(1) The applicant must, 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 must describe each alternative separately. The applicant must 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, email 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, email address and telephone number of that person;¶¶

(B) The contact name, mailing address, email 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:¶¶

(i) The full name, official designation, mailing address, email 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), 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:¶¶

(i) The full name, official designation, mailing address, email 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 must state that fact over the signature of each member;¶¶

(F) If the applicant is a public or governmental entity:¶¶

(i) The full name, official designation, mailing address, email 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's mailing address, email address and telephone number; and¶¶

(H) If the applicant is a limited liability company:¶¶

(i) The full name, official designation, mailing address, email address and telephone number of the officer responsible for submitting the NOI;¶¶

(ii) The date and place of its formation;¶¶

(iii) A copy of its articles of organization and its authorization for submitting the NOI; and¶¶

(iv) In the case of a limited liability company not registered in Oregon, the name and address of the resident attorney-in-fact in this state and proof of registration to do business in Oregon.¶¶

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

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

(i) For electric power generating plants, 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, store, transmit, or transport electricity, useful thermal energy, or fuels;¶¶

- (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;¶¶
- (iv) For thermal power plants, combustion turbine power plants, or other facilities designed to generate electricity from any gas, liquid, or solid fuels:¶¶
- (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) If the facility will generate electric power from natural gas, petroleum, coal or any form of solid, liquid or gaseous fuel derived from such material, a discussion of methods the facility will use to ensure that the facility does not emit greenhouse gasses into the atmosphere, and a description of any equipment the facility will use to capture, sequester, or store greenhouse gases;¶¶
- (III) A discussion of the methods for the disposal of waste heat generated by the facility;¶¶
- (v) For transmission lines, approximate transmission line voltage, load carrying capacity and type of current;¶¶
- (vi) For pipelines, approximate operating pressure and delivery capacity in thousand cubic feet per day;¶¶
- (vii) 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;¶¶
- (viii) 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; and¶¶
- (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 must include an explanation of the basis for selecting the proposed corridors and, for each proposed corridor, the information described in subsections (e), (g), (i), (j), (k), (L), (o) and (q) 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 related to the siting of the proposed facility, a legal citation of the statute, rule or ordinance governing each permit, and the name, address, email address and telephone number of the agency or office responsible for each permit. For each permit, the applicant must provide a preliminary analysis of whether the permit should or should not be included in and governed by the site certificate.¶¶
- (f) Exhibit F. A list of the names and mailing addresses of property owners, as described in this rule:¶¶
- (A) The list must include all owners of record, as shown on the most recent property tax assessment roll, of property located:¶¶
- (i) Within 100 feet of property which the subject of the NOI, where the subject property is wholly or in part within an urban growth boundary;¶¶
- (ii) Within 250 feet of property which is the subject of the NOI, where the subject property is outside an urban growth boundary and not within a farm or forest zone; or¶¶
- (iii) Within 500 feet of property which is the subject of the NOI, where the subject property is within a farm or forest zone; and¶¶
- (B) In addition to incorporating the list in the NOI, the applicant must submit the list to the Department in an electronic format acceptable to the Department.¶¶
- (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 areas for the proposed facility as defined in OAR 345-001-0010;¶¶
- (D) The topography of the study areas 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;¶¶
- (F) The location of any potential waters of the state or waters of the United States that are on or adjacent to the site; and¶¶
- (G) For energy generation facilities, the approximate locations of any other energy generation facilities that are

known to the applicant to be permitted at the state or local level within the study area as defined in OAR 345-001-0010 for impacts to public services.¶

(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 potential significant environmental impacts of construction and operation of the proposed facility on resources in 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 resources, recreation opportunities, land use, and wildfire risk.¶

(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. A list of all protected areas in the study area for impacts to protected areas identifying: ¶

(A) The distance and direction of the protected area from the proposed facility;¶

(B) The basis for protection of the area, by reference to a specific subsection of OAR 345-001-0010(26); and¶

(C) The name, mailing address, phone number, and email address of the land management agency or organization with jurisdiction over the protected area;¶

(m) Exhibit M. 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; and¶

(C) For operation, the source of cooling water and the estimated consumptive use of cooling water, based on annual average conditions.¶

(n) Exhibit N. If the proposed facility would emit carbon dioxide, an estimate of the gross carbon dioxide emissions that are reasonably likely to result from the operation of the facility and a statement of the means by which the applicant intends to comply with the applicable carbon dioxide emissions standard under OAR 345-024-500.¶

(o) Exhibit O. 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 must analyze and describe any problems the applicant foresees in satisfying the requirements of any such statute, rule or ordinance.¶

(p) Exhibit P. A schedule stating when the applicant expects to submit a preliminary application for a site certificate.¶

(q) Exhibit Q. Evidence of consultation with the Legislative 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 must include additional information in the NOI as needed to meet the requirements of section (1) of this rule.¶

(3) The applicant must include a table of contents in the NOI identifying the location of each exhibit required by this rule.¶

~~(4) The applicant must submit, to the Department, two printed copies of the NOI, and an electronic version of the NOI in a non-copy-protected format acceptable to the Department. The applicant must submit additional printed copies of the NOI to the Department upon request. The applicant must prepare and distribute additional copies of the NOI as required by OAR 345-020-0040. ¶~~

(5) The applicant or the applicant's representative must 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.

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 469.330



AMEND: 345-020-0016

RULE SUMMARY: This amendment moves what was 345-020-0016(2) to what is now 345-015-0110(4).

CHANGES TO RULE:

345-020-0016

Amendment of Notice of Intent ¶¶

(1) The applicant may amend the notice of intent (NOI). The applicant must submit, to the Department, two printed copies of the amended NOI, and an electronic version of the amended NOI in a non-copy-protected format acceptable to the Department. The applicant must prepare and submit additional copies of the amended NOI as required by OAR 345-020-0040.¶¶

~~(2) The Department must 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) Significantly increases:¶¶~~

~~(A) The estimated quantity of fuel that will be used or produced by the proposed facility, or changes the proposed fuel type or source;¶¶~~

~~(B) The generating capacity of the proposed energy facility;¶¶~~

~~(C) The voltage of a proposed transmission line;¶¶~~

~~(D) The capacity or operating pressure of a proposed pipeline; or¶¶~~

~~(E) The estimated gross carbon dioxide emissions that are reasonably likely to result from the operation of the proposed facility, or the proposed means compliance with any applicable carbon dioxide emissions standard;¶¶~~

~~(c) Increases water consumption or disposal by more than 5 percent; or¶¶~~

~~(d) Changes the source of water directed by the Department.¶¶~~

(3) 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.

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 469.330

REPEAL: 345-020-0040

RULE SUMMARY: Repealing this rule as all non-redundant language has been moved to 345-015-0120.

CHANGES TO RULE:

~~345-020-0040~~

~~Distribution of a Notice of Intent ¶¶~~

~~(1) After receiving the notice of intent (NOI), the Department must, in coordination with the applicant, determine a distribution date and compile a distribution list that includes, but is not limited to, the reviewing agencies for the proposed facility.¶¶~~

~~(2) The Department must mail or email the memorandum described under OAR 345-015-0120 to each person on the distribution list before the distribution date.¶¶~~

~~(3) Unless the Department directs otherwise, the applicant must mail or email an electronic copy of the NOI to each person on the distribution list on or before the distribution date. The applicant must provide a printed copy of all or part of the NOI to any person on the distribution list upon request.¶¶~~

~~(4) The applicant must provide copies of the NOI or access to copies to any other person requesting copies.~~

~~Statutory/Other Authority: ORS 469.470~~

~~Statutes/Other Implemented: ORS 469.330~~

RULE SUMMARY: OAR 345-021-0050 is being removed so the reference to it in (4) has been removed here.

CHANGES TO RULE:

345-021-0010

Contents of an Application ¶¶

(1) The project order described in OAR 345-015-0160(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 must include in its application for a site certificate information that addresses each provision of this rule identified in the project order. The applicant must 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 345-015-0310, the applicant must 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, email 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, email address and telephone number of that person;¶¶

(B) The contact name, mailing address, email 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:¶¶

(i) The full name, official designation, mailing address, email 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), 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:¶¶

(i) The full name, official designation, mailing address, email 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 must state that fact over the signature of each member;¶¶

(F) If the applicant is a public or governmental entity:¶¶

(i) The full name, official designation, mailing address, email 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's mailing address, email address and telephone number; and¶¶

(H) If the applicant is a limited liability company:¶¶

(i) The full name, official designation, mailing address, email address and telephone number of the officer responsible for submitting the application;¶¶

(ii) The date and place of its formation;¶¶

(iii) A copy of its articles of organization and its authorization for submitting the application; and¶¶

(iv) In the case of a limited liability company not registered in Oregon, the name and address of the resident attorney-in-fact in this state and proof of registration to do business in Oregon.¶¶

- (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) For electric power generating plants, 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, store, transmit, or transport electricity, useful thermal energy, or fuels;¶
  - (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, combustion turbine power plants, or other facilities designed to generate electricity from gas, liquid, or solid fuels:¶
  - (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) If the facility will generate electric power from natural gas, petroleum, coal or any form of solid, liquid or gaseous fuel derived from such material, a discussion of methods the facility will use to ensure that the facility does not emit greenhouse gasses into the atmosphere, and a description of any equipment the facility will use to capture, sequester, or store greenhouse gases;¶
  - (III) A description of energy flows within the facility, including power cycle and steam cycle diagrams, as appropriate;¶
  - (IV) A description of equipment and systems for disposal of waste heat generated by the facility;¶
  - (V) The fuel chargeable to power heat rate of the energy facility;¶
  - (vii) 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;¶
  - (viii) For facilities to store liquefied natural gas, the 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;¶
- (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, a corridor selection assessment explaining how the applicant selected the corridors for analysis in the application. In the assessment, the applicant must evaluate the corridor adjustments the Department has described in the project order, if any. The applicant may select any corridor for analysis in the application and may select more than one corridor. However, if the applicant selects a new corridor, then the applicant must explain why the applicant did not present the new corridor for comment at an informational meeting under OAR 345-015-0130. In the assessment, the applicant must discuss the reasons for selecting the corridors, based upon evaluation of the following factors:¶
- (i) Least disturbance to streams, rivers and wetlands during construction;¶
  - (ii) Least percentage of the total length of the pipeline or transmission line that would be located within areas of Habitat Category 1, as described by the Oregon Department of Fish and Wildlife;¶
  - (iii) Greatest percentage of the total length of the pipeline or transmission line that would be located within or adjacent to public roads and existing pipeline or transmission line rights-of-way;¶
  - (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;¶
  - (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) If the proposed energy facility is a pipeline or transmission line or has, as a related or supporting facility, a transmission line or pipeline of any 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 transmission line or pipeline corridor follows or includes public right-of-way, a description of where the transmission line or pipeline would be located within the public right-of-way, to the extent known. If the

applicant proposes to locate all or part of a transmission line or pipeline adjacent to but not within the public right-of-way, describe the reasons for locating the transmission line or pipeline 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 transmission line or pipeline 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; and¶

(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 must describe in this exhibit all work on the site that the applicant intends to begin before the Council issues a site certificate. The applicant must 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;¶

(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 total land area (in acres) within the proposed site boundary, the total area of permanent disturbance, and the total area of temporary disturbance. If a proposed pipeline or transmission line is to follow an existing road, pipeline or transmission line, the applicant must state to which side of the existing road, pipeline or transmission line the proposed facility will run, to the extent this is known; and¶

(C) For energy generation facilities, a map showing the approximate locations of any other energy generation facilities that are known to the applicant to be permitted at the state or local level within the study area as defined in OAR 345-001-0010 for impacts to public services;¶

(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;¶

(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; and¶

(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 related to the siting of the proposed facility, a legal citation of the statute, rule or ordinance governing each permit, and the name, mailing address, email address and telephone number of the agency or office responsible for each permit;¶

(B) A description of each permit, the reasons the permit is needed for construction or operation of the facility and the applicant's analysis of whether the permit should or should not be included in and governed by the site certificate;¶

(C) For any state or local government agency permits, licenses or certificates that are proposed to be included in and governed by the site certificate, 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; or¶

(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;¶

(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;¶

(iii) The estimated the date when the responsible agency will complete its review and issue a permit decision; and¶

(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 property owners, as described in this subsection: ¶

(A) The list must include all owners of record, as shown on the most recent property tax assessment roll, of property located:¶

(i) Within 100 feet of property which is the subject of the application, where the subject property is wholly or in part within an urban growth boundary;¶

(ii) Within 250 feet of the property which is the subject of the application, where the subject property is outside an urban growth boundary and not within a farm or forest zone; or¶

(iii) Within 500 feet of the property which is the subject of the application, where the property is within a farm or forest zone;¶

(B) The applicant must 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; and¶

(C) In addition to incorporating the list in the application, the applicant must submit the list to the Department in an electronic format approved by the Department.¶

(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 Oregon State Board of Geologist Examiners geologic report guidelines. Current guidelines must be determined based on consultation with the Oregon Department of Geology and Mineral Industries, as described in paragraph (B) of this subsection;¶

(B) A summary of consultation with the Oregon Department of Geology and Mineral Industries regarding the appropriate methodology and scope of the seismic hazards and geology and soil-related hazards assessments, and the appropriate site-specific geotechnical work that must be performed before submitting the application for the Department to determine that the application is complete;¶

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

(D) For all transmission lines, and 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, dead ends (for transmission lines), corners (for transmission lines), and portions of the proposed route where geologic reconnaissance and other site specific studies provide evidence of existing landslides, marginally stable slopes or potentially liquefiable soils that could be made unstable by the planned construction or experience impacts during

the facility's operation;¶

(E) An assessment of seismic hazards, in accordance with standard-of-practice methods and best practices, that addresses all issues relating to the consultation with the Oregon Department of Geology and Mineral Industries described in paragraph (B) of this subsection, and an explanation of how the applicant will design, engineer, construct, and operate the facility to avoid dangers to human safety and the environment from these seismic hazards. Furthermore, an explanation of how the applicant will design, engineer, construct and operate the facility to integrate disaster resilience design to ensure recovery of operations after major disasters. The applicant must include proposed design and engineering features, applicable construction codes, and any monitoring and emergency measures for seismic hazards, including tsunami safety measures if the site is located in the DOGAMI-defined tsunami evacuation zone; and¶

(F) An assessment of geology and soil-related hazards which could, in the absence of a seismic event, adversely affect or be aggravated by the construction or operation of the facility, in accordance with standard-of-practice methods and best practices, that address all issues relating to the consultation with the Oregon Department of Geology and Mineral Industries described in paragraph (B) of this subsection. An explanation of how the applicant will design, engineer, construct and operate the facility to adequately avoid dangers to human safety and the environment presented by these hazards, as well as:¶

(i) An explanation of how the applicant will design, engineer, construct and operate the facility to integrate disaster resilience design to ensure recovery of operations after major disasters; and¶

(ii) An assessment of future climate conditions for the expected life span of the proposed facility and the potential impacts of those conditions on the proposed facility.¶

(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; and¶

(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 this state, as defined under ORS 196.800, including:¶

(A) A description of all areas within the site boundary that might be waters of this state 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 this state;¶

(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, 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; and¶

(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 must 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 469.504(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. 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 must:¶

(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 governments 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;¶
- (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 governments;¶
  - (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;¶
  - (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 potential impacts of the proposed facility on protected areas in the analysis area, providing evidence to support a finding by the Council as required by OAR 345-022-0040, including:¶
  - (A) A list of all protected areas within the analysis area, identifying:¶
    - (i) The distance and direction of the protected area from the proposed facility;¶
    - (ii) The basis for protection, by reference to a specific subsection of OAR 345-001-0010(26); and¶
    - (iii) The name, mailing address, phone number, and email address of the land management agency or organization with jurisdiction over the protected area;¶
  - (B) A map showing the location of the proposed facility in relation to the protected areas; and¶
  - (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, including, but not limited to, changes in landscape character or quality; and¶
    - (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 requires the disclosure of information or records protected from public disclosure by any provision of state or federal law. The applicant must 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 sections of the short-term action plan that call for the acquisition of the proposed facility or, as defined in OAR 345-001-0010, a facility substantially similar to the proposed facility;¶

(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;¶

(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;¶

(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 must 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 must provide a list of citations to the sections of the energy resource plan 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 must 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 must provide a list of citations to the sections of the energy resource plan 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 must 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 must 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 must 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 must 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 must 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;¶¶

(vii) A discussion of reasons why the proposed facility is economically reasonable compared to the alternatives described below. In the discussion, the applicant must 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 must include documentation of assumptions and calculations supporting the table. The applicant must 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;¶¶

(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 must 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 must 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 must separate firm capacity demands into firm demands of retail customers, system losses and each wholesale contract for firm sale. The applicant must 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 must 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 must 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 must 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 must 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 must 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;¶
  - (III) Direct use of electricity, solar or geothermal resources at retail loads as a substitute for use of natural gas supplied by the proposed facility;¶
  - (IV) Adding standard sized smaller or larger pipeline capacity;¶
- (ix) In an application for a proposed liquefied natural gas storage facility, 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, natural gas pipelines and underground gas storage facilities as a substitute for the proposed facility;¶
  - (III) Direct use of electricity, solar or geothermal resources at retail loads as a substitute for use of natural gas supplied by the proposed facility;¶
  - (IV) Adding smaller or larger liquefied natural gas storage capacity; and¶
- (x) The earliest and latest expected in-service date of the facility and a discussion of the circumstances of the energy supplier, as defined in OAR 345-001-0010, that determine these dates.¶
- (o) Exhibit O. Information about anticipated water use during construction and operation of the proposed facility. The applicant must include:¶
  - (A) A description of the use of water during construction and operation of the proposed facility;¶
  - (B) A description of each source of water and the applicant's estimate of the amount of water the facility will need during construction and during operation from each source under annual average and worst-case conditions;¶
  - (C) A description of each avenue of water loss or output from the facility site for the uses described in (A), the applicant's estimate of the amount of water in each avenue under annual average and worst-case conditions and the final disposition of all wastewater;¶
  - (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; and¶
  - (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 must 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 general fish and wildlife habitat categories as set forth in OAR 635-415-0025 and the sage-grouse specific habitats described in the Greater Sage-Grouse Conservation Strategy for Oregon at OAR 635-140-0000 through 635-140-0025 (core, low density, and general habitats), and a description of the characteristics and condition of that habitat in the analysis area, including a table of the areas of permanent disturbance and temporary disturbance (in acres) in each habitat category and subtype;¶
  - (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 general fish and wildlife habitat mitigation goals and standards described in OAR 635-415-0025 and a description of any measures proposed by the applicant to avoid, minimize, and provide compensatory mitigation for the potential adverse impacts described in (F) in accordance with the sage-grouse specific habitat mitigation requirements described in the Greater Sage-Grouse Conservation Strategy for Oregon at OAR 635-140-0000 through 635-140-0025, and a discussion of how the proposed measures would achieve those goals and requirements; and¶

(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 must include:¶

(A) Based on appropriate literature and field study, identification of all threatened or endangered species listed under ORS 496.172(2) and ORS 564.105(2) 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 potential visual impacts of the proposed facility, if any, on significant or important scenic resources within the analysis area, providing evidence to support a finding by the Council under OAR 345-022-0080, including:¶

(A) An inventory of scenic resources identified as significant or important in a land use management plan adopted by one or more local, tribal, state, regional, or federal government or agency applicable to lands within the analysis area for scenic resources. The applicant must provide a list of the land management plans reviewed in developing the inventory and a copy of the relevant portion of the plans;¶

(B) A map or maps showing the location of the scenic resources described under paragraph (A), in relation to the site of the proposed facility;¶

(C) A description of the methodology the applicant used to identify and assess potential visual impacts to the scenic resources identified in paragraph (A);¶

(D) Identification of potential visual impacts to the scenic resources identified in paragraph (A), including, but not limited to:¶

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

(ii) Visual impacts of facility structures or plumes, including but not limited to, changes in landscape character or quality; and ¶

(iii) Loss of visibility due to air emissions or other pollution resulting from the construction or operation of the proposed facility;¶

(E) An assessment of the significance of the visual impacts described under paragraph (D);¶

(F) A description of the measures the applicant proposes to avoid, reduce or otherwise mitigate any potential significant adverse visual impacts; and¶

(G) 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 192.345(11). The applicant must 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 must 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; and¶

(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 the recreational opportunities in the analysis area that includes information on the factors listed in OAR 345-022-0100(1) as a basis for identifying important recreational opportunities;¶

(B) A description of any potential adverse impacts to the important opportunities identified in paragraph (A) including, but not limited to:¶

(i) Direct or indirect loss of a recreational opportunity as a result of facility 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, including but not limited to, changes in landscape character or quality;¶

(C) An evaluation of the significance of the potential adverse impacts identified under paragraph (B);¶

(D) A description of any measures the applicant proposes to avoid, reduce or otherwise mitigate any significant adverse impacts identified in paragraph (B);¶

(E) A map of the analysis area showing the locations of important recreational opportunities identified in paragraph (A); and¶

(F) 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 must 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 wildfire risk within the analysis area, providing evidence to support findings by the Council as required by OAR 345-022-0115, including but not limited to, a draft Wildfire Mitigation Plan that satisfies the requirements of OAR 345-022-0115(1)(b).¶

(W) Exhibit W. 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 must 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; and¶
- (G) The applicant's proposed monitoring program, if any, for minimization of solid waste and wastewater impacts.¶
- (x) Exhibit X. Information about site restoration, providing evidence to support a finding by the Council as required by OAR 345-022-0050(1). The applicant must 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; and¶
  - (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.¶
- (y) Exhibit Y. 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 340-035-0035. The applicant must 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 340-035-0035, 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; and¶
  - (E) A list of the names and addresses of all owners of noise sensitive property, as defined in OAR 340-035-0015, within one mile of the proposed site boundary.¶
- (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 energy facility is a transmission line or has, as a related or supporting facility, a transmission line of any size:¶
  - (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;¶
    - (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 must 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 must 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 345-024-0015;¶¶

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

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

(D) For a fossil-fueled power plant or other facility that emits carbon dioxide, OAR 345-024-0500 to 345-024-0720, including the information required by OAR 345-021-0021.¶¶

(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 must include additional information in the site certificate application as needed to meet the requirements of section (1) of this rule.¶¶

(3) The applicant must include a table of contents in the preliminary application identifying the location of each exhibit required by this rule.¶¶

(4) The applicant must submit, to the Department, an original and a copy of the printed preliminary application, and a non-copy-protected electronic version of the preliminary application in a format acceptable to the Department. The applicant must submit additional printed copies of the preliminary application ~~to as directed by the Department upon request. The applicant must prepare and distribute additional copies of the application as required by OAR 345-021-0050.~~

Statutory/Other Authority: ORS 469.373, 469.470

Statutes/Other Implemented: ORS 469.350, 469.370, 469.413, 469.501, 469.503, 469.504

REPEAL: 345-021-0050

RULE SUMMARY: Repealing 345-021-0050 as (1)-(6) is being moved into 345-015-0180 and (7) is being moved into its own rule: 345-015-0170.

CHANGES TO RULE:

~~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 345-015-0310, it is a preliminary application. After receiving the preliminary application the Department must, in coordination with the applicant, determine a distribution date and compile a distribution list that includes, but is not limited to, the reviewing agencies for the proposed facility.¶¶~~

~~(2) The Department must mail or email the memorandum described under OAR 345-015-0180 to each person on the distribution list before the distribution date.¶¶~~

~~(3) Unless the Department directs otherwise, the applicant must mail or email an electronic copy of the preliminary application to each person on the distribution list on or before the distribution date. The applicant must provide a printed copy of part or all of the preliminary application to a person on the distribution list upon request.¶¶~~

~~(4) After reviewing the preliminary application, each reviewing agency must 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.¶¶~~

~~(5) The Department must, as soon as practicable, send the applicant copies of all comments submitted under section (4) that identify a need for additional information.¶¶~~

~~(6)(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 must, in the comments or recommendations submitted to the Department under section (4), 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 must, in the comments or recommendations submitted to the Department under section (4), 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. For the purpose of this rule, the application is submitted on the date that the Department receives the preliminary application. "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¶¶~~

~~(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.¶¶~~

~~(7) After receiving the preliminary application, the Department must post an announcement on its website to notify the public that a preliminary application has been received. The Department must include the addresses of locations where the public may review copies of the preliminary application in the announcement. The announcement may include the preliminary application or sections of the preliminary application that may be viewed or downloaded. The announcement may include a link to the applicant's website, if any, where the preliminary application may be viewed or downloaded.~~

~~Statutory/Other Authority: ORS 469.470~~

~~Statutes/Other Implemented: ORS 469.350~~



REPEAL: 345-021-0055

RULE SUMMARY: Repealing rule as this language has been merged with OAR 345-015-0200.

CHANGES TO RULE:

~~345-021-0055~~

~~Distribution of a Complete Application ¶¶~~

~~(1) After receiving notification from the Department that the application is complete, the applicant must 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. ¶¶~~

~~(2) The applicant must submit to the Department, two printed copies of the application supplement, and an electronic version of the application supplement in a non-copy-protected format acceptable to the Department. The applicant must submit additional printed copies of the application supplement to the Department upon request. ¶¶~~

~~(3) After receiving the application supplement, the Department must determine a distribution date and prepare a distribution list that includes, but is not limited to, the reviewing agencies for the application. ¶¶~~

~~(4) The Department must mail or email the notice described under OAR 345-015-0200 to each person on the distribution list before the distribution date. ¶¶~~

~~(5) Except as described in OAR 345-015-0310, and unless the Department directs otherwise, the applicant must mail or email an electronic copy of the application supplement to each person on the distribution list provided by the Department on or before the distribution date. The applicant must provide a printed copy of all or part of the application supplement to a person on the mailing list upon request. ¶¶~~

~~(6) If the Department determines it is necessary to present the amendments and additional information described in section (1) of this rule clearly, the Department may require the applicant to provide a complete revision of the preliminary application in place of the application supplement under section (2) and (5) of this rule.~~

~~Statutory/Other Authority: ORS 469.373, 469.470~~

~~Statutes/Other Implemented: ORS 469.350~~

REPEAL: 345-021-0080

RULE SUMMARY: Moving this rule from Division 21 to Division 22, because this rule deals with requirements the applicants need to meet to get a site certificate, which is the subject of Division 22. Making a minor correction of "time line" to "timeline" as well.

CHANGES TO RULE:

~~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.~~

~~Statutory/Other Authority: ORS 469.470~~

~~Statutes/Other Implemented: ORS 469.350~~

ADOPT: 345-022-0005

RULE SUMMARY: Importing this rule language from OAR 345-021-0080. Making a minor correction of "time line" to "timeline."

CHANGES TO RULE:

345-022-0005

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 timeline 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

Statutory/Other Authority: ORS 469.470, ORS 469.501

Statutes/Other Implemented: ORS 469.501, ORS 469.503, ORS 469.504, ORS 469.505