



Oregon

Tina Kotek, Governor



550 Capitol St. NE
Salem, OR 97301
Phone: 503-378-4040
Toll Free: 1-800-221-8035
FAX: 503-373-7806
www.oregon.gov/energy

To: Oregon Energy Facility Siting Council

From: Thomas L. Jackman, Rules Coordinator

Date: September 6, 2024

Subject: Agenda Item I (Action Item) – Tribal Government Rulemaking - Initiation of Informal Rulemaking for the September 19-20, 2024 EFSC Meeting

STAFF RECOMMENDATION

Staff recommends that the Council initiate informal proceedings on the Tribal Government Rulemaking, which was approved for the 2024-2026 Rulemaking Schedule. Staff recommends that Council approve the scope and general direction of the rulemaking as outlined below. Staff also requests that the Council approve focused outreach to develop the draft proposed language, as discussed below. Please note that the Council is not being asked at this time to consider proposed rule amendments or the adoption of permanent rules.

BACKGROUND AND SUMMARY

As part of the 2024-2026 Rulemaking Schedule, the Council directed staff to explore a rulemaking designed to improve communication with tribal governments. Specifically, the proposed Tribal Government Rulemaking is designed to encourage communication by the applicant with tribal governments to improve the efficiency and effectiveness of the siting process as it relates to identifying and protecting cultural resources as well as other resources important to tribal governments.

On July 23, 2024, Thomas Jackman, Council rulemaking coordinator, attended the Oregon Tribal Cultural Cluster, which is a gathering intended to find ways to better protect tribal cultural resources. He gave a presentation providing an overview of the energy facility siting process and invited the tribes to participate in a rulemaking directed at creating a siting process that encourages applicants to communicate with tribes early in the siting process, rather than simply identifying the tribes as currently required by the rules. This suggestion was well received by the group.

TRIBAL GOVERNMENT RULEMAKING - SCOPE AND OBJECTIVES

The Tribal Government rulemaking is intended to evaluate various options to encourage and improve communication between the applicant and all tribes who might be impacted by the siting of an energy project. The intent of this rulemaking is to identify the most appropriate requirements that balance the often-competing interests of efficiency of process and protection of resources. The outcome will ideally address both of these areas, as identifying important resources earlier in the process can better protect them while simultaneously avoiding unnecessary delays that can result from important resources being brought to light later in the process.

Staff recommends the Council approve the scope of the Tribal Government rulemaking as outlined above.

FOCUSED OUTREACH

Staff recommends that Council direct staff to engage with stakeholders individually with an initial draft of potential rule language. This approach would allow each sovereign tribe the chance to get the attention and opportunity for open discussion they so desired. Staff can then approach energy developers and other state agencies to see if there are any significant concerns before requesting that the Council approve the start of formal rulemaking and the start of a public comment period.

If the Council is not convinced that this approach is the best way forward, a traditional Rulemaking Advisory Committee can be formed.