

September 27, 2024

Kathleen Sloan, Senior Siting Analyst
Oregon Department of Energy
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Salem, OR 97301

Re: Response to Public Comments and Energy Facility Siting Council Members

Dear Ms. Sloan:

Thank you for the opportunity to submit responses to comments at the Draft Proposed Order (“DPO”) hearing on September 19, 2024. Applicant Northwest Natural Gas (“NWN”), on behalf of the Mist Resiliency Project, submits this letter (“Letter”) in response to submitted comments on NWN’s 13th request for amendment concerning the Mist underground natural gas storage field (“RFA 13”), as well as to questions from Energy Facility Siting Council (“EFSC” or “Council”) Members during the hearing.

1. Responses to Comments from the Green Energy Institute, the Oregon Chapter of the Sierra Club, Columbia Riverkeeper, and Breach Collective.

The comment letter dated September 19, 2024 (“Comment”) from the Green Energy Institute, the Northwest Environmental Defense Council, the Oregon Chapter of the Sierra Club, Columbia Riverkeeper, and Breach Collective (together, the “ENGOS”) asks EFSC to adopt an ad hoc “need” standard into the regulations and then use that “need” standard to deny “RFA 13.” The ENGOS further insist that EFSC deny RFA 13 by changing its prior decisions made over several decades of precedent concerning the treatment of “related or supporting facilities.” That change would likely impact nearly every EFSC jurisdictional facility.

The Comment does not point to a standard that NWN does not meet. The Comment points to OAR 345-023-0005 (the “need standard” or “rule”) as a standard that EFSC must use to evaluate this application. However, OAR 345-023-0005 does not apply to “nongenerating facilities that are related or supporting facilities.” The Comment jumps through several hoops to try and argue that EFSC can and should deny the application based on OAR 345-023-0005, but it fails on all counts.

1.1 OAR 345-023-0005 Does Not Apply Regardless of Whether RFA 13 Proposes Changes to a “Nongenerating Facility” or “Nongenerating Facilities That Are Related or Supporting Facilities.”

The need standard only applies to three types of “nongenerating facility[ies]” as defined in ORS 469.503.¹ The ENGOs agree that current language in OAR 345-023-0005 does not apply to RFA 13 because it does not fall under one of the three nongenerating facilities that require a need analysis. Instead, the ENGOs ask the Council to “*establish* a need standard for surface facilities related to an underground gas storage reservoir.” Comment at 4 (emphasis added). The Comment provides no legal support for EFSC to adopt a need standard for this or other “nongenerating facilities.” Moreover, there are no grounds for EFSC to change OAR 345-023-0005 at this late date. Such action would require a formal rulemaking process.²

EFSC cannot apply the need standard without first amending OAR 345-023-0005. EFSC cannot amend OAR 345-023-0005 to extend it to “nongenerating facilities that are related or supporting facilities” through agency order because new rulemaking is required when an agency interpretation would “amplify” (i.e., extend) an existing rule.³ Here the rules expressly exempt “nongenerating facilities that are related or supporting facilities” from the need analysis. Any such change would require formal rulemaking.

1.2 Further Clarification of the DPO’s Position on Which Facilities Are “Related or Supporting Facilities” Is Unnecessary.

The Letter asks that the Council interpret RFA 13 to change the definition and interpretation of “related or supporting facilities.” Under Oregon law a “[r]elated or supporting facilit[y]” is:

any structure, proposed by the applicant, to be constructed or substantially modified in connection with the construction of an energy facility, including associated transmission lines, reservoirs, storage facilities, intake structures, road and rail access, pipelines, barge basins, office or public buildings, and commercial and industrial

¹ OAR 345-023-0005.

² See *Burke v. Public Welfare Division*, 31 Or App 161, 165, 570 P2d 87 (1977) (“[T]he interpretive amplification or refinement of an existing rule is a new exercise of agency discretion and must be promulgated as a rule under the APA to be valid.”); *Smith v. Two Rivers Correctional Institution*, 259 Or App 11, 17, 312 P3d 568 (2013) (reiterating that formal rulemaking is not required when the agency is explaining what is necessarily required by the existing rules or how the promulgated rule operates in a specific context or need).

³ *Id.*

structures. “Related or supporting facilities” does not include geothermal or underground gas storage reservoirs, production, injection or monitoring wells or wellhead equipment or pumps.^[4]

As noted above, the longstanding definition and application of the term “related or supporting facilities” applies to virtually every EFSC jurisdictional energy facility. There is no need to make the radical change demanded here.

The application of “related or supporting facilities” for the Mist facility was directly adjudicated in 2013. EFSC issued a declaratory ruling (the “Declaratory Ruling”) that clarified that “related to or supporting facilities” are facilities that are constructed and operated “in connection” with an “energy facility.”⁵ The Council concluded that just because a related or supporting facility could “independently satisf[y]” the “energy facility” definition does not expressly exempt it from being a related or supporting facility.⁶ That is, contrary to the ENGOs’ assertions, a nongenerating facility *can* be a related or supporting facility, even if it fits the definition of an “energy facility.” The analysis is not whether it is an energy facility *or* a related or supporting facility, but rather whether it is “built in connection” with the energy facility.⁷ A “related or supporting facility” is “built in connection” when “it would not be built but for the construction or operation of the energy facility.”⁸ The Council’s 2013 ruling confirmed that the 13-mile North Mist Pipeline would not be considered a new stand-alone energy facility, but instead is a related and supporting facility, as a component of the Mist facility.

The ENGOs’ concern that the DPO mischaracterizes and relies on Amendment 11’s Final Order for its determination of what is a “related or supporting facility” is overblown, factually incorrect, and contrary to the 2013 precedential Council ruling. The DPO describes “[t]he underground storage reservoir and related or supporting facilities.”⁹ It also notes that the related or supporting facilities currently include “compressors, pipelines, control equipment, dehydration and auxiliary systems,

⁴ ORS 469.300(25); *see also Teledyne Wah Chang Albany v. Energy Facility Siting Council*, 298 Or 240, 258, 692 P2d 86 (1984) (concluding that “related or supporting facilities” does not include all land owned by the applicant at the plant site).

⁵ In the Matter of Petition by the NW Natural Gas Company for a Declaratory Ruling, before the Energy Facility Siting Council of the State of Oregon, *Final Declaratory Ruling* (“Final Order”) at 7.

⁶ *Id.* at 6.

⁷ *Id.*

⁸ *Id.* at fn. 4.

⁹ EFSC, *Mist Underground Natural Gas Storage Facility*, Draft Proposed Order on Request for Amendment 13 at 5-6 (Aug. 15, 2024).

most of which are located at NWN’s Miller Station. Other related surface facilities include gathering lines and facilities for maintenance and operations staff.”¹⁰ EFSC has determined, independent of the Final Order on Amendment 11, that these facilities are “related or supporting facilities” consistent with the analysis set forth in the Declaratory Ruling.

1.3 Oregon Energy Policy Does Not Require a “Need” Analysis for RFA 13.

The failure to adopt a need standard here also does not conflict with Oregon’s energy and environmental policy. As acknowledged by the Comment, “ODOE believes that renewable natural gas or green hydrogen will play some role in the decarbonization of Oregon’s economy.” Comment at 6. Oregon Department of Energy (“ODOE”) expects annual increases in renewable natural gas producing facilities as renewable natural gas is integrated into transportation fuel and replaces fossil natural gas. *Id.* at 98. As acknowledged in the Biennial Report, NWN is “pursuing contracts with renewable gas producers to add to the company’s supply,” including for storage at the Mist facility. . ODOE, Biennial Report 2022, p. iv (2022). The report also notes that “Oregon natural gas utilities can insulate themselves from potential price volatility with local natural gas storage,” such as at NWN’s Mist facility. *Id.* HB 2021 does not affect the determination here because it expressly relates to *generating facilities*, not non-generating facilities. House Bill 3630 gives ODOE the discretion to determine and develop the best strategy to achieve the state’s energy policy objectives and does not prohibit expansion of existing facilities. It is entirely possible that that strategy recognizes the need for underground natural gas storage in future years and the potential benefit of storage of renewable natural gas and/or hydrogen at the facility. Consistent with Oregon’s energy policy, the proposed amendments will allow ongoing service of over 800,000 NWN utility customers and will further serve regional energy customers seeking to insulate themselves during this transition and provide potential opportunities for storage of renewable fuels.

In sum, while advocating for policy changes, the Comment does not raise any issues with any applicable standards. The proposed amendment proposes to change and expand “related or supporting facilities.” Because the RFA 13 proposes changes to a “related or supporting facility,” OAR 345-023-0005 expressly does not apply. To the extent that the Comment is proposing adding a need evaluation for ORS 469.300(12)(a)(I), such rule or interpretation is entirely irrelevant to this proceeding because it does not propose “[a] surface facility related to an underground gas storage reservoir.”

¹⁰ *Id.* at 28-29.

2. NWN Maintains High Standards to Control Fugitive Emissions.

During the September 19, 2024, DPO public hearing there was a question from the Council about potential fugitive emissions on pipelines and at the Mist Underground Natural Gas Storage Facility that NWN would like to address.

NWN has one of the tightest, most modern natural gas distribution systems in the nation. We aim to perform a leak survey of each gas main at least every five years, and survey 20% of mains every year. We also strive to perform leakage and atmospheric corrosion surveys every three years and conduct annual inspections in high-occupancy buildings and business districts. We use Supervisory Control and Data Acquisition (“SCADA”) and telemetry to monitor the system in real time and transmit data from remote sources. This technology makes it possible to quickly detect leaks even in remote locations.

Specifically, at the Mist Underground Natural Gas Storage Facility we employ a variety of technologies and systems to monitor the wellheads and pipelines. In addition to continuous monitoring of the storage wells and associated transmission line pressure via SCADA, wellheads, well safety systems, well piping, and site locations are inspected for operability, leaks, and mechanical or other faults weekly under our integrity monitoring program. Wellhead master valves and pipeline isolation valves are tested at least annually to ensure proper function and ability to isolate the well.

We conduct biannual aerial patrols and two-week-long foot patrols at the Facility. Regular valve maintenance occurs as well. Any fugitive emissions are publicly reported to the Oregon Department of Environmental Quality (“DEQ”) on an annual basis.

NWN is a member of Our Nation’s Energy Future (“ONE Future”), a coalition representing around 50 companies and more than 20% of the U.S. natural gas value chain that is committed to reducing methane emissions through adopting science-based standards and deploying best practices. ONE Future has exceeded its goal of reducing methane emissions across the natural gas value chain to below 1% by 2025.¹¹

¹¹ One Future, 2021 Methane Emissions Intensity Overview, <https://onefuture.us/2022-methane-emissions-intensity-report/>.

3. Future Service to Portland General Electric.

The Council asked about the future service of the North Mist Facility at the Mist Underground Natural Gas Storage Facility to Portland General Electric (“PGE”).

NWN has a contract with PGE to provide long-term, no-notice underground gas storage service through 2049. PGE uses the facility to fuel its gas-fired electric power generation facilities, which backs up PGE’s variable load of renewable energy on the electric grid. While HB 2021 sets clean energy targets by 2040 that include offramps for risks to reliability and cost, PGE is best positioned to answer how they plan to use the contracted capacity.

4. Alleged Impacts to Regional Aquifers.

Lastly, NWN would like to address suggestions made in two public comments that our operations have impacted regional aquifers.

About two years ago, NWN reviewed questions regarding our Mist Underground Natural Gas Storage Facility and after taking a close look at our operations, we determined that there was no connection between our operations at Mist and any alleged concerns about water contamination in the region.

In addition, several federal and state regulatory agencies, including Oregon Department of Geology and Mineral Industries (“DOGAMI”), DEQ, ODOE, and U.S. Pipeline and Hazardous Materials Safety Administration (“PHMSA”), reviewed the concerns that were raised and did not find any violations in how we operate and maintain our natural gas storage operations.

For three decades, DOGAMI has enforced stringent storage well design and implementation standards to prevent the release of any natural gas into the atmosphere or contamination of the native aquifers. These standards remain at or above the level of national storage standards set by PHMSA. We take compliance with these regulations and the regulations set by EFSC for our facilities seriously and actively manage our facilities to ensure compliance with these regulations. Safety and environmental stewardship are core values at NWN and are paramount in our day-to-day operations at Mist.

NWN appreciates the opportunity to respond to questions from the Council and public comments. We respectfully urge EFSC to proceed with a Notice of Proposed Order.

Sincerely,



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