

**DIVISION 1
GENERAL PROVISIONS**

345-001-0000

Notice of Permanent Rulemaking

(1) Before adopting, amending or repealing any rule, the Council shall give notice of the proposed adoption, amendment or repeal as required by ORS 183.335:

(a) In the Secretary of State's Bulletin referred to in ORS 183.360 at least 21 days before the effective date of the adoption, amendment or repeal of the rule,

(b) As required under ORS 183.335, by mailing a copy of the notice to the Council's mailing list of persons who have requested notice of rulemaking at least 28 days before the effective date of the rule and to certain legislators at least 49 days before the effective date of the rule, and

(c) By mailing or furnishing a copy of the notice to the Associated Press and the Capitol Press Room.

(2) Notwithstanding the requirements of ORS 183.335, when the Council is required to adopt rules or regulations promulgated by an agency of the federal government and the Council has no authority to alter or amend the content or language of those rules or regulations prior to their adoption, the Council shall adopt these rules or regulations under the procedures prescribed in ORS 183.337.

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.470, 469.490

345-001-0005

Uniform and Model Rules

(1) Except as described in this rule, the Council adopts and incorporates by reference in this chapter the following rules from the Attorney General's Uniform and Model Rules (January 1, 2006): OAR 137-001-0005 through 137-001-0100, 137-002-0010 through 137-002-0060, 137-003-0001 through 137-003-0092, and 137-005-0010 through 137-005-0070.

(2) Notwithstanding the provisions of OAR 137-003-0055(1), following the issuance of notice of a contested case, the Department of Energy shall enter into the record the substance of any significant contact between a Council member and any Department staff from that point forward, concerning facts in the record.

(3) In any conflict between the model rules and Council rules, the Council shall apply its own rules.

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.490

345-001-0010

Definitions

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

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

of naturally occurring radioactivity present. Measurements shall include direct radiation (beta-gamma and alpha), wipes and qualitative and quantitative laboratory analyses. Concentrations of fission and activation products from historical fallout shall be characterized as well.

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

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

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

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

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

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

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

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

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

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

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

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

(18) “Energy supplier” means:

(a) A retail electric utility, a federal power marketing agency, or a local gas distribution company, or

(b) A person or public agency generating electric energy for its own consumption, lawfully purchasing electric energy directly from a generator for its own consumption, or transmitting or distributing natural or synthetic gas from an energy facility for its own consumption.

(19) “Existing corridor,” as used in ORS 469.300 and ORS 469.442, means the right-of-way of an existing transmission line, not to exceed 100 feet on either

side of the physical center line of the transmission line or 100 feet from the physical center line of the outside lines if the corridor contains more than one transmission line.

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

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

(a) A facility that uses the same fuel and substantially similar technology, that has substantially the same in-service date, and that has a direct cost not substantially greater than that of the proposed facility; or

(b) A facility that is demonstrated to provide as good a mix of reliability, compatibility with the power system, strategic flexibility, environmental impact and direct cost as the proposed facility taking into account reasonable trade-offs among such factors.

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

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

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

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

(b) FI = Annual fuel input to the facility applicable to the cogeneration process in British thermal units (higher heating value).

(c) FD = Annual fuel displaced in any industrial or commercial process, heating, or cooling application by supplying useful thermal energy from a cogeneration facility instead of from an alternate source, in British thermal units (higher heating value).

(d) P = Annual net electric output of the cogeneration facility in kilowatt-hours.

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

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

(27) “High efficiency cogeneration facility” means an energy facility, except coal and nuclear power plants, that sequentially produces electrical and useful thermal energy from the same fuel source and under normal operating

conditions has a useful thermal energy output of no less than 33 percent of the total energy output or:

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

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

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

(a) Applies existing comprehensive plan provisions or land use regulations to a proposed facility;

(b) Amends a comprehensive plan map or zoning map to accommodate a proposed facility;

(c) Amends comprehensive plan text or land use regulations to accommodate a proposed facility;

(d) Applies the statewide planning goals to a proposed facility; or

(e) Takes an exception to the statewide planning goals adopted by the Land Conservation and Development Commission for a proposed facility.

(29) “Local government” as defined in ORS 469.300.

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

(31) “Mitigation” means taking one or more of the following actions listed in order of priority:

(a) Avoiding the impact altogether by not taking a certain action or parts of an action;

(b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation;

(c) Partially or completely rectifying the impact by repairing, rehabilitating or restoring the affected environment;

(d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action by monitoring and taking appropriate corrective measures;

(e) Partially or completely compensating for the impact by replacing or providing comparable substitute resources or environments; or

(f) Implementing other measures approved by the Council.

(32) “Natural gas” means all gas and all other fluid hydrocarbons not defined as oil in ORS 520.005(6), including condensate originally in the gaseous phase in the reservoir.

(33) “Natural gas fired facility” means an energy facility that is intended to be fueled by natural gas except for infrequent periods when the natural gas supply is interrupted, during which an alternate fuel may be used. Such alternate

fuel use shall not exceed 10 percent of expected fuel use in British thermal units, higher heating value on an annual basis.

(34) “Net carbon dioxide emissions” as defined in ORS 469.503(2)(e).

(35) “Net electric power output” means the electric power produced or capacity made available for use. Calculation of net electric power output subtracts losses from on-site transformers and power used for any on-site electrical loads from gross capacity as measured or estimated at the generator terminals for each generating unit.

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

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

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

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

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

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

(37) "Nominal electric generating capacity" as defined in ORS 469.300.

(38) “Non-base load power plant” means a fossil-fueled generating facility that is limited by the site certificate to an average number of hours of operation per year of not more than 6,600 hours. For a non-base load power plant designed to operate at variable loads, the facility’s annual hours of operation are determined by dividing the actual annual electric output of the facility in megawatt-hours by the facility’s nominal electric generating capacity in megawatts. The Council shall assume a 30-year life for the plants for purposes

of determining gross carbon dioxide emissions, unless the applicant requests and the Council approves a shorter operational life in the site certificate. If the Council approves a shorter operational life, the certificate holder shall operate the facility for no longer than the approved operational life or, before the expiration of the approved operational life, shall request an amendment of the site certificate to extend the operational life.

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

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

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

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

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

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

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

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

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

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

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

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

(c) Has in effect articles of incorporation that:

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

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

(C) Require nonvoting membership on the decision-making body for holders of site certificates that have provided funds not yet disbursed under OAR 345-024-0710(3);

(d) Has made available on an annual basis, beginning after the first year of operation, a signed opinion of an independent certified public accountant stating

that the qualified organization's use of funds pursuant to ORS 469.503 conforms with generally accepted accounting procedures except that the qualified organization shall have one year to conform with generally accepted accounting principles in the event of a nonconforming audit;

(e) Has to the extent applicable, except for good cause, entered into contracts obligating at least 60 percent of the offset funds to implement offsets within two years after the commencement of construction of the facility; and

(f) Has to the extent applicable, except for good cause, complied with OAR 345-024-0710(3).

(49) “Related or supporting facilities” as defined in ORS 469.300. The Council interprets the terms “proposed to be built in connection with” as meaning that a structure is a related or supporting facility if it would not be built but for construction or operation of the energy facility. “Related or supporting facilities” does not include any structure existing prior to construction of the energy facility, unless such structure must be significantly modified solely to serve the energy facility.

(50) “Reviewing agency” means any of the following officers, agencies or tribes:

- (a) Department of Environmental Quality
- (b) Water Resources Commission and the Water Resources Director through the Water Resources Department
- (c) Fish and Wildlife Commission through the Department of Fish and Wildlife
- (d) State Geologist
- (e) Department of Forestry
- (f) Public Utility Commission
- (g) Department of Agriculture
- (h) Department of Land Conservation and Development
- (i) Northwest Power Planning Council
- (j) Office of State Fire Marshal
- (k) Department of State Lands
- (L) State Historic Preservation Office
- (m) Any other agency identified by the Department of Energy
- (n) Any tribe identified by the State Commission on Indian Services as affected by the proposed facility
- (o) The governing body of any incorporated city or county in Oregon within the study area as defined in OAR 345-001-0010 for impacts to public services
- (p) Any special advisory group designated by the Council under ORS 469.480
- (q) The federal land management agency with jurisdiction if any part of the proposed site is on federal land

(51) “Significant” means having an important consequence, either alone or in combination with other factors, based upon the magnitude and likelihood of the impact on the affected human population or natural resources, or on the importance of the natural resource affected, considering the context of the action or impact, its intensity and the degree to which possible impacts are caused by the proposed action. Nothing in this definition is intended to require a statistical analysis of the magnitude or likelihood of a particular impact.

(52) “Site” as defined in ORS 469.300. “Energy facility site” means all land upon which an energy facility is located or proposed to be located. “Related or supporting facilities site” means all land upon which related or supporting facilities for an energy facility are located or proposed to be located.

(53) “Site boundary” means the perimeter of the site of a proposed energy facility, its related or supporting facilities, all temporary laydown and staging areas and all corridors and micrositing corridors proposed by the applicant.

(54) “Site certificate” as defined in ORS 469.300.

(55) “Special nuclear material” means plutonium, uranium-233 or uranium enriched in the isotope 233 or in the isotope 235.

(56) “Strategic flexibility” means the value of a resource as part of a strategy to manage variance in costs or risks caused by future uncertainty.

(57) “Study area” means an area defined in this rule. Except as specified in subsections (f) and (g), the study area is an area that includes all the area within the site boundary and the area within the following distances from the site boundary:

(a) For impacts to threatened and endangered plant and animal species, 5 miles.

(b) For impacts to scenic resources and to public services, 10 miles.

(c) For land use impacts and impacts to fish and wildlife habitat, one-half mile.

(d) For impacts to recreational opportunities, 5 miles.

(e) For impacts to protected areas described in OAR 345-022-0040, 20 miles.

(f) The distance stated in subsection (a) above does not apply to surface facilities related to an underground gas storage reservoir.

(g) The distances stated in subsections (a), and (d) above do not apply to pipelines or transmission lines.

(58) “Substantial loss of steam host” means the thermal energy user associated with a high efficiency cogeneration facility has made such long-term changes in its manner and magnitude of operation as to result in the loss of one or more work shifts for at least a year, accompanied by at least a 30 percent resultant reduction in the use of thermal energy.

(59) “Substantial loss of fuel use efficiency” means an increase in the fuel chargeable to power heat rate at a high efficiency cogeneration facility to greater than 7000 Btu per kilowatt-hour (higher heating value), or reduction of the

fraction of energy output going to the thermal energy user associated with the facility to less than 20 percent, as a result of a substantial loss of steam host. Substantial loss of fuel use efficiency does not include efficiency losses due to equipment wear or condition.

(60) “Surface facilities related to an underground gas storage reservoir” means structures or equipment adjacent to and associated with an underground gas storage reservoir that are proposed to be built in connection with an underground gas storage reservoir and include, but are not limited to:

(a) Facilities such as stripping plants, main line dehydration stations, offices, warehouses, equipment shops, odorant storage and injection equipment and compressors;

(b) Pipelines, such as gathering lines and liquid collection lines; and

(c) Roads and road maintenance equipment housing at the reservoir site.

(61) “Thermal power plant” as defined in ORS 469.300.

(62) “Total energy output” means the sum of useful thermal energy output and useful electrical energy output.

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

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

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

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

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

Stat. Authority: ORS 469.373, ORS 469.470

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

345-001-0020

Purpose

(1) The purpose of the rules of this chapter is to establish application requirements, review procedures and standards for the siting, construction, operation and retirement of energy facilities, for the transport of radioactive materials, and for the disposal of radioactive waste and uranium mine overburden. These rules are to ensure that the siting, construction, operation and retirement of energy facilities and disposal facilities and the transport of radioactive materials are done consistent with protection of the public health and safety and in compliance with the energy policy and air, water, solid waste, land use and other environmental protection policies of Oregon.

(2) Except as indicated otherwise, the Council shall use the rules of this chapter to determine whether to grant or deny a site certificate and, if the Council grants a site certificate for a facility, to oversee the construction, operation and retirement of the facility. The Council shall use the rules of this chapter in proceedings for amendment, suspension, revocation, transfer or termination of a site certificate.

(3) When the Council deems appropriate, it may adopt additional rules on matters within its jurisdiction. The Council shall adopt any additional rules relating to site certificates sufficiently in advance of the close of testimony in a contested case proceeding on a site certificate to allow parties to address the rule, or if after the close of testimony, in sufficient time to allow the parties an opportunity to supplement their testimony to offer evidence relating to the new rule.

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

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

345-001-0030

Applicability

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

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.310, 469.320

345-001-0035

Electric and Magnetic Field Committee

(1) The chair shall appoint an Electric and Magnetic Field Committee composed of Council members and representatives of the public, utilities, manufacturers and state agencies. The chair may delegate the authority to set meeting dates and agendas to the committee.

(2) The committee shall monitor information available and being developed on the health effects of exposure to low frequency electric and magnetic fields and report the committee's findings periodically to the Council. The Council shall report the findings of the committee to the Legislative Assembly.

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.480

345-001-0050

Public Records Availability and Fees for Copying

(1) All public records of the Council that are retained by the Department of Energy are available for public inspection and copying at the Department during usual business hours, except for records that the Department has determined to be exempt or conditionally exempt from disclosure in accordance with ORS Chapter 192. Except as protected under ORS 357.875, any permanent record of the Council kept by the State Archivist can be inspected at the State Archive building, subject to applicable rules of the Secretary of State, Archives Division.

(2) To inspect Council records a person shall submit to the Department a written request containing the following information:

(a) Name, address, e-mail address and telephone number of the person requesting the record.

(b) A specific description of the record requested.

(3) After receiving a request to inspect a Council record, the Department shall notify the requesting person whether the record is stored on or off the premises of the Department or is kept by the State Archivist.

(4) If the requested record is stored on the premises of the Department, the person who requested the record may inspect it on the premises without charge.

(5) If the requested record is stored off the premises of the Department, the Department shall charge for the staff time necessary to make the record available for inspection on the premises of the Department.

(6) To obtain a copy of a requested record, the person who requested the record shall pay, in addition to any charges under section (5), a fee for the reproduction of the record as follows:

(a) A fee of fifteen cents (\$0.15) per page if the request does not require significant staff time. If the request requires significant staff time, photocopying costs may include, in addition to a per-page charge, the cost of staff time at the rate of twenty-five dollars (\$25) per hour.

(b) A fee of five dollars (\$5) for copies of audio tapes or digital media.

(7) The person requesting copies of records shall pay the fees described in section (6) in advance, except that government agencies or parties in proceedings before the Council need not pay before delivery of the copies.

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.560

345-001-0060

Council Representation at Contested Case Hearings

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

(2) Legal argument as used in this rule has the same meaning as in OAR 137-003-0008(1)(c) and (d).

Stat. Authority: ORS 469.470

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

345-001-0080

Reconsideration and Rehearing -- Orders in Other than Contested Cases

(1) A person entitled to judicial review under ORS 183.484 of a final order in other than a contested case may file a petition for reconsideration or rehearing with the Council within 60 days after the date of the order. A person seeking reconsideration or rehearing shall deliver or mail a copy of the petition to all other persons and agencies required by statute or rule to be notified.

(2) The petitioner shall set forth the specified grounds for reconsideration. The petitioner may support the petition by a written argument.

(3) The petitioner may include a request for a stay of a final order if the petition complies with the requirements of OAR 137-003-0090(2).

(4) The Council may grant or deny a petition by summary order, and, if the Council does not take action, the petition is deemed denied as provided by ORS 183.484(2).

(5) Any Council member may move for reconsideration of a final order in other than a contested case within 60 days after the date of the order. The Council shall grant reconsideration if approved by a majority of the Council. The procedural and substantive effect of granting reconsideration under this section is identical to the effect of granting a party's petition for reconsideration.

(6) The Council shall not grant reconsideration after the filing of a petition for judicial review unless permitted by the court.

(7) A final order remains in effect during reconsideration until stayed or changed.

(8) At the conclusion of a reconsideration, the Council shall enter a new order, which may be an order affirming the existing order.

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.403

ENERGY GENERATION AREAS

345-001-0200

Creation of an Energy Generation Area

(1) The Council shall define the boundaries of an energy generation area by rule when:

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

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

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

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

- (a) The location of geothermal, solar or wind resources;
- (b) The effect of energy facility development on wildlife or wildlife habitat;

- (c) Natural geographical features; and
- (d) Political and treaty boundaries.

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.300, ORS 469.320

345-001-0210

Effect of an Energy Generation Area

(1) For the purpose of this rule:

- (a) “Energy resource” means geothermal, solar or wind power;
- (b) “Small generating plant” means one or more electric power generating devices that:

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

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

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

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

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

(e) Construction of a small generating plant includes the creation of a small generating plant by constructing one or more new electric power generating devices or otherwise adding to the nominal electric generating capacity of one or more existing electric power generating devices that have a combined nominal electric generating capacity of 3 megawatts or less.

(2) For the designated energy resource within an energy generation area created under OAR 345-001-0200:

(a) Except as described in subsection (b), any person who intends to construct or expand a small generating plant shall submit a request for exemption to the Office of Energy, as described in OAR 345-015-0360(6);

(b) If the expansion of a small generating plant would create an electric power generating plant with an average electric generating capacity of 35 megawatts or more, a person shall not expand the small generating plant unless

the Council has granted a site certificate or an amendment to an existing site certificate.

(3) Upon consideration of a request for exemption described in section (2), if the Council finds that the accumulated effects have a magnitude similar to a single generating plant with an average electric generating capacity of 35 megawatts or more, a person shall not construct or expand the small generating plant as proposed unless the Council has granted a site certificate or an amendment to an existing site certificate. In making a finding about accumulated effects, the Council shall consider factors including, but not limited to, the following:

(a) The nominal electric generating capacity of the proposed small generating plant or proposed expansion to a small generating plant;

(b) The location of the proposed small generating plant or proposed expansion to a small generating plant relative to existing small generating plants and energy facilities using the same energy resource;

(c) Significant potential adverse environmental impacts of the proposed small generating plant or proposed expansion to a small generating plant, including the impacts of related or supporting facilities;

(d) Significant adverse environmental impacts of all existing small generating plants using the same energy resource within the energy generation area, including the impacts of all related or supporting facilities;

(e) The contribution of the proposed small generating plant or proposed expansion to a small generating plant toward maintaining reliable energy delivery to an area in the state; and

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

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.320

345-001-0220

Energy Generation Areas

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

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.300, ORS 469.320