

Oregonians' Guide to Siting and Oversight of Energy Facilities

Oregon
Department of
Energy

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OREGON
DEPARTMENT OF
ENERGY



Siting and Oversight of Energy Facilities

Welcome to the Oregonians' Guide to Siting and Oversight of Energy Facilities

Introduction

Reviewing and potentially siting energy facilities in Oregon is a complex and sometimes lengthy process. The Oregon Department of Energy developed this guide to help Oregonians better understand the energy facility siting process and the roles and responsibilities of the Energy Facility Siting Council and Oregon Department of Energy staff. Just as importantly, this guide is intended to help Oregonians effectively participate in the state siting process, and to understand their roles in offering public input on proposed facilities.

This guide is for reference and informational purposes only. It is not exhaustive, nor is it intended to provide legal advice. Any perceived or actual conflict between language of this document and Oregon Revised Statute (ORS) or Oregon Administrative Rule (OAR) will be resolved by reference to those applicable ORSs and OARs.

Please feel free to provide suggestions on how we can improve this guide. Suggestions can be submitted to energy.siting@oregon.gov.

Staying in Touch

As you have questions, or for more information, please reach out to us at:

The Oregon Department of Energy
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Direct: 503-378-4040 | Toll-free in Oregon: 800-221-8035
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askenergy@oregon.gov



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Introduction to the Energy Facility Siting Council

In 1975, the Oregon Legislature passed legislation creating the Energy Facility Siting Council (EFSC or “the Council”) and the Oregon Department of Energy (ODOE or “the Department”). Today, ODOE pursues its mission to lead Oregon to a safe, clean, and sustainable energy future – a mandate that includes providing staff and resources to the Council. EFSC, in turn, is responsible for overseeing the review of and decision-making for most large-scale energy facilities and infrastructure in Oregon. State-level oversight of energy facilities helps ensure a comprehensive, coordinated review. Proposed facilities must meet the Council's siting standards to receive a site certificate, which is required for a facility to be built, and the Council has ongoing regulatory authority over the construction and operation of the facility to protect public safety and Oregon’s environment.

Council Members

EFSC is a separate government body from the Oregon Department of Energy. Seven volunteer members serve on the Council for up to two, four-year terms. The Governor appoints EFSC councilors, who must be confirmed by the Oregon State Senate. Members may be reappointed and reconfirmed to serve a second term. Individuals interested in serving on the Council can apply through the Governor’s Boards and Commissions Appointment process. Geographic representation and diverse expertise both factor in to EFSC appointments. New members go through an onboarding process to familiarize themselves with EFSC responsibilities, and all members receive ongoing training.

EFSC has final decision-making authority over whether to authorize an energy facility that falls under state jurisdiction. EFSC’s authority to approve or deny an energy facility is based entirely on the standards applicable to each proposed facility. Most facilities have to meet **the same 14 general standards**. Facility-specific standards may also apply. Applicants must prove their application meets all of the applicable standards.

WHAT DO WE MEAN BY A “STANDARDS-BASED PROCESS”?

The state of Oregon has 14 general standards that most proposed energy facilities must meet to receive approval for a site certificate, plus facility-specific standards. If Council finds that energy facility proposals satisfy all applicable standards and requirements, the facilities must be approved. Standards cover issues such as land use, environmental impacts, noise concerns, and cultural resources.

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Council Meetings

EFSC is subject to the Public Meetings Law, which governs issues such as advance public notice, executive sessions, quorums, and minutes. At least five of the seven EFSC members must be in attendance to take formal action on any matter. Members may participate by phone.

STAYING INVOLVED

EMAIL: ODOE shares information about EFSC through general and project-specific email lists. Register to receive public notices and other information at

<https://public.govdelivery.com/accounts/ORDOE/subscriber/new>.

MAIL: Request mailed notices by contacting ODOE at energy.siting@oregon.gov or 503-378-4040 or 800-221-8035.

WEBSITE: Find ODOE online at www.oregon.gov/energy. All projects have their own pages in the Energy Facility Siting section. Rulemaking materials can be found in the “Get Involved” section.

SOCIAL MEDIA: You can access ODOE’s Facebook, Twitter, and Instagram accounts from www.oregon.gov/energy. Follow for timely information and reminders about meetings.

EFSC holds meetings throughout the state. Generally, the Council holds its meetings in locations close to the geographic vicinity of the facility the Council is considering or discussing during that particular meeting. Hearings on Draft Proposed Orders are required to be held in the vicinity of the location of proposed facilities.

Meetings, which are typically scheduled out at the beginning of every calendar year, are held approximately one month apart so long as there are substantive agenda items for discussion or action. Roughly one week in advance of each meeting, public notices are posted to the EFSC website and sent to individuals on EFSC’s general mailing list; a press release is sent to media. Notices include the meeting date, time, location, and agenda. On occasion, a special meeting, with limited notice (no less than 24 hours), may be scheduled and held in person or by telephone. All notices include information on how to call in to meetings. In the event of an emergency, a meeting may be held with less than 24 hours’ notice, with notice appropriate to the emergency circumstances.

How EFSC Sets Its Agendas

The Council adheres to a prescribed process for reviewing proposed facilities and taking public comment on those facilities. Meetings typically include facility updates and

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presentations from Department staff, developers, and other stakeholders. Depending on where a proposed energy facility is in its review process, EFSC may make decisions or issue orders. All meetings include an open public comment period, and some agenda items may include specific opportunities for input; these opportunities, which are discussed more fully later in this document, will be clearly noted in the Council meeting agendas.

Stakeholders may request EFSC discussion or action on a particular subject. If you want to ask EFSC to take up a particular topic, you must make the request in writing to the Council Secretary (email: energy.siting@oregon.gov). With the concurrence of the Council Chair, and if the next regularly scheduled EFSC meeting is at least 14 days after the request, the Council Secretary will place the item on the agenda for that next meeting.

Meeting Materials

Materials reviewed by the Council to prepare for meetings and for issuing decisions are made available to the public, excluding those that are subject to attorney-client privilege or confidential materials. ODOE's website is updated with presentations and other documents, and notices announcing the meetings will include links to relevant documents or attachments. Paper copies of many materials are available at the meetings.

Staffing the Council: ODOE and DOJ

The Department of Energy's Energy Facility Siting Division serves as staff to the Council. Siting Division staff manage the application review process and other issues related to a proposed or operating facility or other Siting Division administration. While EFSC is the final decision-maker on all proposed facilities, Department staff make recommendations to EFSC about whether a proposed energy facility complies with applicable standards and rules, and if a facility should receive a site certificate. Staff also provide compliance and oversight if and when a facility is built.

The Oregon Department of Justice provides legal counsel to both the Council and the Department. DOJ's Assistant Attorneys General provide legal advice, represent the Council during Council meetings, and represent the Department or the Council in legal proceedings, including contested cases on site certificate applications. In certain instances, one DOJ attorney may represent Department staff while another represents the Council.

The Governor's Energy Policy Advisor, Department management, and staff from other ODOE divisions may participate in presentations to EFSC. Siting division staff may call on subject matter experts across the agency for assistance during application review and compliance activities.

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Funding the Council and Application Reviews

EFSC review processes require full cost recovery. Specifically, the applicant is responsible for all expenses related to:

- The Department’s application review and associated recommendations to EFSC
- State agency, local government and Tribal Government reimbursable review and comment as requested by the Department
- EFSC’s review and decision
- Ongoing expenses related to compliance and monitoring once a site certificate is issued.

All expenses paid by the applicant or the holder of the site certificate are required by law to be necessary, just, and reasonable.

For EFSC meetings, all general costs such as room rental, food, hotel accommodations, and per diem for Council members, are apportioned to each agenda item based on the amount of time that agenda item took relative to the overall duration of the meeting.

EFSC Jurisdiction

EFSC has jurisdiction over facilities that meet the statutory definition of “energy facility” in ORS 469.300(11)(a). Energy facilities under EFSC’s jurisdiction require a site certificate from EFSC before those facilities may be constructed or operated.

EFSC’s jurisdiction includes most large-scale energy generating facilities and infrastructure in Oregon. What constitutes “large-scale” can depend on the physical footprint of the facility, how much energy is produced at the facility, or both.

Certain facilities – liquefied natural gas terminals, for example – fall exclusively under federal jurisdiction. In those cases, EFSC has no jurisdictional authority for review or approval.

Approved facilities receive a **site certificate** to operate. A site certificate is:

a “binding agreement between the State of Oregon and the applicant, authorizing the applicant to construct and operate a facility on an approved site, incorporating all conditions imposed by the council on the approved facility.”

Once issued by Council decisions, site certificates can be changed over time through the amendment process.

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In others instances, facilities may be subject to both federal and state jurisdiction; for example, a facility that meets state jurisdictional thresholds and is to be sited partially or wholly on federal land would need both federal approval and an EFSC site certificate. For facilities that are subject to both federal and EFSC jurisdiction, the Department and Council will coordinate with the federal agencies to reduce duplicative efforts.

Facilities that do not meet the definition of “energy facility” for purposes of EFSC jurisdiction, and that are not subject to exclusive federal jurisdiction, are subject to review and approval by the local jurisdiction in which the facility is proposed to be located, such as county or city authorities.

For all facilities subject to EFSC jurisdiction, ODOE staff coordinate the application for the site certificate review process on behalf of EFSC, but EFSC is the decision-making authority under state law.

Exemptions

Oregon statutes exclude some facilities from the site certificate requirement. ORS 469.320(2) lists all EFSC jurisdictional facilities for which a site certificate is not required. Even so, these types of facilities still must receive EFSC approval granting the exemption before they can be constructed. The most common exemptions are for high efficiency cogeneration facilities, as defined in OAR 345-001-0010(29), and some biofuel production facilities, as defined in ORS 469.300(11)(a)(G).

Working With Other State and Local Agencies and Tribal Governments

Oregon’s Energy Facility Siting review is designed by rule and statute as a consolidated review. The Council seeks input from state agencies, local governments, and Tribal Governments, who each provide specific knowledge and expertise related to Council standards and applicable rules, including in some circumstances permits or approvals that for non-EFSC jurisdictional facilities would be administered by those agencies directly. Some local or state standards or permits that would be required for the facility become EFSC jurisdictional permits. This helps to eliminate duplication, simplify timelines and decision-making processes, and makes it easier for the public to track and participate.

Oregon Revised Statutes and Administrative Rules designate specific bodies as “reviewing agencies.” These are state and local entities that oversee rules and regulations that may be applicable to the siting of an energy facility, or, that have specific expertise related to an applicable Council standard. ODOE relies upon reviewing agency expertise during application review. For example, the Oregon Department of Fish and Wildlife might be asked to review an

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application for a facility proposed near breeding grounds for a particular species of bird; feedback from ODFW might inform details of the Council's final order.

All state agencies and local governments participating as reviewing agencies are allowed to enter into an agreement with ODOE to be reimbursed for costs of work requested of them. These costs are reimbursed by the applicant.

Tribal Governments that are identified as potentially affected by the proposed facility are also asked to review the proposed facility application and provide comments. Reimbursement is also available to these tribes through contracts established with ODOE.

The governing body of any local government where a facility is proposed to be located is designated as a Special Advisory Group (SAG). The SAG has multiple responsibilities in the review process, including providing to EFSC applicable requirements from the local government's acknowledged comprehensive plan and land use regulations that are required by the statewide planning goals and in effect on the date the preliminary application is submitted. The SAG can also review and provide input to EFSC on any other issue related to a Council standard that is of concern to the SAG.

Once a site certificate has been issued by EFSC, any state and local permits that are included in and governed by the site certificate must be issued by the state or local governments without any additional hearings, conditions, or proceedings. State and local agencies have ongoing compliance responsibilities along with ODOE to monitor and enforce conditions of applicable permits, as necessary.

Some permits and issues are outside of the EFSC process. These typically include federal permits, permits that are delegated by the federal government to state agencies, issues related to workplace safety and labor or wages, and other issues. Facility developers must maintain compliance with these permits and requirements independent of the site certificate process.

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The Proposed Energy Facility Review Process

Major Phases in the EFSC Review Process

EFSC’s application review process integrates all applicable state and local standards, requirements, and permits necessary to receive a site certificate into a single process with seven major steps. A consolidated review process eliminates duplication, different decision timelines, and different appeal paths while simplifying opportunities for public participation.

The EFSC application review process is complex. The review process typically takes between one and two years.

The charts below outline the process for reviewing new proposed energy facilities.

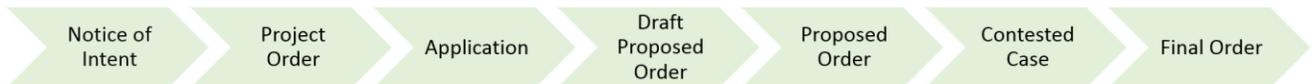
ADDITIONAL RESOURCES

The ODOE website includes documents with EFSC process flowcharts and milestones laid out. We are happy to make copies available for community events and outreach meetings.

[EFSC Process Overview Fact Sheet](#)

[EFSC Frequently Asked Questions](#)

[EFSC Process Flowchart](#)



For amendments to existing site certificates, the review process is somewhat different:



Pre-notice of Intent

Prior to submitting a Notice of Intent (NOI), applicants may have meetings with the Department’s Energy Siting Division, or other state agencies, to discuss the review process. The applicant may also have pre-submittal meetings with local governments or community groups, or contact individual landowners, at its discretion. There may be articles in local newspapers or other media. The Department typically does not comment on meetings that take place during this pre-NOI time period because the first official step in a facility site review process is the submission of a Notice of Intent (NOI), described below.

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Notice of Intent

The Notice of Intent begins the application process for a proposed facility. In an NOI, an applicant provides information about the site and characteristics of the proposed facility, and discusses potential impacts from construction and operation of the proposed facility. The Oregon Administrative Rules (OARs) describe the requirements for the NOI. Information in an NOI reflects what is required in a site certificate application, but the NOI does not contain the same level of detail.

An NOI consists of 16 exhibits.

- Exhibit A Applicant and Participating Persons
- Exhibit B Facility Description
- Exhibit C Facility Location
- Exhibit D Transmission or Pipeline
- Exhibit E Permits Required
- Exhibit F Adjacent Property Owners Name & Addresses
- Exhibit G Maps
- Exhibit H Non-Generating Facility Need
- Exhibit I Choice of Land Use Standards (EFSC or local jurisdiction)
- Exhibit J Identification of Potentially Significant Environmental Impacts
- Exhibit K Information about Potentially Significant Adverse Impacts to Public Services
- Exhibit L Water Use
- Exhibit M Carbon Dioxide
- Exhibit N Applicable OARs, ORS and Local Land Use Requirements
- Exhibit O Schedule to Submit an Application
- Exhibit P Consultation with State Commission on Indian Services

The NOI is the public's first opportunity to submit formal comments on a proposed facility.

Reviewing Agencies, SAGs, and Public Notice of the NOI

Once ODOE receives the NOI, the Department notifies reviewing agencies and Special Advisory Groups, requesting review, comments, and information on applicable state and local regulations and ordinances. At the same time, the NOI is made available to the public for comment; the document is published on the ODOE website, and notice is sent to the general mailing list.

Oregon administrative rules require notice to be sent to people who have contacted the Department and requested to be included in notice mailings for a specific facility and persons who are on the Department's "general" mailing list. Anyone can be added to either of these

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lists by requesting notice through the Department’s website (see the section “Staying Informed”).

During the NOI phase, the Department must also provide notice to property owners within a certain distance of the proposed facility’s site boundary. The list of property owners is provided by the applicant and must include all owners of record as shown on the most recent property tax assessment roll. Notifying property owners is required at several steps in the review process. Property owners may not opt out of the required notifications. Notifications are sent to the property owners’ addresses on record, not the address of the property itself.

THE NOI IS:

- Applicant’s conceptual plan.
- Information about applicant, facility, and potential impacts.
- Reviewing agencies’ and public’s first opportunity to participate.
- Valid for two years.

THE NOI IS NOT:

- A detailed application.
- A complete or final plan.

The Department must also publish notice of the NOI in a newspaper of general circulation that is available in the vicinity of the proposed facility.

The public notice and the NOI are both posted on the ODOE website.

Public input at the NOI stage helps the applicant identify issues that, if covered by an applicable Council standard, can be addressed in the application. Comments should be as specific as possible. Please note: commenting at this stage does not preserve the right to request party status in a contested case proceeding. In order to reserve that right, a commenter must still comment during the Draft Proposed Order comment timeframe, which is discussed below.

Public Information Meeting

One or more public information meetings may be scheduled in the vicinity of the proposed facility during the NOI phase to introduce the facility to the public. The public may raise issues that can be addressed at the meeting or more fully addressed in the application. Public information meetings are not required during the NOI phase, but they are often scheduled to help ensure people who are interested have additional access to information about the proposed facility that can help inform input and public comments later in the review process.

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Project Order

Following receipt of the NOI, the Department prepares a Project Order. The Project Order establishes all state and local standards or criteria that must be met for EFSC to issue a site certificate. To issue a site certificate, the Council must find that an application complies with applicable rules and standards that are in place on the date the site certificate is issued, not the date the project order is issued. The one exception is that applicable local land use regulations are those that are in place as of the date the preliminary application is submitted. The Project Order can be amended at any time.

The Project Order includes the specific analysis area distances the applicant must review for various exhibits. The analysis areas are, at a minimum, the area within the site boundary but can extend beyond the site boundary. These analysis area distances start with the study area distances described in the NOI section above and are increased or decreased based on the Department's preliminary evaluation of the proposed facility type and location as well as input received from reviewing agencies, SAGs, and the public. The Project Order also specifies if the applicant must conduct on the ground surveys or "desk top" surveys, which use digital data, maps, charts, and other resources for site planning.

The standards identified in the Project Order set the stage for how the Council will review the proposed facility.

Timelines

By rule, the Department must issue the Project Order, to the extent practicable, within 140 days following the date of submission of the NOI.

The NOI expires two years after submittal if no application has been submitted. If the applicant requests an extension to EFSC at least 45 days before the expiration date, EFSC may extend the expiration date for up to one year.

THE PROJECT ORDER:

- Is a blueprint for the project application.
- Tells the applicant which standards and requirements apply to their project.
- Establishes the analysis areas.
- Provides the basis for EFSC's evaluation and decision – the final order and site certificate are based on standards identified in the Project Order.
- Can be amended at any time.
- Must be issued within 140 days after the NOI is received.

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Developing the Preliminary Application

The next step in the process is for an applicant to prepare the preliminary Application for a Site Certificate (pASC). The applicant completes appropriate studies and develops the exhibits necessary for the pASC. To complete the exhibits, the applicant may work directly with reviewing agencies or Special Advisory Groups, and may provide drafts of the exhibits to the Department for comment. This time period may be lengthy, from several months to more than a year. To agencies not involved at this stage or to the public, it may appear the project has disappeared, yet the work continues.

Submitting the Preliminary Application (pASC)

The applicant submits the pASC to the Department. The pASC is required to contain the information specified in Chapter 345, Division 21 of the Oregon Administrative Rules.

Facilities must conform to local and state land use laws. When applicants submit a pASC, it must select whether to have the local government in which the facility is located determine land use compliance (“Path A”) or have EFSC determine land use compliance (“Path B”). Once the pASC is submitted, the applicant may not choose a different land use path.

THE PRELIMINARY APPLICATION AND FULL APPLICATION:

- Provide detailed descriptions of the proposed facility.
- Include technical assessment of compliance with standards identified in the Project Order.
- Are based on different analysis areas for different standards.

Completeness Review

After the pASC is submitted, the Department has 60 days to conduct a completeness review and either notify the applicant that the application is complete or request additional information. Per OAR 345-015-0190(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.

A pASC is also reviewed by reviewing agencies, SAGs, and Tribal Governments. These entities, within specified timelines, submit comments or requests for additional information to ODOE.

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If more information is needed, the Department will issue a Request for Additional Information (RAI) describing what the Department or reviewing agency needs to make a determination of completeness. The Department will specify a date by when the applicant must provide the additional information. If the applicant does not respond by the required date, including any approved extensions, the Council may reject the application. The Department will review all submittals in response to RAI's, and may include reviewing agencies in the review of the responses.

ODOE makes the pASC available to the public on the Department's website and the applicant may provide copies to the community (generally, the local library). The Department does not issue a formal public notice, and public comment is not sought at this time.

Review of the Complete Application for a Site Certificate (ASC)

The ASC is deemed filed on the day the Department is in possession of the complete application. The complete application can consist of either the pASC plus an application supplement responding to ODOE and reviewing agency questions and Requests for Additional Information, or a revised application document addressing the RAIs and questions.

The ASC is provided to reviewing agencies for their review along with a notice to agencies asking them to provide a report regarding any applications for permits administered by that agency, issues significant to the agency, the agency's conclusions regarding the proposed facility's compliance with applicable rules and statutes, recommended site certificate conditions, and any other information important for the Council's consideration.

The ASC is made available to the public on the Department's website. The Department also issues a public notice informing the public that the application is complete, and provides notice of any informational public meeting(s) that may be held on the ASC (see next section).

Information included in a complete application for a site certificate:

- Exhibit A Applicant and Participating Persons
- Exhibit B Facility Description
- Exhibit C Facility Location
- Exhibit D Organizational Expertise
- Exhibit E Permits Required
- Exhibit F Adjacent Property Owners Name and Addresses
- Exhibit G Materials Analysis
- Exhibit H Geologic and Soil Stability
- Exhibit I Soil Conditions

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- Exhibit J Wetlands and other Jurisdictional Waters
- Exhibit K Land Use
- Exhibit L Protected Areas
- Exhibit M Financial Capability
- Exhibit N Non-Generating Facility Need
- Exhibit O Water Use
- Exhibit P Fish and Wildlife Habitat
- Exhibit Q Threatened and Endangered Plant and Animal Species
- Exhibit R Scenic
- Exhibit S Historic and Cultural Resources
- Exhibit T Recreation
- Exhibit U Public Services
- Exhibit V Solid Waste and Wastewater
- Exhibit W Site Restoration
- Exhibit X Noise
- Exhibit Y Carbon Dioxide Emissions
- Exhibit Z Evaporative Cooling Tower
- Exhibit AA Electric and Magnetic Fields
- Exhibit BB Other Information
- Exhibit CC Additional Statutes, Rules, Ordinances
- Exhibit DD Other Specific Standards

Public Information Meeting

After the completeness review has been concluded, the Department issues a public notice informing the public that the application is complete. At the same time, ODOE provides notice of any informational public meeting(s) that may be held on the ASC. Public information meetings are not hearings or formal public comment opportunities. They are held to add another opportunity to access information about a proposed facility, which in turn can help inform formal public comment offered later in the process. At public information meetings, Department representatives explain the siting process, and applicants provide details about the proposed facility. These meetings are an opportunity for the public to ask questions about the process and the facility so they better understand the review process and what is being proposed. While information meetings do not include a public comment component, they provide information that can be useful for the formal comment period during the Draft Proposed Order phase.

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Preparing the Draft Proposed Order (DPO)

After receiving a complete application, the Department next prepares a Draft Proposed Order (DPO), using the information contained in the complete application and comments from reviewing agencies, SAGs, and Tribal Governments.

The DPO phase, including the hearing, is the public's second opportunity to submit formal comments on a proposed facility.

The DPO includes staff's evaluation of the information and a recommendation to EFSC of whether the facility application satisfies all applicable standards and rules. If staff finds that the application adequately demonstrates the facility will comply with all applicable standards and rules, or will do so with appropriate conditions, staff will recommend approval and issuance of a site certificate.

If staff finds that the evidence in the application is not sufficient to demonstrate compliance with all applicable standards and rules, staff will recommend that the application be denied.

THE DRAFT PROPOSED ORDER:

- Is based on an evaluation of the application against all applicable standards.
- Incorporates reviewing agency, SAG comments, and Tribal Government comments received during the application review phase.
- Details the findings of facts and conclusions of law.
- Sets forth recommended conditions of approval and any monitoring plans or reasons why the application should be denied.

Draft Proposed Order (DPO) Public Comment Period

When the DPO is issued, the Department will provide notice of and schedule a public comment period and hearing. The notice is sent to the general and facility-specific mailing lists, and to nearby property owners listed on the most recent property tax assessment roll. The applicant is asked to provide an updated property owner list prior to notice. The notice must also be published in at least one newspaper in the vicinity of the proposed facility at least 20 days before the public hearing.

Comment periods are generally 30 days (60 days for Type A amendments), at the end of which the public hearing is held. Written comments, sent via email, regular mail, fax, or hand-delivery, may be submitted at any time until the close

of the record. After the close of the DPO record, no additional comments may be provided.

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Public hearings must be held near the proposed facility's location, and EFSC may appoint an independent hearing officer to preside over the hearing. The public comment period hearing provides the public, reviewing agencies, and the applicant an opportunity to provide written and/or oral testimony on the application and DPO. In other words, it's a critical step in the process, where the public can offer input on an application. In addition, in order to preserve the right to raise an issue in the contested case phase, a later step in the process, a person must comment on the record of the DPO, either in writing or orally at the DPO hearing. To preserve that right, a person must:

1. Raise issues that are within EFSC jurisdiction. This means an issue must be associated with one of the applicable EFSC standards or other laws applicable to the proposed facility. A complete list of EFSC standards that could be applicable to any proposed facility is below. A more specific list of the applicable standards and laws for any particular facility is identified in that facility's Project Order. Commenters should reference which standard their issue relates to.
2. Raise issues on the record, either in writing during the DPO public comment period, or verbally at the DPO public hearing.
3. Raise issues with sufficient specificity to afford EFSC an adequate opportunity to respond, including a statement of facts that support the person's position on the issue, including identifying the standard or rule that is at issue. Simply listing the standards is not typically considered sufficiently specific.

EFSC standards are laid out in the Oregon Administrative Rule:

- 345-022-0000 General Standard of Review
- 345-022-0010 Organizational Expertise
- 345-022-0020 Structural Standard
- 345-022-0022 Soil Protection
- 345-022-0030 Land Use
- 345-022-0040 Protected Areas
- 345-022-0050 Retirement and Financial Assurance
- 345-022-0060 Fish and Wildlife Habitat
- 345-022-0070 Threatened and Endangered Species
- 345-022-0080 Scenic Resources
- 345-022-0090 Historic, Cultural and Archaeological Resources

WHAT'S A HEARING OFFICER?

Hearing officers independently run the contested case, providing third-party oversight of the review process. EFSC contracts with outside individuals that perform this service.

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- 345-022-0100 Recreation
- 345-022-0110 Public Services
- 345-022-0120 Waste Minimization
- 345-023-0005 through 0040
 - Need Standard for Non-Generating Facilities
- 345-024-0010 – 0720
- 345-024-0010 – 0015 Specific Standards for Siting Wind Facilities
- 345-024-0030 Specific Standards for Surface Facilities Related to Underground Gas Storage Reservoirs
- 345-024-0090 Specific Standards for Transmission Lines
- 345-024-0500 – 720 Standards for Energy Facilities that Emit Carbon Dioxide

After the DPO hearing, EFSC members will review the DPO at a public meeting, typically its next regularly scheduled meeting. Staff may require additional time to consider issues and comments raised during the public comment period. During the review of the DPO, Department staff will provide detailed information about the proposed facility, the Department's recommendations, and an overview of the comments received. In advance of this meeting, EFSC will also receive all comments submitted on the record of the DPO. EFSC has the opportunity to question staff about the proposed facility and about the Department's recommendations, and may direct staff to modify sections of the DPO or respond to additional issues raised during the DPO hearing process.

Preparing the Proposed Order

THE PROPOSED ORDER:

- The proposed order is based on the DPO, but has been amended to include EFSC's input, public comments, and reviewing agency comments.

The Department revises the DPO to a Proposed Order based on EFSC's discussion and deliberations and comments received during the public comment period on the DPO. If issues raised during the DPO public hearing process require changes to the analysis, or if EFSC requested changes to the DPO, the proposed order will reflect those changes.

The Department issues the proposed order, and sends public notice of the proposed order to all interested parties, including reviewing agencies, the general and facility-specific mailing lists, and property owners. There is no public comment period on the proposed order.

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The Contested Case Process

Concurrent with the public notice of the proposed order, the Department issues a notice of contested case. A contested case is automatically entered into for new site certificate applications. The notice is sent to the applicant and all persons who commented in person or in writing on the record of the public hearing on the DPO. The Department's notice of contested case includes a deadline for eligible persons to request party status and to raise contested case issues. Only those persons who have commented in person or in writing on the record of the DPO public hearing are eligible to request party status.

The purpose of the contested proceeding is for an independent hearing officer to evaluate properly-raised issues and make a recommendation to EFSC on those issues. The hearing officer is not a decision-maker on a facility application. The hearing officer makes a recommendation to EFSC for EFSC's review and decision. Any final decision by EFSC is appealable directly to the Oregon Supreme Court and any appeal is limited to issues raised in the contested case proceeding.

A hearing officer presides over the contested case proceeding. If there are requests for party status, the hearing officer will review the requests and grant party status as appropriate. The applicant and Department are automatic parties to a contested case. If no additional persons request party status, the hearing officer will conclude the contested case proceeding.

A party denied party status by the hearing officer may appeal that decision to EFSC. Only the Department, the applicant and those who have been granted party status by the hearing officer may participate in the contested case proceeding. The proceeding typically includes presentation of evidence, rebuttal, cross-examination and closing argument.

Following the contested case proceeding, the hearing officer issues a proposed contested case order stating the hearing officer's findings of fact, conclusions of law and if necessary,

CONTESTED CASE:

- Is an administrative judicial process governed by Oregon law.
- The EFSC review process has the "contested case" phase built into the timeline to ensure Oregonians have a clearly defined opportunity to raise issues about a proposed energy facility.
- The process allows additional evidence and evaluation of issues that are not resolved through the Proposed Order phase.

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recommended site certificate conditions on the issues in the contested case. Parties to the contested case proceeding have an opportunity to file exceptions to the proposed contested case order.

EFSC Review and Action on the Facility Application

After the conclusion of the contested case phase, EFSC will review the proposed contested case order, exceptions, and responses to exceptions, as well as the Department's proposed order. EFSC may adopt, modify, or reject the proposed contested case order. In its final order, EFSC will grant or deny issuance of a site certificate. An affirmative vote of at least four EFSC members is required for approval of a site certificate.

THE FINAL ORDER:

- EFSC evaluates the proposed order issued by staff and the contested case order issued by the Hearing Officer, then outlines in the Final Order if Council will adopt, modify, or reject the findings of facts, conclusions of law, and conditions of approval.

THE SITE CERTIFICATE:

- A Site Certificate is issued with a Final Order and contains conditions for the construction, operation and retirement of a facility.

The final order includes the final findings of fact and conclusions of law, and, as necessary, information about how the facility complies with each applicable standard and rule. If EFSC determines the proposed facility satisfies all applicable standards and rules, it must issue a site certificate.

The site certificate represents a binding agreement between the state of Oregon and the applicant. It authorizes the applicant to construct, operate, and retire the energy facility substantially as described in the site certificate. A site certificate approval is typically subject to conditions as specified by EFSC.

Appealing EFSC's Decisions

Parties to the contested case may apply for a rehearing from EFSC within 30 days from the date the final order approval or rejection is issued. Unless EFSC acts on the rehearing application within 30 days after it is filed, the rehearing application is considered denied.

Any party to a contested case may file a petition for judicial review within 60 days of EFSC's final order or within 30 days after the date an application for rehearing is denied or deemed denied. Issues on appeal are limited to those raised by the parties in the contested case

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proceeding. The Oregon Supreme Court has exclusive jurisdiction for judicial review of the Council's approval or rejection of an application for a site certificate.

Amending a Site Certificate

EFSC has initiated a rulemaking related to EFSC's review of requests for amendments to site certificates. We anticipate that the amendment review process will change, but the how process will change will not be finalized until the rulemaking process is concluded. Contact the Department if you would like information on how to participate in the review of any requests for amendments underway.

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Facility Compliance

Introduction to ODOE's Compliance Program

ODOE monitors each facility throughout its lifecycle to maintain compliance with the final order and all site certificate conditions. The Compliance Officer (CO) is the facility compliance lead for ODOE.

Pre-Construction Compliance Activities

The CO will schedule an inspection of the site prior to any ground-breaking activities. At that time, the CO will discuss construction planning and requirements for compliance with the site certificate.

A site certificate typically includes conditions related to pre-construction actions and approvals. The Department will review the certificate holder's submittals and may seek review assistance from reviewing agencies for certain pre-construction compliance submittals. The certificate holder may not commence construction prior to complying with all applicable pre-construction conditions.

To provide the responses required by the pre-construction conditions and to adequately characterize the site, the certificate holder may complete studies on the facility site that may require heavy equipment. Work of this type is not considered "construction." Construction is defined as "work performed on a site, excluding surveying, exploration or other activities to define or characterize the site, the cost of which exceeds \$250,000."

WHY ENERGY FACILITY COMPLIANCE MATTERS:

Most energy facilities will exist for decades, and some facilities are planned to be in service in perpetuity. It's important for the state to have an established program that ensures facilities are designed, constructed, operated, and retired consistent with their site certificate and all conditions.

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Construction Phase Compliance Activities

The certificate holder may not begin construction until all pre-construction conditions have been met, but must begin construction by the date required in the site certificate. The certificate holder may make a Request for Amendment to the site certificate in order to change the construction commencement or completion deadline (see Extension Requests below). The certificate holder is required to report promptly to the Department when construction begins.

The Department will schedule site visits during construction to monitor compliance with the site certificate conditions. In addition, the certificate holder is required to provide semi-annual progress reports to the Department. Construction must be completed by the date included in the site certificate

Construction Deadline Extension Requests

The certificate holder may request extension of the beginning or completion deadlines through a request for amendment to the site certificate. As of fall 2017, EFSC is reviewing its Site Certificate Amendment rules, which may change in the future. However, current rules governing the review process for RFAs require the certificate holder to either request the extension no later than six months before the date of the applicable deadline, or, if the certificate holder demonstrates good cause for the delay in their request, no later than the applicable deadline. If a request for amendment is made, there will be public notice, and opportunity for the public to comment on the request.

Site Certificate Termination

If the certificate holder fails to begin or complete construction by the dates established in the site certificate, EFSC may terminate the site certificate. If the certificate is terminated, future facility developers would be required to begin the application process again at the NOI stage.

Facility Inspections

To monitor compliance with all site certificate conditions, the Department conducts inspections during facility operation. The inspection frequency is determined by many factors but will generally be annually. The Department also reviews the required annual reports and any additional documents required to be submitted. The Department may request additional information or seek support from other agencies to monitor facility compliance.

Anyone may request an inspection of an energy facility if they believe there is a violation of a Council order or site certificate condition or a situation exists that may lead to unnecessary exposure of an individual to hazardous materials or unsafe or dangerous conditions. The Department will follow the procedures included in administrative rule OAR 345-026-0050(2) if a

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request is received. ODOE's website contains links to the process and forms to request a facility inspection.

Reporting Incidents

The certificate holder is required to notify the Department within 72 hours of occurrences involving the facility if:

1. There is an attempt by anyone to interfere with its safe operation.
2. There is a significant natural event such as a fire, earthquake, flood, tsunami or tornado, or human-caused event such as a fire or explosion.
3. There is any fatal injury at the facility.

The Department will monitor the certificate holder's response to the incident if there may be an impact on how the certificate holder meets the site certificate conditions.

Decommissioning and Retirement

If a facility is retired or abandoned, the certificate holder is obligated to decommission the facility and restore the site to a useful, non-hazardous condition. To protect the state, should a facility be abandoned and a site certificate holder go bankrupt before decommissioning a facility, as part of compliance with the Council's standards for Retirement and Financial Assurance, a site certificate holder is required to procure a bond or letter of credit from a Council-approved financial institution in an amount deemed sufficient to restore the proposed site. The bond or letter of credit is held by the Oregon Department of Energy Siting Division Fiscal Analyst for the life of the facility. The bond or letter of credit would be used by the state should a site certificate holder go bankrupt and abandon a facility prior to decommissioning and restoring the site.

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Special or Non-Routine Circumstances

Expedited Review

An applicant may request expedited review of an application if the proposed facility qualifies under applicable statutes (ORS 469.370(10)). Facilities that have a generating capacity of less than 100 megawatts may request expedited review. If the Council approves, no NOI is filed. Reviewing Agencies, SAGs, and Tribes receive notice of the application when the pASC is received. Certain other Special Criteria Facilities, such as gas-fired generating plants of sizes that would preclude inclusion as a small capacity facility, may also qualify for expedited review.

Federal Intersect Under the National Environmental Policy Act

Both EFSC and the federal government have authority over EFSC-jurisdictional facilities that cross federal lands. In those instances, a federal agency decision will be necessary for some aspect of a proposed facility, and the National Environmental Policy Act may require the preparation of an environmental review document.

The NEPA process is an independent federal process that considers alternatives and impacts. The process differs significantly from the EFSC review process.

Facilities that have a federal intersect may provide additional opportunities for the public to comment or attend meetings or hearings. Federal public notices will inform the public about their opportunities to comment or attend meetings and hearings.

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EFSC Rulemaking

Introduction to EFSC Rulemaking

EFSC is responsible for adopting rules that establish application requirements, review procedures, and standards for the siting, construction, operation, and retirement of energy facilities. Council rules determine procedures to amend, suspend, revoke, transfer, or terminate a site certificate. They also govern regulations related to the transport and disposal of radioactive materials and the siting of nuclear power facilities and uranium mills in Oregon.

The EFSC Rulemaking Process

Rules adopted by the Council are located in Oregon Administrative Rules (OAR) Chapter 345. The Council has also expressly adopted key provisions of the Attorney General’s Uniform and Model Rules under OAR Chapter 137. If there is a conflict between the model rules and the Council’s rules, the Council will apply its own rules.

The Council typically approves an annual rulemaking schedule for the upcoming calendar year. After a rulemaking schedule is approved, staff works on the Council’s rulemaking projects according to the approved schedule.

The Council generally initiates rulemaking actions at its regularly scheduled meetings. This may require additional time for scheduling and may also affect when notices are issued and documents filed with the Secretary of State’s office. Following the rulemaking process, the Council must approve all proposed changes to EFSC rules. Appeals related to EFSC rulemaking activities must be made to the Oregon Supreme Court, and all petitions must be filed within 60 days after the date the rule became effective under ORS 183.355.

EFSC rulemakings include opportunities for public comment. Visit the “Get Involved” section of www.oregon.gov/energy.

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For More Information

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