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KY Public Service Commission

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General Information

- [Guide for Kentucky's Electric Generation and Transmission Siting Process](#)
- [Guidelines for Electronic Filing of Maps for the Kentucky State Board on Electric Generation and Transmission Siting](#)
- [Press Releases](#)
- [Directions to The Kentucky State Board on Electric Generation and Transmission Siting and Area Map | \(Area Map\) | Directions](#)

Statutes and Regulations

- [PSC Regulations \(Title 807 of Ky. Administrative Regulations\)](#)
- [PSC Law \(KRS Chapter 278\)](#)

Merchant Power Plant Electronic Case Files

- [Electronic Filing Repository \(All Cases\) and Instructions](#)

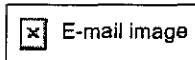
[List of Merchant Power Plant Cases](#)

- o 2002-00149 - Kentucky Mountain Power - Closed Case
- o 2002-00150 - Thoroughbred Generation Company - Closed Case
- o 2002-00171 - Westlake Energy Corporation
- o 2002-00172 - Estill County Energy Partners
- o 2002-00312 - Kentucky Pioneer Energy - Closed Case
- o 2004-00351 - Cincinnati Gas and Electric Company - Closed Case
- o 2005-00108 - DTE Energy Services, Inc.
- o 2005-00152 - Trimble County Electric Generating Plant

Forms

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Please direct all **case related comments or questions** to Andrew Melnykovych - Public Information Officer
at [**Andrew.Melnykovych@ky.gov**](mailto:Andrew.Melnykovych@ky.gov)

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**KENTUCKY'S
ELECTRIC GENERATION &
TRANSMISSION SITING
PROCESS**

**A Guide to
Public
Participation**



**Kentucky State Board on Electric
Transmission and Generation Siting**

ABOUT THE SITING BOARD

The Kentucky State Board on Electric Generation and Transmission Siting (the Siting Board) was created in 2002 by an act of the Kentucky General Assembly. Its purpose is to review applications and, as appropriate, grant certificates for the construction of electric generating facilities and transmission lines that are not regulated by the Kentucky Public Service Commission.

Siting Board review focuses on three areas:

- Environmental matters not covered by permits issued by the Kentucky Department for Environmental Protection. The Department issues permits for air emissions, water withdrawals and discharges and solid waste disposal. (The Department processes are explained briefly later in this guide.) The Siting Board review covers matters such as noise and visual impacts, among others.
- Economic impacts.
- Impact of the proposed facility on Kentucky's electric transmission grid.

The generating facilities reviewed by the Siting Board sell power on the wholesale market and are commonly known as merchant power plants. Siting Board approval is required for merchant plants with a generating capacity of 10 megawatts or more and for non-regulated transmission lines capable of carrying 69,000 volts or more.

The Siting Board is headquartered at the Kentucky Public Service Commission. The PSC staff also serves as staff to the Siting Board. The Siting Board's operations are funded through fees paid by applicants.

All documents submitted to the Siting Board are filed electronically and are available at the board's Web site:

http://psc.ky.gov/agencies/psc/siting_board/merchant.htm.

Siting Board hearings and other proceedings may be viewed live via the Internet.

The Siting Board review of applications is designed to include public participation throughout the process. The Siting Board welcomes and encourages public participation. This guide is intended to explain the siting process and the opportunities for public participation.

The Siting Board may be contacted at:

Kentucky State Board on Electric
Generation and Transmission Siting

211 Sower Boulevard

P.O. Box 615

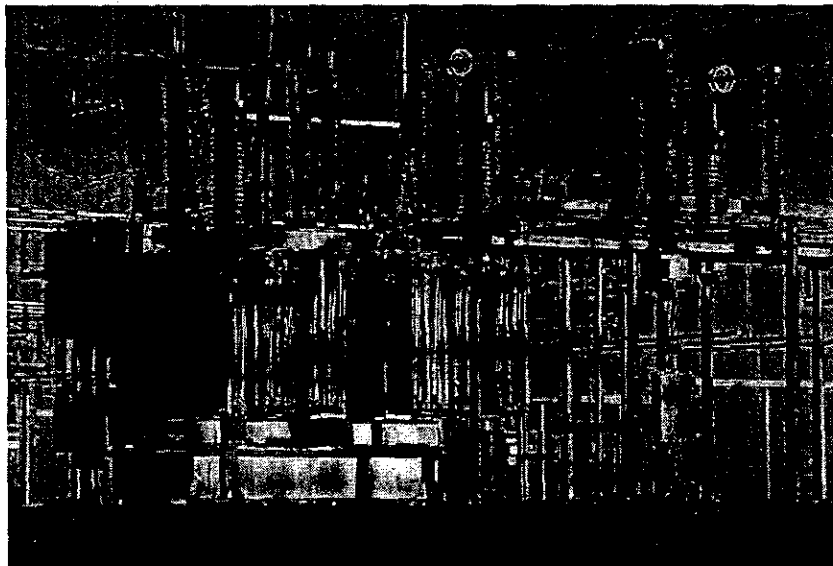
Frankfort, KY 40602

502-564-3940

Toll-free 1-800-772-4636

Fax (502) 564-3460

psc.ky.gov



MEMBERSHIP OF THE SITING BOARD

The Siting Board has five permanent *ex officio* members and two *ad hoc* members who are appointed by the Governor to review specific applications. The permanent *ex officio* members are:

- The three members of the Kentucky Public Service Commission. The chairperson of the PSC also chairs the Siting Board.
- The secretary of the Kentucky Environmental and Public Protection Cabinet, or his designee
- The secretary of the Kentucky Cabinet for Economic Development, or his designee

The two *ad hoc* members of the board are appointed as follows:

If the facility is located within a single county, the *ad hoc* members shall be:

- The chairperson of the planning commission with jurisdiction over the proposed site. If no planning commission exists for the site, the Governor may name either the county judge/executive or, if the proposed facility is within the limits of a city, the mayor of the city.
- A resident of the county in which the facility is proposed to be located.

If the proposed site for the facility is located in more than one county, the *ad hoc* members shall be:

- The county judge/executive of one of the counties, chosen by a majority vote of the county judge/executives of all the counties in which the facility is proposed.
- A resident of a county in which the facility is proposed to be located.

The *ad hoc* members serve only for the duration of the case for which they were appointed.

THE SITING APPLICATION PROCESS

NOTICE OF INTENT

Anyone planning to apply for certification from the Siting Board must submit a Notice of Intent at least 30 days before submitting the application. The notice, which is made public, must include a brief description of the proposed facility and its location, and the identity of any consultants retained to conduct analyses for the applicant. It also must identify the Local Planning and Zoning Authority and provide notice of any requested deviations from state setback

requirements. When a notice is deemed complete, the Siting Board contacts the Governor and the county and city governments where the proposed facility would be located. The *ad hoc* members of the Siting Board are to be appointed during the notice period. The Siting Board also will use the notice period to engage any consultants it may require to assist in evaluating the application.

APPLICATION

Application for a certificate from the Siting Board may be made 30 days after the filing of a completed Notice of Intent. The application must contain certain information, including:

- Evidence that public notice of the application has been made
- A report on public involvement activities conducted by the applicant
- A site assessment report containing a detailed description of the project and thorough analysis of the impacts to be considered by the Siting Board (visual impacts, traffic, property values, etc.)
- A statement of compliance with any local zoning regulations and noise control ordinances
- An analysis of the effects of the proposed facility on the electric transmission grid
- An analysis of the economic impacts of the proposed facility
- Disclosure of past environmental violations by the applicants

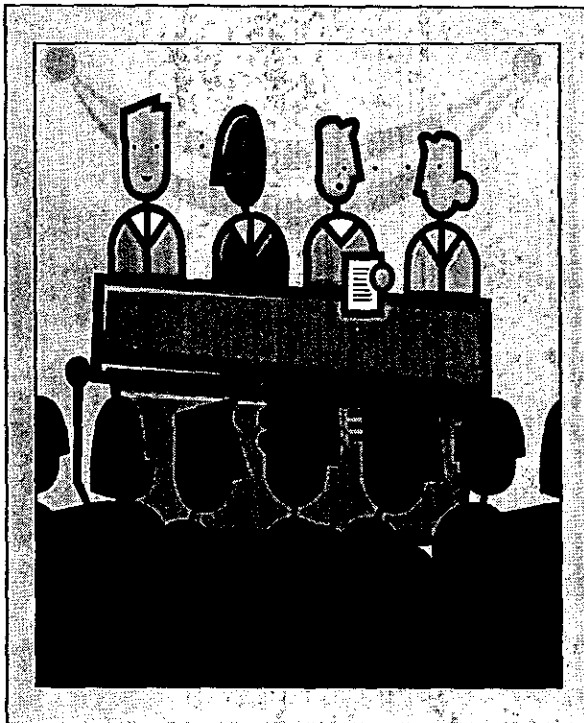
HEARINGS

Evidentiary hearing

An evidentiary hearing will be held upon the written request of a party to the case or on the motion of the Siting Board itself. It must be requested within 30 days of the filing of a completed application. The evidentiary hearing is a formal proceeding, with participation limited to the applicants and the parties to the case (intervenor). Testimony is taken under oath. It may be held in the county where the proposed facility would be located or in Frankfort at the Public Service Commission's offices.

Local public hearing

This is an informal proceeding held to give the general public an opportunity to be heard by the Siting Board. A local public hearing will be held if requested by a local government entity – city, county or planning and zoning authority – or by at least three residents of the city or county in which the proposed facility would be located. Requests must be made in the form of a letter to the Siting Board. The local public hearing must be requested within 30 days of the filing of a completed application. It must be held within 60 days of the filing date, with 20 days' advance notice given to the public of the date, time and location of the hearing. The local public hearing will be held within the county in which the facility is proposed. If the facility spans more than one county, the local public hearing will be held in the most populous county.



How to submit comments

There is no requirement to sign up in advance to speak at a local public hearing. However, those wishing to speak will be asked to sign up upon arrival at the hearing. The time allocated to each speaker may be limited in order to allow everyone who wishes to comment to be heard.

The most helpful comments are those which:

- Are clear, concise and to the point.
- Address matters under Siting Board jurisdiction, rather than those under the purview of the Kentucky Environmental and Public Protection Cabinet.
- Address specific aspects of the proposed facility, rather than simply general support or opposition.
- Suggest ways to remedy any perceived shortcomings in the application.



Comments also may be submitted to the Siting Board in writing. People with extensive, detailed comments are encouraged to submit them in writing to:

Kentucky State Board on Electric Generation and Transmission Siting

211 Sower Boulevard

P.O. Box 615

Frankfort, KY 40602

Fax (502) 564-3460

psc.ky.gov

INTERVENORS

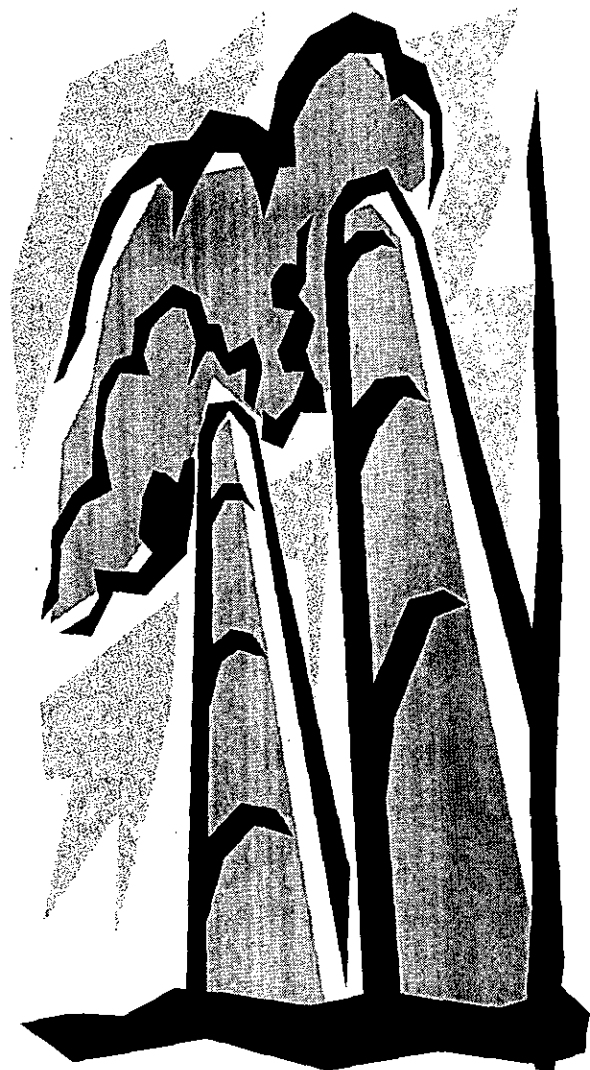
Any interested party may apply to the Siting Board to become an intervenor in the proceeding. The request must be made in writing within 30 days of the filing of a completed application. Intervenors can be, but are not limited to, residents of the city or county in which the proposed facility would be located. Intervenors have the right to participate fully in the board proceedings. This includes the right to file requests for information from the applicant or other parties and to cross-examine witnesses during formal proceedings of the Siting Board. Parties to a case before the Siting Board also have the right to appeal the Siting Board decision to the Circuit Court in the county in which the facility is proposed to be located.

THE SITING BOARD DECISION

The Siting Board is required to make its decision no later than 120 days after the submission of a complete application.

The Siting Board will consider information submitted by the applicant, evidence and public comments from the hearings, other public comments and reports submitted by consultants to the Siting Board. The Siting Board also may conduct its own inspection of the location for the proposed facility.

The Siting Board may accept or deny an application as submitted, order mitigation measures to reduce impacts and allow deviations from setback requirements. The Siting Board may not order relocation of a proposed facility.



THE SITING BOARD PROCESS

SUMMARY/TIMELINE

-30 DAYS

NOTICE OF INTENT FILED

**AD HOC BOARD MEMBERS,
CONSULTANTS SELECTED**

0 DAYS

APPLICATION FILED

FILINGS FOR INTERVENORS

30 DAYS

DEADLINE FOR REQUESTING HEARINGS

NOTICE OF PUBLIC HEARINGS

60 DAYS

DEADLINE FOR PUBLIC HEARINGS

BOARD CONSULTANTS FILE REPORTS

120 DAYS

BOARD DECISION DUE

+30 DAYS

DEADLINE FOR FILING APPEALS



THE ROLE OF THE KENTUCKY CABINET FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION

The law creating the Siting Board does not alter the role of Kentucky Department for Environmental Protection in granting permits for electric generating facilities.

The required permits include those for:

- Air emissions
- Wastewater discharges
- Water withdrawal
- Solid waste disposal

It is likely that some or all of these permits may have been granted prior to application being made to the Siting Board. Therefore, members of the public interested in electric generation facility siting issues should not rely solely on the Siting Board process to gain notice of or comment upon such facilities.

The Department has its own procedures for gathering public input on pending permit applications. They are as described on the chart that follows.

Public Input Opportunities for Each of the DEP Permits Typically Issued to Kentucky Power Plants

Type of Permit	Public Comment Periods (Opportunities to submit written comments)	Public Hearing Opportunities (Opportunities to present verbal comments)
Air Quality Permit	30 day public comment period on the draft permit	Members of the public can request a hearing during the public comment period. DEP may self-initiate a public hearing if there is significant public interest.
KPDES Permit for Wastewater Discharge	30 day public comment period on the draft permit	Members of the public can request a hearing during the public comment period or DEP may self-initiate a public hearing if there is significant public interest.
Special Waste Landfill Permit for Ash Management	30 day public comment period notice when application is administratively complete. 30 day public comment period on the draft permit.	Members of the public can request an informational hearing with the Department during the permit application public comment period. Members of the public can request a hearing with a Cabinet Hearing Officer during the draft permit public comment period.
Water Withdrawal Permit (Non-Utilities only)	30 day public comment period if there will be an inter-basin water transfer. (An inter-basin transfer is when water is withdrawn from one stream system and then discharged into a different stream system)	No public hearings.

Kentucky Department for Environmental Protection

14 Reilly Road
 Ash Building
 Frankfort, KY 40601
 502-564-2150
 502-564-4245 (fax)
www.dep.ky.gov/



Commonwealth Of Massachusetts
Department of Telecommunications and Energy

DTE



April 18, 2006

Siting Division

Our divisions

Siting Board Topics



Welcome To the Energy Facilities Siting Board

[Board Members](#)

[FAQ](#)

[Siting Handbook](#)

[Procedural Rules](#)

[Helpful Links](#)

The Energy Facilities Siting Board is a nine-member review board charged with ensuring a reliable energy supply for the Commonwealth with a minimum impact on the environment at the lowest possible cost. G.L. c. 164, §69H. The Siting Board's primary function is to license the construction of major energy infrastructure in Massachusetts, including large power plants, electric transmission lines, natural gas pipelines and natural gas storage facilities. The Siting Board also represents Massachusetts before the Federal Energy Regulatory Commission on cases involving the construction of energy infrastructure in Massachusetts, and coordinates state and local permitting of Massachusetts hydropower projects. The Siting Board is staffed by the DTE's Siting Division. Siting Division staff also review requests filed with the DTE for zoning exemptions, eminent domain, and permission to construct electric transmission lines.

Siting Board Decisions

[Power Plants](#)

[Transmission Lines](#)

[Natural Gas](#)

[Advisory Rulings](#)

[Rulemaking/NOI](#)

[Other Siting Board Decisions](#)

Related DTE Topics

[Zoning Exemption Checklist](#)

[Relevant DTE](#)

[Orders](#)

[DTE Fileroom](#)

NEW

[1/13/06 EFSB 05-1 Final Decision](#)

[11/1/04 Order Opening Notice of Inquiry](#)

[11/1/04 Checklist Section](#)

[Zoning Exemption Checklist](#)

Ongoing Activities

[Siting Board Dockets](#)

[Siting Board Rulemakings](#)

[FERC Activities](#)

Siting Board Calendar

Energy Facility Siting Board
One South Station
Boston, MA 02110
Phone 617 305-3525
Fax 617 443-1116

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[[Transportation](#)] [[Siting](#)] [[Gas](#)] [[DTE Webmaster](#)] [[email us](#)]
DTE 2005. ([email webmaster](#))

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MEPA

Massachusetts Environmental Policy Act Office
Executive Office of Environmental Affairs, 100 Cambridge St., Boston MA
02114

Mitt Romney, Governor | Kerry Healey, Lt. Governor | Stephen R. Pritchard, Secretary

[MEPA Home Page](#)

About MEPA -The Massachusetts Environmental Policy Act

[MEPA Regulations](#)

[Review Thresholds](#)

[MEPA Glossary](#)

[MEPA Statute](#)

[Filing with MEPA](#)

[Executive Orders](#)

[EOEA Policies](#)

[Disclaimer](#)

The Massachusetts Environmental Policy Act - MEPA - requires that state agencies study the environmental consequences of their actions, including permitting and financial assistance. It also requires them to take all feasible measures to avoid, minimize, and mitigate damage to the environment.

MEPA further requires that state agencies "use all practicable means and measures to minimize damage to the environment," by studying alternatives to the proposed project, and developing enforceable mitigation commitments, which will become permit conditions for the project if and when it is permitted.

MEPA applies to projects above a certain size that involve some state agency action. That is, they are either proposed by a state agency or are proposed by municipal, nonprofit or private parties and require a permit, financial assistance, or land transfer from state agencies.

MEPA review is not a permitting process. MEPA requires public study, disclosure, and development of feasible mitigation for a proposed project. It does not pass judgement on whether a project is environmentally beneficial, or whether a project can or should receive a particular permit. Those decisions are left to the permitting agencies. MEPA review occurs before permitting agencies act, to ensure that they know the environmental consequences of their actions.

MEPA provides the mechanism through which this information collection and mitigation mandate is executed. The primary mechanism is known as an Environmental Impact Report - EIR. MEPA empowers the Secretary of Environmental Affairs to oversee the review process. The process is public and encourages comments from the public and from state, regional and local agencies.

The MEPA Office is the staff of the Secretary of Environmental Affairs responsible for day-to-day implementation of the MEPA review process. Its job is to solicit comments from the public and agencies, represent the Secretary at the public consultation sessions on projects, coordinate project review with the proponent, consultants, and interested agencies and citizens, and make a recommendation to the Secretary regarding the need for - and adequacy of - environmental documentation submitted for a project.

Updated March 4, 2004

[Top](#)

Executive Office of Environmental Affairs
Mitt Romney, Governor
Kerry Healey, Lt. Governor
Stephen R. Pritchard, Secretary
100 Cambridge Street, Suite 900, Boston MA 02114
(617) 626-1020
FAX (617) 626-1181
[Privacy Policy](#)

**The Energy Facilities Siting
Handbook:**

**An Overview of
the Energy Facilities Siting Board
Review Process**

**The Massachusetts
Energy Facilities Siting Board
One South Station
Boston, MA 02110**

Revised: October, 2002

PURPOSE

IMPORTANT NOTE:

This handbook is not intended as a legal guide. Instead, it provides a general overview of the Siting Board's process for reviewing requests to construct energy facilities. This review process takes the form of an adjudication conducted pursuant to G.L. c. 30A and 980 CMR 1.00. It is each person's responsibility to understand and adhere to applicable statutes and regulations in all proceedings before the Siting Board, and to seek legal counsel if necessary.

There are many federal, state and local agencies that regulate the construction and operation of power plants, electric transmission lines, natural gas pipelines and natural gas storage facilities in Massachusetts. This handbook provides information about one such agency -- the Massachusetts Energy Facilities Siting Board. It includes an introduction to the Siting Board, a detailed description of the Siting Board's review process, and an explanation of the various ways to participate in that process. We hope that this handbook will provide interested citizens, municipalities, and organizations with an initial understanding of the Siting Board's review process. Further information is available at the Siting Board's offices in Boston and on the Siting Board's website at www.state.ma.us/dpu/siting_board.htm.

1. INTRODUCTION

The Massachusetts Energy Facilities Siting Board (sometimes referred to as the "Siting Board") is an independent state review board located administratively within the Massachusetts Department of Telecommunications and Energy ("DTE"). The Siting Board is charged, by state statute, with ensuring a "reliable energy supply for the Commonwealth with a minimum impact on the environment at the lowest possible cost." G.L. c. 164, § 69H. The nine-member Siting Board is made up of three commissioners of the DTE, the Secretary of Environmental Affairs, the Director of Economic Development, the Commissioner of the Division of Energy Resources, and three public members who are appointed to three-year terms by the Governor.

The Siting Board decides whether prospective developers may construct major energy facilities -- electric generating plants, electric transmission lines, intrastate natural gas pipelines, facilities for the manufacture or storage of natural gas, and various oil facilities -- in Massachusetts. The scope of the Siting Board's review of a proposed facility varies, depending on the type of facility being reviewed.

The Siting Board's review of electric generating plants focuses on environmental impacts and mitigation, while its review of other types of facilities considers the need for the proposed facility, the cost of the facility, and its impacts on the environment. Alternatives to a proposed facility, including one or more designated alternate routes for transmission line and gas pipeline projects, may also be considered.

In addition to conducting facility reviews, the Siting Board may represent the Commonwealth in proceedings before the Federal Energy Regulatory Commission ("FERC") having to do with the construction of energy facilities in Massachusetts. For example, the Siting Board typically intervenes when interstate natural gas pipeline companies petition the FERC to construct major gas pipelines in Massachusetts. The Siting Board also is responsible for coordinating the permitting and licensing of hydropower projects in Massachusetts.

Siting Board Review Process

The Siting Board reviews major energy facilities using an adjudicatory process which, broadly speaking, can be

divided into three phases: procedural, evidentiary, and decision. During the procedural phase, the Siting Board lays the groundwork for its formal review of the proposed facility by providing for public notice of the proceeding, holding one or more public comment hearings, determining who may take part in the formal proceeding, and establishing the ground rules and schedule for the evidentiary phase.

The evidentiary phase is the information-gathering portion of the review process. During this phase, parties and limited participants file the written testimony of their witnesses; these witnesses then respond to written information requests and to oral questioning at evidentiary hearings. Finally, during the decision phase, parties file legal briefs and the Siting Board develops and issues a decision. Each phase is described in greater detail in the following sections of this handbook.

Time Frame

The Siting Board's review of a facility proposal typically is completed within a year; however, the length of the review varies with the type and complexity of the facility proposal.

2. THE PROCEDURAL PHASE

An energy facility review begins when a prospective developer files with the Siting Board a petition to construct a facility. Milestones in the initial procedural phase of the review include public notice that the petition has been filed, public comment hearing(s), rulings on requests to participate formally in the proceeding, and the establishment of a timetable for the evidentiary phase of the review.

Public Notice

Upon receiving a petition to construct an energy facility in Massachusetts, the Siting Board directs the applicant to:

- (1) publish, prior to the public comment hearing, notice of its proposal to construct the project in at least two newspapers having a reasonable level of circulation within the community or region,
- (2) mail notice to owners of all property within a certain distance of the boundaries of the proposed and alternate sites, if any, for the facility, and
- (3) post notice in the city or town halls of communities in which the proposed project would be located.

The Siting Board also customarily mails notice of the applicant's petition to local and state officials who represent the municipality or municipalities where the facility is proposed. The applicant's full petition must be available at the public library or clerk's office in each community where the facility is proposed, and at the Siting Board's Boston offices.

Public Comment Hearing and Site Visit

After notice has been published, the Siting Board holds one or more public comment hearings, generally in the city or town where the facility is proposed. The public comment hearing, held in the evening, provides those who attend with an opportunity to learn more about the proposed project and its potential impacts. It also allows the Siting Board staff to learn about the public's concerns. At the public comment hearing, the applicant presents an overview of the proposed facility. Public officials and the general public then have an opportunity to ask questions and make comments about the proposal. The public comment hearing is recorded by a court reporter.

Siting Board staff members also view the site or route where the developer proposes to construct its facility. If the applicant has designated an alternate site or route, staff members visit that site or route as well.

Seeking the Right to Take Part in a Proceeding

Persons or groups who wish to be involved in a Siting Board proceeding beyond the public comment hearing stage may seek either to **intervene as a party**, or to **participate as a limited participant**, by filing a petition with the Presiding Officer assigned to the case. The petition should clearly describe the petitioner's interest in the proceeding. Persons seeking to intervene or participate as a limited participant should consult the regulations governing intervention and participation in Siting Board proceedings, which can be found at 980 CMR 1.05.

The Presiding Officer reviews all petitions to intervene as a party or participate as a limited participant, and makes a ruling on each petition. In order to intervene as a party, a petitioner must demonstrate that he or she is, or may be, "substantially and specifically affected" by the proceeding. The issues raised in the petition to intervene must be

specific to the potential intervenor, must fall within the scope of the Siting Board's review, and must go beyond a general expression of concern about quality of life or property values. For example, to support a petition to intervene as a party, a town might claim that a transmission line project will improve the reliable delivery of electricity to its citizens; a conservation commission might cite the need to protect a river bank area which could be affected by a project's water use or discharges; or an individual whose property abuts or is near to a project site might state that he is concerned about noise or about the view from his backyard. Individuals or groups that are permitted to intervene as a party are known as "intervenors". Persons or groups seeking to participate as a limited participant need not demonstrate "substantial and specific" interest; however, a petition to participate as a limited participant should state the petitioner's interest in the proceeding.

Legal Counsel

The Siting Board requires most intervenors to be represented by an attorney, unless granted a waiver by the Presiding Officer. Individuals appearing *pro se* and limited

Parties and Limited Participants: A Comparison

The rights of an party in a Siting Board proceeding are more extensive than those of a limited participant.

A party typically may:

- * Issue information requests and receive responses,
- * Present written testimony and witnesses,
- * Cross-examine witnesses,
- * File a brief,
- * Review the Tentative Decision,
- * Address the Siting Board at its meeting, and
- * Appeal a Final Decision.

A limited participant typically may:

- * Receive copies of information requests and testimony in a proceeding,
- * Receive copies of responses to information requests upon request,
- * File a brief,
- * Review the Tentative Decision, and
- * Address the Siting Board at its meeting.

participants are not required to be represented by an attorney. However, the Siting Board recommends that all persons involved in a Siting Board proceeding obtain legal representation. All participants, whether or not represented by an attorney, must abide by legal conventions and adhere to the laws and regulations governing the Siting Board. The Siting Board staff is not permitted to provide legal advice of any kind to parties or limited participants.

The Procedural Conference

After ruling on all petitions to intervene as a party and participate as a limited participant, the Presiding Officer typically convenes a procedural conference to establish a procedural schedule for issuing information requests and filing written testimony, and to set a date for the commencement of evidentiary hearings. This schedule may change during the course of the proceeding; however, those involved in a Siting Board proceeding are expected to meet all deadlines in the procedural schedule unless the Presiding Officer grants a party's request for an extension in advance of the deadline.

3. THE EVIDENTIARY PHASE

During the evidentiary phase of a proceeding, the Siting Board develops a factual record upon which to base its decision. The Siting Board's decision must be based solely on information that has been properly admitted into the evidentiary record during the proceeding. Such evidence typically is provided by witnesses sponsored by the applicant and by intervenors. Each witness provides an initial written direct case and then responds to written and oral questions. This process is further described below.

Direct Case - The Applicant

The applicant's direct case consists of its initial petition, the testimony of each of its expert witnesses, and any other evidence (applications for permits from other state or local agencies, for example) that it properly submits to support its case. The applicant typically presents the bulk of its direct case in written form prior to the evidentiary hearings. Additional verbal testimony and written documentation may be offered during the evidentiary hearings.

Direct Case - Intervenors

If they wish, intervenors also may present a direct case by sponsoring a witness or witnesses who present written and oral testimony on specific issues pertaining to the applicant's proposal. The Presiding Officer will establish a schedule for the submission of testimony by intervenor witnesses. Limited participants may not sponsor witnesses.

Pre-Filed Testimony

The initial written testimony of any witness is called "pre-filed testimony". A witness' pre-filed testimony should first present his or her qualifications or familiarity with the subject of his or her testimony, and then set forth relevant information through a series of questions to the witness, each followed by the witness' response. Pre-filed testimony may reference analyses performed by the witness, as well as relevant documentary evidence such as published reports, photographs of features in the project area, or noise measurements. Copies of any such materials must be provided if they have not already been entered into the record as part of the applicant's direct case, or as part of the applicant's responses to discovery. Any witness who submits pre-filed testimony must be available to respond to

written discovery regarding that testimony, and to testify at an evidentiary hearing at the Siting Board's office in Boston during business hours.

Discovery

The purpose of discovery is to provide for access to relevant information prior to the start of evidentiary hearings.

Discovery consists of written questions and requests for pertinent documents. Typically, the Siting Board and intervenors may direct discovery to the applicant. If an intervenor presents a direct case, the Siting Board staff and the applicant may direct discovery to that intervenor. Intervenors may not direct discovery to other intervenors without specific permission from the Presiding Officer.

Information requests and responses must be filed in accordance with the procedural schedule. Responses to discovery must be dated, must include the name of the witness who prepared the response, and must be presented in the format specified by the Presiding Officer. All witnesses responsible for responding to discovery must also

be made available for cross-examination under oath at the evidentiary hearings.

Evidentiary Hearings

The purpose of the evidentiary hearing is to further develop the evidentiary record through the examination of witnesses under oath. Evidentiary hearings are open to the public; however, only parties may offer or question witnesses. Hearings are held at the Siting Board's office at One South Station in Boston during normal business hours.

Evidentiary hearings are conducted by the Presiding Officer assigned to the case, who establishes the witness schedule after consulting with the parties to determine when their witnesses will be available. Generally, the applicant's witnesses appear first, followed by the intervenor witnesses. The witness schedule is subject to change during the course of hearings.

At the evidentiary hearings, each witness is sworn in by the Presiding Officer. The witness then provides his or her direct oral testimony adopting, clarifying, and as necessary, amending his or her pre-filed testimony and responses to

discovery. The witness is then subject to cross-examination by the Siting Board staff and other parties. Cross-examination provides staff members and parties with an opportunity to clarify confusing areas in a witness' testimony or responses to discovery.

On occasion, a witness may be unable to respond to a specific question during cross-examination, due to the complexity of the subject or the absence of documentation. In such cases, the questioner may ask to make a record request for the information. If the record request is allowed, the witness must provide a written response to the question at a time determined by the Presiding Officer; generally, responses are provided one to two weeks after the request is made.

Following cross-examination, witnesses may be subject to re-direct examination on issues raised during cross-examination, and to re-cross-examination on issues raised during re-direct examination.

Closing the Record

After evidentiary hearings are completed and all responses to record requests have been received, the Presiding Officer issues a final exhibit list and closes the evidentiary record.

4. THE DECISION PHASE

After the close of evidentiary hearings, the applicant, intervenors and limited participants may submit briefs that evaluate the evidence in the record in light of the Siting Board's statute. The Siting Board staff then drafts a Tentative Decision based on the record evidence. The members of the Siting Board review the Tentative Decision and meet to vote on whether or not to adopt the Tentative Decision. If the Siting Board adopts the Tentative Decision, a Final Decision is issued.

The Brief

A brief is a document that presents an opinion, based on information in the evidentiary record and on the Siting Board's statute and standard of review, as to whether the proposed facility should be approved, approved with conditions, or rejected. Briefs may not introduce additional evidence.

At the close of evidentiary hearings, the Presiding Officer establishes a briefing schedule, which typically allows for initial briefs, followed by reply briefs that respond to the arguments presented by others in their initial briefs.

Initial Briefs

The applicant, intervenors, and limited participants may submit initial briefs in accordance with the briefing schedule set by the Presiding Officer. Initial briefs typically are due two to three weeks after the close of evidentiary hearings. The applicant's initial brief typically summarizes the record of the case and argues that the proposed facility meets all statutory requirements for approval. Initial briefs from intervenors and limited participants may address a broad range of issues or may focus on a few critical issues – for example, a specific proposal for mitigation of an environmental impact. Any argument or proposal raised in the brief must be based on evidence that is in the record. No party or limited participant is under any obligation to file an initial brief.

The Reply Brief

Reply briefs typically are due one to two weeks after the initial briefs were filed. A reply brief should address only those issues raised in other initial briefs; therefore, reply briefs generally are shorter than initial briefs. No party or

limited participant is under any obligation to file a reply brief.

Tentative Decision

Following the submission of reply briefs, the Siting Board staff drafts and issues a Tentative Decision, which is distributed to all parties and limited participants. A Tentative Decision may: (1) approve the proposed project or noticed alternative; (2) approve the proposed project or noticed alternative subject to conditions; or (3) deny the proposed project. The Tentative Decision contains sections addressing each of the major statutory issues in the case. A Decision section at the end of the document summarizes the staff's findings. These summary findings, however, are based on the more detailed findings made throughout the document. It is essential to read the entire text to fully understand the Tentative Decision.

Comment Period

A comment period of at least seven days commences immediately after the Tentative Decision is issued. During the comment period, the applicant, intervenors, and limited participants may submit written comments on the Tentative

Decision to the Siting Board. These comments should focus on the consistency of the Tentative Decision with evidence in the record; they may not introduce new evidence. Intervenors and limited participants are not required to submit written comments on the Tentative Decision. However, anyone who wishes to provide oral comments at the Siting Board meeting must first provide written comments that identify the substance of the issues that will be addressed at the meeting.

Siting Board Meeting

Approximately two weeks after the Tentative Decision is issued, the Siting Board holds a public meeting during business hours at its office in Boston to consider whether to approve, amend, or reject the Tentative Decision. At the Siting Board meeting, Siting Board staff members present a brief overview of the Tentative Decision, respond directly to specific written comments when appropriate, identify any amendments being proposed by staff, and respond to questions from Siting Board members. Following the staff presentation, those who have submitted written comments on the Tentative Decision may address the Siting Board.

The Siting Board members may question any speaker regarding his or her comments on the Tentative Decision.

After hearing from the staff, parties and limited participants, the Siting Board considers any proposed amendments to the Tentative Decision. After all amendments have been considered, the Siting Board votes on whether to accept the Tentative Decision as amended.

Final Decision of the Siting Board

The Final Decision, which incorporates all approved amendments to the Tentative Decision, typically is issued on the business day immediately following the Siting Board vote. All parties and limited participants receive a copy of the Final Decision. An aggrieved party in interest may appeal the Final Decision to the Supreme Judicial Court pursuant to G.L. c. 25, §5, as made applicable to the Siting Board by G.L. c. 164, § 69P.

APPENDIX A - Other Reviewing Agencies

A number of state agencies other than the Siting Board have responsibilities in connection with the regulation and development of energy facilities. The two agencies most frequently involved are the MEPA Unit of the Massachusetts Office of Environmental Affairs (617/626-1020) and the Department of Environmental Protection (617/292-5500), especially those divisions concerned with the regulation of air, water, wetlands and waterways, and waste. Other involved agencies could include: the Department of Telecommunications and Energy (617/305-3500), the Division of Energy Resources (617/727-4732), the Department of Environmental Management (617/727-3180), the Massachusetts Natural Heritage and Endangered Species program (508/792-7270), the Massachusetts Water Resources Authority (617/242-6000), the Office of Coastal Zone Management (617/727-9530), the Massachusetts Historical Commission (617/727-8470), the Massachusetts Highway Department (617/973-7500), the Department of Public Health (617/624-6000) and the Department of Public Safety (617/727-3200). Local agencies and officials such as the building inspector, planning board, conservation commission, water department, fire department, historical commission, board of health and department of public works also may be involved.

**DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY
CHECKLIST FOR FILING OF ZONING EXEMPTION PETITIONS**

The following checklist is intended to serve as guidance for persons filing petitions for exemption from a municipal zoning ordinance or bylaw pursuant to G.L. c. 40A, § 3, or pursuant to §6 of Chapter 665 of the Acts of 1956. Petitioners must complete all three parts of the form and submit a copy of the completed form with the petition at the time of filing.

PART 1: GENERAL INFORMATION

Petitioner name:

Description of land or structures for which exemption is sought:

Municipality:

PART 2: CONTENTS OF FILING

The filing (petition and accompanying documentation) must contain, at a minimum, the following information:

- ☒ A demonstration that the petitioner is a public service corporation that may seek a zoning exemption pursuant to G.L. c. 40A, § 3, with supporting documentation as necessary.
- ☒ A list of the sections of the zoning ordinance or bylaw from which the petitioner seeks an exemption, together with a summary of each such section and an explanation of why exemption from that section is needed, with supporting documentation as necessary.
- ☒ A description of the use of land or structures which are the subject of the exemption request, and an explanation of the purpose of the proposed use.
- ☒ An explanation of the public benefits to be provided by the proposed use of land or structures, with a supporting analysis and a description of the methods used to develop this analysis.
- ☒ A description of alternatives to the proposed use of land or structures, including the use of existing structures or facilities.
- ☒ An analysis of the environmental or other impacts of the use of land or structures, during both construction and operation. This analysis could include, without limitation, impacts on land use at or near the site, on wetlands or water resources at or near the site, visual and noise considerations, traffic and access considerations, public safety considerations, air pollutant emissions, or the use of hazardous substances.
- ☒ A list of all permits required for the proposed use of land or structures prior to construction, during construction and during operation.

NOTE: All information provided in the filing (including the petitioner's analysis of the need for each exemption sought) must be adopted by witnesses who will be able to testify and respond to questions at evidentiary hearings. The petitioner should be prepared to identify which witness will adopt which part of the filing no later than three weeks after the filing date.

PART 3: ATTACHMENTS

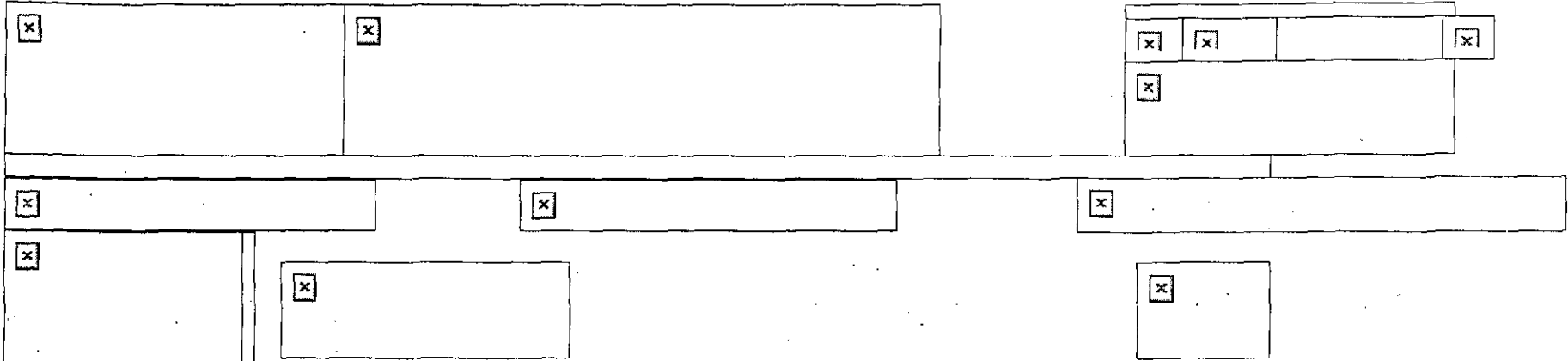
The following documents must be submitted with the petition:

- ☒ An attested copy of the municipality's complete zoning ordinance or bylaw, as in effect at the date of filing.
- ☒ Copies of any zoning decisions or related municipal actions taken with respect to the proposed use of land or structures.
- ☒ A United States Geological Survey map (1:24,000 or 1:25,000 scale and in color) of the area, showing the locus of the land or structures.
- ☒ A diagram of the site of the proposed use, showing property boundaries, existing and proposed structures, and other use areas (e.g., roadway, parking, and materials storage/transfer areas) at the site.
- ☒ Either: (1) a copy of the Environmental Notification Form ("ENF") for the project and the Certificate of the Secretary of Environmental Affairs on such ENF; or (2) an affidavit from the petitioner stating that the proposed use does not require the filing of an ENF. If an Environmental Impact Report ("EIR") is required, and has been submitted to the MEPA Office at the time of filing, a copy of the EIR(s) and any related Certificates also should be submitted with the petition.
- ☒ Draft MEPA Section 61 findings relating to the proposed use of land or structures, if an EIR is required for the proposed use.
- ☒ A draft hearing notice (hard copy and on diskette in Microsoft Word or in WordPerfect 8.0 or higher).
- ☒ Filing fee: A check for \$100.00, made payable to Commonwealth of Massachusetts.

All of the information requested above has been included in the Zoning Exemption Filing and attachments submitted with this form.

Signature

Date



Town Reaches Settlement On KeySpan Power Plant

Author: Don McKay
Article Date: 08/15/02

Having watched other Long Island municipalities lose their battles in the Article X process of siting an energy plant, the Town of Huntington has reached a settlement agreement with KeySpan on the siting of the proposed Spagnoli Road Energy Center. Concessions included in the agreement will greatly benefit all that live and work in the Town.

The Town Board made its unanimous decision to negotiate rather than move forward with a lengthy and expensive process, knowing that no municipality has won a favorable decision from the Siting Board of the New York State Public Service Commission. Furthermore, courts have upheld the Siting Board's decision in every instance. Similar to the State's Padavan Law, the Article X process was established to allow the State to override local zoning. While not endorsing the plant proposal, Town Board members stated the settlement was negotiated in the best interests of Huntington residents.

"We knew that moving forward with the Article X process would be futile and very expensive," said Supervisor Frank P. Petrone. "The Board decided to sit down and negotiate with KeySpan. I believe that when the residents are informed of the concessions that we will receive from KeySpan, they will agree that the Town Board made a wise decision."

Said Councilwoman Marlene Budd: "When we decided to enter into negotiations, it was clearly understood that history put the Siting Board and the courts on KeySpan's side. The Town Board was determined and committed to negotiating significant and lasting benefits for the

people of Huntington."

Under the settlement, KeySpan has agreed to significantly reduce air emissions by converting a unit at the Northport Power Plant to a combination of natural gas and residual oil. In addition, the Spagnoli Road Energy Center will allow KeySpan to undertake upgrades at other facilities. Reduction in air emissions includes nitrogen oxide, sulfur dioxide and particulate matter. KeySpan is under no regulatory obligation to reduce emissions at Northport. The Town, therefore, made this concession a priority.

A second concession that will also benefit air quality and the environment is the conversion of Town-owned vehicles to natural gas. KeySpan will assist the Town and commit \$200,000 for purchasing Town vehicles that will operate on natural gas instead of gasoline. Fueling of vehicles will take place at a KeySpan facility in Huntington. According to the federal Environmental Protection Agency, natural gas is one-third less expensive than gasoline, and vehicles using natural gas emit less greenhouse gases.

"With these first two concessions alone, Huntington will be on the cutting edge of efforts to reduce air pollution and to improve our environment," said Councilman Mark Cuthbertson.

An economic power incentive for the Route 110 corridor will encourage the development of the biotechnology and technology sector. KeySpan will provide a discount in the cost of electrical power to businesses in the 110 corridor in the Town of Huntington to enhance the Town's economic development. In addition, KeySpan will provide energy discounts to the Half Hollow Hills School District, the district in which the plant is sited. The Town Board was successful in obtaining a fixed assessed value for the plant for 20 years.

Said Councilwoman Susan Berland: "The guarantee of a stable income stream to the school district, library district and fire district, as well as the Town will not only benefit all the residents but will avoid costly tax certiorari litigation such as experienced by the Shoreham School District."

Another major concession will benefit the Huntington Station community. KeySpan will provide \$40,000 a year for five consecutive years in economic development grants and an additional \$750,000 in low-interest loans to assist in the revitalization of Huntington Station. "These grants and loans will be made available to businesses, individuals and not-for-profits for storefront renovation, historic and beautification projects," said Councilman Mark Capodanno. "This money will provide valuable assistance in helping the Town implement the revitalization of the Huntington Station community."








Two additional concessions will benefit the environment, the Town's operating expenses and recreational opportunities for children. KeySpan has agreed to purchase and install a microturbine at the Dix Hills Ice Rink. The rink, located in Dix Hills Park, is one of the Town's



largest and costly energy users and the installation of a microturbine will not only slash energy costs but also reduce air emissions at the facility. For the Town's young soccer players, KeySpan will provide a portion of the Spagnoli Road plant property for recreational use. The company will provide soccer fields, parking, bleachers and potable water.

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Town Caves to Power Plant Pressure


by Jane Lee Bock

Crime Stoppers Alert - Cemetary




August 14, 2002

The Town of Huntington today announced that rather than fight to uphold its zoning ordinances, it "negotiated" a settlement with KeySpan Energy that allows the company to construct a 250 megawatt power plant on Spagnoli Road in Melville, despite the fact that the proposed plant does not meet existing zoning requirements for the town's power plant code and more than 50 percent of Suffolk County's power is already being produced in Huntington.




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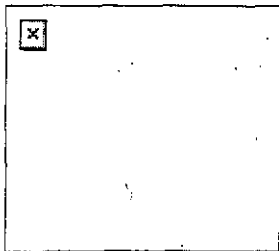
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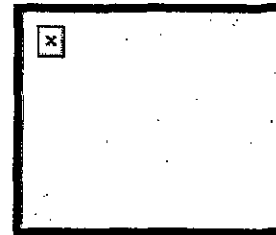
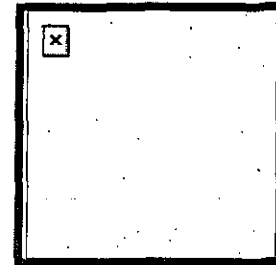
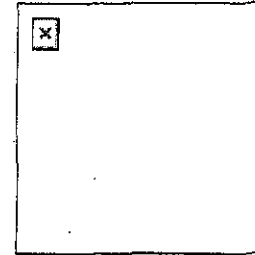
The announcement came on the first day of testimony in the Article X siting proceedings in front of the New York Public Service Commission. The attorneys for the town who had been hired to protect the town's interests in the matter had previously filed sworn statements arguing that the town's zoning and noise ordinances were not "unreasonably restrictive," and should not be waived.


They have now reversed their position and withdrawn their testimony, even though in the town's own statement provided to the Public Service Commission they state, "The previous Article X applications in which the Siting Board found local laws to be unreasonably restrictive did not consider zoning ordinances which, like Huntington's, set aside an area for electrical generating plants ... No other case considered a local law which specifically excluded electrical generating facilities."

With this agreement in place, the current zoning code regarding power plants is "irrelevant," said Maureen Liccone, the outside counsel credited with finalizing the settlement. Irrelevant because the town is allowing it to be overridden. Liccone apparently convinced the board that the town would never win the battle against the siting of the plant because "no municipality has ever won," and the town leaders decided the responsible thing to do was to get as many concessions as possible.

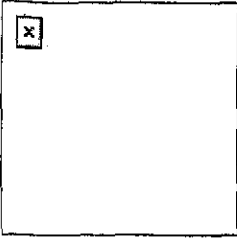
Acceptance of the settlement was called a unanimous decision of the town board, even though at least one town board member, Mark Capodano was a guest supporter during his campaign at a SHARED (South Huntington Alliance For Responsible Energy Development) rally prior to his election. SHARED has been the most vocal opponent of the plant's construction. Their representatives called the agreement "a disgraceful back-door deal" that ignores the voices of the town's residents.

According to documents provided by the town, in order to get the plant built, KeySpan has agreed to significantly reduce

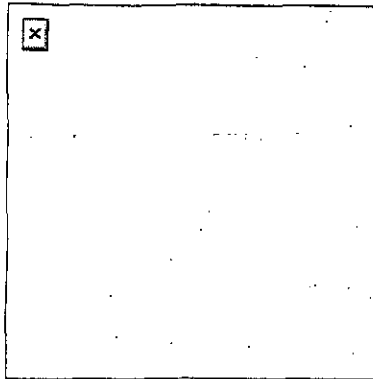




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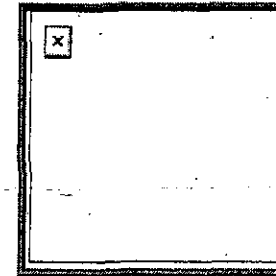
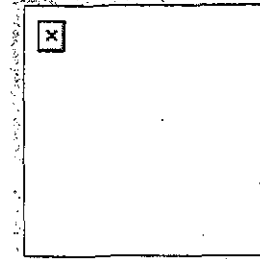
[harmful] air emissions by converting a unit at the Northport Power Plant to a combination of natural gas and residual oil. In addition, the Spagnoli Road Energy Center will allow KeySpan to undertake upgrades at other facilities, although exactly how one affects the other is not clear. Since KeySpan is under no regulatory obligation to reduce emissions at the Northport facility the town made this concession a priority.

Another concession that also involves air quality is the conversion of town-owned vehicles to natural gas. KeySpan will "assist" the town and commit \$200,000 toward purchasing vehicles that operate on natural gas instead of gasoline. Critics of these programs say they are simply a marketing ploy that enables KeySpan to sell more natural gas.

KeySpan will also implement an economic power incentive for the Route 110 corridor to "encourage the development of the biotechnology and technology sector." It will provide discounted electrical power to targeted businesses and energy discounts to the Half Hollow Hills School District. It will also provide \$40,000 per year for five consecutive years of economic development grants and an additional \$850,000 in low-interest loans to assist in the revitalization of Huntington Station - a section of Huntington more than five miles away from the proposed power plant site.

In addition, the plant will have a fixed assessed value for 20 years, ensuring consistent tax revenues to the town, fire, and school districts. Further promises made by KeySpan include the installation of a microturbine at the Dix Hills Ice Rink and the construction of soccer fields on a portion of the Spagnoli Road property.

Opponents of the agreement say the town board agreed to the plan in "behind closed doors" meetings, and charges that they considered only KeySpan's interests and not the interests of town residents. "They did a flip-flop," said Mark Schwartz,



executive director and general counsel of SHARED. "The town sold out to KeySpan to get benefits on the backs of the ratepayers."

(see further details of the controversy)

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Department of Land Conservation and Development



Goals

[Statewide Planning Goals](#)

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Statewide Planning Goals

Since 1973, Oregon has maintained a strong statewide program for land use planning. The foundation of that program is a set of 19 Statewide Planning Goals.

The goals express the state's policies on land use and on related topics, such as citizen involvement, housing, and natural resources.

Most of the goals are accompanied by 'guidelines,' which are suggestions about how a goal may be applied. As noted in Goal 2, guidelines are not mandatory.

Oregon's statewide goals are achieved through local comprehensive planning. State law requires each city and county to adopt a comprehensive plan and the zoning and land-division ordinances needed to put the plan into effect.



The local comprehensive plans must be consistent with the Statewide Planning Goals. Plans are reviewed for such consistency by the state's Land Conservation and Development Commission (LCDC). When LCDC officially approves a local government's plan, the plan is said to be 'acknowledged.' It then becomes the controlling document for land use in the area covered by that plan.

Oregon's planning laws apply not only to local governments but also to special districts and state agencies. The laws strongly emphasize coordination -- keeping plans and programs consistent with each other, with the goals, and with acknowledged local plans.

Oregon's 19 Statewide Planning Goals

[Goal 1 Citizen Involvement \(pdf\)](#) [[Definitions](#)]

[Goal 2 Land Use Planning \(pdf\)](#) [[Definitions](#)]

[Goal 3 Agricultural Lands \(pdf\)](#) [[Definitions](#)]

[Goal 4 Forest Lands \(pdf\)](#) [[Definitions](#)]

[Goal 5 Open Spaces, Scenic and Historic Areas, and Natural Resources \(pdf\)](#) [[Definitions](#)]

[Goal 6 Air, Water and Land Resources Quality \(pdf\)](#) [[Definitions](#)]

[Goal 7 Areas Subject to Natural Disasters and Hazards \(pdf\)](#) [[Definitions](#)]

[Goal 8 Recreational Needs \(pdf\)](#) [[Definitions](#)]

[Goal 9 Economic Development \(pdf\)](#) [[Definitions](#)]

[Goal 10 Housing \(pdf\)](#) [[Definitions](#)]

[Goal 11 Public Facilities and Services \(pdf\)](#) [[Definitions](#)]

[Goal 12 Transportation \(pdf\)](#) [[Definitions](#)]

[Goal 13 Energy Conservation \(pdf\)](#) [[Definitions](#)]

[New Goal 14 Urbanization \(pdf\)](#) [[Definitions](#)]

[Old Goal 14 Urbanization \(pdf\)](#) [[Definitions](#)]


[Goal 15 Willamette River Greenway \(pdf\)](#) [[Definitions](#)]

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[Goal 19 Ocean Resources \(pdf\)](#) [[Definitions](#)]

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Other Information

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- [Evolution of Oregon's Statewide Planning Goals \(pdf\)](#)
- [Goal Adoption and Amendment Dates \(pdf\)](#)

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OREGON

Energy Facility Siting

Energy Facility Siting Standards

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Introduction

Council standards protect natural resources, ensure public health and safety and protect against adverse environmental impacts. The standards ask three fundamental questions:

- Does the applicant have the appropriate abilities to build this energy facility?
- Is the site suitable?
- Would the facility have adverse impacts on the environment and the community?

The standards in OAR Chapter 345, Division 22, apply to all types of energy facilities. However, some types of facilities need not meet all of the Division 22 standards for the Council to issue a site certificate.

Division 24 has additional specific standards for wind facilities, surface facilities related to underground gas storage reservoirs and transmission lines. These standards address public health and safety concerns. In addition, Division 24 contains [standards for carbon dioxide emissions](#) from energy facilities.

Division 23 contains a [need for the facility](#) standard that applies only to nongenerating facilities.

General Standard of Review

OAR 345-022-0000

The General Standard of Review requires a proposed energy facility to comply with all applicable Oregon standards, statutes and rules, including those of agencies other than the Siting Council. The Council consults with other agencies in determining compliance with this standard.

Some of the other permits and agency standards that the Council reviews under the general standard include:

Noise: The Environmental Quality Commission (EQC) has adopted noise standards in OAR Chapter 340, Division 35. There is no noise permit, but the EQC noise standards apply to all industrial facilities, including energy facilities.

Wetlands: Some facilities require a Removal/Fill permit from the Division of State Lands (DSL). For these facilities, the Council performs a review using DSL criteria.

Water Pollution Control Facility: The Council reviews WPCF permit information, using the Department of Environmental Quality's criteria. This is a Department of Environmental Quality permit that is not federally delegated.

Water Rights: If the facility will require a new water right, a water right transfer or a temporary water right, the Water Resources Department (WRD) will issue the water right based on a Council finding of compliance with WRD regulations.

Some permits are outside Council jurisdiction. Permits that the federal government has delegated to a state agency other than the Council are outside the site certificate process. For example, the Air Contaminant Discharge and NPDES permits are federally delegated to the Department of Environmental Quality. Likewise, permits related to detailed design and operation specifications, such as local building permits, are outside Council jurisdiction.

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Organizational Expertise

OAR 345-022-0010

This standard helps ensure that the applicant has the abilities and resources to successfully build and operate the facility. By meeting this standard, the applicant demonstrates the expertise to do an effective and conscientious job of mitigating impacts and meeting commitments to the Council and to the community.

In determining compliance with this standard, the Council considers the applicant's past experience with similar types of projects. The Council looks at any history of regulatory citations received by the applicant and any other evidence of technical, managerial and organizational expertise. The Council considers the applicant's ability to comply with site certificate conditions and to restore the site to a useful, non-hazardous condition.

In addition, this standard ensures that "third party permits" will be available when they are needed. Some applicants do not apply directly for all the permits needed for the proposed facility. Instead, they arrange to use permits that third parties will obtain or they enter into agreements to use permits already held by third parties.

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Structural Standard

OAR 345-022-0020

The structural standard protects public health and safety, including the safety of facility workers, from seismic hazards. Consultation with the Oregon Department of Geology and Mineral Industries is useful in determining compliance with the standard. In many cases, the applicant's commitment to secure all

needed building permits and follow the Oregon Building Code is all that is required.

However, for some types of facilities, there is no building code, and some sites may have specific geological features or seismic hazards that go beyond the seismic zones in the Oregon Building Code.

For this reason, the structural standard is largely a site characterization standard. Before the Council finds that the site is suitable, the applicant must do enough site-specific work to identify potential faults or other hazards and to assess the extent of the hazard. This is especially useful in parts of the state where detailed geological exploration and mapping have not yet been done. In addition to characterizing the seismic hazards, the applicant must study the site for hazards that do not require an earthquake as an initiating event, such as landslide potential.

The Council requires that the assessment of seismic hazards and non-earthquake related hazards be based on actual physical exploration, not merely on available literature. Predictions of ground acceleration must take into account the specific soil and rock conditions underlying the site. The Council looks for evidence that the applicant has fully characterized the site in terms of stability. If there are unstable or erosion-prone soils, the Council looks for evidence that the applicant will use proper engineering techniques to avoid hazards to public safety.

The Council may issue a site certificate for a wind, solar or geothermal energy facility or for a gas-fired power plant that qualifies for special criteria expedited review without finding compliance with this standard. However, the Council may impose site certificate conditions for such facilities based on this standard.



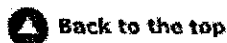
Soil Protection

OAR 345-022-0022

This standard requires the applicant to consider problems of erosion and drainage that could affect land in the surrounding area. The applicant must also consider potential impacts on soils from cooling tower drift and other forms of chemical deposition.

The soil protection standard requires the applicant to describe the site in detail. The applicant should plan to prevent or mitigate the impacts on soils or show evidence that the impacts are insignificant.

Some counties have erosion and drainage control ordinances as part of their land use requirements. In these counties, the information required under this standard applies to the land use standard as well.



Land Use

OAR 345-022-0030

The land use standard ensures that the proposed facility will comply with Oregon's land use planning goals adopted by the Land Conservation and Development Commission (LCDC). To show compliance with the standard, the applicant must first choose whether to seek land use approval from the local jurisdiction or to have the Council make the land use determination.

If the applicant chooses local approval, the land use authority in the location of the proposed facility determines compliance with the local government's acknowledged comprehensive plan and land use regulations. However, the applicant must complete the local land use process before the Council can issue a site certificate. For some facilities, such as long pipelines, the location of the proposed facility lies in more than one land use jurisdiction. In that case, the applicant must obtain land use approvals from each jurisdiction, and the applicant may prefer to have the Council make the land use determination.


If the applicant chooses Council determination of land use compliance, the Council appoints the governing body of the local government in the location of the proposed facility as a "special advisory group." The Council considers applicable substantive criteria identified by the special advisory group in determining whether the proposed facility complies with the statewide planning goals. The applicable land use criteria are those in effect on the date the application is submitted.

In addition, the Council must decide whether the facility complies with any LCDC rules and goals and any land use statutes directly applicable to the facility under ORS 197.646(3).

If the proposed facility does not comply with one or more of the applicable substantive criteria, then the Council must decide whether the facility complies directly with the statewide planning goals. If the proposed facility does not comply with a statewide planning goal, then the Council may find that the facility qualifies for an exception to that goal. In deciding if such an exception is justified, the Council applies criteria listed in its land use rule, OAR 345-022-0030(4).

The land use standard addresses conflicts between the applicable substantive criteria recommended by the special advisory group and state statutes or administrative rules. The Council must resolve such conflicts consistent with the public interest. The resolution cannot override any state statute.

The standard provides for the special case of proposed pipelines, transmission lines or solar collecting facilities that would lie in more than one local government jurisdiction or more than three zones in any one jurisdiction. For such facilities, the Council may choose not to apply the applicable substantive criteria recommended by the local authorities and instead evaluate the proposed facility against the statewide planning goals or against a combination of the applicable substantive criteria and statewide planning goals. The Council must consult with the special advisory group and consider the factors listed in OAR 345-022-0030(6).


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Protected Areas

OAR 345-022-0040

This standard prohibits energy facilities in protected areas, except for special cases (primarily transmission lines or pipelines) where there is no better alternative. Protected areas include national and state parks, national monuments and other areas deemed by the Council to have special scenic, natural or environmental value.

For proposed facilities near protected areas, the standard ensures that energy facilities located near these areas would have no significant adverse impact. The Council might find no significant adverse impact, either because the facility is inherently low in impact or because the applicant proposes mitigation. The applicant must address not only direct impacts but also downstream impacts such as air and water quality.

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Retirement and Financial Assurance

OAR 345-022-0050

The Council recognizes the risk that construction of an energy facility could stop in a partially completed state or and operating facility could cease operating, leaving the community with unusable property and no funds for site restoration. This standard protects against that risk by requiring financial assurance to pay for site restoration. The applicant does not have to show adequate funding to complete the facility but needs only show adequate funding to restore the site in case of early termination of the project.

The Council includes a mandatory condition in every site certificate requiring a bond or letter of credit to be in place before construction begins to provide funds for site restoration.

The applicant must explain how it proposes to restore the site. The Council will decide whether the proposed restoration would leave the site in a useful, non-hazardous condition. The applicant must estimate site restoration costs. The Council will review the cost estimates to determine if they are reasonable, and it will use these estimates to set the amount of the bond or letter of credit required under the mandatory conditions. The applicant must provide evidence that it can obtain the required bond or letter of credit. This can be done in a number of ways, including showing evidence of the financial strength of the applicant or of ratings by major rating services such as Moody's.

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Fish and Wildlife Habitat

OAR 345-022-0060

This standard requires that the proposed facility comply with the habitat mitigation goals and standards of the Oregon Department of Fish and Wildlife (ODFW). The ODFW rule defines six categories of habitat in order of their value to wildlife. The rule then establishes mitigation goals and corresponding implementation standards for each habitat category.

The Council must determine whether the applicant has done appropriate site-specific studies to characterize the fish and wildlife habitat at the site and nearby. If impacts cannot be avoided, the applicant must provide a habitat mitigation plan. The plan must provide for appropriate mitigation measures, depending on the habitat category affected by the proposed facility. The plan may require setting aside and improving other land for fish and wildlife habitat to make up for the habitat removed by the facility.

The Council reviews this part of the application in consultation with ODFW. Applicants are encouraged to consult with ODFW and to begin relevant biological surveys, if necessary, before submitting a notice of intent.



Threatened and Endangered Species

OAR 345-022-0070

Through this standard, the Council seeks to avoid harmful impacts to plant and animal species identified as threatened or endangered under state or federal law. The applicant must provide appropriate studies of the site to identify threatened or endangered species that the proposed facility could affect. If the facility might adversely affect either a state or federally-listed threatened or endangered wildlife species, the applicant should consult with the Oregon Department of Fish and Wildlife. For plant species, the applicant should contact the Oregon Department of Agriculture. If a potential risk to the survival or recovery of a threatened or endangered species exists, the applicant must redesign or relocate the facility to avoid that risk or propose appropriate mitigation measures.

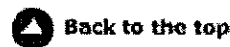


Scenic and Aesthetic Values

OAR 345-022-0080

This standard protects scenic values that local land use or federal management plans identify as significant or important. The preferred site is one where an energy facility would have no adverse impact on identified scenic values, either because of distance or because the facility is inherently low in visual impact. If the proposed facility would affect scenic values identified as significant or important, the applicant must propose appropriate measures to reduce the impact.

The Council may issue a site certificate for a gas-fired power plant that qualifies for special criteria expedited review without finding compliance with this standard. However, the Council may impose site certificate conditions for such facilities based on this standard.



Historic, Cultural and Archaeological Resources

OAR 345-022-0090

This standard protects the public interest in preserving places that have historic, cultural or archeological significance, including sites of historic or religious importance to Native American tribes. The standard preserves historic and cultural artifacts and prevents permanent loss of the archaeological record unique to particular sites in the state.

The applicant must conduct appropriate surveys at the proposed site to identify and avoid places of historic, cultural or archaeological significance. If previously unidentified sites are discovered during construction of an energy facility, site certificate conditions typically require an immediate halt to site-disturbing activities until a qualified archaeologist can examine the site. If the project involves construction on an archaeological site, then the applicant may need a permit from the State Historic

Preservation Officer in addition to the site certificate.

The Council may issue a site certificate for a wind, solar or geothermal energy facility or for a gas-fired power plant that qualifies for special criteria expedited review without finding compliance with this standard. However, the Council may impose site certificate conditions for such facilities based on this standard.



Recreation

OAR 345-022-0100

Under this standard, the Council must decide whether construction or operation of the proposed facility would adversely affect important recreational opportunities at the site or in the surrounding area. The applicant must identify the recreational opportunities and describe the potential impact of the facility. If the Council finds that significant adverse impact is likely, the Council may impose site certificate conditions to avoid or reduce the impact or require the certificate holder to develop alternate recreational opportunities in the area.

The Council may issue a site certificate for a gas-fired power plant that qualifies for special criteria expedited review without finding compliance with this standard. However, the Council may impose site certificate conditions for such facilities based on this standard.

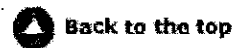


Public Services

OAR 345-022-0110

This standard protects the ability of providers in local communities to deliver critical services. The applicant must assess the proposed facility's needs for water and for disposal of wastewater, storm water and solid waste. The applicant must evaluate the expected population increases in local communities resulting from construction and operation of the facility. The applicant should address all permanent and temporary impacts on housing, traffic safety, police and fire protection, health care and schools. The Council reviews the application to ensure that the applicant has addressed potential adverse impacts.

The Council may issue a site certificate for a wind, solar or geothermal energy facility or for a gas-fired power plant that qualifies for special criteria expedited review without finding compliance with this standard. However, the Council may impose site certificate conditions for such facilities based on this standard.



Waste Minimization

OAR 345-022-0120

This standard requires the applicant to plan to minimize solid waste and wastewater generated by construction and operation of the proposed facility. The standard requires recycling of wastes, if possible, or proper waste disposal. The Council has applied this standard to encourage developers to use state-of-the-art techniques to reduce their consumptive use of water.

The applicant must evaluate the types of waste products that would be produced during construction and operation of the proposed facility and estimate the amounts or volume of waste products. The applicant must propose appropriate methods to handle the waste through collection, storage and disposal. Compliance with the standard assures that the applicant will reduce the amount of waste generated and dispose of waste in a responsible manner.

The Council may issue a site certificate for a wind, solar or geothermal energy facility or for a gas-fired power plant that qualifies for special criteria expedited review without finding compliance with this standard. However, the Council may impose site certificate conditions for such facilities based on this standard.

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Carbon Dioxide Emissions

In 1997, the Oregon legislature gave the Energy Facility Siting Council authority to set carbon dioxide emissions standards for new energy facilities. Under [Division 24](#) of the Council's rules, beginning at OAR 345-024-0500, there are specific standards for base load gas plants, non-base load (peaking) power plants and non-generating energy facilities that emit carbon dioxide.

Base load gas plants	0.675 lb. CO ₂ / kWh
Non-base load gas plants	0.675 lb. CO ₂ / kWh
Nongenerating facilities	0.504 lb. CO ₂ / horsepower-hour

The standard for base load gas plants applies only to natural gas-fired plants. The standards for non-base load plants and nongenerating facilities apply to all fuels. The Council has not yet set a carbon dioxide emissions standards for base load power plants using other fossil fuels. Rules allow base load gas plants that have power augmentation equipment to meet both the base load and non-base load standards for the respective parts of the plant. The definitions for the facilities are in [Division 1](#).

The calculations for compliance with the standard account for the efficiency of the facility. Generating plants have the option of offsetting part or all of their excess carbon dioxide emissions through guaranteed cogeneration.

At their discretion, applicants can propose carbon dioxide offset projects they or a third party will manage, or they can provide funds via the "monetary path" to the [The Climate Trust](#). The Council recognizes The Climate Trust as a "qualified organization," as defined in [statute](#) (ORS 469.503). This definition appears also in Council [rules](#) (OAR 345-001-0010(45)). The Climate Trust takes responsibility for obtaining offsets when an applicant uses the "monetary path." Once a site certificate holder has provided adequate funds to The Climate Trust, it has met its obligations under the carbon dioxide standard.

The calculations to show the required offsets or offset funds are relatively detailed. Applicants who propose facilities that will emit carbon dioxide should consult with the Department of Energy before submitting an application and should indicate in the notice of intent the compliance paths they plan to take. The information needed to show compliance with this standard is located at Exhibit Y of the application, which is described in [Division 21](#) of the Council rules.

Many discussions, reports and legislative debates led to the current carbon dioxide standard for new energy facilities. The following documents show some of the history that went into developing the carbon dioxide standard:

[HB 3283 \(1997\)](#) - Legislation for Oregon's carbon dioxide emission standards for energy facilities
Council Evaluation of CO₂ Offsets: [Final Council Order on 500 Megawatt Exemption \(1996\)](#) [PDF]

[Oregon's Carbon Dioxide Standard for New Energy Facilities](#) [PDF] - detailed description

[Oregon's Carbon Dioxide Standard](#) - brief description

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Need Standard for Nongenerating Facilities

OAR Chapter 345, Division 023

The need standard applies to electric transmission lines, gas pipelines and liquefied natural gas (LNG) storage facilities with capacity of 3 million gallons or more. An applicant may be able to demonstrate that the facility is needed if the proposed facility's capacity is identified in a least cost plan acknowledged by the Oregon Public Utilities Commission. If no such plan applies to the proposed facility, the applicant may demonstrate need if the proposed facility's capacity is identified in a short term action plan or

energy resource plan adopted by a public utility district or other governmental body that makes or implements energy policy, provided the plan meets the criteria listed in OAR 345-023-0020 (1)(a) through (L).

If the proposed facility does not appear in an energy resource plan that meets these criteria, then the applicant must show need under the system reliability rule for electric transmission lines or the economically reasonable rule for gas pipelines and LNG storage facilities. Both rules involve detailed analysis of system reliability or supply and demand.

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A Summary of Oregon's Statewide Planning Goals

1. **CITIZEN INVOLVEMENT** Goal 1 calls for "the opportunity for citizens to be involved in all phases of the planning process." It requires each city and county to have a citizen involvement program containing six components specified in the goal. It also requires local governments to have a committee for citizen involvement (CCI) to monitor and encourage public participation in planning.
2. **LAND USE PLANNING** Goal 2 outlines the basic procedures of Oregon's statewide planning program. It says that land use decisions are to be made in accordance with a comprehensive plan, and that suitable "implementation ordinances" to put the plan's policies into effect must be adopted. It requires that plans be based on "factual information"; that local plans and ordinances be coordinated with those of other jurisdictions and agencies; and that plans be reviewed periodically and amended as needed. Goal 2 also contains standards for taking exceptions to statewide goals. An exception may be taken when a statewide goal cannot or should not be applied to a particular area or situation.
3. **AGRICULTURAL LANDS** Goal 3 defines "agricultural lands." It then requires counties to inventory such lands and to "preserve and maintain" them through farm zoning. Details on the uses allowed in farm zones are found in ORS Chapter 215 and in Oregon Administrative Rules, Chapter 660, Division 33.
4. **FOREST LANDS** This goal defines forest lands and requires counties to inventory them and adopt policies and ordinances that will "conserve forest lands for forest uses."
5. **OPEN SPACES, SCENIC AND HISTORIC AREAS AND NATURAL RESOURCES** Goal 5 covers more than a dozen natural and cultural resources such as wildlife habitats and wetlands. It establishes a process for each resource to be inventoried and evaluated. If a resource or site is found to be significant, a local government has three policy choices: preserve the resource, allow proposed uses that conflict with it, or strike some sort of a balance between the resource and the uses that would conflict with it.
6. **AIR, WATER AND LAND RESOURCES QUALITY** This goal requires local comprehensive plans and implementing measures to be consistent with state and federal regulations on matters such as groundwater pollution.
7. **AREAS SUBJECT TO NATURAL DISASTERS AND HAZARDS** Goal 7 deals with development in places subject to natural hazards such as floods or landslides. It requires that jurisdictions apply "appropriate safeguards" (floodplain zoning, for example) when planning for development there.
8. **RECREATION NEEDS** This goal calls for each community to evaluate its areas and facilities for recreation and develop plans to deal with the projected demand for them. It also sets forth detailed

standards for expedited siting of destination resorts.

9. **ECONOMY OF THE STATE** Goal 9 calls for diversification and improvement of the economy. It asks communities to inventory commercial and industrial lands, project future needs for such lands, and plan and zone enough land to meet those needs.
10. **HOUSING** This goal specifies that each city must plan for and accommodate needed housing types, such as multifamily and manufactured housing. It requires each city to inventory its buildable residential lands, project future needs for such lands, and plan and zone enough buildable land to meet those needs. It also prohibits local plans from discriminating against needed housing types.
11. **PUBLIC FACILITIES AND SERVICES** Goal 11 calls for efficient planning of public services such as sewers, water, law enforcement, and fire protection. The goal's central concept is that public services should to be planned in accordance with a community's needs and capacities rather than be forced to respond to development as it occurs.
12. **TRANSPORTATION** The goal aims to provide "a safe, convenient and economic transportation system." It asks for communities to address the needs of the "transportation disadvantaged."
13. **ENERGY** Goal 13 declares that "land and uses developed on the land shall be managed and controlled so as to maximize the conservation of all forms of energy, based upon sound economic principles."
14. **URBANIZATION** This goal requires cities to estimate future growth and needs for land and then plan and zone enough land to meet those needs. It calls for each city to establish an "urban growth boundary" (UGB) to "identify and separate urbanizable land from rural land." It specifies seven factors that must be considered in drawing up a UGB. It also lists four criteria to be applied when undeveloped land within a UGB is to be converted to urban uses.
15. **WILLAMETTE GREENWAY** Goal 15 sets forth procedures for administering the 300 miles of greenway that protects the Willamette River.
16. **ESTUARINE RESOURCES** This goal requires local governments to classify Oregon's 22 major estuaries in four categories: natural, conservation, shallow-draft development, and deep-draft development. It then describes types of land uses and activities that are permissible in those "management units."
17. **COASTAL SHORELANDS** The goal defines a planning area bounded by the ocean beaches on the west and the coast highway (State Route 101) on the east. It specifies how certain types of land and resources there are to be managed: major marshes, for example, are to be protected. Sites best suited for unique coastal land uses (port facilities, for example) are reserved for "water-dependent" or "water related" uses.
18. **BEACHES AND DUNES** Goal 18 sets planning standards for development on various types of dunes. It prohibits residential development on beaches and active foredunes, but allows some other

types of development if they meet key criteria. The goal also deals with dune grading, groundwater drawdown in dunal aquifers, and the breaching of foredunes.

19. *OCEAN RESOURCES* Goal 19 aims "to conserve the long-term values, benefits, and natural resources of the

nearshore ocean and the continental shelf." It deals with matters such as dumping of dredge spoils and discharging of waste products into the open sea. Goal 19's main requirements are for state agencies rather than cities and counties.

DIVISION 21
APPLICATION FOR A SITE CERTIFICATE

345-021-0000

General Requirements

(1) Except for facilities that the Council has determined exempt as described in OAR 345-015-0350 to OAR 345-015-0370 or for which a separate site certificate is not required according to ORS 469.320(5), a person shall not construct or expand a facility unless the Council has granted a site certificate or an amendment to an existing site certificate.

(2) Notwithstanding the definition of "energy facility," a person may elect to apply for a site certificate for an electric power generating plant with an average electric generating capacity of less than 35 megawatts from wind energy.

(3) An applicant shall not submit an application for a site certificate before the Office of Energy has issued a project order for the proposed facility as described in OAR 345-015-0160. Not later than 30 days after the public comment period described in the public notice issued under OAR 345-015-0110, the applicant may submit to the Office a written request for waiver or modification of requirements in OAR 345-021-0010 that the applicant believes are not applicable to the proposed facility. If the applicant chooses, the applicant may submit a draft application before the issuance of a project order. The applicant must submit the application before the expiration of the notice of intent.

(4) Notwithstanding the requirement of section (3), in the case of an expedited review granted under OAR 345-015-0300 or OAR 345-015-0310, the applicant may submit an application for a site certificate any time after the Office of Energy determines the request for expedited review satisfies the requirements for expedited review as described in those rules.

(5) In addition to the application for a site certificate described in OAR 345-021-0010, the applicant shall submit to the Office of Energy three copies of each application for a state or local government agency permit for which the Council must determine compliance with applicable standards and three copies of federally-delegated permit applications, unless the applicant chooses to incorporate copies of the permit applications as part of the application for a site certificate. The requirements of this section do not apply to third-party permits. The applicant may submit the site certificate application before submitting copies of each permit application if the applicant submits a schedule of the dates by which the applicant intends to submit the copies of permit applications. The permit applications and letters described in this section are part of the decision record for the Office of Energy's proposed order, described in OAR 345-015-0230. The Office shall not find the site certificate application to be complete before receiving copies of all permit applications described in this section and:

(a) For non-federally-delegated permit applications for which the Council must determine compliance with applicable standards, a letter or other indication

from each responsible agency stating that the permit application received from the applicant provides an adequate basis for a permit decision; and

(b) For federally-delegated permit applications, a letter or other indication from each responsible agency stating that the agency has received a permit application from the applicant, identifying any additional information the agency is likely to need from the applicant based on the agency's review of the application as submitted, and estimating the date when the agency will complete its review and issue a permit decision.

(6) If the proposed facility is a non-generating facility for which the applicant must demonstrate need under OAR 345-023-0005, in addition to the application for a site certificate described in OAR 345-021-0010, the applicant shall submit to the Office three copies of each energy resource plan or combination of plans on which the applicant relies to demonstrate need under OAR 345-023-0020, unless the applicant chooses to incorporate copies of the plan(s) as part of the application for a site certificate. The applicant shall submit the plan(s) to the Office with the site certificate application. The Office shall not find the site certificate application to be complete before receiving copies of the plan(s). The plan or plans described in this section are part of the decision record for the Office of Energy's proposed order, described in OAR 345-015-0230.

(7) The applicant shall submit an application for a site certificate to the Office with 25 percent of the fee the Office determines necessary for review of the application under ORS 469.421(3), payable to the Oregon Office of Energy. The applicant shall pay the balance of the fee periodically, as specified by the Office.

Stat. Authority: ORS 469.373, ORS 469.470

Stat. Implemented: ORS 469.350, ORS 469.370, ORS 469.421

345-021-0010

Contents of an Application

(1) The project order described in OAR 345-15-160(1) identifies the provisions of this rule applicable to the application for the proposed facility, including any appropriate modifications to applicable provisions of this rule. The applicant shall include in its application for a site certificate information that addresses each provision of this rule identified in the project order. The applicant shall designate the information with the appropriate exhibit label identified in the following subsections. If the same information is required in each of several exhibits the applicant may provide the required information in one exhibit and include appropriate references in the others. For the purpose of submitting an application for a site certificate in an expedited review granted under OAR 345-015-0300 or OAR 345-015-0310, the applicant shall include information that addresses all provisions of this rule. In such expedited reviews, analysis areas addressed in this rule are the study areas defined in OAR 345-001-0010, subject to later modification in the project order.

(a) **Exhibit A.** Information about the applicant and participating persons, including:

(A) The name and address of the applicant including all co-owners of the proposed facility, the name, mailing address and telephone number of the contact person for the application, and if there is a contact person other than the applicant, the name, title, mailing address and telephone number of that person;

(B) The contact name, address and telephone number of all participating persons, other than individuals, including but not limited to any parent corporation of the applicant, persons upon whom the applicant will rely for third-party permits or approvals related to the facility, and, if known, other persons upon whom the applicant will rely in meeting any facility standard adopted by the Council.

(C) If the applicant is a corporation, it shall give:

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

(ii) The date and place of its incorporation;

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

(iv) In the case of a corporation not incorporated in Oregon, the name and address of the resident attorney-in-fact in this state and proof of registration to do business in Oregon.

(D) If the applicant is a wholly owned subsidiary of a company, corporation, or other business entity, in addition to the information required by paragraph (C), it shall give the full name and business address of each of the applicant's full or partial owners;

(E) If the applicant is an association of citizens, a joint venture or a partnership, it shall give:

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

(ii) The name, business address and telephone number of each person participating in the association, joint venture or partnership and the percentage interest held by each;

(iii) Proof of registration to do business in Oregon;

(iv) A copy of its articles of association, joint venture agreement or partnership agreement and a list of its members and their cities of residence; and

(v) If there are no articles of association, joint venture agreement or partnership agreement, the applicant shall state that fact over the signature of each member;

(F) If the applicant is a public or governmental entity, it shall give:

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

(ii) Written authorization from the entity's governing body to submit an application;

(G) If the applicant is an individual, the individual shall give his or her mailing address and telephone number;

(b) **Exhibit B.** Information about the proposed facility, construction schedule and temporary disturbances of the site, including:

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

(i) Major components, structures and systems, including a description of the size, type and configuration of equipment used to generate electricity and useful thermal energy;

(ii) A site plan and general arrangement of buildings, equipment and structures;

(iii) Fuel and chemical storage facilities, including structures and systems for spill containment;

(iv) Equipment and systems for fire prevention and control;

(v) Structures, systems and equipment for waste management and waste disposal, including, to the extent known, the amount of wastewater the applicant anticipates and the applicant's plans for disposal of wastewater and storm water. If the applicant has submitted any permit applications to the Office, as described in OAR 345-021-0000(4), that contain this information, the applicant may copy relevant sections of those documents into this exhibit or include in this exhibit cross-references to the relevant sections of those documents;

(vi) For thermal power plants and electric generating facilities producing energy from wind, solar or geothermal energy:

(I) A discussion of the source, quantity, availability, and energy content of all fuels (Btu, higher heating value) or the wind, solar or geothermal resource used to generate electricity or useful thermal energy. For the purpose of this subparagraph, "source" means the coal field, natural gas pipeline, petroleum distribution terminal or other direct source;

(II) Fuel cycle and usage including the maximum hourly fuel use at net electrical power output at average annual conditions for a base load gas plant and the maximum hourly fuel use at nominal electric generating capacity for a non-base load power plant or a base load gas plant with power augmentation technologies, as applicable;

(III) The gross capacity as estimated at the generator output terminals for each generating unit. For a base load gas plant, gross capacity is based on the average annual ambient conditions for temperature, barometric pressure and relative humidity. For a non-base load plant, gross capacity is based on the average temperature, barometric pressure and relative humidity at the site during the times of year when the facility is intended to operate. For a baseload gas plant with power augmentation, gross capacity in that mode is based on the average temperature, barometric pressure and relative humidity at

the site during the times of year when the facility is intended to operate with power augmentation.

(IV) A table showing a reasonable estimate of all on-site electrical loads and losses greater than 50 kilowatts, including losses from on-site transformers, plus a factor for incidental loads, that are required for the normal operation of the plant when the plant is at its designed full power operation.

(V) Process flow, including power cycle and steam cycle diagrams to describe the energy flows within the system;

(VI) Equipment and systems for disposal of waste heat;

(VII) The maximum number of hours per year and energy content (Btu per year, higher heating value) of alternate fuel use;

(VIII) The nominal electric generating capacity;

(IX) The fuel chargeable to power heat rate;

(vii) For transmission lines, the rated voltage, load carrying capacity, and type of current;

(viii) For pipelines, the operating pressure and delivery capacity in thousand cubic feet per day;

(ix) For surface facilities related to underground gas storage, estimated daily injection and withdrawal rates, horsepower compression required to operate at design injection or withdrawal rates, operating pressure range and fuel type of compressors; and

(x) For facilities to store liquefied natural gas, the volume, maximum pressure, liquefaction and gasification capacity in thousand cubic feet per hour;

(B) A description of major components, structures and systems of each related or supporting facility;

(C) The approximate dimensions of major facility structures and visible features;

(D) If the proposed energy facility is a pipeline or a transmission line or has, as a related or supporting facility, a transmission line or pipeline that, by itself, is an energy facility under the definition in ORS 469.300, a corridor selection assessment explaining how the applicant selected the corridor(s) for analysis in the application. In the assessment, the applicant shall evaluate the corridor adjustments the Office has described in the project order, if any. The applicant may select any corridor for analysis in the application and may select more than one corridor. However, if the applicant selects a new corridor, then the applicant must explain why the applicant did not present the new corridor for comment at an informational meeting under OAR 345-015-0130. In the assessment, the applicant shall discuss the reasons for selecting the corridor(s), based upon evaluation of the following factors:

(i) Least disturbance to streams, rivers and wetlands during construction;

(ii) Least percentage of the total length of the pipeline or transmission line that would be located within areas of Habitat Category 1, as described by the Oregon Department of Fish and Wildlife;

(iii) Greatest percentage of the total length of the pipeline or transmission line that would be located within or adjacent to public roads, as defined in ORS 368.001, and existing pipeline or transmission line rights-of-way;

(iv) Least percentage of the total length of the pipeline or transmission line that would be located within lands that require zone changes, variances or exceptions;

(v) Least percentage of the total length of the pipeline or transmission line that would be located in a protected area as described in OAR 345-022-0040;

(vi) Least disturbance to areas where historical, cultural or archaeological resources are likely to exist; and

(vii) Greatest percentage of the total length of the pipeline or transmission line that would be located to avoid seismic, geological and soils hazards;

(viii) Least percentage of the total length of the pipeline or transmission line that would be located within lands zoned for exclusive farm use;

(E) For the corridor(s) the applicant selects under paragraph (D) and for any related or supporting facility that is a pipeline or transmission line, regardless of size:

(i) The length of the pipeline or transmission line;

(ii) The proposed right-of-way width of the pipeline or transmission line, including to what extent new right-of-way will be required or existing right-of-way will be widened;

(iii) If the proposed corridor follows or includes public right-of-way, a description of where the facility would be located within the public right-of-way, to the extent known. If the applicant might choose to locate all or part of the facility adjacent to but not within the public right-of-way, describe the reasons the applicant would use to justify locating the facility outside the public right-of-way. The applicant must include a set of clear and objective criteria and a description of the type of evidence that would support locating the facility outside the public right-of-way, based on those criteria.

(iv) The diameter and location, above or below ground, of each pipeline; and

(v) A description of transmission line structures and their dimensions;

(F) A construction schedule including the date by which the applicant proposes to begin construction and the date by which the applicant proposes to complete construction. Construction is defined in OAR 345-001-0010. The

applicant shall describe in this exhibit all work on the site that the applicant intends to begin before the Council issues a site certificate. The applicant shall include an estimate of the cost of that work. For the purpose of this exhibit, "work on the site" means any work within a site or corridor, other than surveying, exploration or other activities to define or characterize the site or corridor, that the applicant anticipates or has performed as of the time of submitting the application;

(G) A map showing all areas that may be temporarily disturbed by any activity related to the design, construction and operation of the proposed facility;

(c) **Exhibit C.** Information about the location of the proposed facility, including:

(A) A map or maps, including a 7.5-minute quadrangle map, showing the proposed locations of the energy facility site, and all related or supporting facility sites, in relation to major roads, water bodies, cities and towns, important landmarks and topographic features; and

(B) A description of the location of the proposed energy facility site and the proposed site of each related or supporting facility, including the approximate land area of each. If a proposed pipeline or transmission line is to follow an existing road, pipeline or transmission line, the applicant shall state to which side of the existing road, pipeline or transmission line the proposed facility will run, to the extent this is known;

(d) **Exhibit D.** Information about the organizational expertise of the applicant to construct and operate the proposed facility, providing evidence to support a finding by the Council as required by OAR 345-022-0010, including:

(A) The applicant's previous experience, if any, in constructing and operating similar facilities;

(B) The qualifications of the applicant's personnel who will be responsible for constructing and operating the facility, to the extent that the identities of such personnel are known when the application is submitted;

(C) The qualifications of any architect, engineer, major component vendor, or prime contractor upon whom the applicant will rely in constructing and operating the facility, to the extent that the identities of such persons are known when the application is submitted;

(D) The past performance of the applicant, including but not limited to the number and severity of any regulatory citations in constructing or operating a facility, type of equipment, or process similar to the proposed facility;

(E) If the applicant has no previous experience in constructing or operating similar facilities and has not identified a prime contractor for construction or operation of the proposed facility, other evidence that the applicant can successfully construct and operate the proposed facility. The applicant may include, as evidence, a warranty that it will, through contracts, secure the necessary expertise; and

(F) If the applicant has an ISO 9000 or ISO 14000 certified program and proposes to design, construct and operate the facility according to that program, a description of the program;

(G) If the applicant relies on mitigation to demonstrate compliance with any standards of Division 22 or 24 of this chapter, evidence that the applicant can successfully complete such proposed mitigation, including past experience with other projects and the qualifications and experience of personnel upon whom the applicant will rely, to the extent that the identities of such persons are known at the date of submittal.

(e) **Exhibit E.** Information about permits needed for construction and operation of the facility, including:

(A) Identification of all federal, state and local government permits needed before construction and operation of the proposed facility, legal citation of the statute, rule or ordinance governing each permit, and the name, address and telephone number of the agency or office responsible for each permit.

(B) A description of each permit and the reasons the permit is needed for construction or operation of the facility.

(C) For state or local government permits or approvals for which the Council must determine compliance with applicable standards, evidence to support findings by the Council that construction and operation of the proposed facility will comply with all statutes, rules and standards applicable to the permit. The applicant may show this evidence:

(i) In Exhibit J for permits related to wetlands;

(ii) In Exhibit O for permits related to water rights.

(D) For federally-delegated permit applications, evidence that the responsible agency has received a permit application and the estimated date when the responsible agency will complete its review and issue a permit decision.

(E) If the applicant will not itself obtain a state or local government permit or approval for which the Council would ordinarily determine compliance but instead relies on a permit issued to a third party, identification of any such third-party permit and for each:

(i) Evidence that the applicant has, or has a reasonable likelihood of entering into, a contract or other agreement with the third party for access to the resource or service to be secured by that permit;

(ii) Evidence that the third party has, or has a reasonable likelihood of obtaining, the necessary permit; and

(iii) An assessment of the impact of the proposed facility on any permits that a third party has obtained and on which the applicant relies to comply with any applicable Council standard.

(F) If the applicant relies on a federally-delegated permit issued to a third party, identification of any such third-party permit and for each:

(i) Evidence that the applicant has, or has a reasonable likelihood of entering into, a contract or other agreement with the third party for access to the resource or service to be secured by that permit;

(ii) Evidence that the responsible agency has received a permit application; and

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

(G) The applicant's proposed monitoring program, if any, for compliance with permit conditions.

(f) **Exhibit F.** A list of the names and mailing addresses of all owners of record, as shown on the most recent property tax assessment roll, of property located within or adjacent to the corridor(s) the applicant has selected for analysis as described in subsection (b) and property located within or adjacent to the site of the proposed facility. The applicant shall submit an updated list of property owners as requested by the Office of Energy before the Office issues notice of any public hearing on the application for a site certificate as described in OAR 345-015-0220. In addition to incorporating the list in the application for a site certificate, the applicant shall submit the list to the Office in electronic format suitable to the Office for the production of mailing labels. Property adjacent to the proposed site of the facility or corridor means property that is:

(A) Within 100 feet of the site or corridor, where the site or corridor is within an urban growth boundary;

(B) Within 250 feet of the site or corridor, where the site or corridor is outside an urban growth boundary and not within a farm or forest zone; and

(C) Within 500 feet of the site or corridor, where the site or corridor is within a farm or forest zone;

(g) **Exhibit G.** A materials analysis including:

(A) An inventory of substantial quantities of industrial materials flowing into and out of the proposed facility during construction and operation;

(B) The applicant's plans to manage hazardous substances during construction and operation, including measures to prevent and contain spills; and

(C) The applicant's plans to manage non-hazardous waste materials during construction and operation;

(h) **Exhibit H.** Information from reasonably available sources regarding the geological and soil stability of the site and vicinity, providing evidence to support findings by the Council as required by OAR 345-022-0020, including:

(A) A description of the geological features and topography of the site and vicinity;

(B) A description of site specific geological and geotechnical work performed or planned to be performed before construction. The applicant shall include:

(i) A proposed schedule for geotechnical work;

(ii) A description of the nature and extent of the work with a discussion of the methods used to assess the expected ground response, including amplification, at the site;

(iii) A list of the professional literature relied on in characterizing the site; and

(iv) The names of the personnel responsible for the work and a description of their relevant experience;

(C) For all transmission lines, a description of locations along the proposed route where the applicant proposes to perform site specific geotechnical work, including but not limited to railroad crossings, major road crossings, river crossings, dead ends, corners, and portions of the proposed route where geologic reconnaissance and other site specific studies provide evidence of existing landslides or marginally stable slopes that could be made unstable by the planned construction;

(D) For all pipelines that would carry explosive, flammable or hazardous materials, a description of locations along the proposed route where the applicant proposes to perform site specific geotechnical work, including but not limited to railroad crossings, major road crossings, river crossings and portions of the proposed alignment where geologic reconnaissance and other site specific studies provide evidence of existing landslides or marginally stable slopes that could be made unstable by the planned construction;

(E) A map showing the location of existing and significant potential geological and soil stability hazards and problems, if any, on the site and in its vicinity that could adversely affect, or be aggravated by, the construction and operation of the proposed facility;

(F) An assessment of seismic hazards. For the purposes of this assessment, the maximum probable earthquake (MPE) is the maximum earthquake that could occur under the known tectonic framework with a 10 percent chance of being exceeded in a 50 year period. If seismic sources are not mapped sufficiently to identify the ground motions above, the applicant shall provide a probabilistic seismic hazard analysis to identify the peak ground accelerations expected at the site for a 500 year recurrence interval and a 5000 year recurrence interval. In the assessment, the applicant shall include:

(i) Identification of the Oregon Building Code Seismic Zone designation for the site;

(ii) Identification and characterization of all earthquake sources capable of generating median peak ground accelerations greater than 0.05g on rock at the site. For each earthquake source, the applicant shall assess the magnitude and minimum epicentral distance of the maximum credible earthquake (MCE) and the MPE;

(iii) A description of any recorded earthquakes within 50 miles of the site and of recorded earthquakes greater than 50 miles from the site that caused ground shaking at the site more intense than the Modified Mercalli III

intensity. The applicant shall include the date of occurrence and a description of the earthquake that includes its magnitude and highest intensity and its epicenter location or region of highest intensity;

(iv) Assessment of the median ground response spectrum from the MCE and the MPE and identification of the spectral accelerations greater than the design spectrum provided in the Oregon Building Code. The applicant shall include a description of the probable behavior of the subsurface materials and amplification by subsurface materials and any topographic or subsurface conditions that could result in expected ground motions greater than those characteristic of the Oregon Building Code Seismic Zone identified above; and

(v) An assessment of seismic hazards expected to result from reasonably probable seismic events. As used in this rule "seismic hazard" includes ground shaking, landslide, lateral spreading, liquefaction, tsunami inundation, fault displacement, and subsidence;

(G) An assessment of soil-related hazards such as landslides, flooding and erosion which could, in the absence of a seismic event, adversely affect or be aggravated by the construction or operation of the facility;

(H) An explanation of how the applicant will design, engineer and construct the facility to avoid dangers to human safety from the seismic hazards identified in paragraph (F). The applicant shall include proposed design and engineering features, applicable construction codes, and any monitoring for seismic hazards; and

(I) An explanation of how the applicant will design, engineer and construct the facility to adequately avoid dangers to human safety presented by the hazards identified in paragraph (G);

(i) **Exhibit I.** Information from reasonably available sources regarding soil conditions and uses of the site and vicinity, providing evidence to support findings by the Council as required by OAR 345-022-0022, including:

(A) Identification and description of the major soil types at the site and its vicinity;

(B) Identification and description of any land uses on the proposed site and in its vicinity, such as growing crops, that require or depend on productive soils;

(C) Identification and assessment of significant potential adverse impact to soils from construction, operation and retirement of the facility, including, but not limited to, erosion and chemical factors such as salt deposition from cooling towers, land application of liquid effluent, and chemical spills;

(D) A description of any measures the applicant proposes to avoid or mitigate adverse impact to soils; and

(E) The applicant's proposed monitoring program, if any, for impact to soils;

(j) **Exhibit J.** Information based on literature and field study, as appropriate, about significant potential impacts of the proposed facility on wetlands that are within state jurisdiction under ORS Chapter 196, including:

(A) A determination, as defined in OAR 141-090-0020, of whether construction or operation of the proposed facility would affect any waters of the state, including wetlands, and, if so, a wetland delineation report, as defined in OAR 141-090-0020, describing how those waters would be affected;

(B) A wetland map, as defined in OAR 141-090-0020, showing the location of any wetlands under state jurisdiction on or near the site and the source of the water for the wetlands, including any wetlands identified in the Statewide Wetland Inventory of the Division of State Lands;

(C) A description of each wetland identified in (A);

(D) A description of significant potential impact to each wetland, if any, including the nature and amount of material the applicant would remove from or place in each wetland and the specific locations where the applicant would remove or fill that material;

(E) Evidence that all required fill and removal permits of the Oregon Division of State Lands can be issued to the proposed facility in compliance with ORS 196.800 et seq., including:

(i) A discussion and evaluation of the factors listed in ORS 196.825 and OAR Chapter 141 Division 85; and

(ii) A description of the steps the applicant proposes to mitigate impacts to wetlands; and

(F) The applicant's proposed monitoring program, if any, for impacts to wetlands;

(k) **Exhibit K.** Information about the proposed facility's compliance with the statewide planning goals adopted by the Land Conservation and Development Commission, providing evidence to support a finding by the Council as required by OAR 345-022-0030. The applicant shall state whether the applicant elects to address the Council's land use standard by obtaining local land use approvals under ORS 469.504(1)(a) or by obtaining a Council determination under ORS 504(1)(b). An applicant may elect different processes for an energy facility and a related or supporting facility but may not otherwise combine the two processes. Notwithstanding OAR 345-021-0090(2), once the applicant has made an election, the applicant may not amend the application to make a different election. In this subsection, "affected local government" means a local government that has land use jurisdiction over any part of the proposed site of the facility. In the application, the applicant shall:

(A) Include a map showing the comprehensive plan designations and land use zones of the facility site, all areas that may be temporarily disturbed by any activity related to the design, construction and operation of the proposed facility and property adjacent to the site;

(B) If the applicant elects to obtain local land use approvals:

- (i) Identify the affected local government(s) from which land use approvals will be sought;
- (ii) Describe the land use approvals required in order to satisfy the Council's land use standard;
- (iii) Describe the status of the applicant's application for each land use approval; and
- (iv) Provide an estimate of time for issuance of local land use approvals;

(C) If the applicant elects to obtain a Council determination on land use:

- (i) Identify the affected local government(s);
- (ii) Identify the applicable substantive criteria from the affected local government's acknowledged comprehensive plan and land use regulations that are required by the statewide planning goals and that are in effect on the date the application is submitted and describe how the proposed facility complies with those criteria;
- (iii) Identify all Land Conservation and Development Commission administrative rules, statewide planning goals and land use statutes directly applicable to the facility under ORS 197.646(3) and describe how the proposed facility complies with those rules, goals and statutes;
- (iv) If the proposed facility might not comply with all applicable substantive criteria, identify the applicable statewide planning goals and describe how the proposed facility complies with those goals; and
- (v) If the proposed facility might not comply with all applicable substantive criteria or applicable statewide planning goals, describe why an exception to any applicable statewide planning goal is justified, providing evidence to support all findings by the Council required under ORS 469.504(2); and

(D) If the proposed facility will be located on federal land:

- (i) Identify the applicable land management plan adopted by the federal agency with jurisdiction over the federal land;
- (ii) Explain any differences between state or local land use requirements and federal land management requirements;
- (iii) Describe how the proposed facility complies with the applicable federal land management plan;
- (iv) Describe any federal land use approvals required for the proposed facility and the status of application for each required federal land use approval;
- (v) Provide an estimate of time for issuance of federal land use approvals; and
- (vi) If federal law or the land management plan conflicts with any applicable state or local land use requirements, explain the differences in the conflicting requirements, state whether the applicant requests Council waiver of

the land use standard described under paragraph (B) or (C) of this subsection and explain the basis for a waiver;

(L) **Exhibit L.** Information about the proposed facility's impact on protected areas, providing evidence to support a finding by the Council as required by OAR 345-022-0040, including:

(A) A map showing the location of the proposed facility in relation to the protected areas listed in OAR 345-022-0040 located within the analysis area;

(B) A description of significant potential impacts of the proposed facility, if any, on the protected areas including, but not limited to, potential impacts such as:

(i) Noise resulting from facility construction or operation;

(ii) Increased traffic resulting from facility construction or operation;

(iii) Water use during facility construction or operation;

(iv) Wastewater disposal resulting from facility construction or operation;

(v) Visual impacts of facility structures, including cooling tower or other plumes, if any; and

(vi) Visual impacts from air emissions resulting from facility construction or operation, including, but not limited to, impacts on Class 1 visual resources as described in OAR 340-204-0050;

(m) **Exhibit M.** Information about the applicant's financial capability, providing evidence to support a finding by the Council as required by OAR 345-022-0050(2). Nothing in this subsection shall require the disclosure of information or records protected from public disclosure by any provision of state or federal law. The applicant shall include:

(A) An opinion or opinions from legal counsel stating that, to counsel's best knowledge, the applicant has the legal authority to construct and operate the facility without violating its bond indenture provisions, articles of incorporation, common stock covenants, or similar agreements;

(B) The type and amount of the applicant's proposed bond or letter of credit to meet the requirements of OAR 345-022-0050; and

(C) Evidence that the applicant has a reasonable likelihood of obtaining the proposed bond or letter of credit in the amount proposed in paragraph (B), before beginning construction of the facility;

(n) **Exhibit N.** If the proposed facility is a non-generating facility for which the applicant must demonstrate need under OAR 345-023-0005, information about the need for the facility, providing evidence to support a finding by the Council as required by OAR 345-023-0005, including:

(A) Identification of the rule in Division 23 of this chapter under which the applicant chooses to demonstrate need;

(B) If the applicant chooses to demonstrate need for the proposed facility under OAR 345-023-0020(1), the least-cost plan rule:

(i) Identification of the energy resource plan or combination of plans on which the applicant relies to demonstrate need;

(ii) The name, address, and telephone number of the person responsible for preparing each energy resource plan identified in subparagraph (i);

(iii) For each plan reviewed by a regulatory agency, the agency's findings and final decision, including:

(I) For a plan reviewed by the Oregon Public Utility Commission, the acknowledgment order; or

(II) For a plan reviewed by any other regulatory agency, a summary of the public process including evidence to support a finding by the Council that the agency's decision process included a full, fair and open public participation and comment process as required by OAR 345-023-0020(1)(L), and the location of and means by which the Office of Energy can obtain a complete copy of the public record;

(iv) Identification of the section(s) of the short-term action plan(s) that call(s) for the acquisition of the proposed facility or a facility substantially similar to the proposed facility; and

(v) The attributes of the proposed facility that qualify it as one called for in the short-term action plan of the energy resource plan or combination of plans identified in subparagraph (i) or a demonstration that a facility substantially similar to the proposed facility is called for in the plan(s);

(C) In addition to the information described in paragraph (B), if the applicant chooses to demonstrate need for the proposed facility under OAR 345-023-0020(1), the least-cost plan rule, and relies on an energy resource plan not acknowledged by the Public Utility Commission of Oregon:

(i) The names, addresses and telephone numbers of members of any public advisory groups that participated in the preparation and review of each plan identified in paragraph (B);

(ii) A discussion of how the plan or combination of plans conforms to the standards in OAR 345-023-0020(1)(a) through (L) including citations to relevant portions of the plan documents or other supporting evidence; and

(iii) The expected annual emissions in tons of nitrogen oxides, PM-10 particulate, sulfur dioxide, carbon dioxide and mercury and a discussion of other environmental impacts, as compared to resources in the applicable energy resource plan;

(D) In addition to the information described in paragraphs (B) and (C), if the applicant chooses to demonstrate need for a proposed natural gas pipeline or storage facility for liquefied natural gas under OAR 345-023-0020(1), the least-cost plan rule, and relies on an energy resource plan not acknowledged by the Public Utility Commission of Oregon, the applicant shall include the information described in paragraph (G) of this subsection if the energy resource plan or combination of plans does not contain that information. If the energy

resource plan or combination of plans contains the information described in paragraph (G), the applicant shall provide a list of citations to the sections of the energy resource plan(s) that contain the information;

(E) In addition to the information described in paragraphs (B) and (C), if the applicant chooses to demonstrate need for a proposed electric transmission line under OAR 345-023-0020(1), the least-cost plan rule and relies on an energy resource plan not acknowledged by the Public Utility Commission of Oregon, the applicant shall include the information described in paragraph (F) of this subsection if the energy resource plan or combination of plans does not contain that information. If the energy resource plan or combination of plans contains the information described in paragraph (F), the applicant shall provide a list of citations to the sections of the energy resource plan(s) that contain the information;

(F) If the applicant chooses to demonstrate need for a proposed electric transmission line under OAR 345-023-0030, the system reliability rule:

(i) Load-resource balance tables for the area to be served by the proposed facility. In the tables, the applicant shall include firm capacity demands and existing and committed firm resources for each of the years from the date of submission of the application to at least five years after the expected in-service date of the facility.

(ii) Within the tables described in subparagraph (i), a forecast of firm capacity demands for electricity and firm annual electricity sales for the area to be served by the proposed facility. The applicant shall separate firm capacity demands and firm annual electricity sales into loads of retail customers, system losses, reserve margins and each wholesale contract for firm sale. In the forecast, the applicant shall include a discussion of how the forecast incorporates reductions in firm capacity demand and firm annual electricity sales resulting from:

(I) Existing federal, state, or local building codes, and equipment standards and conservation programs required by law for the area to be served by the proposed facility;

(II) Conservation programs provided by the energy supplier;

(III) Conservation that results from responses to price; and

(IV) Retail customer fuel choice;

(iii) Within the tables described in subparagraph (i), a forecast of existing and committed firm resources used to meet the demands described in subparagraph (ii). The applicant shall include, as existing and committed firm resources, existing generation and transmission facilities, firm contract resources and committed new resources minus expected resource retirements or displacement. In the forecast, the applicant shall list each resource separately;

(iv) A discussion of the reasons each resource is being retired or displaced if the forecast described in subparagraph (iii) includes expected retirements or displacements;

(v) A discussion of the annual capacity factors assumed for any generating facilities listed in the forecast described in subparagraph (iii);

(vi) A discussion of the reliability criteria the applicant uses to demonstrate the proposed facility is needed, considering the load carrying capability of existing transmission system facilities supporting the area to be served by the proposed facility; and

(vii) A discussion of reasons why the proposed facility is economically reasonable compared to the alternatives described below. In the discussion, the applicant shall include a table showing the amounts of firm capacity and firm annual electricity available from the proposed facility and each alternative and the estimated direct cost of the proposed facility and each alternative. The applicant shall include documentation of assumptions and calculations supporting the table. The applicant shall evaluate alternatives to construction and operation of the proposed facility that include, but are not limited to:

(I) Implementation of cost-effective conservation, peak load management, and voluntary customer interruption as a substitute for the proposed facility;

(II) Construction and operation of electric generating facilities as a substitute for the proposed facility;

(III) Direct use of natural gas, solar or geothermal resources at retail loads as a substitute for use of electricity transmitted by the proposed facility; and

(IV) Adding standard sized smaller or larger transmission line capacity;

(viii) The earliest and latest expected in-service dates of the facility and a discussion of the circumstances of the energy supplier that determine these dates; and

(G) If the applicant chooses to demonstrate need for a proposed natural gas pipeline or a proposed facility for storing liquefied natural gas under OAR 345-023-0040, the economically reasonable rule:

(i) Load-resource balance tables for the area to be served by the proposed facility. In the tables, the applicant shall include firm demands and resource availability for each of the years from the date of submission of the application to at least five years after the expected in-service date of the proposed facility. In the tables, the applicant shall list flowing supply and storage supply separately;

(ii) Within the tables described in subparagraph (i), a forecast of firm capacity demands for the area to be served by the proposed facility. The applicant shall separate firm capacity demands into firm demands of retail customers, system losses and each wholesale contract for firm sale. The applicant shall accompany the tables with load duration curves of firm capacity and interruptible demands for the most recent historical year, the year the

facility is expected to be placed in service and the fifth year after the expected in-service date. In the forecast of firm capacity demands, the applicant shall include a discussion of how the forecast incorporates reductions in firm capacity demand resulting from:

(I) Existing federal, state, or local building codes and equipment standards and conservation programs required by law for the area to be served by the proposed facility;

(II) Conservation programs provided by the energy supplier;

(III) Conservation that results from responses to price; and

(IV) Retail customer fuel choice;

(iii) Within the tables described in subparagraph (i), a forecast of existing and committed firm resources used to meet the demands described in subparagraph (ii). The applicant shall include, as existing and committed firm capacity resources, existing pipelines, storage facilities, and scheduled and budgeted new facilities minus expected resource retirements or displacement. In the forecast, the applicant shall list each committed resource separately;

(iv) A discussion of the reasons each resource is being retired or displaced if the forecast described in subparagraph (iii) includes expected retirements or displacements;

(v) A discussion of the capacity factors assumed for any storage facilities listed in the forecast described in subparagraph (iii);

(vi) A discussion of the reliability criteria the applicant uses to demonstrate the proposed facility is needed, considering the capacity of existing gas system facilities supporting the area to be served by the proposed facility;

(vii) A discussion of reasons why the proposed facility is economically reasonable compared to the alternatives described in subparagraphs (viii) or (ix). In the discussion, the applicant shall include a table showing the amounts of firm capacity available from the proposed facility and each alternative and the estimated direct cost of the proposed facility and each alternative. The applicant shall include documentation of assumptions and calculations supporting the table;

(viii) In an application for a proposed natural gas pipeline, an evaluation of alternatives to construction and operation of the proposed facility including, but not limited to:

(I) Implementation of cost-effective conservation, peak load management, and voluntary customer interruption as a substitute for the proposed facility;

(II) Installation of propane storage systems, facilities to store liquefied natural gas and underground gas storage reservoirs as a substitute for the proposed facility;

(III) Direct use of electricity, solar or geothermal resources at retail loads as a substitute for use of natural gas supplied by the proposed facility; and

(IV) Adding standard sized smaller or larger pipeline capacity.

(ix) In an application for a proposed liquefied natural gas storage facility, an evaluation of alternatives to construction and operation of the proposed facility including, but not limited to:

(I) Implementation of cost-effective conservation, peak load management, and voluntary customer interruption as a substitute for the proposed facility;

(II) Installation of propane storage systems, natural gas pipelines and underground gas storage facilities as a substitute for the proposed facility;

(III) Direct use of electricity, solar or geothermal resources at retail loads as a substitute for use of natural gas supplied by the proposed facility; and

(IV) Adding smaller or larger liquefied natural gas storage capacity; and

(x) The earliest and latest expected in-service date of the facility and a discussion of the circumstances of the energy supplier that determine these dates;

(o) **Exhibit O.** Information about the water requirements the applicant anticipates for construction and operation of the proposed facility. If the applicant has submitted any permit applications to the Office, as described in OAR 345-021-0000(4), that contain this information, the applicant may copy relevant sections of those documents into this exhibit or include in this exhibit cross-references to the relevant sections of those documents. The applicant shall include:

(A) A description of each source of water and the applicant's estimate of the amount of water the facility will need from each source under annual average and worst-case conditions;

(B) If a new water right is required, the approximate location of the points of diversion with the estimated quantity of water to be taken at each point;

(C) A description of how the water is to be used;

(D) A description of each avenue of water loss or output from the facility site, the applicant's estimate of the amount of water in each avenue under annual average and worst-case conditions, and the final disposition of all wastewater, including storm water;

(E) For operation, a water balance diagram, including the source of cooling water and the estimated consumptive use of cooling water, based on annual average conditions;

(F) If the facility does not require a groundwater permit, a surface water permit, or a water rights transfer, an explanation why no such permit or transfer is required for the construction and operation of the proposed facility;

(G) Evidence to support Council findings that the Water Resources Department should issue a groundwater or a surface water permit under ORS

Chapter 537 or should approve a transfer of a water use under ORS Chapter 540, including a discussion and evaluation of all relevant factors, including those listed in ORS 537.153(2) and (3), ORS 537.170(8) and OAR Chapter 690, Divisions 15 and 310;

(H) A discussion of any steps proposed by the applicant to reduce consumptive water use; and

(I) A discussion of any mitigation steps proposed by the applicant to address the impact of the applicant's water use on affected resources;

(p) **Exhibit P.** Information about the fish and wildlife habitats and the fish and wildlife species, other than the species addressed in subsection (q) that may be affected by the proposed facility, providing evidence to support a finding by the Council as required by OAR 345-022-0060. The applicant shall include:

(A) Identification and description of all habitat within the analysis area, classified by the habitat categories as set forth in OAR 635-415-0030;

(B) A description of biological and botanical surveys performed that support the information in this exhibit, including a discussion of the timing and scope of each survey;

(C) A map showing the locations of the habitat identified in (A);

(D) A description of the nature, extent and duration of significant potential impacts on the habitat identified in (A) that may result from construction, operation and retirement of the proposed facility;

(E) A description of any measures the applicant proposes to avoid, reduce or mitigate potential adverse impacts;

(F) Evidence that the proposed facility, including any proposed mitigation, complies with the fish and wildlife habitat mitigation goals and standards in OAR 635-415-0030; and

(G) The applicant's proposed monitoring program, if any, for impacts to such fish and wildlife species and their habitats;

(q) **Exhibit Q.** Information about threatened and endangered plant and animal species that may be affected by the proposed facility, providing evidence to support a finding by the Council as required by OAR 345-022-0070. The applicant shall include:

(A) Based on appropriate literature and field study, identification of all threatened or endangered species listed under ORS 496.172(2), ORS 564.105(2) or 16 USC § 1533 that may be affected by the proposed facility;

(B) For each species identified under (A), a description of the nature, extent, locations and timing of its occurrence in the analysis area and how the facility might adversely affect it;

(C) For each species identified under (A), a description of measures proposed by the applicant, if any, to avoid or reduce adverse impact;

(D) For each plant species identified under (A), a description of how the proposed facility, including any mitigation measures, complies with the

protection and conservation program, if any, that the Oregon Department of Agriculture has adopted under ORS 564.105(3);

(E) For each plant species identified under paragraph (A), if the Oregon Department of Agriculture has not adopted a protection and conservation program under ORS 564.105(3), a description of significant potential impacts of the proposed facility on the continued existence of the species and on the critical habitat of such species and evidence that the proposed facility, including any mitigation measures, is not likely to cause a significant reduction in the likelihood of survival or recovery of the species;

(F) For each animal species identified under (A), a description of significant potential impacts of the proposed facility on the continued existence of such species and on the critical habitat of such species and evidence that the proposed facility, including any mitigation measures, is not likely to cause a significant reduction in the likelihood of survival or recovery of the species; and

(G) The applicant's proposed monitoring program, if any, for impacts to threatened and endangered species;

(r) **Exhibit R.** An analysis of significant potential impacts of the proposed facility, if any, on scenic and aesthetic values identified as significant or important in applicable federal land management plans or in local land use plans for the analysis area, providing evidence to support a finding by the Council as required by OAR 345-022-0080, including:

(A) Identification of the applicable federal land management plans and local land use plans;

(B) Identification and description of the scenic and aesthetic values identified as significant or important in the applicable plans;

(C) A description of significant potential adverse impacts to the scenic and aesthetic values identified in (B), including, but not limited to, potential impacts such as:

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

(ii) Visual impacts of facility structures, including cooling tower or other plumes, if any; and

(iii) Visual impacts from air emissions resulting from facility construction or operation, including, but not limited to, impacts on Class 1 visual resources as described in OAR 340-031-0120;

(D) The measures the applicant proposes to avoid, reduce or otherwise mitigate any significant adverse impacts;

(E) A map or maps showing the location of the visible scenic and aesthetic values analyzed under (B); and

(F) The applicant's proposed monitoring program, if any, for impacts to scenic and aesthetic values;

(s) **Exhibit S.** Information about historic, cultural and archaeological resources providing evidence to support a finding by the Council as required by OAR 345-022-0090, including:

(A) Historic and cultural resources within the analysis area that have been listed, or would likely be eligible for listing, on the National Register of Historic Places;

(B) For private lands, archaeological objects, as defined in ORS 358.905(1)(a), and archaeological sites, as defined in ORS 358.905(1)(c), within the analysis area;

(C) For public lands, archaeological sites, as defined in ORS 358.905(1)(c), within the analysis area;

(D) The significant potential impacts, if any, of the construction, operation and retirement of the proposed facility on the resources described in paragraphs (A), (B) and (C) and a plan for protection of those resources that includes at least the following:

(i) A description of any discovery measures, such as surveys, inventories, and limited subsurface testing work, recommended by the State Historic Preservation Officer and the National Park Service of the U.S. Department of Interior for the purpose of locating, identifying and assessing the significance of resources listed in paragraphs (A), (B) and (C);

(ii) The results of surveys, inventories, and subsurface testing work recommended by the state and federal agencies listed in subparagraph (i), together with an explanation by the applicant of any variations from the survey, inventory, or testing recommended;

(iii) A list of measures to prevent destruction of the resources identified during surveys, inventories and subsurface testing referred to in subparagraph (i) or discovered during construction; and

(iv) A completed copy of any permit applications submitted pursuant to ORS 358.920. Notwithstanding OAR 345-021-0000(4), the applicant shall include copies of the permit applications as part of the site certificate application. If the same information required by subparagraphs (i) through (iii) above is contained in the permit applications, then the applicant may provide cross-references to the relevant sections of the permit applications in substitution; and

(E) The applicants proposed monitoring program, if any, for impacts to historic, cultural and archaeological resources during construction, operation and retirement of the proposed facility;

(t) **Exhibit T.** Information about the impacts the proposed facility would have on important recreational opportunities in the analysis area, providing evidence to support a finding by the Council as required by OAR 345-022-0100, including:

(A) A description of any important recreational opportunities in the analysis area considering the criteria in OAR 345-022-0100;

(B) An assessment of significant potential adverse impacts to the opportunities identified in (A) including, but not limited to, potential impacts such as:

- (i) Direct or indirect loss of an opportunity as a result of construction or operation;
- (ii) Noise resulting from facility construction or operation;
- (iii) Increased traffic resulting from facility construction or operation;
- (iv) Water use during facility construction or operation;
- (v) Wastewater resulting from facility construction or operation;
- (vi) Visual impacts of facility structures, including cooling tower or other plumes, if any; and
- (vii) Visual impacts from air emissions resulting from facility construction or operation, including, but not limited to, impacts on Class 1 visual resources as described in OAR 340-204-0050;

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

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

(E) The applicant's proposed monitoring program, if any, for impacts to important recreational opportunities;

(u) **Exhibit U.** Information about significant potential adverse impacts of construction and operation of the proposed facility on the ability of public and private providers in the analysis area to provide the services listed in OAR 345-022-0110, providing evidence to support a finding by the Council as required by OAR 345-022-0110. The applicant shall include:

(A) The important assumptions the applicant used to evaluate potential impacts;

(B) Identification of the public and private providers in the analysis area that would likely be affected;

(C) A description of any likely adverse impact to the ability of the providers identified in (B) to provide the services listed in OAR 345-022-0110;

(D) Evidence that adverse impacts described in (C) are not likely to be significant, taking into account any measures the applicant proposes to avoid, reduce or otherwise mitigate the impacts; and

(E) The applicant's proposed monitoring program, if any, for impacts to the ability of the providers identified in (B) to provide the services listed in OAR 345-022-0110;

(v) **Exhibit V.** Information about the applicant's plans to minimize the generation of solid waste and wastewater and to recycle or reuse solid waste and wastewater, providing evidence to support a finding by the Council as required by OAR 345-022-0120. The applicant shall include:

(A) A description of the major types of solid waste and wastewater that construction, operation and retirement of the facility are likely to generate;

(B) The applicant's plans to minimize, recycle or reuse the solid waste and wastewater described in (A);

(C) A description of any adverse impact on surrounding and adjacent areas from the accumulation, storage, disposal and transportation of waste generated by the construction and operation of the facility;

(D) Evidence that adverse impacts described in (C) are likely to be minimal, taking into account any measures the applicant proposes to avoid, reduce or otherwise mitigate the impacts; and

(E) The applicant's proposed monitoring program, if any, for minimization of solid waste and wastewater impacts;

(w) **Exhibit W.** Information about facility retirement and site restoration, providing evidence to support a finding by the Council as required by OAR 345-022-0050(1). The applicant shall include:

(A) The estimated useful life of the proposed facility;

(B) The actions that the applicant proposes for retirement of the facility and restoration of the site to a useful, non-hazardous condition;

(C) The estimated costs to retire the facility and restore the site to a useful, non-hazardous condition and a discussion of the methods and assumptions used to estimate retirement and restoration costs; and

(D) For facilities that might produce site contamination by hazardous materials, any proposed monitoring plan, such as periodic environmental site assessment and reporting, or an explanation why a monitoring plan is unnecessary.

(x) **Exhibit X.** Information about noise generated by construction and operation of the proposed facility, providing evidence to support a finding by the Council that the proposed facility complies with the Oregon Department of Environmental Quality's noise control standards in OAR 340-35-0035. The applicant shall include:

(A) A baseline noise assessment for the proposed site and vicinity;

(B) Predicted noise levels resulting from construction and operation of the proposed facility;

(C) An assessment of the proposed facility's compliance with the applicable noise regulations in OAR 340-35-0035;

(D) Any measures the applicant proposes to reduce noise levels or noise impacts;

(E) The assumptions and methods used in the noise analysis; and

(F) The applicant's proposed monitoring program, if any, for noise generated by construction and operation of the facility;

(y) **Exhibit Y.** If the facility is a base load gas plant, a non-base load power plant, or a nongenerating energy facility that emits carbon dioxide, a statement of the means by which the applicant elects to comply with the

applicable carbon dioxide emissions standard under OAR 345-024-0560, OAR 345-024-0600, or OAR 345-024-0630 and information, showing detailed calculations, about the carbon dioxide emissions of the energy facility. The applicant may present the calculations in tabular form. The applicant shall include the following calculations:

(A) The total gross carbon dioxide emissions for 30 years, unless an applicant for a non-base load power plant or nongenerating energy facility proposes to limit operation to a shorter time;

(B) The gross carbon dioxide emissions rate expressed as:

(i) Pounds of carbon dioxide per kilowatt-hour of net electric power output for a base load gas plant, including operation with or without power augmentation, as appropriate, or for a non-base load power plant;

(ii) Pounds of carbon dioxide per horsepower hour for nongenerating facilities for which the output is ordinarily measured in horsepower; or

(iii) A rate comparable to pounds of carbon dioxide per kilowatt-hour of net electric power output for nongenerating facilities other than those measured in horsepower;

(C) The total excess carbon dioxide emissions for 30 years, unless an applicant for a non-base load power plant or a nongenerating energy facility proposes to limit operation to a shorter time;

(D) The excess carbon dioxide emissions rate, using the same measure as required for paragraph (B);

(E) The average annual site conditions, including temperature, barometric pressure and relative humidity, together with a citation of the source and location of the data collection devices;

(F) For a non-base load power plant (or when using power augmentation), the average temperature, barometric pressure and relative humidity at the site during the times of the year when the facility is intended to operate, together with a citation of the source and location of the data collection devices;

(G) The annual fuel input in British thermal units, higher heating value, to the facility for each type of fuel the facility will use, assuming:

(i) For a base load gas plant, a 100-percent capacity factor on a new and clean basis and the maximum number of hours annually that the applicant proposes to use alternative fuels;

(ii) For a non-base load power plant, the applicant's proposed annual hours of operation on a new and clean basis, the maximum number of hours annually that the applicant proposes to use alternative fuels and, if the calculation is based on an operational life of fewer than 30 years, the proposed operational life of the facility;

(iii) For a nongenerating energy facility, the reasonably likely operation of the facility based on one year, 5-year, 15-year, and 30-year averages, unless an applicant proposes to limit operation to a shorter time;

(H) For each type of fuel a base load gas plant or a non-base load power plant will use, the estimated heat rate and capacity of the facility measured on a new and clean basis with no thermal energy to cogeneration, consistent with the data supplied in Exhibit B;

(I) For each type of fuel a nongenerating energy facility will use, the estimated efficiency and capacity of the facility with no thermal energy to cogeneration;

(J) If the facility provides thermal energy for cogeneration to lower its net carbon dioxide emissions rate, the applicant shall include:

(i) The estimated annual useful thermal energy available from the facility for non-electric processes, annual useful thermal energy used by non-electric processes, and annual thermal energy rejected as waste heat;

(ii) For a base load gas plant or non-base load power plant, the estimated annual net electric power output and annual fuel input in British thermal units higher heating value for the facility for each type of fuel the facility will use and the basis of such estimates;

(iii) A description of the non-electric thermal processes, the names and addresses of the persons intending to use the non-electric thermal energy, and a description and an estimate of the fuel displaced by cogeneration, including supporting assumptions;

(iv) A description of the products produced and thermal energy needed for production of the primary products made by the persons intending to use the non-electric thermal energy produced by the proposed facility, supported by fuel use and steam production records or estimates, if the production facility is new;

(v) The efficiency of each boiler that the thermal energy will displace;

(vi) For each boiler, the annual fossil fuel displaced in million Btu, higher heating value, by type of fuel that will be displaced by the thermal energy;

(vii) The annual carbon dioxide offset by the cogeneration host, using a rate of 117 pounds of carbon dioxide per million Btu of natural gas fuel (higher heating value) and a rate of 161 pounds of carbon dioxide per million Btu of distillate fuel (higher heating value);

(viii) The cumulative carbon dioxide offset by the steam host through the thirtieth year of facility operation, or for a shorter period if an applicant for a nongenerating facility proposes a shorter operational period;

(ix) A copy of the contractual agreement between the applicant and the cogeneration host for the use of the thermal energy;

(x) A description of the guarantees of offsets that the applicant shall provide for cogeneration projects, pursuant to OAR 345-024-0560(1) and OAR 345-024-0600(1);

(xi) A proposed monitoring and evaluation plan and an independent verification plan, pursuant to subparagraphs (K)(xix) and (K)(xx);

(xii) A copy of the instrument by which the certificate holder will transfer the offsets to the Council for it to hold in trust;

(K) If the applicant proposes to offset carbon dioxide emissions as described in OAR 345-024-0550(3), OAR 345-024-0560(2), OAR 345-024-0590(3), OAR 345-024-0600(2), OAR 345-024-0620(3) or OAR 345-024-0630(1), the applicant shall include:

(i) A description of each offset project;

(ii) A description of who will implement the offset project, including qualifications and experience;

(iii) Detailed estimates of the of carbon dioxide offset, measured in short tons, that the offset projects will achieve over the life of the project;

(iv) For each offset project, an explanation of how the applicant quantified its carbon dioxide estimates to a degree of certainty acceptable to the Council through a transparent and replicable calculation methodology;

(v) For each offset project, evidence that the offset project would not likely have been implemented if not for the applicant's activities or funding;

(vi) For each offset project, a description of a "Baseline" projection that does not include the proposed project and a "Project Case" projection that does. The historic Baseline shall use reliable emissions data or pre-project data available for the most recent three years unless the applicant can demonstrate that a different period more closely represents historical operations or unless it can demonstrate that another method provides a more reasonable estimate. The applicant shall show how the Baseline projection changes over time if changes from business-as-usual could be reasonably anticipated during the project life;

(vii) For each offset project, a description, in a transparent and realistic manner, of the assumptions and methodologies used to quantify the Baseline and the Project Case projections, including a description of key parameters and data sources. This shall include a description of the formulae used to estimate carbon dioxide emissions or sequestration within the project boundary and a net change of carbon dioxide emissions or sequestration that occurs outside of the project boundary that is measurable and attributable to the project activity;

(viii) For projects that avoid conventional electricity generation, a description of a Baseline that calculates the carbon dioxide emissions per kilowatt hour in two steps: (1) for the first five years of operation, a description of the rate based on dispatch data or models or, absent that, a weighted average of all resources in a power pool except zero-fuel-cost or must-run facilities, and (2) a description of the rate for any subsequent years based on a group of similar

facilities built within the prior five years or under construction in the electrical distribution region of the project or the three most recent plants built in the region, whichever rate is lower;

(ix) For projects that avoid conventional electricity generation, a description of avoided transmission and distribution losses, using average grid area or national losses;

(x) A description of any guarantee for offsets from projects that the applicant proposes pursuant to OAR 345-024-0560(2), OAR 345-024-0600(2), and OAR 345-024-630(1), if the applicant chooses to offer a guarantee;

(xi) A description of the offset project boundary. The boundary shall encompass all carbon dioxide emissions under the control of the project that are significant and reasonably attributable to the project activity. If the project is being conducted by one part of a corporation, the boundary shall include the emissions and reductions of the whole corporate entity and the carbon dioxide emissions resulting from processes and facilities that are related to the project, with identification of subsidiaries that are affected by the project;

(xii) A description of significant risks and risk mitigation strategies, including an estimate of the range of uncertainty around the expected carbon dioxide offsets;

(xiii) For biological sequestration projects, an assessment of the risk of climate change to natural systems that are sequestering the carbon dioxide, including, if appropriate, the risks from forest fires, pest and other unplanned releases of carbon from sequestration;

(xiv) A description of whether the offset project will permanently avoid or displace emissions of carbon dioxide. If a project only temporarily sequesters carbon, an indication of the duration of sequestration or storage;

(xv) A description of the amount of funding the applicant will provide for each offset project it proposes;

(xvi) If the applicant anticipates that a project will have funding sources in addition to itself, identification of the sources of those funds, the amount of other funding that is required to implement a project, the amount of funds other parties have committed, and the risks of other funds not being available;

(xvii) If the applicant proposes that a project will have funding sources in addition to itself, a description of how ownership of the offsets will be allocated among the several funding sources;

(xviii) A copy of the instrument by which the certificate holder will transfer all the offsets to the Council for it to hold in trust;

(xix) A description of a transparent and replicable methodology for the applicant's monitoring and evaluation plan and for an independent verification plan, including (1) procedures the applicant and the independent entity will employ, (2) how the applicant will assure funds for ongoing monitoring, evaluation and verification, (3) the time frame and frequency over

which the applicant will conduct monitoring and evaluation and over which the independent entity will conduct verification, including the frequency of site visits, if applicable, (4) the reporting procedures and guidelines for the plans, and (5) whether the applicant has identified the independent entity that will perform the verification;

(xx) The monitoring and evaluation plan and the verification plan shall identify the data needs and data quality with regard to accuracy, comparability, completeness, and validity. It shall include methodologies to be used for data collection, monitoring, storage, reporting and management, including quality assurance and quality control provisions. It shall provide complete calculations used to calculate and estimate carbon dioxide emissions from activity within the project boundary. It shall show any formulae and assumptions the applicant used to calculate offset project leakage;

(xxi) A description of reasonably likely, significant undesirable long-term environmental impacts from the implementation of an offset project; and

(L) If the applicant elects to comply with the applicable carbon dioxide emissions standard by using the monetary path under OAR 345-024-0560(3), OAR 345-024-0600(3) or OAR 345-024-0630(2), the applicant shall include:

(i) A statement of the applicant's election to use the monetary path;

(ii) The amount of carbon dioxide reduction, in tons, for which the applicant is taking credit by using the monetary path;

(iii) The qualified organization to whom the applicant will provide offset funds and funds for the cost of selecting and contracting for offsets. The applicant shall include evidence that the organization meets the definition of a qualified organization under OAR 345-001-0010. The applicant may identify an organization that has applied for, but has not received, an exemption from federal income taxation, but the Council shall not find that the organization is a qualified organization unless the organization is exempt from federal taxation under section 501(c)(3) of the Internal Revenue Code as amended and in effect on December 31, 1996; and

(iv) A statement of whether the applicant intends to provide a bond or letter of credit to secure the funds it must provide to the qualified organization or whether it requests the option of providing either a bond or a letter of credit.

(z) **Exhibit Z.** If the proposed facility has an evaporative cooling tower, information about the cooling tower plume, including:

(A) The predicted size and frequency of occurrence of a visible plume and an assessment of its visual impact;

(B) The predicted locations and frequency of occurrence of ice formation on surfaces and ground level fogging and an assessment of significant potential adverse impacts, including, but not limited to, traffic hazards on public roads;

(C) The predicted locations and rates of deposition of solids released from the cooling tower (cooling tower drift) and an assessment of significant potential adverse impacts to soils, vegetation and other land uses;

(D) Any measures the applicant proposes to reduce adverse impacts from the cooling tower plume or drift;

(E) The assumptions and methods used in the plume analysis; and

(F) The applicant's proposed monitoring program, if any, for cooling tower plume impacts;

(aa) **Exhibit AA.** If the proposed facility includes an electric transmission line:

(A) Information about the expected electric and magnetic fields, including:

(i) The distance in feet from the proposed center line of each proposed transmission line to the edge of the right-of-way;

(ii) The type of each occupied structure, including but not limited to residences, commercial establishments, industrial facilities, schools, daycare centers and hospitals, within 200 feet on each side of the proposed center line of each proposed transmission line;

(iii) The approximate distance in feet from the proposed center line to each structure identified in (A);

(iv) At representative locations along each proposed transmission line, a graph of the predicted electric and magnetic fields levels from the proposed center line to 200 feet on each side of the proposed center line;

(v) Any measures the applicant proposes to reduce electric or magnetic field levels;

(vi) The assumptions and methods used in the electric and magnetic field analysis, including the current in amperes on each proposed transmission line; and

(vii) The applicant's proposed monitoring program, if any, for actual electric and magnetic field levels; and

(B) An evaluation of alternate methods and costs of reducing radio interference likely to be caused by the transmission line in the primary reception area near interstate, U.S. and state highways;

(bb) **Exhibit BB.** Any other information that the Office requests in the project order;

(cc) **Exhibit CC.** Identification, by legal citation, of all state statutes and administrative rules and local government ordinances containing standards or criteria that the proposed facility must meet for the Council to issue a site certificate, other than statutes, rules and ordinances identified in Exhibit E, and identification of the agencies administering those statutes, administrative rules and ordinances. The applicant shall identify all statutes, administrative rules and ordinances that the applicant knows to be applicable to the proposed facility, whether or not identified in the project order. To the extent not addressed by

other materials in the application, the applicant shall include a discussion of how the proposed facility meets the requirements of the applicable statutes, administrative rules and ordinances.

(2) The applicant shall submit an affidavit with the original application that, to the applicant's best knowledge and belief, the information in the application is true and accurate. If the applicant is not an individual, the affidavit must be signed by an individual authorized to act on behalf of the applicant. The applicant shall include a copy of the affidavit in each copy of the application.

(3) Documents prepared in connection with an environmental assessment or environmental impact statement for the proposed facility under the National Environmental Policy Act of 1970, if any, may contain some of the information required under section (1) of this rule. The applicant may copy relevant sections of such documents into the appropriate exhibits of the site certificate application. The applicant may otherwise submit full copies of those documents and include, in the appropriate exhibits of the site certificate application, cross-references to the relevant sections of those documents. The applicant may use such documents only to avoid duplication. The applicant shall include additional information in the site certificate application as needed to meet the requirements of section (1) of this rule.

(4) In each application for a site certificate submitted to the Office of Energy, the applicant shall include an index or table of contents clearly identifying by page number the location of each exhibit required by this rule. The applicant shall submit the original application for a site certificate and ten copies to the Office and shall prepare and distribute additional copies of the application as required by OAR 345-021-0050. In addition to the printed copies, the applicant shall submit the text (including appendices and graphical information to the extent practical) of the application in electronic format suitable to the Office.

Stat. Authority: ORS 469.373, ORS 469.470

Stat. Implemented: ORS 469.350, ORS 469.370, ORS 469.501, ORS 469.503, ORS 469.504

345-021-0020

Specific Application Requirements for Siting of Surface Facilities Related to Underground Gas Storage Reservoirs

In addition to the requirements of OAR 345-021-0010, in an application for a site certificate for a surface facility related to an underground storage reservoir, the applicant shall include the following information:

- (1) The design rates of natural or synthetic gas injection or withdrawal;
- (2) The compression horsepower required to operate at design injection or withdrawal rates;
- (3) The fuel type of the compressor;
- (4) The estimated carbon dioxide emissions from the compressor for the projected life of the facility; and
- (5) The proposed location of all wells.

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.350, ORS 469.503

345-021-0050

Distribution of an Application as Submitted

(1) When the applicant submits an application for a site certificate to the Office of Energy, the applicant shall send a copy of the submitted application to each officer, agency and tribe listed in OAR 345-020-0040(1) accompanied by a memorandum from the Office as described in OAR 345-015-0180. If the applicant obtains written consent from the officer, agency or tribe and provides a copy of that written consent to the Office, the applicant may send specified parts of the application or an electronic copy of all or specified parts of the application to that officer, agency or tribe instead of sending a full printed copy.

(2) In written comments or recommendations to the Office, the officers, agencies and tribes receiving copies of the site certificate application as described in section (1) shall:

(a) State whether the officer, agency or tribe needs any additional information from the applicant to review the application under the statutes, administrative rules or ordinances administered by the officer, agency or tribe and describe such information; and

(b) Describe the status of applications for permits, if any, that the applicant has submitted to the officer, agency or tribe and that are necessary for the construction and operation of the proposed facility.

(3) The Office shall, as soon as practicable, send the applicant copies of all comments submitted under section (2) that identify additional information needed by the officer, agency or tribe to review the application.

(4)(a) If the applicant has elected to demonstrate compliance with the Council's land use standard under ORS 469.504(1)(a), each local government with land use jurisdiction over the proposed facility shall, in the comments or recommendations submitted to the Office of Energy under section (2), describe the status of the local land use proceedings and state the date when the local government expects to issue a final land use decision.

(b) If the applicant has elected to obtain a Council determination of compliance with the Council's land use standard under ORS 469.504(1)(b), each local government with land use jurisdiction over the proposed facility shall, in the comments or recommendations submitted to the Office under section (2), include:

(A) A complete list of applicable substantive criteria from the local government's acknowledged comprehensive plan and land use regulations that are required by the statewide planning goals and that are in effect on the date the application was submitted. "Applicable substantive criteria" means the criteria and standards that the local government would apply in making all land use decisions necessary to site the proposed facility in the absence of a Council proceeding;

(B) A complete list of Land Conservation and Development Commission administrative rules, statewide planning goals and land use statutes directly applicable to the facility under ORS 197.646(3);

(C) Copies of the criteria listed in (A) and any interpretations of ambiguous terms and matters arising from the local government's land use regulations; and

(D) An assessment of the accuracy and completeness of the applicable substantive criteria the applicant identified in the site certificate application;

(c) If possible, the local government shall submit its recommendations, comments and interpretations as described in subsection (b) in the form of a resolution adopted by the local governing body.

(5) The applicant shall provide additional copies of the submitted application to the Office upon request, and copies or access to copies to any person requesting copies.

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.350

345-021-0055

Distribution of a Filed Application

(1) After receiving notification from the Office of Energy that the application is complete, the applicant shall prepare a supplement or a revised application that includes all amendments to the application, all additional information requested by the Office of Energy before the date of filing as determined by OAR 345-015-0190 or OAR 345-015-0310 and the affidavit described in section (2). The applicant shall submit the original supplement or revised application and ten copies to the Office. In addition to the printed copies, the applicant shall submit the text (including appendices and graphical information to the extent practical) of the supplement or revised application in electronic format suitable to the Office. Except as described in OAR 345-015-0310, the applicant shall send one copy of the supplement or revised application to persons on a mailing list provided by the Office of Energy, accompanied by the notice from the Office described in OAR 345-015-0200. If the applicant obtains written consent from a person named on the mailing list and provides a copy of that written consent to the Office, the applicant may send specified parts of the application or an electronic copy of all or specified parts of the application to that person instead of sending a full printed copy.

(2) The applicant shall submit an affidavit with the supplement or revised application that, to the applicant's best knowledge and belief, the information in the supplement or revised application is true and accurate. If the applicant is not an individual, the affidavit must be signed by an individual authorized to act on behalf of the applicant. The applicant shall include a copy of the affidavit in each copy of the supplement or revised application.

(3) After the date of filing, the applicant's "filed application" is the revised application or, if the applicant has prepared a supplement as described in section

(1), the supplement together with the application originally submitted as required by OAR 345-021-0010(4) or OAR 345-015-0310(5).

(4) The applicant shall provide additional copies of the filed application to the Office upon request and copies or access to copies to any person requesting copies.

Stat. Authority: ORS 469.373, ORS 469.470

Stat. Implemented: ORS 469.350

345-021-0080

Agency Coordination

(1) Each agency with legal authority to implement or enforce state statutes, state administrative rules or local government ordinances that must be satisfied in order for the Council to issue a site certificate for a proposed facility is encouraged to conduct its review of the application for a site certificate and other permit applications for the proposed facility filed with the agency on a time line and in a manner that enables the agency to:

(a) Make recommendations to the Office of Energy and Council about compliance of the applications with the state statutes, administrative rules or ordinances administered by the agency;

(b) Recommend conditions for inclusion in the site certificate that will ensure compliance with such statutes, rules and ordinances;

(c) Present testimony and evidence at the contested case hearing on the site certificate application; and

(d) To the extent consistent with applicable law, consolidate all of its public hearings and written comment periods with the procedures established by this chapter.

(2) Following the date established under OAR 345-015-0200 for submitting agency reports, the Office may convene a meeting of the appropriate agency personnel to coordinate review of the site certificate application and other permit applications for the proposed facility by the agency and the Office.

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.350

345-021-0090

Amendment of an Application

(1) Before the date of filing as determined by OAR 345-015-0190 or OAR 345-015-0310, the applicant may amend the application without prior approval of the Office of Energy. The applicant shall submit the original and ten copies of the amendment to the Office. In addition to the printed copies, the applicant shall submit the text (and graphical information to the extent practical) of the amendment in electronic format suitable to the Office.

(2) After the date of filing as determined by OAR 345-015-0190 or OAR 345-015-0310, the applicant shall not amend the application without the approval of the Office. If the Office approves amending the application, the Office may withdraw the filing of the application until the Office has reviewed

the amended application for completeness as described under OAR 345-015-0190 or OAR 345-015-0310. After issuance of a contested case notice under OAR 345-015-0014, the applicant shall not amend the application without the approval of the Council's hearing officer. The applicant shall give notice of the amendment and serve copies of the amendment according to the order of the Office or hearing officer and any applicable contested case procedures.

(3) Information submitted to the Office under OAR 345-015-0190(8) does not constitute an amendment to the application.

Stat. Authority: ORS 469.373, ORS 469.470

Stat. Implemented: ORS 469.350

345-021-0100

Contested Case Proceeding on the Application -- Burden of Proof

(1) After the issuance of a notice of contested case as described in OAR 345-015-0230, the hearing officer shall conduct a contested case proceeding on a filed application according to the provisions of OAR Chapter 345, Division 15.

(2) The applicant has the burden of proving, by a preponderance of the evidence in the decision record, that the facility complies with all applicable statutes, administrative rules and applicable local government ordinances.

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.370

**Guidelines for Applicants
for
Energy Facility Site Certificates**

**Oregon Office of Energy
and the
Oregon Energy Facility Siting Council**

**Prepared by
Adam Bless
Oregon Office of Energy**

May 2002

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Part 1 – INTRODUCTION AND OVERVIEW

I. Purpose

The Oregon Office of Energy (“the Office” or “OOE”) has prepared these guidelines to explain Oregon's energy facility siting process. Under Oregon statute, most large energy facilities in Oregon must have a Site Certificate from the Energy Facility Siting Council (“EFSC” or “the Council”), a citizen board whose members are appointed by the governor and confirmed by the Oregon Senate. The Office of Energy serves as staff to the Energy Facility Siting Council.

These guidelines are informal, and are not a substitute for the statutes or rules. The Council will issue a site certificate only if it finds that the facility meets the applicable rules and statutes, and only after completing the review process described below. Applicants should carefully review the rules and statutes to gain a detailed understanding of the siting requirements.

Procedures and requirements governing Site Certificate review are contained in OAR Chapter 345, Divisions 1 through 50. The standards for siting energy facilities are contained in OAR Chapter 345 Divisions 22, 23 and 24. These rules implement the provisions of ORS 469.300 to 469.601 and ORS 469.992, the enabling legislation for the Council. Copies are available from the Oregon Office of Energy, 625 Marion St. NE, Salem, OR 97301-3742 and law libraries throughout the state, or from the OOE web site: www.energy.state.or.us/siting/sitehm.htm.

Office of Energy staff members generally refer to the Energy Facility Siting Council as “the Council”, and the Office of Energy as “the Office”. However, members of other state agencies, local governments and the public are often familiar with the acronyms “EFSC” and “OOE”. Either term is correct.

II. Overview of the Site Certificate Process

The Council performs a consolidated review for the siting of large energy facilities. These include:

- Thermal or combustion turbine electric power plants with generating capacity 25 megawatts (MW) or more;
- Wind energy facilities with generating capacity of 105 MW or more
- Geothermal energy facilities with generating capacity of 38.85 MW or more
- Transmission lines of 230 kilovolts (kV) or more and 10 miles or longer;
- Surface facilities associated with underground natural gas storage facilities;
- Liquid fuel pipelines 6 inches or larger in diameter and 5 miles or more in length with capacity greater than 50 million cubic feet per day;
- Liquefied natural gas storage facilities with capacity of 70,000 gallons or more;
- Natural gas pipelines (intrastate) 16 inches or more in diameter and 5 miles or more in length;
- Synthetic fuel plants capable of producing fuel product with energy content greater than 2 billion Btu per day (except plants that use biomass as the raw material);

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- Small generating plants within an “energy generation area,” if the accumulated effects of development are similar to a single plant with capacity of 35 MW or more. OAR 345-001-0200; and
- Radioactive waste disposal sites and nuclear installations.
- Plants that convert biomass to gas, liquid or solid fuel product and have the capacity to produce product equivalent to six billion Btu of heat per day.
- Smaller energy facilities in an “energy generation area” if the accumulated effects with other small energy facilities have a magnitude similar to a single energy facility that would require a site certificate

The statutory basis for the siting process is contained in ORS 469.300 to ORS 469.601, and ORS 469.992. These laws include key provisions that make the EFSC siting process different from the permitting process in other states and different from the permitting practices of many other state and local agencies in Oregon. These provisions include:

- The use of specific standards with which the applicant must demonstrate compliance;
- A “one-stop” process in which the Council determines compliance with not only its own standards but those of most other state and local permitting agencies as well;
- Public comment periods at the front end of the process, followed by a more formal “contested case”;
- Appeal for judicial review directly to the Supreme Court.

The use of specific standards makes the siting decision basically a “yes or no” process. If the facility meets the standards, the Council must issue the site certificate. If the facility does not meet one or more of the standards, the Council cannot issue the site certificate. (The Council does have the ability to waive selected standards, but only under certain conditions that are clearly defined in OAR 345-022-0000(2).)

In making the siting decision, the Council will use not only its own standards but also the applicable rules and ordinances of state and local agencies. Once the Council renders its decision, that decision is binding on all state and local agencies whose permits are addressed in the Council’s review. These agencies are bound to issue all applicable permits and licenses, subject only to the conditions adopted by the Council. ORS 469.401(3). The Council decision does not apply to federally delegated permits. ORS 469.503(3).

Typically, the siting process has two major phases. In the first phase, the applicant submits a Notice of Intent (NOI), which describes the proposed facility in general terms, allows OOE to gather public comment, and enables state and local agencies to identify regulations and ordinances that apply. The NOI does not require as much detail as a full application and need not demonstrate compliance with standards.

In the second phase, the applicant submits an Application for Site Certificate (ASC) that provides detailed information and shows compliance with all the applicable standards. During its review, OOE will coordinate review by state and local agencies. However, we encourage applicants to work directly with state and local agencies to promote better understanding of their projects. Applicants need not wait until they submit the ASC to begin working with state or local authorities.

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OOE reviews the ASC and issues its findings and recommendations in a document called the "draft proposed order." After receiving comments from the Council and the public, OOE issues its proposed order on the application.

Most siting reviews include three opportunities for members of the public to participate in the process in person. The first opportunity is an informal public information meeting, which OOE holds when it receives the NOI. The second is a public hearing that OOE holds after issuing the draft proposed order. The purpose of these two gatherings is to accept public comment and to give the applicant a chance to address the public's concerns in an informal process. Members of the public must raise their issues in the hearing on the draft proposed order to preserve their right to have them included in the contested case.

The third and most complex opportunity for public participation is a "contested case" under the Oregon Administrative Procedures Act, ORS Chapter 183, and occurs after OOE issues the proposed order. At the end of the contested case, the Council will make its decision and issue a Final Order.

Based on past history, applicants should plan on the process taking anywhere from 18 months to two and a half years from NOI submittal to the Council's Final Order. That time varies with the issues involved, the quality of the NOI and application, and the level of public opposition. Appendix A to this guideline contains a more detailed discussion of time requirements. Appendix B shows a flowchart of the siting process.

The Council can amend a site certificate on request by the site certificate holder. The request for amendment must demonstrate that the facility will continue to meet all the applicable standards. The amendment process is much shorter than the certification process, and includes a contested case only if someone requests one and only if the Council determines that one is warranted. The 1999 Oregon legislature clarified in statute that site certificate amendments have the same legal authority as site certificates.

PART 2 – STANDARDS FOR ENERGY FACILITY SITE CERTIFICATES

When the Council reviews an Application for Site Certificate (ASC), it applies two important classes of standards and requirements:

- Standards of the Energy Facility Siting Council, and
- Standards, permits, and statutory requirements of other agencies (except Federally-delegated requirements)

I. Energy Facility Siting Council Standards

The Council standards are designed to protect natural resources, ensure public health and safety, and protect against adverse environmental impacts. In some cases, (such as wetlands protection), the Council does this by applying the permitting requirements of another agency. In other cases, (such as fish and wildlife habitat), the Council standard codifies the rules and policies of another agency. Finally, certain standards are not based on any other agency's regulations, but originate with the Council.

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A. *Standards in OAR 345 Division 22*

There are 13 standards in OAR Chapter 345 Division 22. They ask three fundamental questions:

- Does the applicant have the appropriate abilities to build this energy facility?
- Is the site suitable? (Note that the Council does not choose the site. With certain exceptions, the applicant need not submit alternative sites. Instead, the applicant describes the site and the Council determines its acceptability by applying standards)
- Would the facility have adverse impacts on the environment and the community?

OAR Chapter 345 Division 24 has additional standards for specific types of facilities, most of which directly protect public health and safety. In 1997 the Oregon legislature authorized the Council to adopt standards for carbon dioxide emissions from energy facilities. These standards are in OAR 345 Division 24. And finally, OAR 345 Division 23 contains the Need for a Facility standard, which applies to non-generating facilities.

Historically, the Council has described the standards in three groups - standards that concern the applicant, standards that concern the suitability of the site, and standards that concern impacts from construction and operation. Grouped this way, the Division 22 standards are:

Standards Concerning the Applicant:

- Organizational Expertise (OAR 345-022-0010)
- Financial Assurance and Retirement (OAR 345-022-0050)

Standards that Concern the Suitability of the Site:

- Structural Standard (OAR 345-022-0020)
- Soil Protection Standard (OAR 345-022-0022)
- Land Use Standard (OAR 345-022-0030)
- Protected Areas Standard (OAR 345-022-0040)
- Scenic and Aesthetic Values Standard (OAR 345-022-0080)

Standards that Concern Impacts from Construction and Operation:

- Fish and Wildlife Habitat Standard (OAR 345-022-0060)
- Threatened and Endangered Species Standard (OAR 345-022-0070)
- Historic, Cultural and Archaeological Resources Standard (OAR 345-022-0090)
- Recreation Standard (OAR 345-022-0100)
- Public Services Standard (OAR 345-022-0110)
- Waste Minimization Standard (OAR 345-022-0120)

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The following is a more detailed explanation of each standard:

1. Organizational Expertise Standard

345-022-0010 (1) To issue a site certificate, the Council must find that the applicant has the organizational expertise to construct, operate and retire the proposed facility in compliance with Council standards and conditions of the site certificate. To conclude that the applicant has this expertise, the Council must find that the applicant has demonstrated the ability to design, construct and operate the proposed facility in compliance with site certificate conditions and in a manner that protects public health and safety and has demonstrated the ability to restore the site to a useful, non-hazardous condition. The Council may consider the applicant's experience, the applicant's access to technical expertise and the applicant's past performance in constructing, operating and retiring other facilities, including, but not limited to, the number and severity of regulatory citations issued to the applicant.

(2) The Council may base its findings under section (1) on a rebuttable presumption that an applicant has organizational, managerial and technical expertise, if the applicant has an ISO 9000 or ISO 14000 certified program and proposes to design, construct and operate the facility according to that program.

(3) If the applicant does not itself obtain a state or local government permit or approval for which the Council would ordinarily determine compliance but instead relies on a permit or approval issued to a third party, the Council, to issue a site certificate, must find that the third party has, or has a reasonable likelihood of obtaining, the necessary permit or approval, and that the applicant has, or has a reasonable likelihood of entering into, a contractual or other arrangement with the third party for access to the resource or service secured by that permit or approval.

(4) If the applicant relies on a permit or approval issued to a third party and the third party does not have the necessary permit or approval at the time the Council issues the site certificate, the Council may issue the site certificate subject to the condition that the certificate holder shall not commence construction or operation as appropriate until the third party has obtained the necessary permit or approval and the applicant has a contract or other arrangement for access to the resource or service secured by that permit or approval.

What this standard accomplishes

This standard helps ensure that the applicant has the abilities and resources to successfully build and operate the facility in a way that will comply with applicable rules. By meeting this standard, applicants demonstrate the ability to do an effective and conscientious job of mitigating impacts and meeting the commitments they make to the Council and to the community.

The standard has a "third party permit" clause because some applicants do not apply for all the permits needed for their proposed facility. Instead, they arrange to use permits obtained by third parties, or they enter into agreements to use permits already held by third parties. For example, a cogeneration facility may use water permits already held by its steam host. This standard ensures that those permits will be available when they are needed.

What the Council Looks for in Determining Compliance

The Council looks at past experience with similar types of projects. The Council also looks at the applicant's regulatory history and any other evidence of technical, managerial and

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organizational expertise the applicant offers. In 1999, the Council decided to accept ISO 9000 or ISO 14000 certification as one form (but not necessarily the only form) of objective evidence that the applicant can complete the project in compliance with all regulatory requirements and commitments. The information needed to show compliance with this standard should be provided in Exhibits A and D of the Application.

New in 2002

In 2002 the Council changed this rule. Besides looking for the ability to build and operate the facility, the Council now looks for the ability to comply with the site certificate conditions and to restore the site to a useful, non-hazardous condition. Applicants typically make commitments to mitigate and minimize their impacts, and the rule now requires that they show they have the ability to keep those commitments. Also, the rule now includes the ability to retire the site. And, the Council shortened the title of this standard.

2. Structural Standard

345-022-0020 To issue a Site Certificate, the Council must find that:

(1) Except for facilities described in sections (2) and (3), to issue a site certificate, the Council must find that:

(a) The applicant, through appropriate site-specific study, has adequately characterized the site as to seismic zone and expected ground motion and ground failure, taking into account amplification, during the maximum credible and maximum probable seismic events; and

(b) The applicant can design, engineer, and construct the facility to avoid dangers to human safety presented by seismic hazards affecting the site that are expected to result from all maximum probable seismic events. As used in this rule "seismic hazard" includes ground shaking, landslide, liquefaction, lateral spreading, tsunami inundation, fault displacement, and subsidence;

(c) The applicant, through appropriate site-specific study, has adequately characterized the potential geological and soils hazards of the site and its vicinity that could, in the absence of a seismic event, adversely affect, or be aggravated by, the construction and operation of the proposed facility; and

(d) The applicant can design, engineer and construct the facility to avoid dangers to human safety presented by the hazards identified in subsection (c).

(2) The Council may issue a site certificate for a facility that would produce power from wind, solar or geothermal energy without making the findings described in section (1). However, the Council may apply the requirements of section (1) to impose conditions on a site certificate issued for such a facility.

(3) The Council may issue a site certificate for a special criteria facility under OAR 345-015-0310 without making the findings described in section (1). However, the Council may apply the requirements of section (1) to impose conditions on a site certificate issued for such a facility.

What this Standard Accomplishes

The structural standard is intended to protect public health and safety, including the safety of facility workers, from seismic hazards. In many cases, compliance with the Oregon Building

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Code will accomplish that, and a commitment from the applicant to secure all needed Building permits and meet the Oregon Building code is all that is required.

But for some types of facilities, there is no building code. And, some sites may have specific geological features or seismic hazards that go beyond the seismic zones in the Oregon Building Code.

For this reason, the structural standard is largely a site characterization standard. Before the Council finds that the site is suitable, the applicant must do enough site-specific work to identify potential faults or other hazards and to assess the extent of the hazard. This is especially useful in parts of the state where detailed geological exploration and mapping have not yet been done.

In addition to characterizing the seismic hazards, the applicant must also study the site for hazards that do not require an earthquake as an initiating event, such as landslide potential.

What the Council looks for in Determining Compliance

The Council looks for a thorough, site-specific assessment of maximum ground motion in the maximum credible seismic event. The Council requires that the assessment of seismic hazard be based on actual physical exploration, not merely on available literature. Predictions of ground acceleration must take into account the specific soil and rock conditions underlying the site. Potential for non-earthquake related hazards must also be based on actual site examination. The Council looks for evidence that the applicant has fully characterized the site in terms of stability. If there are unstable or erosion-prone soils, the Council looks for evidence that the applicant will use proper engineering techniques to compensate. In our experience, most conscientious design engineers do this kind of work prior to construction. The Council uses this information to determine if a site is suitable for the proposed facility.

The Council will consult with the Oregon Department of Geology and Mineral Industries (DOGAMI) in reviewing the application for compliance with the Structural Standard.

Applicants are encouraged to contact DOGAMI directly if the proposed site is in an area that may have elevated seismic hazards.

The information needed to show compliance with this standard should be located in Exhibit H of the Application, with attachments as needed.

New in 2002

Under new laws passed by the 2001 legislature (House Bill 3788, codified at ORS 469.373), the Council may issue a site certificate to wind, solar, geothermal and certain natural gas fired power plants that meet "special criteria" without finding compliance with this standard. However, the Council can still impose site certificate conditions based on this standard.

3. Soil Standard

345-022-0022 To issue a site certificate, the Council must find that the design, construction and operation of the facility, taking into account mitigation, is not likely to result in a significant adverse impact to soils including, but not limited to, erosion and chemical factors such as salt deposition from cooling towers, land application of liquid effluent, and chemical spills.

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What this Standard Accomplishes

While the structural standard is aimed at hazards affecting the site and the facility, this standard requires the applicant to consider problems like erosion and drainage that could affect land in the surrounding area. Some counties have erosion and drainage control ordinances as part of their land use requirements. In these counties, the information required under this standard will also apply to the Land Use standard. Also, this standard considers the potential impacts on soils in the surrounding area from cooling tower drift and other forms of chemical deposition.

What the Council Looks For in Determining Compliance

Like the structural standard, this standard requires the applicant to describe the site in detail and in a site specific way. The Council will expect to see measures that either prevent or mitigate the impacts on soils, or evidence that the impacts are insignificant. The information needed to show compliance with this standard should be located in Exhibit I of the application. The Council did not change this standard in 2002.

4. Protected Area Standard

345-022-0040(1) Except as provided in sections (2) and (3), the Council shall not issue a site certificate for a proposed facility located in the areas listed below. To issue a site certificate, the Council must find that, taking into account mitigation, the design, construction and operation of a proposed facility located outside the areas listed below is not likely to result in significant adverse impact to the areas listed below. Cross-references in this rule to federal or state statutes or regulations are to the version of the statutes or regulations in effect as of the effective date of this rule:

(a) National parks, including but not limited to Crater Lake National Park and Fort Clatsop National Memorial;

(b) National monuments, including but not limited to John Day Fossil Bed National Monument, Newberry National Volcanic Monument and Oregon Caves National Monument;

(c) Wilderness areas established pursuant to The Wilderness Act, 16 U.S.C. 1131 et seq. and areas recommended for designation as wilderness areas pursuant to 43 U.S.C. 1782;

(d) National and state wildlife refuges, including but not limited to Ankeny, Bandon Marsh, Baskett Slough, Bear Valley, Cape Meares, Cold Springs, Deer Flat, Hart Mountain, Julia Butler Hansen, Klamath Forest, Lewis and Clark, Lower Klamath, Malheur, McKay Creek, Oregon Islands, Sheldon, Three Arch Rocks, Umatilla, Upper Klamath, and William L. Finley;

(e) National coordination areas, including but not limited to Government Island, Ochoco and Summer Lake;

(f) National and state fish hatcheries, including but not limited to Eagle Creek and Warm Springs;

(g) National recreation and scenic areas, including but not limited to Oregon Dunes National Recreation Area, Hell's Canyon National Recreation Area, and the Oregon Cascades Recreation Area, and Columbia River Gorge National Scenic Area;

(h) State parks and waysides as listed by the Oregon Department of Parks and Recreation and the Willamette River Greenway;

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(i) State natural heritage areas listed in the Oregon Register of Natural Heritage Areas pursuant to ORS 273.581;

(j) State estuarine sanctuaries, including but not limited to South Slough Estuarine Sanctuary, OAR Chapter 142;

(k) Scenic waterways designated pursuant to ORS 390.826, wild or scenic rivers designated pursuant to 16 U.S.C. 1271 et seq., and those waterways and rivers listed as potentials for designation;

(L) Experimental areas established by the Rangeland Resources Program, College of Agriculture, Oregon State University: the Prineville site, the Burns (Squaw Butte) site, the Starkey site and the Union site;

(m) Agricultural experimental stations established by the College of Agriculture, Oregon State University, including but not limited to:

Coastal Oregon Marine Experiment Station, Astoria
Mid-Columbia Agriculture Research and Extension Center, Hood River
Agriculture Research and Extension Center, Hermiston
Columbia Basin Agriculture Research Center, Pendleton
Columbia Basin Agriculture Research Center, Moro
North Willamette Research and Extension Center, Aurora
East Oregon Agriculture Research Center, Union
Malheur Experiment Station, Ontario
Eastern Oregon Agriculture Research Center, Burns
Eastern Oregon Agriculture Research Center, Squaw Butte
Central Oregon Experiment Station, Madras
Central Oregon Experiment Station, Powell Butte
Central Oregon Experiment Station, Redmond
Central Station, Corvallis
Coastal Oregon Marine Experiment Station, Newport
Southern Oregon Experiment Station, Medford
Klamath Experiment Station, Klamath Falls;

(n) Research forests established by the College of Forestry, Oregon State University, including but not limited to McDonald Forest, Paul M. Dunn Forest, the Blodgett Tract in Columbia County, the Spaulding Tract in the Mary's Peak area and the Marchel Tract;

(o) Bureau of Land Management areas of critical environmental concern, outstanding natural areas and research natural areas; and

(p) State wildlife areas and management areas identified in OAR chapter 635, Division 8.

(2) Notwithstanding section (1), the Council may issue a site certificate for a transmission line or a natural gas pipeline or for a facility located outside a protected area that includes a transmission line or natural gas or water pipeline as a related or supporting facility located in a protected area identified in section (1), if other alternative routes or sites have been studied and determined by the Council to have greater impacts. Notwithstanding section (1), the Council may issue a site certificate for surface facilities related to an underground gas storage reservoir that have pipelines and injection, withdrawal or monitoring wells and individual wellhead equipment and pumps located in a protected area, if other alternative routes or sites have been studied and determined by the Council to be unsuitable.