



# Oregon

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**To:** Energy Facility Siting Council

**From:** Christopher M. Clark, Siting Policy Analyst & Rules Coordinator

**Date:** April 8, 2022

**Subject:** Agenda Item E (Action Item): Initiation of 2022 CO<sub>2</sub> Standards Rulemaking for the April 22, 2022 EFSC Meeting

**Attachments:** Attachment 1: Issues Analysis (Forthcoming)  
Attachment 2: Draft Proposed Rules (Forthcoming)

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## STAFF RECOMMENDATION

Oregon Department of Energy (Department) staff recommends that the Energy Facility Siting Council (Council) initiate rulemaking to update Standards for Fossil-Fueled Power Plants based on the requirements of House Bill (HB) 2021.

## BACKGROUND

In 1997, the legislature removed the Council's ability to consider the need for new generating facilities, and instead, established new carbon dioxide (CO<sub>2</sub>) emissions standards for fossil-fueled power plants. The new law also directed the Council to adopt standards addressing the impacts of carbon dioxide emissions from other types of facilities on climate change.<sup>1</sup> This landmark legislation was the first of its kind in the United States.

In 1999, the Council adopted rules establishing carbon dioxide emissions standards for base-load gas plants, non-base load power plants, and non-generating facilities such as compressor stations. Under these rules, a facility must meet the emissions standard through the use of efficient technology, monetary CO<sub>2</sub> emission offsets, or a combination of the two. The initial rules set the carbon dioxide emission standard at 0.70 pounds of carbon dioxide per kilowatt hour of net electrical output.<sup>2</sup> The Council amended the standards once in 2000<sup>3</sup>, and again in 2018 to 0.614 pounds of carbon dioxide per kilowatt hour of net electrical output.<sup>4</sup> The Council has also revised the monetary offset rate used to achieve compliance with the emissions

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<sup>1</sup> See ORS 469.310, 469.501 and 469.503 as amended by Oregon Laws 1997, chapter 428.

<sup>2</sup> EFSC 2-1999, filed and effective April 14, 1999

<sup>3</sup> EFSC 1-2000, filed and effective February 2, 2000

<sup>4</sup> EFSC 1-2018, filed and effective July 18, 2018

standard several times. The rate was most recently amended in 2020, when the Council set the rate to \$2.85 per ton of carbon dioxide emissions.<sup>5</sup>

In 2021, the legislature once again acted to address climate change by passing HB 2021. The bill contains a broad range of provisions intended to assist Oregon’s transition to 100% clean energy. One such provision, which has been codified as ORS 469.413, establishes new requirements for new and amended site certificates for fossil-fueled power plants:

“Notwithstanding ORS 469.320 and 469.405, the Energy Facility Siting Council may not:

*(1) Issue a site certificate for a new generating facility that produces electric power from fossil fuels, including natural gas, petroleum, coal or any form of solid, liquid or gaseous fuel derived from such material, unless the council determines that a new generating facility will generate only nonemitting electricity as defined in ORS 469A.400; or*

*(2) Approve the amendment of a site certificate for an energy facility described under subsection (1) of this section that was granted prior to September 25, 2021, in a manner that would significantly increase the gross carbon dioxide emissions that are reasonably likely to result from the operation of the energy facility.”<sup>6</sup>*

Staff recommends that Council initiate rulemaking to implement the new laws established by HB 2021. As discussed further in the following section, we also recommend that the Council update existing carbon dioxide emissions standards and the associated monetary offset rate, and make other nonsubstantive changes to reflect the limited applicability of those rules as part of this rulemaking.

## **NEED AND AUTHORITY FOR RULEMAKING**

As described above, HB 2021 establishes new requirements for new and amended site certificates for fossil-fueled power plants. While the provisions of the new law are effective without further Council action, staff recommends that rulemaking is needed to establish clear standards and procedures for future siting decisions related to fossil-fueled power plants, and to clarify the applicability of the new requirements to thermal power plants and other technologies that use clean fuel sources such as renewable natural gas or hydrogen.

Rulemaking may also be needed to clarify what constitutes a “*significant increase*” in the gross carbon dioxide emissions that are reasonably likely to result from operation of a fossil-fueled power plants facility. Neither the new provisions of ORS 469.413 or other sections of HB 2021 define what level of emissions increase the legislature considered to be a significant increase and as a result, this question has been left for the Council to decide. While this issue could

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<sup>5</sup> EFSC 2-2020, filed June 29, 2020 and effective July 1, 2020.

<sup>6</sup> 2021 Oregon Laws chapter 508, section 28

potentially be resolved through an amendment proceeding on a fossil-fueled power plant, if one were to arise, staff recommends that resolving this ambiguity through prior rulemaking would provide certificate holders with additional certainty and would provide stakeholders with an opportunity to provide input on potential policy alternatives outside of a project-specific context.

The passage of HB 2021 also created some uncertainty about the need to maintain the existing emissions standards and rules related to carbon dioxide emissions. The provisions of ORS 469.413 clearly prevail over the existing standards and rules related to fossil fueled power plants, but do not replace them and the existing standards may continue to be applicable in some limited circumstances. For example, a small number of previously approved site certificates contain conditions allowing for incremental increases in emissions without a site certificate amendment as long as the certificate holder complies with the carbon dioxide standard and offset requirements in place at the time the incremental increase occurs.<sup>7</sup> In the event these conditions were activated, having an emissions standard and monetary offset rate may help further incentivize the use of efficient or non-emitting technology. In addition, the new law only applies to fossil-fueled power plants, and the standards in rule would be applicable to any future applications for a carbon dioxide emitting non-generating facility.<sup>8</sup> While it is unclear if these circumstances will arise in the future, staff believes they justify at least one additional update of the emissions standards and carbon monetary offset rate. Staff recommends that public input on the need for future updates of the rules and standards be sought as part of the rulemaking project.

HB 2021 did not provide the Council with new rulemaking authority; however, all of the issues above can be addressed under the Council's existing authority under ORS 469.470 and 469.503.

### **SCOPE AND OBJECTIVES OF RULEMAKING**

Consistent with the need and authority described above, staff recommends that the scope of this project be limited to changes needed to implement the new standards for fossil fueled power plants established by HB 2021 and to update the existing carbon dioxide emissions standards. As described below, we also recommend the Council consolidate definitions and other rules implementing the current carbon dioxide emissions standards into a single location within OAR chapter 345.

Specific recommendations will be provided before the April 22, 2022 Council meeting. A brief description of the individual issues staff recommends be addressed in this rulemaking follows:

- Adopt a new rule in OAR chapter 345, division 024 to incorporate the new requirements and clarify the standards applicable to the review of an application for a new fossil-fueled power plant.

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<sup>7</sup> See Site Certificate for Carty Generation Station, Condition 12.16

<sup>8</sup> Carbon Dioxide Emitting Non-Generating Facilities include combustion-driven compressor stations (underground natural gas storage facilities).

- Amend OAR 345-020-0011 and 345-021-0010 and adopt new rules to establish specific application requirements for fossil-fueled power plants and other facilities that emit carbon dioxide.
- Adopt a new rule in OAR chapter 345, division 027 implementing new requirements for amendments to existing site certificates for fossil-fueled power plants and defining what is considered to be a “significant increase” in gross carbon dioxide emissions based on existing site certificate conditions.
- Amend OAR 345-024-0580 to increase the monetary offset rate for carbon dioxide emissions by the maximum allowable increase of 50 percent. This would result in a new monetary offset rate of \$4.27 per ton of carbon dioxide emissions.
- Amend OAR 345-024-0550, 345-024-0590, and 345-024-0620 to reset emissions standards based on the most efficient stand-alone combined cycle, combustion turbine, natural gas-fired energy facility that is commercially demonstrated and operating in the United States.
- Make non-substantive organizational and clerical changes to the rules to reflect the limited future applicability of the carbon dioxide standards. Recommended changes include, but are not limited to:
  - Amending OAR 345-024-0500 to specify applicability of carbon dioxide standards
  - Delete provisions of rule that unnecessarily restate statute
  - Amend OAR 345-001-0010 to adopt definitions in ORS 469.300 and 469.503(2) by reference
  - Adopt new rule for other carbon specific definitions

**POTENTIAL IMPACTS ON STAKEHOLDERS**

Because the rule changes associated with the implementation of HB 2021 merely implement existing law, no fiscal impacts are expected. The recommended changes to the emissions standards and monetary offset rates could increase costs of compliance for some existing fossil-fueled power plants; however, because these changes would only be applicable in limited circumstances involving incremental increases in emissions caused by future changes to a facility, the magnitude of impact is expected to be small and would likely be mitigated by the public benefits of reducing carbon dioxide emissions. These changes are not expected to affect any small businesses.

**METHOD FOR OBTAINING PUBLIC INPUT**

Staff acknowledges that issues related to the siting of fossil-fueled power plants and reduction of carbon dioxide emissions are likely to be of high interest to certificate holders, energy developers, and the public at large; however, the Council has limited substantive discretion in how to implement the requirements of HB 2021. While the Council has significantly more discretion in whether or how to update the existing carbon dioxide emissions standards and associated monetary offset rate, the Council has, in large part, established findings and methods sufficient to address many of the other issues involved in this rulemaking in prior proceedings that included significant stakeholder engagement. As such, staff recommends that reasonable opportunities to provide data or views concerning the rule changes recommended

in this report can be provided during the formal public comment period. Staff recommends the Council also schedule a rulemaking hearing as part of the formal proceedings.

**NEXT STEPS AND PROJECTED RULEMAKING TIMELINE**

Staff will provide Council with a full issues analysis, including recommendations for any findings required under ORS 469.503, and draft proposed rules prior to the April 22, 2022 Council meeting. If the Council is satisfied with the draft proposed rules, staff will request authorization to issue a Notice of Proposed Rulemaking and initiate formal proceedings to implement HB 2021 and update the existing carbon dioxide standards, monetary offset rate, and associated rules. If the request is approved, staff recommends that Council schedule a rulemaking hearing as part of the formal public comment period. The table below presents a projected timeline for this project based on these recommendations.

**Projected Rulemaking Timeline**

Council approves proposed rules and authorizes Notice of Proposed Rulemaking	April 22, 2022
Rulemaking hearing & comment deadline	June 23, 2022
Council adoption of permanent rules	June 24, 2022