



Oregon

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To: Energy Facility Siting Council

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

Date: July 8, 2022

Subject: Agenda Item F (Action Item): 2022 Carbon Dioxide Standards Rulemaking – Review of Public Comments and Consideration of Permanent Rules for the July 22, 2022, EFSC Meeting

Attachments: 1: Notice of Proposed Rulemaking
2: Public Comments
3: Staff Summary of Comments & Recommended Responses

SUMMARY AND STAFF RECOMMENDATION

Staff recommends that the Council adopt permanent rules for the implementation of HB 2021 (2021) and updates to carbon dioxide emissions standards after fully considering public comments and making any necessary changes to the proposed rules in response. All written comments must be received by 5:00 pm on July 11, 2022, to be considered by the Council.

BACKGROUND

In 1997, the legislature removed the Council's ability to consider the need for new generating facilities, and instead, established new carbon dioxide 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.¹ 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 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.² The Council amended the standards once in 2000³, and again in 2018 to 0.614 pounds of carbon dioxide per kilowatt hour of net electrical output.⁴ The Council has also revised the monetary offset rate used to achieve compliance with the emissions standard

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

² EFSC 2-1999, filed and effective April 14, 1999

³ EFSC 1-2000, filed and effective February 2, 2000

⁴ EFSC 1-2018, filed and effective July 18, 2018

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.⁵

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.”⁶

Rulemaking is needed to implement the provisions of ORS 469.413, to establish clear standards and procedures for future siting decisions related to fossil-fueled power plants, and 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 plant.

ORS 469.413 establishes requirements for new fossil fueled power plants, but the existing carbon dioxide emissions standards adopted under ORS 469.503(2) continue to be applicable to nongenerating facilities and may apply to existing fossil fueled power plants under limited circumstances. As a result, the standards need to be updated to ensure that carbon dioxide emissions are mitigated to the full extent allowed by law.

PROCEDURAL HISTORY

At its April 22, 2022, meeting, the Energy Facility Siting Council initiated formal proceedings to adopt rules for the implementation of HB 2021 (2021) and updates to the carbon dioxide emissions standards in OAR chapter 345, division 024.

Staff issued a Notice of Proposed Rulemaking containing the proposed rules under consideration by Council on April 29, 2022. The notice is included as **Attachment 1** to this staff report.

⁵ EFSC 2-2020, filed June 29, 2020 and effective July 1, 2020.

⁶ 2021 Oregon Laws chapter 508, section 28

The Notice of Proposed Rulemaking began a public comment period on the proposed rules. An opportunity for oral comments was provided at a rulemaking hearing on June 23, 2022. The Notice required all written comments to be received before the hearing; however, in response to a request from the Public, the Council extended the deadline to 5:00 pm on July 11, 2022. The Council will not consider comments provided after the July 11 deadline unless the comment period is extended for everyone.

SUMMARY OF PROPOSED RULES

The proposed rules include a number of proposed rulemaking actions, including but not limited to:

- Amending OAR 345-024-0500 to incorporate the new requirements and clarify the standards applicable to the review of an application for a new fossil-fueled power plant.
- Amending OAR 345-024-0550, 345-024-0590, and 345-024-0620 to reset emissions standards based on the most efficient gas-fired combined cycle combustion turbine plant that is commercially demonstrated and operating in the United States.
- Amending OAR 345-024-0580 to increase the monetary offset rate for carbon dioxide emissions from \$2.85 to \$4.27 per ton of carbon dioxide emissions.
- Amending 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.
- Amending OAR 345-027-0375 to implement 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.
- Making non-substantive organizational and clerical changes to the rules.

Complete text of the proposed rules can be found in **Attachment 1**.

PUBLIC COMMENTS AND RULEMAKING HEARING

The Notice of Proposed Rulemaking established a public comment period on the proposed rules and scheduled a rulemaking hearing for June 23, 2022.

Oral Comments Provided at Rulemaking Hearing

Four persons provided comments at the hearing. Major issues and recommendations raised in the commenters' testimony are described below. A full summary of the testimony will be included in the meeting minutes for the Council's June 23, 2022 meeting.

Kathy Moyd, League of Women Voters of Oregon: Ms. Moyd commented that HB 2021 may allow for the use carbon capture and storage, but that technology is in development. She recommended that the Council verify that the generation of electricity under any new site certificate for a fossil-fueled power plant really will be "nonemitting."

She also recommended that the Council's rulemaking could be a way to limit emissions associated with electricity that is generated in Oregon and exported to another state as those emissions are not regulated by HB 2021 or the DEQ's Climate Protection Program.

Regarding the proposed OAR 345-027-0375, Ms. Moyd explained that the League was concerned that existing OAR 345-027-0353(1) provides that change to a power plant that involves an increase of fuel consumption of less than 10% would not require an amendment, and that the League would consider a corresponding 10% increase in carbon dioxide emissions to be significant. She recommended that the delete that provision in OAR 345-027-0353(1) and the sentence referencing that section in the proposed rule. She also recommended the proposed rules in Division 020 and 021 also be updated specify that “an amendment will not be approved if it would significantly increase the gross carbon emissions.” Finally, Ms. Moyd recommended that the extension of the expiration date for a fossil fueled power plant should be precluded unless a facility will capture, sequester, and restore all carbon dioxide emissions.

Brendan McCarthy, Portland General Electric Company (PGE): Mr. McCarthy explained that PGE read the proposed rules to nullify the direction from the legislature to allow approval of a site certificate amendment or change operations of site up to a level below a significant increase by referencing OAR 345-027-0353(1). Mr. McCarthy explained that PGE believes the legislature intended for PGE and EFSC to be creative in how to utilize existing plants and that this may include a modest increase in emissions at one site with a decrease in overall system emissions. He explained that PGE had submitted suggested language in their written comments which they believe is consistent with the legislature’s intent to spur innovation while continuing to reduce carbon emissions.

Jake Stephens, NewSun Energy: Mr. Stephens disagreed with PGE’s suggestion that the legislature intended to allow emissions at individual facilities to go up. He recommended that the Council should ensure that any application for permit extensions are in compliance with the 2040 requirements for 0% emissions, potentially with some exceptions for emergency system conditions.

Daniel Serres, Columbia RiverKeeper: Mr. Serres stated that Columbia RiverKeeper along with Verde, Rogue Climate, Earthjustice and Friends of the Columbia Gorge, support the proposal to increase the monetary offset rate by the full amount currently allowed under Oregon Law and staff recommendations to reset emissions standards based on the most efficient standalone combined cycle combustion turbine gas fired energy facility commercially demonstrated and operated in the US.

He explained that RiverKeeper and the other commenters urge EFSC to reconsider the proposed approach to the question of what constitutes a significant increase in pollution. He stated that HB 2021 intended to prevent significant increases in carbon emissions and that the proposed rules exempt an electric generating facility increasing its fuel consumption by no more than 10% from the requirement to obtain a site certificate amendment and that a 10% increase in fuel consumption should be considered significant considering the typical size of gas plants. He recommended that any increase in gas use is significant.

Mr. Serres also recommended that the Council should truly question whether a fossil-fuel plants could truly be non-emitting given the unproven track record of carbon capture and sequestration technology over the long timelines that would be required for plants to durably remove or prevent carbon dioxide from entering the atmosphere.

Written Comments

The Council will accept written comments on the proposed rules until 5:00 pm on July 21, 2022. Any comments received prior to this deadline, including any testimony provided by the Department, will be provided to the Council before it considers the adoption of permanent rules. As of the date of this staff report, the Council had received written comments from:

- Jinx Houston
- Portland General Electric Company
- Columbia RiverKeeper, Verde, Rogue Climate, Earthjustice, Friends of the Columbia Gorge
- League of Women Voters of Oregon
- Kathy Moyd
- Climate Solutions, Renewable Northwest, and the Metro Climate Action Team Steering Committee
- Oregon Department of Energy
- Green Energy Institute
- AVISTA
- Martha Dibblee

Exact copies of these Comments have been included in **Attachment 2**. The attachment will be updated before the Council's meeting on July 22. All comments will also be added to the online "[Siting Docket](#)" as they are received by the Department.

ADOPTION OF PERMANENT RULES

The Council may adopt permanent rules after fully considering all oral and written comments provided before the deadline. The Council may adopt the proposed rules as presented in the Notice of Proposed Rulemaking or may make changes to the proposed rules in response to the comments received. As part of this rulemaking, the Council will also need to determine:

- The rate of carbon dioxide emissions per kilowatt hour of net electric output for the most efficient stand-alone combined cycle, combustion turbine, natural gas-fired energy facility that is commercially demonstrated and operating in the United States. The Council may reset the carbon dioxide emissions standard under OAR 345-024-0550, 345-024-0590, and 345-024-0620 at 17 percent below this rate.
- That amending the carbon dioxide emissions standards under OAR 345-024-0590 and 345-024-0620 as described above will accomplish the principles listed under ORS 469.503(2)(b), or will reflect a balancing of those principles.

- That amending OAR 345-024-0580 to increase the monetary offset rate for carbon dioxide emissions from \$2.85 to \$4.27 per ton of carbon dioxide will be economically achievable with the modified rate for natural gas-fired power plants.

Staff will provide a summary of major issues raised in public comments and recommended responses as **Attachment 3** to this staff report prior to the Council's consideration of permanent rules.