

Attachment 4

Overview of Public Comments and Staff Response

What follows is a summary of comments received during the public comment period. Note that the comments are included in their entirety as Attachment 4A.

Portland General Electric (PGE)

Comment #1

PGE is requesting that the Council evaluate the need for printed copies of various documents contemplated by the existing rules and, in the alternative, is requesting that the Council consider language “that would allow for the Department to have control and decision over the number of printed copies necessary.”

Staff Response to Comment #1

Staff has explored the possibility of eliminating the need for printed copies of various documents, but feels bound by existing statute, e.g., ORS 469.370(2)(d), which requires the Department to inform via its public notice that “copies of the application and draft proposed order are available for inspection. . . .” The Department recently reduced the number of required copies printed from three to two. The need for printed copies beyond this is driven by external request.

Comment #2

PGE is requesting additional language be added to clarify the intent behind the new notice requirements regarding the “land management agency or organizations with jurisdiction over the protected areas identified in the proposed order.” Specifically, PGE “suggest[s] that this language clarify if the agencies mentioned are limited to state and local agencies or if federal agencies would be included.” PGE refers to OAR 345-001-0010(28)(r), which states that part of its confusion relates to language in the rules that states “[t]he federal land management agency with jurisdiction if any part of the proposed site is on federal land” is a reviewing agency.

Staff Response to Comment #2

PGE appears to be conflating public notice requirements with reviewing agency requirements. Staff recommends no rule changes, as the rule in question does not limit notice to state or local agencies and/or organizations. Staff recommends clarifying for the record that the notice rules at issue here are intended to provide notice to any agency or organization that manages protected areas – federal, state, or otherwise.

Friends of the Gorge (Friends)

Comment #1

Friends is requesting that the comment deadline be extended, per a previous comment sent on August 9, 2023. See full email exchange in Attachment 4A. They are concerned that an erroneous public comment deadline on Council's website may have misled the public and discouraged public comment.

Staff Response to Comment #1

Everyone who was statutorily required to receive notice, including the required legislators, those who received paper notice, and those who signed up to receive notice of any rulemaking activity were given that notice with the proper deadline. Staff appreciates that Friends pointed out the incorrect date on the website, which was fixed immediately. However, the information posted to the website is not required by rules or statute.

Regarding Friend's extension request, the law states: "Upon request of an interested person received before the earliest date that the rule could become effective after the giving of notice pursuant to subsection (1) of this section, the agency shall postpone the date of its intended action no less than 21 nor more than 90 days in order to allow the requesting person an opportunity to submit data, views or arguments concerning the proposed action." ORS 183.335(4), emphasis added.

The issue here is a question of whether Friends can ask for an extension on behalf of the public, when the law explicitly states that the request must be made on the requestor's own behalf. Staff is concerned it is a bad precedent to allow for extension requests to be granted simply on the belief that someone might provide comments if an extension is granted. If Friends wanted more time so that it could provide additional comments, it could have made the request, an extension would have been legally required, and staff would be recommending one. It did not.

Staff leaves it to the Council to determine how to proceed. Staff believes that all legal obligations have been met and that the Council can proceed with the existing schedule and make a determination as to the rulemaking. However, if the Council believes there is value in extending the public comment deadline, it can extend the deadline by 21 days, ending on Friday, September 15, 2023 at 5pm.

Comment #2

Friends requests that 345-015-0180(1) be modified to read "Unless and Until the Department determines the application to be complete as described in OAR 345-015-0190 or 345-015-0310, it is a preliminary application." Friends suggests that, absent this additional language, it is not clear that applications do not always result in a finding of completeness.

Staff Response to Comment #2

Staff recommends not adding the proposed language. Throughout the rules it is repeatedly stated or otherwise suggested that an application will not always be found to be complete. See e.g., OAR 345-015-0190(4), which reads: "If the applicant does not submit the information by the deadline specified by the Department, including any allowed extension, the Council may reject the application."

Comment #3

Friends requests that 345-015-0190(7) be reverted to an earlier version submitted by Staff (and these same changes be applied to OAR 345-015-0310(11)) and then modified to read (modifications in bold):

After a determination that an application is complete, if the Department identifies a need for additional information during its review of the application **and requests such additional information**, the applicant must submit **that** additional information to the Department. Submission of such information does not constitute an amendment of the application.

Friends provides two reasons for this proposed change. First, it states that “the Department should be expressly required to communicate a request to an applicant for any additional information.” Second, Friends suggests that under the current proposal applicants might claim they satisfy the “additional information” requirement even if the information is not responsive to the Department’s request for additional information.

Staff Response to Comment #3

Staff recommends adopting the proposed language.

Comment #4

Friends requests new “rules [. . .] to ensure that the public and reviewing agencies are provided with timely notice and access to any ‘additional information’ submitted by applicants pursuant to Proposed Rules 345-015-0190(7) and 345-015-0310(11).”

Staff Response to Comment #4

Staff recommends rejecting this recommendation as outside the scope of this rulemaking. If Council agrees, staff will make a note of this request for future rulemakings.