

KLAMATH COGENERATION PROJECT

SITE CERTIFICATE

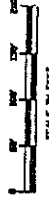
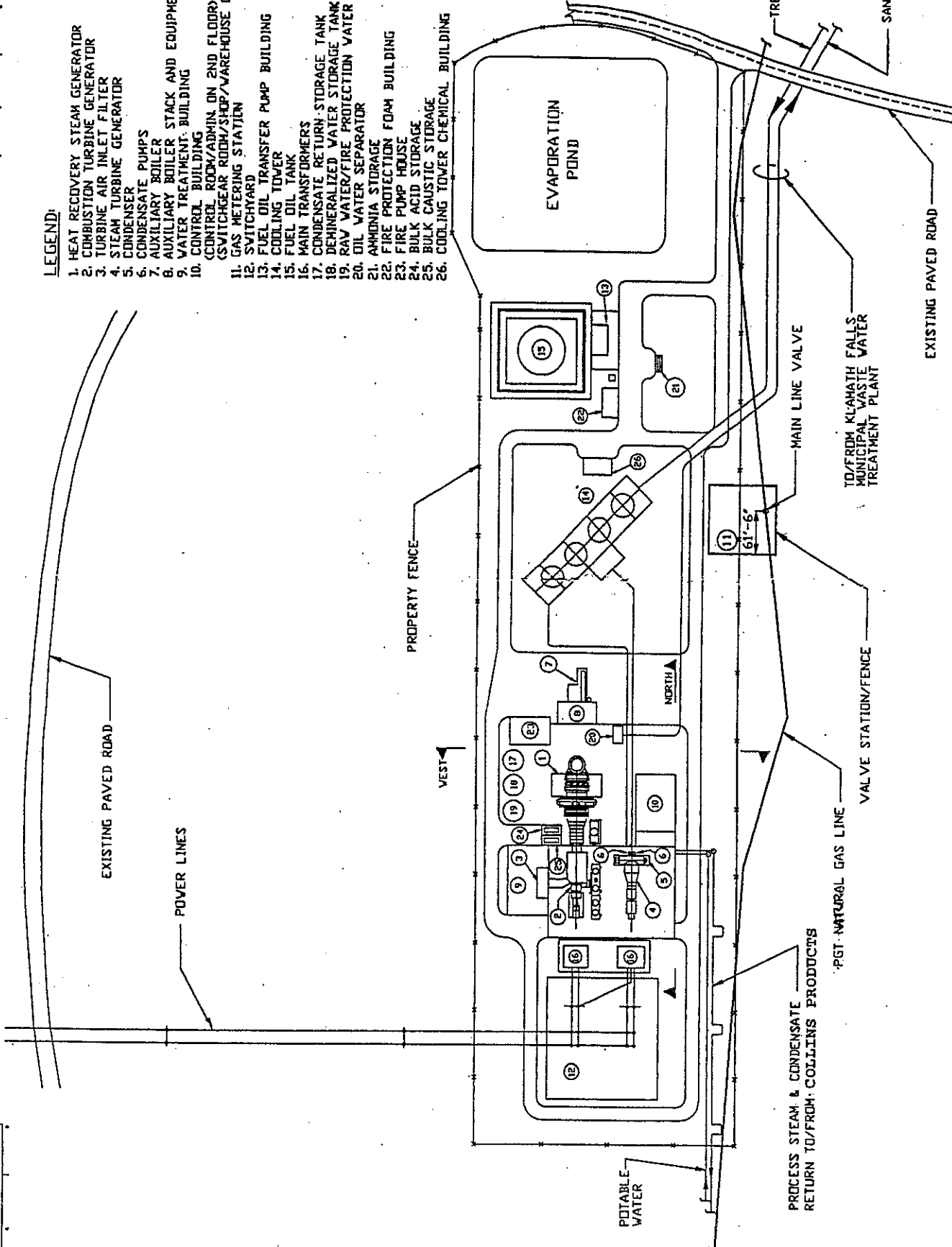
APPENDIX A

05777.01 FB-3-D



LEGEND:

- 1. HEAT RECOVERY STEAM GENERATOR
- 2. COMBUSTION TURBINE GENERATOR
- 3. TURBINE AIR INLET FILTER
- 4. STEAM TURBINE GENERATOR
- 5. CONDENSER
- 6. CONDENSATE PUMPS
- 7. AUXILIARY BOILER
- 8. AUXILIARY BOILER STACK AND EQUIPMENT ENCLOSURE
- 9. WATER TREATMENT BUILDING
- 10. CONTROL BUILDING
- 11. CONTROL ROOM/ADMIN ON 2ND FLOOR (SWITCHGEAR ROOM/SHOP/WAREHOUSE ON 1ST FLOOR)
- 12. GAS METERING STATION
- 13. SWITCHYARD
- 14. FUEL OIL TRANSFER PUMP BUILDING
- 15. COOLING TOWER
- 16. FUEL OIL TANK
- 17. MAIN TRANSFORMERS
- 18. CONDENSATE RETURN STORAGE TANK
- 19. DEMINERALIZED WATER STORAGE TANK
- 20. RAW WATER/FIRE PROTECTION WATER STORAGE TANK
- 21. OIL WATER SEPARATOR
- 22. AMMONIA STORAGE
- 23. FIRE PROTECTION FOAM BUILDING
- 24. FIRE PUMP HOUSE
- 25. BULK ACID STORAGE
- 26. BULK CAUSTIC STORAGE
- 26. COOLING TOWER CHEMICAL BUILDING



STATION ARRANGEMENT
FIGURE B-3

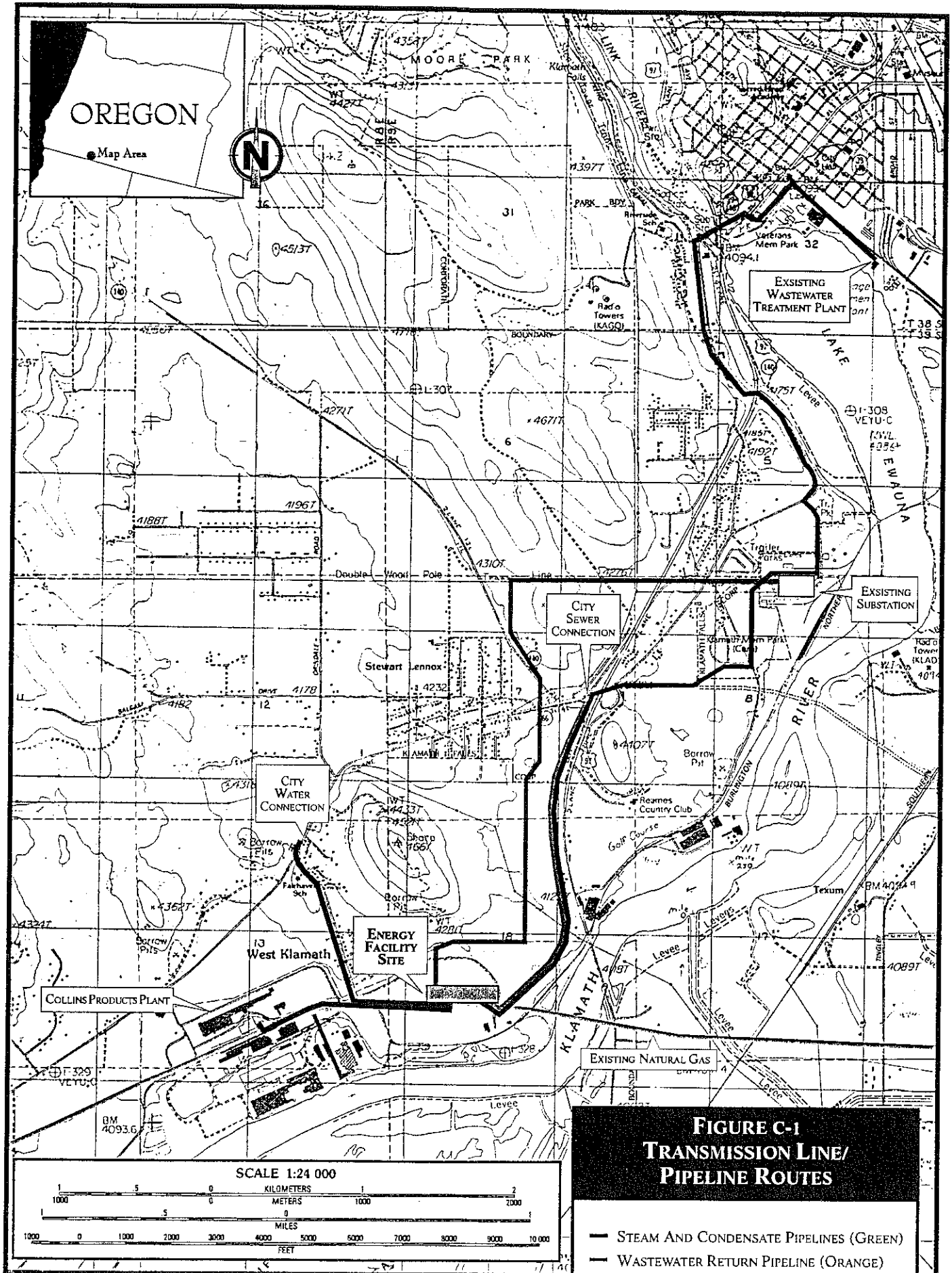
KLAMATH
COOPERATIVE PROJECT
ENGINE & SERVICE ENGINEERING CORPORATION
PROJECT NO. 05777.01 FB-3-D
DATE: 11/15/77
BY: J. RAYBURN
CHECKED: J. RAYBURN
SCALE: AS SHOWN

NO.	DESCRIPTION	DATE	BY	CHECKED
1	DESIGN	11/15/77	J. RAYBURN	J. RAYBURN
2	REVISION			
3	REVISION			
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APPENDIX B



**FIGURE C-1
TRANSMISSION LINE/
PIPELINE ROUTES**

- STEAM AND CONDENSATE PIPELINES (GREEN)
- WASTEWATER RETURN PIPELINE (ORANGE)
- COOLING WATER PIPELINE (PURPLE)
- 230-KV TRANSMISSION LINE (BLUE)
- EXISTING NATURAL GAS PIPELINE (GREY)
- POTABLE WATER PIPELINE (RED)

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FIGURE C-1 TRANSMISSION LINE/ PIPELINE ROUTES



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SITE CERTIFICATE

APPENDIX C

The ST is a triple admission, reheat, condensing dual extraction turbine and is designed for sliding pressure operation. Sliding pressure operation means that the steam turbine inlet pressure follows the pressure set by the output of the HRSG, which is a function of combustion turbine and duct burner output. Assuming an ST electrical output of 125 MW (based on a 305 MW nominal output project design), the high pressure (HP) section of the ST receives approximately 520,000 pounds per hour (lb/hr) of HP superheated steam from the HRSG. Approximately 383,000 lb/hr of steam exhausts from the HP section of the ST at 382 pounds per square inch-absolute (psia), 664°F as cold reheat to the HRSG. This accounts for a portion of the exhaust flow which is exported to the Collins plant for process steam. The export steam is desuperheated by a portion of the high pressure feed water resulting in approximately 143,400 lb/hr process steam (annual average) which does not return to the turbine. The Collins plant will return all required steam condensate and makeup to the energy facility site. A condensate storage tank will provide approximately 24 hours of storage. The hot reheated steam returning from the HRSG and the transition piece cooling steam (which is generated in the HRSG and then used to cool the CT transition pieces) combine, and the resulting 393,000 lb/hr of 345 psia, 1000°F steam enters the low pressure (LP) section of the ST. Approximately 45,000 lb/hr of superheated LP steam from the intermediate pressure superheater of the HRSG is inducted into the LP section of the ST. A total of 517,000 lb/hr of LP steam at 1.53 inches of mercury, absolute (HgA) exhausts from the LP section of the ST to the condenser.

Cycle Cooling System

Condenser

A water-cooled steam surface condenser will condense the ST exhaust steam. The system will include a non-condensable gas removal system. The condenser will be designed to condense all steam from the HRSG in the event a steam turbine trip occurs. The advantage of being able to condense 100 percent of the steam is that it will save water and will avoid a steam plume as well as the noise associated with venting to the atmosphere in the unlikely event of a steam turbine trip.

Two 100 percent capacity can-type vertical condensate pumps will take suction from the condenser hot well and feed the external deaerator after preheating the condensate in the low pressure, low temperature section of the HRSG as described above.

Cooling Tower

An evaporative (wet) cooling process, using a mechanical induced draft cooling tower consisting of approximately four cells, will be used to cool the condenser. Cooling tower components include the basin, fans, fan deck, drift eliminators, fill material, and a fire protection system consisting of sprinklers and fire suppression equipment. Circulating water pumps will move the water from the cooling tower basin through the circulating water piping system to the tube side of the steam surface condenser and then back to the top of the cooling tower. During this process, the cooling water does not come into contact

with the steam or the high quality water circulating in the HRSG that will be heated to make steam. The cooling water will be cooled by evaporation as it falls through the fill in the cooling tower to the basin. The evaporation rate from the cooling tower will be approximately 1,005 GPM based on annual average ambient conditions.

Makeup water to the cooling tower will be treated effluent supplied from the SSWTP. The effluent will be added to the cooling tower basin to replace evaporation and blow down losses. The total makeup requirement will be approximately 1,500 GPM.

The makeup water piping will be approximately 14 to 16-inch diameter buried PVC piping. A makeup water pumping station will be located near the SSWTP. This pumping station will include two 100 percent pumps with a capacity of approximately 1,500 GPM each for system reliability. In addition, at least one of the pumps will be connected to SSWTP's emergency diesel generator in the event a local power outage occurs.

Boiler and Cooling Tower Chemical Treatment

Boiler water chemistry will be maintained by an automatic chemical injection system capable of supplying the required quantities of phosphates, neutralizing amine, and oxygen scavenger.

An injection system using acid, sodium hypochlorite (bleach), and corrosion inhibitor will be used to control biological growth, corrosion, and foaming in the circulating cooling water system. Secondary containment will be provided to prevent the spread of accidental chemical spills.

Component Cooling System

The component cooling water system is a separate closed loop that transfers waste heat to the cooling tower water through a heat exchanger. Two 100 percent capacity pumps and heat exchangers provide cooling water to the CT and ST lube oil coolers, generator coolers, and other miscellaneous auxiliaries.

Control System

Distributed Control Systems (DCS)

The facility will have a state-of-the-art, integrated microprocessor based control system for plant control, data acquisition, and data analysis. The distributed control system (DCS) will provide control for startup, shutdown, normal operation, and personnel and equipment protection. The DCS controls automatic valves and major electrical motors. The DCS also provides instrumentation monitoring, switch gear and circuit breaker status, trending, historical record keeping, alarms, system graphics, and the status of important components and current instrument values within the system.

million by volume, dry basis (ppmvd) NO_x levels during steady-state full load operations while firing natural gas.

Continuous Emissions Monitoring System

A continuous emissions monitoring system (CEMS) will be installed to provide monitoring of NO_x and O₂ concentrations in the HRSG exhaust system. The CEMS will provide an alarm should high levels of NO_x occur, and will connect to the microprocessor based data acquisition system to meet requirements of the Oregon Department of Environmental Quality (DEQ) for monitoring and reporting.

Other Emissions

Because the facility is fueled primarily by natural gas, only trace amounts of SO₂ and PM₁₀ will be emitted. When fuel oil backup is needed, only low-sulfur fuel oil will be used. Low levels of CO and volatile organic compounds will be achieved by means of good gas turbine combustion.

Fire Protection

A fire water loop system will be provided for the energy facility site that consists of fire hydrants, building sprinkler systems, the cooling tower sprinkler system, the turbine generator lube oil sprinkler systems, and hose stations. The source of fire water will be from a dedicated portion of the raw water storage tank or, as a back up, from tie-ins to the Collins fire water pressure loop. A packaged CO₂ fire suppression system will be provided as part of the CT fire protection system. The control room will be protected using an automatic water sprinkler system.

Water Treatment Systems

A complete water treatment system will be designed to treat make-up water required for the Project's steam cycle. The system will include:

- ▶ Two (2) 100 percent multimedia pressure filters
- ▶ Two (2) 100 percent reverse osmosis units
- ▶ Two (2) 100 percent mixed bed polishers

The two 100 percent capacity mixed bed demineralizers will be designed to provide make-up water to the HRSG. The demineralizers will be regenerated on-site using acid and caustic. Regenerant waste will be neutralized and combined with cooling tower blowdown for discharge to the existing municipal wastewater system. Operation of the water treatment system will be controlled from the energy facility DCS. Two 100 percent capacity boiler water makeup pumps deliver the demineralized water to the steam cycle. The water treatment system will be located indoors. A demineralized water storage tank will be installed to provide 20 to 24 hours of storage.

Material Disposal

Stormwater Drainage

A storm drainage system will be provided for the energy facility site. Stormwater will be collected by a system of drainage piping and ditches. Stormwater drainage will be directed into the unused, lined drain collection area around the cooling tower. Overflow from this area will be routed to the area designated as the stormwater evaporation pond provided at the energy facility site. The pond surface area will be approximately 85,000 square feet and approximately 5.5 feet deep. This will provide a total evaporation area of approximately 170,000 square feet, including the drain collection areas and the evaporation pond.

Waste Material Disposal

Small quantities of hazardous and non-hazardous waste materials will be generated at the facility. Hazardous waste materials will include waste oil, boiler chemical cleaning waste, solvents, adhesives, paints, and lead acid batteries. These materials will be managed in accordance with local and state regulatory standards.

Appropriate documentation will be maintained, and hazardous materials will be handled by qualified personnel. To comply with regulations, hazardous waste will be stored on-site for no more than 90 days, followed by transport to a licensed treatment storage disposal facility. Waste streams that can be practicably recycled, such as waste oils, will be transported by truck to an approved recycling facility.

Non-hazardous waste materials will include used packing materials, piping and steel scrap, trash, water treatment sludge, and garbage. Waste materials that can be practicably recycled, such as demineralizer resins, will be recycled by the original equipment vendors. Other recycling programs will be used to recycle paper and glass products to minimize the total amount of waste materials requiring final disposal at a landfill.

Wastewater Disposal

Wastewater will include sanitary wastewater and cooling tower blowdown. Sanitary wastewater will be produced primarily from plant domestic services, demineralizer wastes, and equipment drains and will be discharged to the existing municipal sewage system. Cooling tower blowdown water will also be discharged to the municipal sewage system. No additional treatment of wastewater will be required.

The total wastewater flow from the energy facility site will be approximately 436 GPM, primarily from cooling tower blowdown. The wastewater piping will be approximately 8-inch diameter buried PVC piping. A wastewater pumping station will be located within the energy facility site. This pumping station will include two 100 percent pumps, with a capacity of approximately 436 GPM each.

The increased displacement of Collins plant boiler fuel due to higher steam use is demonstrated by the lower value of fuel chargeable to power (FCP) associated with the maximum steam flow.

GENERAL DESIGN BASIS

Drawings

The following general design drawings of the Project structures, equipment, and their appurtenances are provided:

Figure B-1	Process Flow Diagram
Figure B-2	Site Plan
Figure B-3	General Arrangement
Figure B-4	Elevation Diagrams
Figure B-5A, 5B, & 5C	Electrical One-Line
Figure B-6	Typical 230-kV Transmission Structure

The site plans and elevation diagrams include conceptual design drawings of the energy facility site structures.

Codes and Standards

The Applicant intends to comply with applicable federal, state, and local safety codes and standards for construction of the facility, transmission line, and gas interconnection normally utilized in the design and construction of this type of facility. The codes and standards used will include the National Electric Safety Code (NESC), Uniform Building Code (UBC), the Federal Department of Transportation (DOT) Pipeline Safety Regulations, and specialty codes administered through the American Society of Mechanical Engineers (ASME) and the American National Standards Institute (ANSI). The Applicant will comply with UBC Chapters 79 (Hazardous Materials) and 80 (Flammable Liquids), and NFPA Standard 580 (Fire Protection for Combustion Turbines). Where the applicable Oregon codes specify added conditions or more stringent requirements, these requirements will be incorporated into the facility design during the detailed design phase of the Project.

Structural, wind, and seismic design will be in accordance with the current version of the UBC and the State of Oregon Amendments "Structural Specialty Code" 1993 Edition. Specific recognition of the wind and seismic criteria applicable to the Project is noted as follows:

- ▶ Wind: The facility's wind design conditions will include a minimum basic wind speed of 80 mph and an exposure class of B.
- ▶ Seismic: The facility's seismic design will be based on seismic zone 3 with an importance factor of 1.25.

The design basis for unfired pressure vessels and piping will be ANSI and ASME codes. Other codes will be applied as applicable.

The Project will meet the requirements of the UBC, as amended by Oregon, and the NFPA. An on-site fire protection system will be installed to control and extinguish fires within buildings and yard areas. To supplement the stationary fire systems, portable fire extinguishers will be provided at strategic locations within the facility. The type and number of extinguishers will satisfy applicable code requirements. First aid kits, eyewash stations, and safety showers will be provided at appropriate locations in the facility.

INTRODUCTION AND APPLICABLE REGULATIONS

OAR 345-21-010(1)(f) requires a materials analysis in Exhibit F of a site certificate application including an inventory of substantial quantities of industrial materials flowing into and out of the proposed facility. This inventory is included herein as Table F-1, which is located at the end of this section.

OVERVIEW**CONSTRUCTION PHASE**

The construction phase produces waste materials that are unique to that phase and not related to the operation of the energy facility. This phase will involve materials and methods typical of traditional heavy industrial facilities, which include concrete foundations and structures, steel-framed buildings and structures, steel piping, electrical, and pre-packaged process equipment. During construction, temporary trailers and storage facilities will be required. The net effect of this construction activity produces the following wastes:

- ▶ Solid waste materials will be generated from concrete and steel-work. Wood and steel scraps will be segregated and recycled to the extent reasonably possible. Concrete and excavation waste will be used on-site for fill or exported for fill use elsewhere.
- ▶ Packing materials, paper, and refuse will be accumulated in dumpsters and periodically removed by a licensed waste hauler.
- ▶ Oily waste, filters, rags, dirty, or hazardous solid waste will be collected in sealable drums and removed by a licensed disposal contractor.
- ▶ Spent oils, solvents, and cleaning materials will be collected in tanks or barrels supplied by material vendors. Disposal, or recycle where practical, will be handled by appropriate vendors or licensed contractors.
- ▶ Spent caustic solutions from boiler piping washes will be collected in temporary transportable tanks and removed for off-site neutralization and disposal by a licensed contractor.
- ▶ Sewage will be routed to the existing sanitary waste system. Portable toilets will supplement trailer facilities and be pumped and cleaned on a regular basis by the supplying contractor.

- ▶ Temporary facilities such as trailers, storage buildings, and fences will be removed at the end of construction. The site will be landscaped when construction is complete.

OPERATIONS PHASE

Fuel Use

The primary fuel for the energy facility will be natural gas. The intent of the applicant is to contract for gas supplies from existing production areas in Alberta and British Columbia, the Rocky Mountains, and/or the San Juan Basin. Delivery capacity will be purchased on the PGT pipeline system. The PGT Medford lateral passes directly adjacent to the energy facility site's south boundary. The interconnection pipeline would be approximately 12 inches in diameter. Gas used by the Project should not be a sufficiently large market share to affect the price and availability of gas in the regional market. When operating at rated output, with no supplemental firing at annual average conditions, the Project will consume approximately 53,300,000 SCF of natural gas per day.

The natural gas will be consumed on-site. There are no disposal or storage issues related to the use of natural gas by the proposed energy facility.

The energy facility will be designed to operate on low-sulfur fuel oil during short periods. Fuel oil will be stored in one 2.5 million gallon steel tank. Secondary containment will be provided around the storage tank as described in Exhibit B. Fuel oil will be delivered by tanker truck.

Water Use

Non-recoverable heat produced by the energy facility will be rejected by evaporation from the cooling tower. In order to balance the thermodynamic energy cycles that drive the energy facility, approximately 1,005 gpm of water will be evaporated in the cooling tower to reject the waste heat load present at the rated energy output condition. The factors that impact the amount of water used by the facility will be the energy production rate, the quantity of minerals in the cooling water supply, the concentration of solids in the cooling tower blowdown, and changes in steam use by the Collins plant.

Makeup water replaces the steam exported to the Collins plant, cooling tower evaporation and blowdown, domestic water uses, gas turbine inlet air evaporation, and water treatment wastes. A total wastewater flow of approximately 436 gpm is anticipated, resulting in a water demand of approximately 1,460 gpm total for the project. The complete water cycle is detailed in Figure F-1. (Note that the Project water balance in Figure F-1 is based on a nominal electrical generating capacity of 305 MW (net) and 143,400 pounds per hour of steam to Collins.)

The Project will reduce the requirement for well water makeup by utilizing SSWTP effluent from the City as the primary makeup water flow for cooling tower evaporation.

The cooling tower system will be operated at four cycles of concentration. Cooling tower blowdown will be combined with domestic wastewater that is treated on-site, and with surface drainage (i.e., equipment washdown rinse water) from the energy facility. Oil and grease constituents will be removed using an oil/water separator at the energy facility site. The combined flows will be returned to the City as sanitary wastewater. Stormwater collected on-site, but away from the actual equipment locations, will be discharged to an on-site stormwater retention pond.

ON-SITE MATERIAL INVENTORIES

On-site material inventories are organized in the categories as follows:

- ▶ Fuel-use related
- ▶ Major equipment lube oil
- ▶ Major electrical insulating oil
- ▶ Water treatment commodity chemicals
- ▶ Water treatment specialty chemicals
- ▶ Compressed gases
- ▶ Maintenance supplies

Table F-1 gives a complete over-view of all material inventories. All materials with significant quantities present are listed, including those held in the internal sumps and reservoirs of the major electrical and mechanical equipment items. It should be noted that, in the majority of material categories, the life-cycle of the material is closed-loop: recycling, neutralization, evaporation, or combustion is the ultimate disposition of the material. This means that a very low volume of waste is generated that requires removal and disposal to landfill or other approved sites.

Each material category will be explained in the following paragraphs.

Category A - Fuel-Use Related

The fuel-use related materials are completely consumed in the energy facility, so no off-site disposal is necessary. The Project will operate primarily on natural gas. No on-site storage of natural gas is planned. Ammonia is used in the selective catalytic reduction process to lower Project emissions of NO_x. Ammonia will be delivered to the energy facility site by tanker truck and stored on-site in one 17,000-gallon, 250-psia pressurized storage vessel. Average ammonia consumption is estimated at 530 gallons per day. Based on truck deliveries of 7,000 gallons per shipment, one truck delivery of ammonia will be required every 13 days (approximately 28 deliveries annually).

Low-sulfur fuel oil will be stored on-site for use as a secondary fuel. Fuel oil will be purchased from west coast refiners and delivered by tanker truck to the Project. Fuel oil use is not expected to exceed 720 hours per year while operating at full load, or the equivalent volume for other operating scenarios.

Fuel

To ensure proper safe handling of the natural gas, the entire system will be installed and operated in accordance with the National Fire Protection Association (NFPA)54: Natural Fuel Gas Code, Part 2; Gas Piping System Design, Materials, and Components, Part 3; Gas Pipe Installation, Part 4; and Inspection, Testing, and Purging. The piping will be designed in accordance with ANSI B31.8.

The fuel control systems on the gas turbine will include automatic fuel shut-off valves to stop all fuel flow to the unit under shut-down conditions. Fuel flow will restart when all safety permissive firing conditions have been satisfied. Each fuel shut-off valve will have a mechanical device for local manual tripping and a means for remote tripping. A vent valve will be provided on the fuel gas system to automatically vent the piping downstream of the shut-off valve when the fuel shut-off valve closes. Gas shut-off valves will be installed at the PGT pipeline connection point as well as at the energy facility. The area immediately around the gas system will be a NFPA/NEC Class I, Division II, Group D Hazardous area. Operations in this area will be in accordance with this classification and accepted, proven industrial standards of practice and procedures.

The fuel oil storage tank will be designed in accordance with API requirements. The tank will be located within a bermed area to provide secondary containment. The tank area will be provided with a foam fire protection system.

Non-Fuel Substances

Management of hazardous substances will be conducted in accordance with applicable federal, state, and local regulatory standards for public occupational safety and health protection. The storage and conveyance system for liquid hazardous chemicals will be designed to prevent and contain spills through pumping and storage controls and secondary containment around tanks. Pumping systems and storage tank controls will include:

- ▶ Dry disconnects at transfer hose and piping connections
- ▶ Automatic pump shut-offs on tank high level
- ▶ Redundant tank level indicators and high level alarms
- ▶ Inventory tracking
- ▶ Daily visual inspections of tank levels
- ▶ Written unloading and transfer operation instructions

Measures to protect equipment and workers from harmful exposure to chemicals such as sulfuric acid and caustic will be implemented. Areas in which these chemicals will be stored or used will have safety showers, eyewashes, and containment areas so that spills and wastes will be collected, treated, and disposed of in accordance with regulatory requirements. Flange covers will be used in all acid and caustic piping. Foundations and slabs for equipment containing lubricating oil, insulating oil, or hydraulic fluid will be designed to contain and collect any spill. Neutralizers and/or absorbers will be on-site in

case a spill does occur. Suitable garments and face coverings will be required to be worn by personnel handling sulfuric acid and caustic. Chemical storage areas will provide a secondary containment storage volume equal to 100 percent of the maximum chemical volume in primary containment.

The facility will meet or exceed the following safety and health requirements:

- ▶ Storage and handling of flammable and combustible liquid chemicals will be in compliance with NFPA 30 and 321 ("Basic Classification of Flammable and Combustible Liquids").
- ▶ Chemical storage areas will have secondary containment to confine chemical spillage.
- ▶ Ammonia storage will comply with NFPA and local fire department requirements, and will be designed in accordance with ANSI K61.1, Safety Requirements for the Storage and Handling of Anhydrous Ammonia.
- ▶ Personnel involved with the chemical fluids and flammable gasses will be trained in proper handling procedures for both normal and emergency situations and safety precautions in the use of these fluids.
- ▶ Piping systems will be designed in accordance with the American Society of Mechanical Engineers (ASME B31.1, 31.4, or 31.8 piping codes as required by its service).
- ▶ Standards for the design, construction, installation, venting, diking, piping, valving, supports, foundations, and anchorage of tanks will be in accordance with State of Oregon requirements.

Table M-1 Cooling Tower Parameters		
Parameter	Cooling Tower Characteristics	
Dimensions	4 cells, 55'L x 55'W x 50'H Total Tower Dimensions: 220'L x 55'W x 50'H	
Drift Rate	0.0005% of circulating water Circulating Water Rate: 51,300 gal/min 16.2g/sec of drift droplets emitted	
Heat Dissipation	Winter: 598 MMBtu/hr (175 MW) Summer: 685 MMBtu/hr (201 MW)	
Input Air Rate	Winter: 21.76 MMlb/hr (2,740 kg/sec) Summer: 18.2 MMlb/hr (2,290 kg/sec)	
Drift Droplet Size	<u>Droplet Size (microns)</u>	<u>Mass %</u>
	375 and larger	1.0
	275 - 375	2.0
	175 - 275	6.5
	100 - 175	15.5
	50 - 100	25.0
	0 - 50	50.0

Table M-2 Estimated Cooling Tower Plume Dimensions and Frequency						
Seasons	Plume Length (m)		Plume Height (m)		Plume Radius (m)	
	>100 m	>500 m	>50 m	>100 m	>10 m	>50 m
Winter	74.3%	27.7%	68.6%	24.1%	87.0%	12.2%
Spring	34.2%	3.9%	28.4%	6.4%	56.0%	1.5%
Summer	16.1%	0.9%	11.6%	1.8%	39.1%	0.1%
Fall	39.6%	10.0%	34.2%	7.4%	60.9%	2.9%
Annual Average	41.0%	9.8%	35.4%	9.9%	60.3%	3.9%

MITIGATION

Mitigation Measure N.1

The proposed Project alignment has been located to maximize its use of existing utility corridors, ruderal areas, and development/landscape areas, when feasible.

Mitigation Measure N.2

Impacts to native terrestrial plant communities (i.e., juniper woodland, shrub-steppe, and grass/forb) will be mitigated by restoring areas to pre-disturbance conditions. These community types shall be regenerated with post-construction erosion control, revegetation, and maintenance measures as described below:

- ▶ *An erosion control plan shall be developed and implemented which follows best management practices, as prescribed by state and local regulations and policies. This plan shall be reviewed by the Oregon Department of Fish and Wildlife, the Oregon Department of Agriculture, and the Oregon Division of State Lands, as required.*
- ▶ *A post-construction revegetation plan shall be developed and implemented. This plan shall be designed to restore each natural ecological community type adversely affected by construction of this Project. It shall provide performance goals, a planting and irrigation plan, maintenance requirements, and a monitoring program. This plan shall be reviewed by the Oregon Department of Fish and Wildlife, the Oregon Department of Agriculture, and the Oregon Division of State Lands, as required.*

Permanent reductions in the size of vegetation communities would be caused by the Project. These permanent losses are not considered significant and would result from displacements caused by construction of the Project, parking lots, permanent access roads, footings and foundations for transmission towers/poles, and elevated steam pipelines.

Mitigation Measure N.3

Native terrestrial vegetation communities, habitat category 3 (i.e., juniper woodland, shrub-steppe, and grass/forb), that experience permanent loss of acreage shall be mitigated at a 1:1 ratio by restoring lost acreage within the existing Collins property or other acceptable areas. This restoration may be performed in conjunction with mitigation for visual impacts, and may be performed out-of-kind if the community being restored is considered to be of a higher ecological value or is less common in the study area.

Potential declines in diversity or functionality of native upland vegetation communities could be caused by the Project. Examples of these impacts could include increased competition from invasive non-native plant species, localized habitat fragmentation effects of plant communities, and disturbance from maintenance activities. The proposed erosion control and revegetation plans described in mitigation measure N.2 will minimize these potential effects.

FINDINGS (GOVERNMENTAL SERVICES)

SEWER AND SEWAGE TREATMENT

The SSWTP is the City's sewage treatment facility. Wastewater from the Project's cooling tower blowdown and sanitary system would be piped to the City's existing sewer main at the intersection of Highways 66 and 97. The SSWTP has the capacity to process approximately 6 MGD of wastewater and at present is operating at approximately one-half capacity. The SSWTP should not have difficulty handling the volume of additional wastewater from the Project, which is estimated to be approximately 0.6 MGD (Colahan 1995). Industrial wastewater issues have been discussed in another section within this site certificate application (see Exhibit O).

WATER SUPPLIES

The Project cooling water supply requirements would be provided by the City. Approximately 2.0 MGD of water would be required for the cooling system. The City generates 2.9-6.2 MGD of wastewater effluent and is committed to meeting the entire cooling water needs of the Project with water from the SSWTP. No new groundwater or surface water withdrawals will be required for Project cooling needs.

Service and potable water requirements for the Project are approximately 200,000 gpd (0.2 MGD). The City would provide this water to the Project. The provision of this water would not cause an impact.

STORMWATER DISPOSAL

An evaporation pond will be constructed to collect Project stormwater runoff during Project operation for evaporation on-site rather than discharge. During construction, the Project will comply with federal, state, and local stormwater discharge requirements. A Stormwater Discharge Permit, as required by ORS 468B and OAR 340-45-033, would be obtained from the DEQ. Therefore, no adverse impacts are anticipated for this governmental service.

SOLID WASTE DISPOSAL

Klamath County Landfill receives solid waste from all areas within Klamath County. Due to the small increase in population during the construction and operation of the Project, no significant impact would occur due to domestic solid waste.

Solid waste generated by the Project during construction will include wood, concrete, and steel scraps. The wood and steel will be sorted and recycled, where practicable. The concrete will be used for on-site fill, where practicable. Quantities of the materials which are not reusable will be disposed at an off-site landfill. Other construction solid wastes (e.g., oily rags, filters, or hazardous solid wastes) will be collected for disposal by a licensed contractor.

Solid waste generated during operation of the Project will include packing materials, paper, and other refuse. These will be reused as possible and the remainder disposed of periodically at an off-site landfill. Exhibit V contains a discussion of the Project's solid waste minimization plan.

HOUSING

Most available housing in Klamath County for temporary and regular workers for the Project would be found in Klamath Falls. During the summer months, Klamath Falls has greater availability of temporary housing due to college students at Oregon Institute of Technology leaving the area. Typically, the occupancy rate for rental homes, multiplexes, and apartment units is between 90-95 percent (Coleman, Anderson 1995). Rents for one bedroom units range from \$300-400 per month, two-bedroom units run \$385-\$500 per month, and three-bedroom units typically start at \$450 per month (Coleman 1995).

As shown in Table U-1, during the peak construction period, a maximum of 92 new households, 73 of which would be single employees, would require some form of housing in the area:

Table U-1 In-Migrant Households - Peak Construction			
	Direct Labor Households	Indirect Labor Related Households	Total Households
Single Workers	60	13	73
Married Workers	15	4	19
Total Workers	75	17	92

There are many opportunities for home purchases in Klamath Falls. The average price for an 1,800 square foot, three-bedroom/two-bath home is currently estimated at \$90,000. Particularly with the development of new subdivisions planned for the area, there would be increased availability of new homes for purchase (Moden 1995).

Of the 20 regular workers of the facility, an estimated 10 employees would be moving from outside the local area. As a result, four in-migrant indirect labor related households would be established. As shown in Table U-2, approximately 11 of the 14 total new households from the Project operations would be married workers with families.

Table U-2 In-Migrant Households - Operations			
	Direct Labor Households	Indirect Labor Related Households	Total Households
Single Workers	2	1	3
Married Workers	8	3	11
Total Workers	10	4	14

With adequate advanced planning and coordination, the housing needs of the temporary work force can be met (Coleman 1995). Should it appear necessary, the Applicant will coordinate with local officials and businesses to provide adequate facilities in advance of the arriving temporary workers.

TRAFFIC SAFETY

As noted earlier, the peak construction work force will be approximately 250 workers. The average work force will be 110 workers.

If it is conservatively anticipated that each worker will travel independently to the Project site, this will result in 250 round trips per day. The working hours of the construction crafts will be coordinated with the other industries in the area to minimize traffic congestion. In addition to the construction workers, there will be owner's personnel, vendor representatives, and other visitors to the facility. This will result, at peak, in an additional 50 round trips per day. A parking area of approximately 1-3/4 acres (75,000 square feet) is planned for construction, based on 300 vehicles.

Estimated truck traffic during the construction period is 25 deliveries per day. This will range from UPS type vehicles, local suppliers, and concrete trucks, to large steel and equipment deliveries. Typical work hours for construction projects are 7:00 a.m. to 3:30 p.m., and these deliveries will be spread over this time frame. Rail delivery is possible, if needed, for larger shipments.

Most of the construction work force will travel from the Klamath Falls area. Anticipated traffic routes will be primarily on Interstate 95, U.S. Highway 97, and State Highways 140 and 66. There will be some local traffic on State Highway 39. Access to the site will be from Highway 97 onto a private road leading to the site. The Project is working with the ODOT to determine the requirements for design of this access road during construction and Project operation (see Appendix U-1). Because of the proximity of the interstate highway, traffic through the City should be minimal and it is not anticipated that large truck traffic will travel through the City.

Since the access roads to the area are currently sufficient to handle the heavy traffic generated by the other local industries, it is not expected that street modifications will be needed to accommodate the traffic or weight of the equipment arriving at the site. There are also no anticipated additional maintenance and/or operation cost to the roads. The additional construction traffic will exist only for a limited time and does not represent a significant increase over the current traffic. Therefore, it should not have any adverse impact on these roads.

During Project operations, there will be 20 employees working at the site. They will be divided into three shifts, with approximately 10 on the day shift, five on the second, and five on the third. In total, approximately 40 trips per day into the facility are expected. The additional trips include tradespeople, vendors, and management, primarily on the day shift.

There will also be ongoing truck deliveries during operation of the energy facility. Deliveries will be three to five per day to the site. Mostly these will be small trucks of the UPS type. There will also be larger, semi-trailer, size delivery trucks for water treatment chemicals and other types of consumables or equipment at the rate of three to five per month. Fuel oil will be delivered by large tanker trucks at a rate of several per hour, during working hours, for limited periods of time when filling the fuel oil tank. These periods are expected to occur about once per year and be about two to four weeks long.

Anticipated traffic routes will remain the same as during the construction phase. They will be primarily on Interstate 95, U.S. Highway 97, and State Highways 140 and 66. Some local traffic will be on State Highway 39. Access to the site will be from Highway 97 onto a private road leading to the site. As noted earlier, the Project is consulting with the ODOT to determine the design requirements for this access road. Traffic through the City will be minimal. It is expected that most traffic will use the interstate highway and only small delivery type trucks will travel through the City on their daily routes.

There are no expected street modifications or anticipated maintenance and/or operation costs to any of the roads due to operation phase staffing, visits, or truck traffic, since the additional traffic is not a significant addition to current volume. Table U-3 compares the Project's estimated traffic to the Weyerhaeuser facility's existing traffic.

As discussed in more detail in Exhibit M, operation of the Project's cooling tower will not cause rime icing on the Highway 97 bridge across the Klamath River, nor will the cooling tower result in ground fog impacts to local roads.

Medical assistance is also provided by Fire District #4. This medical unit is comprised of one paramedic, eight EMTs, and two ambulances.

The Project would have its own fire protection system designed in conformance with applicable fire codes and National Fire Protection Association (NFPA) standards. The system would include provisions for water storage, motor-driven fire pumps, fire water loop and monitors, chemical extinguishing for combustion equipment, and portable fire extinguishers.

Fire District #4 is experienced in and capable at combatting industrial fires (Cady 1995). In conjunction with the other fire departments, Fire District #4 would be capable of handling any fire emergency that could occur at the Project site. Therefore, no mitigation would be necessary for fire protection services.

HEALTH CARE

The largest health care facility in Klamath County is Merle West Medical Center, which has 176 beds, over 70 physicians, and approximately 1500 employees. This hospital is well equipped to respond in case of large emergency or disaster situations. In coordination with the County's emergency plan, Merle West Medical Center is prepared to mobilize resources within the hospital or in the field. While the Medical Center does not have its own burn unit, they are equipped to stabilize burn victims and air-transport them to regional medical centers in Medford, Portland, Eugene, or San Francisco. They currently have a 13-bed emergency room and 4-bed urgent care center with plans to expand the emergency room to 25 beds within two years. The hospital runs its own ambulance service comprised of three full-time ambulances and 25 employees. This health care facility is well able to handle any emergency that might occur at the Project site (McCaffrey 1995).

The Klamath Urgent Care Center, Chiloquin Clinic, Sprague Valley Clinic, and several ambulance/rescue services and private medical clinics also serve the area.

Due to the preparedness and the capabilities of the Merle West Medical Center, as well as the relatively small increase in population resulting from construction and operation of the energy facility, the Project is not expected to have adverse impacts on health care services in the impact area.

SCHOOLS

The City District and Klamath County District provide 20 elementary and nine junior/senior high schools for approximately 11,000 students in this public education system. The schools in the City and County districts are generally at or exceed capacity. While three of the City schools are over capacity (Joseph Conger Elementary, Pelican Elementary, and Roosevelt Elementary), students could still be accommodated by transferring outside of their area to a number of other schools within the City, if deemed necessary (Stearns 1995).

EXHIBIT V

SOLID WASTE AND WASTEWATER

INTRODUCTION AND APPLICABLE REGULATIONS

OAR 345-21-010(1)(v) requires a description of the Applicant's plans to minimize, to the greatest extent practicable, the generation of solid waste or wastewater and to recycle or reuse solid waste and wastewater.

A solid waste minimization and recycling program will be developed and implemented for both hazardous and non-hazardous waste during construction and operation of the energy facility. The program will address the handling, separation, containerization, and shipping of the waste streams and include an employee training program with both the rationale and mechanics of the waste minimization and operation of the recycling program.

A wastewater minimization and reuse program will be prepared for the Project construction and operation. During construction, the program will focus on collection and recycling of runoff in the Project area (energy facility and related facilities). During Project operation, the program will address the handling and reuse of Project wastewater streams.

OVERVIEW

MINIMIZATION OF SOLID WASTE

There is no significant solid waste generated in the production of electric or steam energy from the natural gas-fired energy facility. Solid waste will be generated as a result of construction activities and normal plant operation, routine plant maintenance activities, and from office activities. Waste minimization will focus on reducing the use of non-reusable materials and hazardous materials during facility construction and operation. Methods of eliminating waste at the source and salvage programs for reuse of excess and discarded materials will be evaluated. New product purchases will be evaluated to determine if alternate recyclable or non-hazardous products can be substituted to reduce waste generation.

Construction Phase

Solid waste generated during the construction period will generally consist of non-hazardous discarded equipment packing materials, wood materials, and construction debris. The construction debris will include excess piping, concrete, and steel scrap. These materials will be transported to a sanitary landfill or to a recycling facility, as appropriate. Solid waste will be recycled to the extent practicable as a first priority through a deliberate recycling program to minimize the final amount of waste materials requiring landfill disposal.

Operational Phase

Solid waste generated during the operational phase of the facility will consist of both hazardous and non-hazardous wastes.

Hazardous Solid Waste

The following hazardous solid waste is anticipated to be generated from the Project:

- ▶ Used lead acid batteries
- ▶ Spent Selective Catalytic Reduction (SCR) Catalyst
- ▶ Oily rags, oil absorbent materials

Used batteries and spent SCR catalyst are removed and replaced when the materials have worn-out or served their useful life. Batteries are used as a source of backup power for plant system controls and safety related equipment functions. Typical battery life is expected to range from 10 to 15 years. Used batteries will be shipped to vendor recycling facilities for heavy metal recovery to minimize the final amount of waste materials requiring disposal at a hazardous disposal site.

The Project will use an advanced dry low NO_x combustion system in the gas turbine and an SCR catalytic system in the HRSG. This system will convert NO_x in the gas turbine exhaust into nitrogen and water vapor to minimize NO_x air emissions. The SCR catalyst has a typical design life of five to seven years before replacement is necessary. The spent catalyst system may contain heavy metals which are considered hazardous materials. Spent SCR catalysts will be shipped to the manufacturer or to a metals reclaiming facility. The catalyst is expected to be recycled.

Oily rags and oil absorbent materials will be generated in cleaning up of leaks and maintenance operations. These waste materials will be disposed in a licensed landfill. The Project will be operated and maintained in accordance with rigid operations and maintenance procedures by qualified and properly trained personnel in a program designed to minimize the potential for oil material spills.

Non-Hazardous Solid Waste

The following non-hazardous solid waste materials are anticipated to be generated from the Project:

- ▶ Spent demineralizer resins
- ▶ Office and administration area waste (trash and garbage)

The water treatment demineralizers are used at the energy facility to further purify potable and off-site condensate return water to boiler feedwater quality for use as makeup to the steam cycle and for water injection into the gas turbine to control NO_x formation when burning fuel oil. The demineralizers contain non-hazardous cation and anion ion exchange

resins. Anion resins have a useful life of four to five years while the cation resins have a useful life of 8 to 10 years. The spent resins will be shipped to vendor recycling facilities thereby minimizing solid waste generation.

Office and administration area waste will generally consist of inert paper waste, trash, and garbage. Paper products, aluminum cans, glass, and some plastics will be recycled to the extent practicable by providing separate disposal containers in the plant. The recycling program will minimize the amount of waste materials requiring disposal in a sanitary landfill.

MINIMIZATION OF WASTEWATER

Wastewater will be generated from the following plant process and/or equipment:

- ▶ Sanitary wastewater
- ▶ Demineralization system backwash water
- ▶ Cooling tower blowdown

Sanitary wastewater is produced primarily due to plant domestic services. The amount of sanitary wastewater will be minimized through the use of flow water restricting devices on bathroom and locker room sink and shower fixtures and by using low water consumption water closets.

The Project's water treatment demineralizers will be provided with programmable logic controls and will be set up to maximize resins efficiency thereby reducing the overall water consumption during resin regeneration and backwashing. The backwash will be neutralized and the wastewater from the neutralization system will be discharged to the City's sewer system.

The HRSG boiler blowdown is utilized as makeup to the cooling tower. The amount of cooling tower blowdown will be minimized by automating the chemical treatment and blowdown system for the cooling tower to allow the tower to operate at the highest practical number of cycles of concentration.

On-site stormwater runoff from non-equipment areas will be directed to the stormwater evaporation pond. Surface drainage from equipment areas with potential oil contamination will pass through an oil/water separator before being discharged to the stormwater evaporation pond.

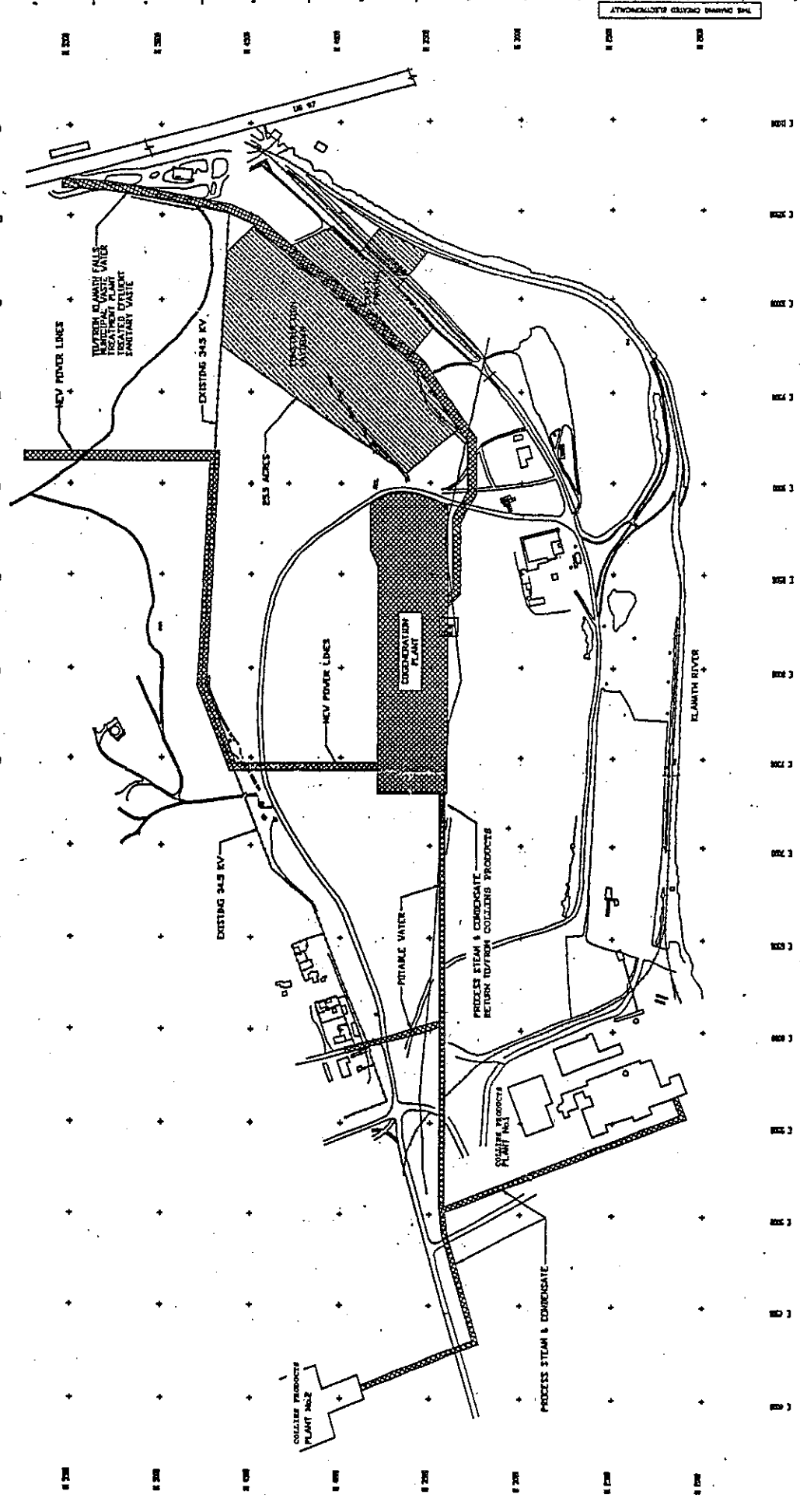
MINIMIZATION OF WATER USE

Specific features of the Project which reduce its water consumption are listed below.

- ▶ The Project will operate with an advanced combustion turbine selected to minimize fuel consumption per kilowatt of electricity generated. The advanced turbine design

allows the energy facility to achieve a greater proportion of its electrical generation in the combustion turbine (Brayton) cycle than could be realized using a conventional combustion turbine. This reduces the relative size of the steam (Rankine) cycle reducing the amount of water needed for boiler feedwater and cooling tower makeup.

- ▶ The combustion turbine utilizes dry low NO_x combustion in lieu of steam or water injection for NO_x emission control under natural gas firing, reducing consumptive water use.
- ▶ The energy facility's surface condenser will be sized to condense all steam produced in the heat recovery steam generator to minimize steam venting (water loss) during startup, shutdown, and abnormal operating conditions when the steam turbine is off-line.
- ▶ The energy facility has been designed, and non-hazardous chemicals selected, so its wastewater can be treated in the City's SSWTP.
- ▶ Steam condensate that is recovered in the Collins plant will be returned to the energy facility for reuse.
- ▶ The energy facility will use effluent from the City's SSWTP as cooling water. This process will eliminate the need to use surface or groundwater for cooling water makeup, allowing those sources to remain available for other high quality users in the Klamath basin.



**CONSTRUCTION SITE PLAN
FIGURE X-2**

ELMATH PROJECT
STEAM & WASTEWATER TREATMENT CONSTRUCTION
NOVEMBER 1994
05777.01 FX-2-D
SCALE: AS SHOWN
DATE: 11/15/94
BY: J. J. [unreadable]

NO.	DESCRIPTION	DATE	BY	CHECKED
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05777.01 FX-2-D

KLAMATH COGENERATION PROJECT

SITE CERTIFICATE

APPENDIX D

RESOURCE MANAGEMENT
INTERNATIONAL, INC.

MEMORANDUM

Via Facsimile

DATE: October 9, 1996

TO: Tom Meehan
Oregon Department of Energy

FROM: Thor Hibbeler

SUBJECT: PERMITTING ACTION ITEMS LIST FOR THE KLAMATH
COGENERATION PROJECT

Tom,

This memo is being sent to resolve Items N-2, N-3, S-3, U-3 and Z-2 of the Klamath Cogeneration Project's Permitting Action Items List. This list is being used to track those issues which must be resolved in order to deem the Application for Site Certificate (ASC) complete.

With respect to Item N-2, as we discussed on 10/4/96, the primary concern is erosion of some soil types that may be encountered during construction. While it should be noted that the areas that will be affected by the Project (Energy Facility Site and transmission line and pipelines) are zoned for heavy industrial, commercial or other non-resource activities and none are involved in productive uses such as agriculture or forestry, the Project recognizes the need to minimize the potential for erosion, as these affected areas do support local flora and fauna. Further, it is particularly important that erosion be controlled in sloped areas along the Project's transmission line and pipeline routes and in the vicinity of the Energy Facility Site (to prevent siltation of the river).

To ensure that soil erosion does not cause any significant adverse impacts during construction, the Project will develop an erosion control plan, which will be reviewed by the Oregon Department of Fish and Wildlife, the Oregon Department of Agriculture and the Oregon Division of State Lands, as required, and will incorporate Best Management Practices. The Project will also develop a post-construction re-vegetation plan. In addition to providing a template for the restoration of natural ecological community types affected by Project construction, this plan will serve to minimize erosion in Project areas over the life of the Project.

As noted in Exhibit N of the ASC, there are four soil types which may be encountered during Project construction that have the potential to cause erosion or stability problems. Two of these, the Tweepers and Tulana Silt Loams, which may be found



RESOURCE MANAGEMENT
INTERNATIONAL, INC.

January 2, 1997

Tom Meehan
Oregon Department of Energy
625 Marion Street NE
Salem, OR 93710

Subject: Items Requiring Resolution for Issuance of the Draft Proposed Order

Dear Tom:

This letter is being sent to resolve Items B-1, B-3, B-4, D-7, I-4, S-6, U-1, U-10, U-11, BB-1, BB-2 and Misc-7 of the Klamath Cogeneration Project's Permitting Action Items List (Revision 3). This list is being used to track those items which must be resolved in order to issue the Draft Proposed Order (DPO) in connection with the Project's Application for Site Certificate (ASC).

With respect to Item B-1, the two paragraphs from pp. B-5 & B-6 of the ASC supplement that describe the Project's steam turbine are presented below with modifications to reflect the supply of 200,000 pounds per hour of steam to the Collins facility. Please note that the figures used below are approximate and represent our best estimates at this time.

Steam Turbine (ST)

The steam turbine (ST) uses the steam production from the HRSG to produce approximately 125 MW of electrical power. This maximum design output is based on 48°F ambient temperature, full duct firing, and one-half of the maximum process steam flowing through the turbine. Normally the output is variable with process flow and ambient conditions. Approximately 87 MW is the average expected output with no duct firing. Sizing of the steam turbine is subject to optimization based on steam and electrical generation contractual requirements.

The ST is a triple admission, reheat, condensing dual extraction turbine and is designed for sliding pressure operation. Sliding pressure operation means that the steam turbine inlet pressure follows the pressure set by the output of the HRSG, which is a function of combustion turbine and duct burner output. Assuming an ST electrical output of 125 MW (based on a 300 MW nominal output project design), the high pressure (HP) section of the ST receives approximately 520,000 pounds per hour (lb/hr) of HP superheated steam from the HRSG. Approximately 337,000 lb/hr of steam exhausts from

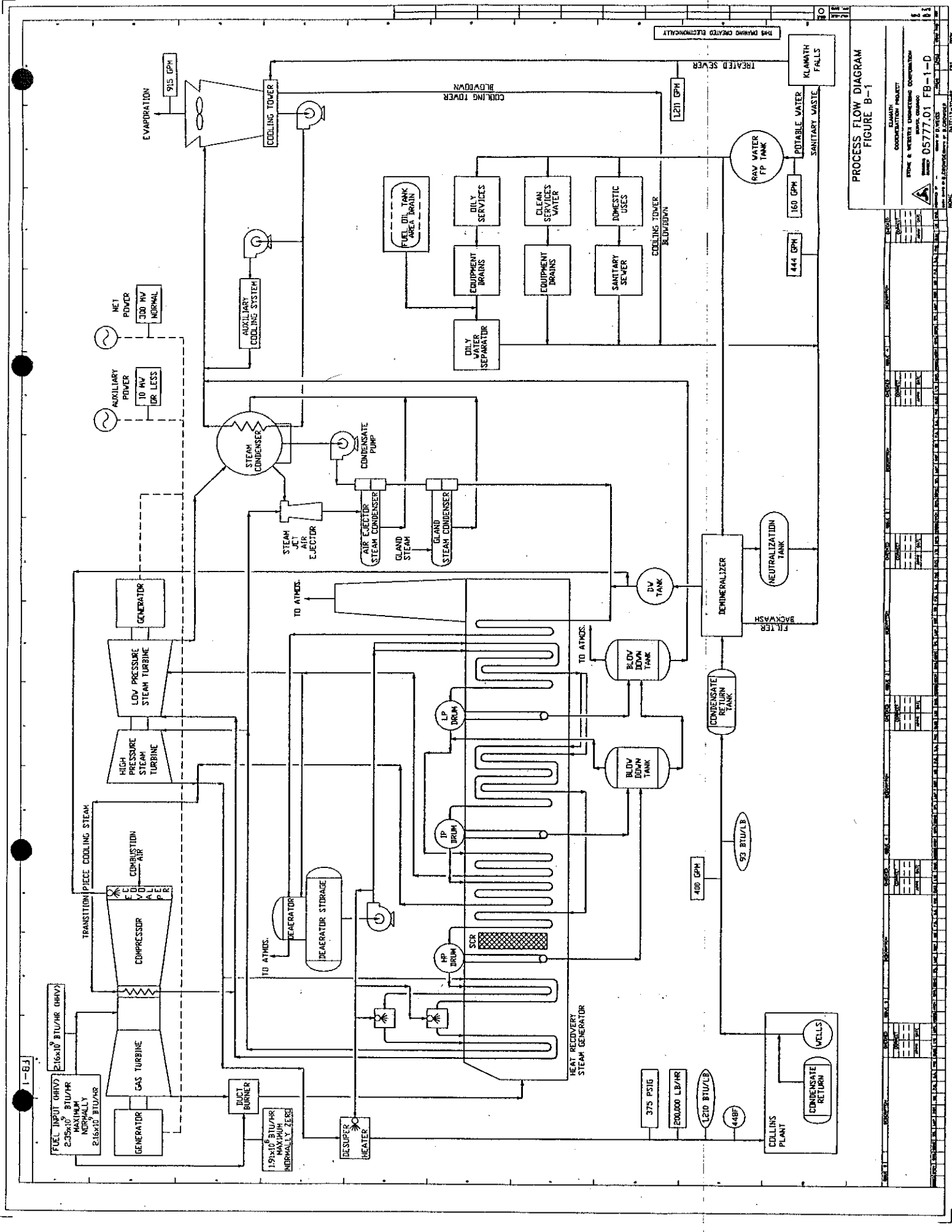
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- COPENHAGEN, DENMARK
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- MELBOURNE, AUSTRALIA
- PRAGUE, CZECH REPUBLIC

DEPARTMENT OF ENERGY

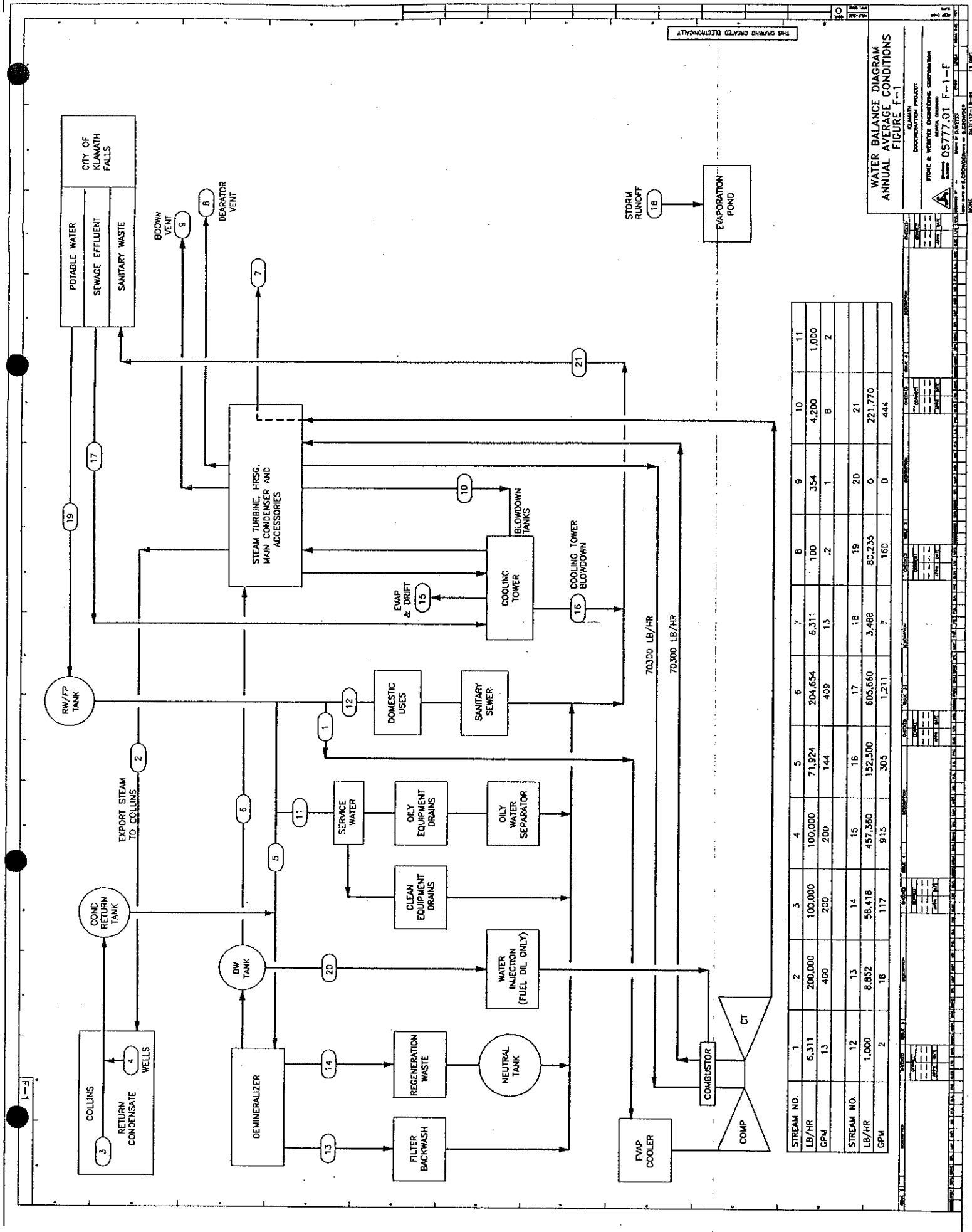


FB-1

PROCESS FLOW DIAGRAM
FIGURE B-1

NO.	DESCRIPTION	UNIT	REMARKS
1	FUEL INPUT (GHV)	2.35x10 ¹⁰ BTU/HR	MAXIMUM NORMALLY
2	FUEL INPUT (GHV)	2.16x10 ¹⁰ BTU/HR	NORMALLY
3	NET POWER	300 MW	NORMAL
4	AUXILIARY POWER	10 MW	OR LESS
5	EVAPORATION	915 GPM	
6	RAW WATER PP TANK	160 GPM	
7	POTABLE WATER	444 GPM	
8	SANITARY WASTE		
9	CONDENSATE RETURN	448F	
10	CONDENSATE RETURN	1210 BTU/LB	
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DATE: 12-20-85
 PROJECT: KLAMATH FALLS
 DRAWING NO: 05777.01 FB-1-0
 DESIGNER: [Name]
 CHECKER: [Name]
 APPROVED: [Name]
 SCALE: AS SHOWN
 SHEET NO: 1 OF 1



STREAM NO.	1	2	3	4	5	6	7	8	9	10	11
LB/HR	6,311	200,000	100,000	100,000	71,924	204,654	6,311	100	354	4,200	1,000
GPM	13	400	200	200	144	409	13	2	1	8	2
STREAM NO.	12	13	14	15	16	17	18	19	20	21	
LB/HR	1,000	8,832	58,418	457,350	152,500	603,660	3,488	80,235	0	221,770	
GPM	2	18	117	915	305	1,211	7	160	0	444	

WATER BALANCE DIAGRAM
ANNUAL AVERAGE CONDITIONS
FIGURE F-1

DATE: 05/77/01 F-1-F
 PROJECT: [unreadable]
 DRAWN BY: [unreadable]
 CHECKED BY: [unreadable]

December 2, 1996

Oregon

Tom Meehan
Oregon Department of Energy
625 Marion Street NE
Salem, OR 97310

DEPARTMENT OF
GEOLOGY AND
MINERAL
INDUSTRIES

ADMINISTRATIVE
OFFICE

SUBJECT: Agency Report: Klamath Cogeneration Project

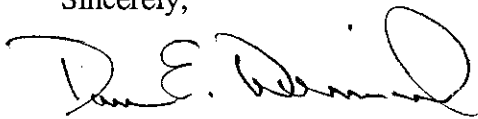
The application for a site certificate for the proposed Klamath Cogeneration Project has been reviewed in regards to our areas of interest which are primarily geologic and seismic hazards. DOGAMI does not require any permits associated with the proposed project.

The following is the DOGAMI Agency Report regarding the Klamath Cogeneration Project. As indicated in our letter of May 16, 1996 (attached), the application has been found to be complete as presented for geologic and seismic hazards and questions have been satisfactorily resolved. The site certificate should include conditions indicated in the letter regarding future geotechnical work (attached). It should be clarified in the second bullet on G-18 that there should be a literature analysis of potential seismogenic sources off the site. No field work should be required off the site unless a potential seismogenic source is identified on the site. As indicated in the Preliminary Geologic and Seismic Hazards Evaluation Report (Golder and Associates), the site is located in proximity to known active faults and was impacted by the 1993 Klamath Falls earthquake. Mitigation measures should be accomplished such as by ground improvement or appropriate foundation type and needed structural and non-structural detailing for the facility. A final site specific geotechnical report including seismic hazards should be submitted to ODOE for peer review as a condition of the site certificate.

The 1994 Uniform Building Codes contains Chapter 16 - Structural Forces which includes Division 2 regarding Earthquake Recording Instrumentation. Because of the location of the proposed facility to known active faults and impacts from the 1993 Klamath Falls earthquake, the applicant is encouraged to install earthquake recording instrumentation in the facility.

Attached is the completed Agency Report Response Form for the Klamath Cogeneration Project. Please contact me with and questions or comments in regards to this matter.

Sincerely,



Dan E. Wermiel

c: John Beaulieu, DOGAMI



Suite 965
800 NE Oregon Street # 28
Portland, OR 97232
(503) 731-4100
FAX (503) 731-4066

Mitigation Measure G-3:

Methane Gas - If methane is encountered, a permeable layer of gravel can be constructed beneath foundations or pavements to vent methane and prevent the build-up of hazardous quantities of methane.

Mitigation Measure G-4:

Erosion - Erosion can be minimized by properly controlling surface water run-off and revegetating disturbed areas during and/or following construction. For the existing fill slopes near the energy facility site area, foundations will be offset adequately from the slope crest to ensure that erosion of these slopes does not impact foundation support.

FUTURE GEOTECHNICAL WORK

The assessment of geologic and seismic hazards, potential impacts, and identification of appropriate mitigation measures are based on existing information that was available for review. This information includes subsurface investigations and field and laboratory testing that were previously completed in the vicinity of the energy facility site for other development projects. As part of the final design, additional geotechnical work will be completed to confirm geotechnical conditions, delineate the extent of magnitude of potential geologic hazards, and further define the design earthquake ground motions. Specific tasks that will be completed include:

- ▶ detailed geologic site reconnaissance to confirm identification of and to develop a map delineating the extent and magnitude of potential geologic hazards;
- ▶ detailed analysis of potential seismogenic sources to confirm their location, develop recurrence intervals, confirm maximum magnitudes associated with each source, and complete the assessment for potential, if any, of surface rupture at the site;
- ▶ perform a probabilistic assessment of seismic ground motions to further refine and develop design values for the operating and maximum design earthquakes (ODE and MDE) and the maximum credible earthquake (MCE). Currently, the estimated design ground motions for the ODE, MDE and MCE are presented as a range of potential values;
- ▶ test pits will be excavated at building locations and for the storm water evaporation pond to characterize the depth of fills, determine foundation preparation requirements, allowable bearing loads, and confirm groundwater conditions;
- ▶ completion of test pits to examine the variability and composition of the existing fill materials; and
- ▶ completion of test pits along selected portions of the pipeline alignments where trench excavations are relatively deep, adjacent to existing structures, or in areas with

STATE OF OREGON
BUILDING CODES DIVISION

INTEROFFICE MEMO
DECEMBER 13, 1996

TO: Mark Long
Assistant Manager, Field Services Section

FROM: Rebai Tamerhoulet
Facilities Engineer

SUBJECT: Klamath Cogeneration Project

I reviewed Exhibit B of the application for Klamath Cogeneration Project and the followings are my remarks:

A. In section "Codes and Standards" page B-13, the following codes should be added in this section:

1. Oregon Mechanical Specialty Code.
2. Oregon Plumbing Specialty Code
3. Oregon Electrical Specialty Code.
4. UBC Standards

In addition, the UBC edition 1991 and the State of Oregon Amendments " Structural Specialty Code" edition 1993 should be replaced by UBC edition 1994 and the State of Oregon Amendments " Structural Specialty Code" edition 1996.

B. In addition to soils investigation, a detailed seismic hazard study is required per Oregon Structural Specialty Code Section 1804.2. Detailed scope of the study shall be outlined in the document as shown in Exhibit G of the application. Seismic Hazard Study can be a part of soils investigation. Seismic Hazard Study shall include, but not limited to, the items listed in Oregon Structural Specialty Code, Section 1804.3.2.

ODFW Report
Page 5

5. Protected Areas

The proposed project is within 0.5 miles of the Klamath Wildlife Management Area. The Department agrees that the project will not adversely affect the management area or other protected areas in the project vicinity.

6. Other Issues

a. Noise Impacts - The application includes a noise analysis as the Department had requested. The report addresses the impact of increased noise levels from facility operation on wildlife in the Klamath Wildlife Management Area (BB-4, Application for Site Certificate). Based on the noise analysis, predicted worst case background noise levels along the north boundary of the Klamath Wildlife Management Area are anticipated to increase by approximately 2 to 3 dB L50 directly across from the energy facility site, and will gradually decrease at locations to the east and west. The noise levels due to the energy facility site operations are expected to comply with the State of Oregon noise level criteria. It appears that the predicted noise levels for the Klamath Wildlife Management Area will comply with the most stringent noise level criteria for designated "Quiet Areas" (p. BB-4).

F. Proposed Site Certificate Conditions

In addition to the conditions in the project application, the Department recommends the following site conditions:

1. The restoration plan to mitigate for permanent loss of acreage shall be coordinated with the Oregon Department of Fish and Wildlife.
2. The project must meet DEQ's temperature standard.

KLAMATH COGENERATION PROJECT

SITE CERTIFICATE

APPENDIX E

Chapter 469

1995 EDITION

Energy Conservation

POLICY; DEFINITIONS

- 469.010 Legislative findings
- 469.020 Definitions

OFFICE OF ENERGY; ADMINISTRATION

- 469.030 Office of Energy; duties
- 469.040 Administrator; duties; appointment; confirmation
- 469.050 Limitations on employment of past administrator; sanctions
- 469.060 Comprehensive energy plan; energy pricing structures research
- 469.070 Energy forecast; contents
- 469.080 Energy resource information; subpoena power; depositions; limitations on obtaining information; protection from abuse
- 469.085 Procedure for imposing civil penalties
- 469.090 Confidentiality of information submitted under ORS 469.080
- 469.097 Duty to monitor industry progress in energy conservation
- 469.100 Agency consideration of legislative policy
- 469.110 Dealings with Federal Government; intervention by Office of Energy in agency action
- 469.120 Office of Energy Account; appropriation; record of moneys
- 469.135 Energy Conservation Clearinghouse for Commerce and Industry
- 469.150 Energy suppliers to provide conservation services and information
- 469.155 Advisory energy conservation standards for dwellings

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- 469.160 Definitions for ORS 469.160 to 469.180
- 469.165 Rules; federal standards
- 469.170 Claim for tax credit for alternative energy devices in dwellings; eligibility; contents; contractor system certification
- 469.172 Ineligible devices
- 469.176 Performance assumptions and prescriptive measures for tax credits
- 469.180 Forfeiture of tax credits; revocation of contractor certificate; inspection; effect of failure to allow inspection

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- 469.185 Definitions for ORS 469.185 to 469.225
- 469.190 Policy
- 469.195 Priority given to certain projects; criteria
- 469.200 Annual limits to costs of facilities in granting tax credits
- 469.205 Application for renewable energy resource facility tax credit; eligibility; contents; fees
- 469.207 Tax credit for rental housing units; eligibility
- 469.208 Transferability of rental housing unit tax credit

- 469.210 Submission of plans and specifications; preliminary certification; request for hearing upon denial
- 469.215 Final certification; eligibility; application; content; appeal
- 469.217 Fees for certification
- 469.220 Certificate required for tax credits; certification not to exceed five years
- 469.225 Revocation of certificate; forfeiture of tax credits; collection

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(Generally)

- 469.228 Definitions for ORS 469.228 to 469.298
- 469.230 Purpose; functions

(Commission)

- 469.232 Oil Heat Commission; terms; confirmation; expenses
- 469.234 Qualifications of members; vacancy
- 469.236 Ex officio members
- 469.240 Meetings
- 469.241 Applicability of Oregon Tort Claims Act to commission and employees
- 469.242 Exemption from State Personnel Relations Law
- 469.243 Eligibility of employees for group benefit plans
- 469.245 Eligibility of employees to participate in Public Employees' Retirement System
- 469.246 Powers of commission
- 469.247 Accounting system; annual financial statement; report to Governor and legislature
- 469.248 Rules
- 469.249 Petty cash fund
- 469.250 Duties to provide advice and consultation related to remedial action, energy conservation and education
- 469.253 Audit by Secretary of State; commission response

(Assessments)

- 469.254 Collection of assessments from oil marketers; amount
- 469.258 Reports by oil marketers
- 469.259 Failure to file report or pay assessment
- 469.260 Records of persons required to pay assessments; rules; inspections and audits
- 469.262 Cancellation of delinquent assessment

(Finances)

- 469.267 Heating Oil Education and Conservation Account
- 469.269 Heating Oil Remedial Action Account

(Remedial Action Costs)

- 469.274 Claims for remedial action costs; notice; final claim

PUBLIC HEALTH AND SAFETY

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469.278	Time for payment of claims	469.470	Powers and duties
469.280	Demand for hearing; contents; time for filing	469.480	Local government advisory group; special advisory groups; compensation and expenses; Electric and Magnetic Field Committee
469.282	Hearing; final order		
469.284	Judicial review		
469.286	Effect of insufficient money to pay claims; partial payment		(Rules; Standards; Compliance)
	(Enforcement)	469.490	Adoption of rules; determination of validity
469.290	Fine for failure to pay assessment	469.501	Energy facility siting, construction, operation and retirement standards; exemptions
469.292	Penalty for late payment	469.503	Requirements for approval of energy facility site certificate; compliance with statewide planning goals; effect on local comprehensive plan and land use regulations; recommendations of special advisory group
	(Miscellaneous)	469.505	Consultation with other agencies
469.296	Administration and enforcement of ORS 469.228 to 469.298	469.507	Monitoring environmental and ecological effects of construction and operation of energy facilities
469.298	Short title	469.520	Cooperation of state governmental bodies; adoption of rules by state agencies on energy facility development
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(General Provisions)			
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469.310	Policy		
	(Siting)		
469.320	Site certificate required; exceptions		(Plant Operations; Radioactive Wastes)
469.330	Notice of intent to file application for site certificate; public notice; standards, application requirements and study requirements; project order	469.525	Radioactive waste disposal facilities prohibited; exceptions
469.350	Application for site certificate; comment and recommendation	469.530	Review and approval of security programs
469.360	Evaluation of site applications; costs; payment	469.533	Office of Energy rules for health protection and evacuation procedures in nuclear emergency
469.370	Draft proposed order for hearing; issues raised; final order; expedited processing	469.534	County procedures
469.375	Required findings for radioactive waste disposal facility certificate	469.535	Governor may assume control of emergency operations during nuclear accident or catastrophe
469.401	Energy facility site certificate; conditions; effect of issuance on state and local government agencies	469.536	Public utility to disseminate information under ORS 469.533
469.402	Delegation of review of future action required by site certificate	469.540	Reductions or curtailment of operations for violation of safety standards; notice; time period for repairs; transport and disposal of radioactive materials
469.403	Rehearing on approval or rejection of application for site certificate; appeal; judicial review vested in Supreme Court	469.550	Order for halt of plant operations or activities with radioactive material; notice
469.405	Amendment of site certificate	469.553	Active uranium mill or mill tailings disposal facility site certification required; procedure for review; fees
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469.421	Fees; exemptions; assessment of certain utilities and suppliers; penalty	469.559	Cooperative agreements authorized between council and federal officials and agencies; rules; powers of Governor; exception for inactive or abandoned site
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ENERGY CONSERVATION

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uses</p> <p>469.653 Alternative program of publicly owned utility</p> <p>469.655 Energy conservation as part of utility service of publicly owned utility</p> | <p>469.657 Conditions for cash payments to dwelling owner by publicly owned utility</p> <p>469.659 Implementation by publicly owned utility</p> <p style="text-align: center;">(Oil Dealers)</p> <p>469.673 Definitions for ORS 469.673 to 469.683</p> <p>469.675 Oil dealer program</p> <p>469.677 Contracts for information, assistance and technical advice; standards for energy audits</p> <p>469.679 Implementation by fuel dealer</p> <p>469.681 Petroleum supplier assessment; computation; effect of failure to pay; interest</p> <p>469.683 Oil-Heated Dwellings Energy Audit Account</p> <p style="text-align: center;">(Miscellaneous)</p> <p>469.685 Use of earlier energy audit</p> <p>469.687 Title for ORS 469.631 to 469.687</p> <p style="text-align: center;">ENERGY CONSERVATION PROGRAMS</p> <p style="text-align: center;">(Single Family Residence)</p> <p>469.700 Energy efficiency ratings; public information; "single family residence" defined</p> <p style="text-align: center;">(Low Interest Loans)</p> <p>469.710 Definitions for ORS 469.710 to 469.720</p> <p>469.715 Low interest loans for cost-effective energy conservation; rate</p> <p>469.717 When installation to be completed</p> <p>469.719 Eligibility of lender for tax credit not affected by owner's failure</p> <p>469.720 Energy audit required; permission to inspect required; owner not to receive other incentives</p> <p style="text-align: center;">(Public Buildings)</p> <p>469.730 Declaration of purpose</p> <p>469.735 Definitions for ORS 469.730 to 469.745</p> <p>469.740 Energy conservation standards for public buildings; bases</p> <p>469.745 Voluntary compliance program</p> <p>469.750 State purchase of alternative fuels</p> <p style="text-align: center;">(State Agency Projects)</p> <p>469.752 Definitions for ORS 469.752 to 469.756</p> <p>469.754 Authority of state agencies to establish projects; use of savings</p> <p>469.756 Rules; 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469.895 Application of ORS 469.890 to 469.900 to publicly owned utility
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- 469.990 Penalties
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- Public building lighting standards, 455.530 to 455.580
- 469.730**
- Energy conservation in public buildings built in 1978 or after, 455.560 to 455.580

POLICY; DEFINITIONS

469.010 Legislative findings. The Legislative Assembly finds and declares that:

(1) Continued growth in demand for nonrenewable energy forms poses a serious and immediate, as well as future, problem. It is essential that future generations not be left a legacy of vanished or depleted resources, resulting in massive environmental, social and financial impact.

(2) It is the goal of Oregon to promote the efficient use of energy resources and to develop permanently sustainable energy resources. The need exists for comprehensive state leadership in energy production, distribution and utilization. It is, therefore, the policy of Oregon:

(a) That development and use of a diverse array of permanently sustainable energy resources be encouraged utilizing to the highest degree possible the private sector of our free enterprise system.

(b) That through state government example and other effective communications, energy conservation and elimination of wasteful and uneconomical uses of energy and materials be promoted. This conservation must include, but not be limited to, resource recovery and materials recycling.

(c) That the basic human needs of every citizen, present and future, shall be given priority in the allocation of energy resources, commensurate with perpetuation of a free and productive economy with special attention to the preservation and enhancement of environmental quality.

(d) That state government assist every citizen and industry in adjusting to a diminished availability of energy.

(e) That energy-efficient modes of transportation for people and goods shall be encouraged, while energy-inefficient modes of transportation shall be discouraged.

(f) That cost-effectiveness be considered in state agency decision-making relating to energy sources, facilities or conservation, and that cost-effectiveness be considered in all agency decision-making relating to energy facilities.

(g) That state government shall provide a source of impartial and objective information in order that this energy policy may be enhanced. [1975 c.606 §1; 1979 c.723 §1]

469.020 Definitions. As used in ORS 176.820, 469.010 to 469.225, 469.860 (3), 469.880 to 469.895, 469.900 (3), 469.990, 469.992, 757.710 and 757.720, unless the context requires otherwise:

(1) "Administrator" means the administrator of the Office of Energy created under ORS 469.030.

(2) "Agency" includes a department or other agency of state government, city, county, municipal corporation, political subdivision, port, people's utility district, joint operating agency and electric cooperative.

(3) "Coal supplier" means any person engaged in the wholesale distribution in this state of coal intended for use in this state for an energy facility.

(4) "Cost-effective" means that an energy resource, facility or conservation measure during its life cycle results in delivered power costs to the ultimate consumer no greater than the comparable incremental cost of the least cost alternative new energy resource, facility or conservation measure. Cost comparison under this definition shall include but not be limited to:

(a) Cost escalations and future availability of fuels;

(b) Waste disposal and decommissioning costs;

(c) Transmission and distribution costs;

(d) Geographic, climatic and other differences in the state; and

(e) Environmental impact.

(5) "Council" means the Energy Facility Siting Council established under ORS 469.450.

(6) "Energy facility" has the meaning given in ORS 469.300.

(7) "Energy generation area" means an area within which the effects of two or more small generating plants may accumulate so the small generating plants have effects of a magnitude similar to a single generating plant of 25 megawatts or more. An energy generation area for facilities using a geothermal resource and covered by a unit agreement, as provided in ORS 522.405 to 522.545 or by federal law, shall be defined in that unit agreement. If no such unit agreement exists, an energy generation area for facilities using a geothermal resource shall be the area that is within two miles, measured from the electrical generating equipment of the facility, of an existing or proposed geothermal electric power generating plant, not including the site of any other such plant not owned or controlled by the same person.

(8) "Geothermal reservoir" means an aquifer or aquifers containing a common geothermal fluid.

(9) "Nominal electric generating capacity" has the meaning given in ORS 469.300.

(10) "Office of Energy" means the Office of Energy created under ORS 469.030.

(11) "Person" means an individual, partnership, joint venture, private or public corporation, association, firm, public service company, political subdivision, municipal corporation, government agency, people's utility district, or any other entity, public or private, however organized.

(12) "Petroleum supplier" means a petroleum refiner in this state, or any person engaged in the wholesale distribution of crude petroleum or derivative thereof or of propane in this state.

(13) "Related or supporting facilities" means any structure, proposed by the applicant, to be constructed or substantially modified in connection with the construction of an energy facility, including associated transmission lines, reservoirs, storage facilities, intake structure, road and rail access, pipelines, barge basins, office or public buildings, and commercial and industrial structures. "Related or supporting facilities" does not include geothermal or underground gas storage reservoirs, production, injection or monitoring wells or wellhead equipment or pumps.

(14) "Site" means a proposed location of an energy facility, and its related or supporting facilities.

(15) "Thermal power plant" has the meaning given that term by ORS 469.300.

(16) "Utility" includes:

(a) An individual, a regulated electrical company, a people's utility district, a joint operating agency, an electric cooperative, municipality or any combination thereof, engaged in or authorized to engage in the business of generating, transmitting or distributing electric energy;

(b) A person or public agency generating electric energy from an energy facility for its own consumption; and

(c) A person engaged in this state in the transmission or distribution of natural or synthetic gas. [1975 c.606 §2; 1977 c.794 §1; 1979 c.723 §2; 1981 c.629 §1; 1981 c.792 §1; 1991 c.480 §3; 1993 c.569 §1; 1995 c.505 §4; 1995 c.551 §2]

OFFICE OF ENERGY; ADMINISTRATION

469.030 Office of Energy; duties. (1) There is created the Office of Energy within the Department of Consumer and Business Services.

(2) The Office of Energy shall:

(a) Be the central repository within the state government for the collection of data on energy resources;

(b) Endeavor to utilize all public and private sources to inform and educate the public about energy problems and ways in which the public can conserve energy resources;

(c) Engage in research, but whenever possible, contract with appropriate public or private agencies and dispense funds for research projects and other services related to energy resources, except that the Office of Energy shall endeavor to avoid duplication of research whether completed or in progress;

(d) Qualify for, accept and disburse or utilize any private or federal moneys or services available for the administration of ORS 176.820, 192.501 to 192.505, 192.690, 469.010 to 469.225, 469.300 to 469.570, 469.990, 757.710 and 757.720;

(e) Administer federal and state energy allocation and conservation programs and energy research and development programs and apply for and receive available funds therefor;

(f) Be a clearinghouse for energy research to which all agencies shall send information on all energy related research;

(g) Prepare contingent energy programs to include all forms of energy not otherwise provided pursuant to ORS 757.710 and 757.720;

(h) Maintain an inventory of energy research projects in Oregon and the results thereof;

(i) Collect, compile and analyze energy statistics, data and information;

(j) Contract with public and private agencies for energy activities consistent with ORS 469.010 and this section; and

(k) Upon request of the governing body of any affected jurisdiction, coordinate a public review of a proposed transmission line according to the provisions of ORS 469.442. [1975 c.606 §4; 1981 c.792 §2; 1987 c.200 §4; 1993 c.569 §2; 1995 c.551 §3]

Note: Section 1, chapter 551, Oregon Laws 1995, provides:

Sec. 1. The Department of Energy that has operated under ORS chapters 469 and 470 is continued as the Office of Energy within the Department of Consumer and Business Services. [1995 c.551 §1]

469.040 Administrator; duties; appointment; confirmation. (1) The Office of Energy shall be under the supervision of the administrator who shall:

(a) Supervise the day-to-day functions of the Office of Energy;

(b) Supervise and facilitate the work and research on energy facility siting applications at the direction of the Energy Facility Siting Council;

(c) Hire, assign, reassign and coordinate personnel of the Office of Energy, prescribe their duties and fix their compensation, subject to the State Personnel Relations Law; and

(d) Adopt rules and issue orders to carry out the duties of the administrator and the Office of Energy in accordance with ORS 183.310 to 183.550 and the policy stated in ORS 469.010.

(2) The administrator may delegate to any officer or employee the exercise and discharge in the administrator's name of any power, duty or function of whatever character vested in the administrator by law. The official act of any person acting in the administrator's name and by the administrator's authority shall be considered an official act of the administrator.

(3) The administrator shall be appointed by the Director of the Department of Consumer and Business Services as provided in ORS 705.115. [1975 c.606 §5; 1985 c.593 §1; 1993 c.496 §3; 1995 c.551 §4]

469.050 Limitations on employment of past administrator; sanctions. (1) A person who has been the administrator of the Office of Energy shall not, within two years after the person ceases to be the administrator, be an employee of:

(a) An owner or operator of an energy facility;

(b) An applicant for a site certificate; or

(c) Any person who engages in the sale or manufacture of any energy resource or of any major component of an energy facility in Oregon.

(2) Employment of any individual in violation of subsection (1)(a) or (b) of this section shall be grounds for the revocation of any license issued by this state or any agency thereof and held by the person that employs such individual. [1975 c.606 §§6,7]

469.060 Comprehensive energy plan; energy pricing structures research. (1) Every odd-numbered year, the Office of Energy shall transmit to the Governor and the Legislative Assembly a comprehensive plan including comments on the energy forecasts of the utilities and on the Office of Energy's independent analysis and evaluation. The plan shall be designed to identify emerging trends related to energy supply, need and conservation and public health and safety factors, to estimate the level of statewide energy need for each year in the forthcoming five-year period and for the 10th and 20th year following issuance of the plan.

(2) Notwithstanding ORS 469.030 (2)(c), the Office of Energy shall conduct research into all energy pricing structures, relating

price to consumption and considering the interchangeability of the various energy forms. In conducting the research, the Office of Energy shall consider matters including, but not limited to, price elasticity, cross elasticity of demand and energy rate structures, as well as the rate structure studies of the Public Utility Commission. This research shall be submitted biennially to the Legislative Assembly and the Governor as a part of the plan described in subsection (1) of this section.

(3) Consistent with the legislatively approved budget, the plan described in subsections (1) and (2) of this section shall include, but not be limited to:

(a) An inventory of existing energy resources available to Oregon.

(b) An estimation of the potential contribution that various energy resources could make in satisfying Oregon's future energy needs consistent with the policy stated in ORS 469.010 and where appropriate, the energy plan and fish and wildlife program adopted by the Pacific Northwest Electric Power and Conservation Planning Council pursuant to P.L. 96-501.

(c) Recommendations for state and local governments to assist in the development and maximum use of cost-effective conservation and renewable resources, consistent with the policy stated in ORS 469.010 and, where appropriate, the energy plan and fish and wildlife program adopted by the Pacific Northwest Electric Power and Conservation Planning Council pursuant to P.L. 96-501.

(d) Recommendations for proposed research, development and demonstration projects and programs necessary to evaluate the availability and cost-effectiveness of conservation and renewable resources in Oregon.

(4) The plan described in this section shall be compiled by organizing and refining data acquired by the Office of Energy in the performance of its existing duties. [1975 c.606 §§8; 1983 c.273 §1; 1989 c.466 §1; 1995 c.505 §5; 1995 c.551 §19a]

469.070 Energy forecast; contents. (1) At least biennially the Office of Energy shall issue a forecast on the energy situation as it affects Oregon. The forecast shall include, but not be limited to, an estimate of:

(a) Energy demand and the resources available to meet that demand; and

(b) Impacts of conservation and new technology, increased efficiency of present energy facilities, additions to present facilities, and construction of new facilities, on the availability of energy to Oregon.

(2) The forecast shall include summary forecasts for:

(a) Each of the first five years immediately following issuance of the forecast; and

(b) The 10th and 20th year following the issuance of the forecast.

(3) The forecast shall identify all major components of demand and any anticipated increase in demand, including but not limited to population, commercial, agricultural and industrial growth.

(4) The Office of Energy, by July 1 of each even-numbered year, shall issue a statement setting forth the methodology and assumptions it intends to employ in preparing the forthcoming forecast, any changes in the preceding forecast, and an outline of the contents of the biennial plan to be published by the Office of Energy on the following January 1, and not later than the 45th day thereafter, commence public hearings thereon.

(5) All state agencies, energy suppliers, owners of energy facilities, and other persons whom the administrator of the Office of Energy believes have an interest in the subject or who have applied to the administrator therefor, shall be supplied a copy of the statement issued by the Office of Energy on July 1 of each even-numbered year. The administrator may charge a reasonable fee for a copy of this statement not to exceed the cost thereof.

(6) After the public hearings required by subsection (4) of this section, but not later than January 1 following the issuance of its statement, the Office of Energy shall issue the forecast required by subsection (1) of this section.

(7) The forecast shall be included within the plan provided for in ORS 469.060 (1). [1975 c.606 §9; 1977 c.794 §3; 1983 c.273 §2]

469.080 Energy resource information; subpoena power; depositions; limitations on obtaining information; protection from abuse. (1) The administrator of the Office of Energy may obtain all necessary information from producers, suppliers and consumers of energy resources within Oregon, and from political subdivisions in this state, as necessary to carry out ORS 176.820, 192.501 to 192.505, 192.690, 469.010 to 469.225, 469.300 to 469.570, 469.990, 469.992, 757.710 and 757.720. Such information may include, but not be limited to:

(a) Sales volume;

(b) Forecasts of energy resource requirements;

(c) Inventory of energy resources; and

(d) Local distribution patterns of information under paragraphs (a) to (c) of this subsection.

(2) In obtaining information under subsection (1) of this section, the administrator with the written consent of the Governor may subpoena witnesses, material and relevant books, papers, accounts, records and memoranda, administer oaths, and may cause the depositions of persons residing within or without Oregon to be taken in the manner prescribed for depositions in civil actions in circuit courts, to obtain information relevant to energy resources.

(3) In obtaining information under this section the administrator:

(a) Shall avoid eliciting information already furnished by a person or political subdivision in this state to a federal, state or local regulatory authority that is available to the administrator for such study; and

(b) Shall cause reporting procedures, including forms, to conform to existing requirements of federal, state and local regulatory authorities.

(4) Any person who is served with a subpoena to give testimony orally or in writing or to produce books, papers, correspondence, memoranda, agreements or the documents or records as provided in ORS 176.820, 192.501 to 192.505, 192.690, 469.010 to 469.225, 469.300 to 469.570, 469.990, 469.992, 757.710 and 757.720, may apply to any circuit court in Oregon for protection against abuse or hardship in the manner provided in ORCP 36 C. [1975 c.606 §18; 1977 c.358 §9; 1977 c.794 §4a; 1979 c.284 §154]

469.085 Procedure for imposing civil penalties. (1) Except as otherwise provided in this section, civil penalties under ORS 469.992 shall be imposed as provided in ORS 183.090.

(2) Notwithstanding ORS 183.090 (2), the notice to the person against whom a civil penalty is to be imposed shall reflect a complete statement of the consideration given to the factors listed in subsection (7) of this section. The notice may be served by either the administrator or the council.

(3) Notwithstanding ORS 183.090, if a hearing is not requested or if the person requesting a hearing fails to appear, a final order shall be entered upon a prima facie case made on the record of the agency.

(4) The provisions of this section are in addition to and not in lieu of any other penalty or sanction provided by law. An action taken by the administrator or the council under this section may be joined by the administrator or the council with any other action against the same person under this chapter.

(5) Any civil penalty recovered under this section shall be paid into the General Fund.

(6) The administrator or the council shall adopt by rule a schedule of the amount of civil penalty that may be imposed for a particular violation.

(7) In imposing a penalty under ORS 469.992, the administrator or the council shall consider:

(a) The past history of the person incurring a penalty in taking all feasible steps or procedures necessary or appropriate to correct or prevent any violation;

(b) Any prior violations of ORS chapter 469 or rules, orders or permits relating to the alleged violation;

(c) The impact of the violation on public health and safety or public interests in fishery, navigation and recreation;

(d) Any other factors determined by the administrator or the council to be relevant; and

(e) The alleged violator's cooperativeness and effort to correct the violation.

(8) The penalty imposed under ORS 469.992 may be remitted or mitigated upon such terms and conditions as the administrator or council determines to be proper. Upon the request of the person incurring the penalty, the administrator or council shall consider evidence of the economic and financial condition of the person in determining whether a penalty shall be remitted or mitigated. [1991 c.480 §2; 1991 c.734 §106]

469.090 Confidentiality of information submitted under ORS 469.080. (1) Information furnished under ORS 469.080 shall be confidential and maintained as such, if so requested by the person providing the information, if the information meets one of the following requirements:

(a) The information is proprietary in nature; or

(b) The information consists of geological and geophysical information and data, including maps, concerning oil, gas or geothermal resource wells.

(2) Nothing in this section prohibits the use of confidential information to prepare statistics or other general data for publication, so presented as to prevent identification of particular persons. [1975 c.606 §19]

469.095 [1979 c.561 §9; repealed by 1993 c.475 §3]

469.097 Duty to monitor industry progress in energy conservation. The Office of Energy shall to the extent permitted by its resources monitor industry progress in achieving energy conservation. [1981 c.865 §3; 1987 c.158 §96]

469.100 Agency consideration of legislative policy. (1) All agencies shall consider

the policy stated in ORS 469.010 in adopting or modifying their rules and policies.

(2) All agencies shall review their rules and policies to determine their consistency with the policy stated in ORS 469.010. [1975 c.606 §3; 1995 c.551 §20]

469.110 Dealings with Federal Government; intervention by Office of Energy in agency action. (1) As to any matter involving the Federal Government, its departments or agencies, which is within the scope of the power and duties of the Office of Energy, the Office of Energy may represent its interest or, upon request, may represent the interest of any county, city, state agency, special district or owner or operator of any energy facility.

(2) The Office of Energy may intervene in any proceeding undertaken by an agency for the purpose of expressing its views as to the effect of an agency action, upon state energy resources and state energy policy. [1975 c.606 §12]

469.120 Office of Energy Account; appropriation; record of moneys. (1) The Office of Energy Account is established.

(2) All funds received by the Office of Energy pursuant to law shall be paid into the State Treasury and credited to the Office of Energy Account. All moneys in the account are continuously appropriated to the Office of Energy for payment of expenses of the Office of Energy, the Oregon Department of Administrative Services and the Energy Facility Siting Council.

(3) The administrator of the Office of Energy shall keep a record of all moneys deposited in the Office of Energy Account. The record shall indicate by special cumulative accounts the source from which moneys are derived and the individual activity against which each withdrawal is charged. [1975 c.606 §13; 1995 c.551 §5]

469.130 [1975 c.606 §47; 1977 c.794 §5; 1977 c.891 §10; 1987 c.879 §16; repealed by 1995 c.551 §21]

469.135 Energy Conservation Clearinghouse for Commerce and Industry. The Office of Energy shall expand the Energy Conservation Clearinghouse for Commerce and Industry so that it provides:

(1) Current information to business and industry on:

(a) State and federal financing mechanisms;

(b) Tax advantages of energy conservation investments; and

(c) General economic advantages of energy conservation investments.

(2) Teaching on conservation techniques and management of energy by corporations. [1981 c.865 §2]

469.140 [1975 c.606 §48; repealed by 1977 c.794 §6]

469.150 Energy suppliers to provide conservation services and information. (1) As used in this section "energy conservation services" means services provided by energy suppliers to educate and inform customers and the public about energy conservation. Such services include but are not limited to providing answers to questions concerning energy saving devices and providing inspections and making suggestions concerning the construction and siting of buildings and residences.

(2) Energy suppliers other than public utilities as defined in ORS 757.005, that produce, transmit, deliver or furnish heat, light or power shall establish energy conservation services and shall provide energy conservation information to customers and to the public. The services shall be performed in accordance with such guidelines as the administrator of the Office of Energy may by rule prescribe.

(3) As used in this section "energy supplier" means a publicly owned utility or fuel oil dealer which supplies electricity or fuel oil for the space heating of dwellings. [1977 c.887 §13]

469.155 Advisory energy conservation standards for dwellings. (1) As used in this section:

(a) "Dwelling" means real or personal property inhabited as the principal residence of an owner or renter. "Dwelling" includes a manufactured dwelling as defined in ORS 446.003, a floating home as defined in ORS 830.700 and multiple unit residential housing. "Dwelling" does not include a recreational vehicle as defined in ORS 446.003.

(b) "Energy conservation standards" means standards for the efficient use of energy for space and water heating in a dwelling.

(2) The administrator of the Office of Energy shall establish advisory energy conservation standards for existing dwellings. The standards shall be adopted by rule in accordance with ORS 183.310 to 183.410. The standards:

(a) Shall take cost-effectiveness into account; and

(b) Shall be compatible with and further the state's incentive programs for residential energy conservation.

(3) The administrator shall publicize the energy conservation standards and encourage home owners to voluntarily comply with the standards. [1981 c.565 §2; 1987 c.158 §97; 1989 c.648 §65]

469.157 [1981 c.746 §7; repealed by 1995 c.79 §287]

ALTERNATIVE ENERGY DEVICES

469.160 Definitions for ORS 469.160 to 469.180. As used in ORS 469.160 to 469.180:

(1) "Alternative energy device" means any system, mechanism or series of mechanisms, including a photovoltaic system, that uses solar radiation for space heating, cooling, electrical energy or any combination thereof for one or more dwellings that meets or exceeds 10 percent of the total energy requirements for the dwelling or dwellings. "Alternative energy device" includes any system that uses solar radiation for domestic water heating. "Alternative energy device" includes any system that uses solar radiation for swimming pool, spa or hot tub heating and that meets the requirements set forth in ORS 316.116 (1). "Alternative energy device" includes a ground water heat pump and a ground loop system.

(2) "Coefficient of performance" means the ratio calculated by dividing the usable output energy by the electrical input energy. Both energy values must be expressed in equivalent units.

(3) "Contractor" means a person whose trade or business consists of offering for sale an alternative energy device, installation service or design service.

(4) "Cost" means the actual cost of the acquisition, construction and installation of the alternative energy device paid by the taxpayer for the alternative energy device.

(5) "Domestic water heating" means the heating of water used in a dwelling for bathing, clothes washing, dishwashing and other related functions.

(6) "Dwelling" means real or personal property ordinarily inhabited as a principal or secondary residence and located within this state. "Dwelling" includes, but is not limited to, an individual unit within multiple unit residential housing.

(7) "First year energy yield" of an alternative energy device is the usable energy produced under average environmental conditions in one year.

(8) "Placed in service" means the date an alternative energy device is ready and available to produce usable energy or save energy. [1977 c.196 §2; 1979 c.670 §3; 1981 c.894 §4; 1983 c.346 §1; 1983 c.768 §2; 1987 c.492 §2; 1989 c.880 §1; 1995 c.746 §19a]

Note: Section 20b, chapter 746, Oregon Laws 1995, provides:

Sec. 20b. The amendments to ORS 316.116, 469.160, 469.170 and 469.172 by sections 19 to 20a of this Act apply to alternative energy devices first placed in service on or after January 1, 1996. [1995 c.746 §20b]

469.165 Rules; federal standards. (1) For the purposes of carrying out the pro-

visions of ORS 469.160 to 469.180, the Office of Energy may adopt rules prescribing minimum performance criteria for alternative energy devices for dwellings.

(2) The Office of Energy, in adopting rules under this section for solar heating and cooling systems, shall take into consideration applicable standards of federal performance criteria prescribed pursuant to the provisions of section 5506, title 42, United States Code (Solar Heating and Cooling Act of 1974). [1977 c.196 §3; 1989 c.880 §2]

469.170 Claim for tax credit for alternative energy devices in dwellings; eligibility; contents; contractor system certification. (1) Any person may claim a tax credit under ORS 316.116 if the person meets the requirements under ORS 469.160 to 469.180 and if that person pays all or a portion of the costs of an alternative energy device for a dwelling or dwellings.

(2) In order to be eligible for a tax credit under ORS 316.116, a person claiming a tax credit for an alternative energy device shall have the system certified by the Office of Energy or installed by a contractor certified by the Office of Energy under subsection (4) of this section.

(3) Verification of the installation of an alternative energy device shall be made in writing on a form provided by the Department of Revenue and shall contain:

(a) The location of the alternative energy device;

(b) A description of the type of device;

(c) If the device was installed by a contractor, evidence that the contractor has any license, bond, insurance and permit required to sell and install the alternative energy device;

(d) If the device was installed by a contractor, a statement signed by the contractor that the applicant has received:

(A) A statement of the reasonably expected energy savings of the device;

(B) A copy of consumer information published by the Office of Energy;

(C) An operating manual for the alternative energy device; and

(D) A copy of the contractor's certification certificate or alternative energy device system certificate as appropriate;

(e) If the device was not installed by a contractor, evidence that:

(A) The Office of Energy has issued an alternative energy device system certificate for the device; and

(B) The taxpayer has obtained all building permits required for installation of the device;

(f) A statement, signed by both the taxpayer claiming the credit and the contractor if the device was installed by a contractor, that the installation meets all the requirements of ORS 469.160 to 469.180;

(g) The date the alternative energy device was purchased;

(h) The date the alternative energy device was placed in service; and

(i) Any other information that the Department of Revenue determines is necessary.

(4)(a) When the Office of Energy finds that an alternative energy device can meet the standards adopted under ORS 469.165, the administrator of the Office of Energy may issue a contractor system certification to the person selling and installing the alternative energy device.

(b) An application for a contractor system certification shall be made in writing on a form provided by the Office of Energy and shall contain:

(A) A statement that the contractor has any license, bonding, insurance and permit that is required for the sale and installation of the alternative energy device;

(B) A specific description of the alternative energy device, including, but not limited to, the material, equipment and mechanism used in the device, operating procedure, sizing and siting method and installation procedure;

(C) The addresses of three installations of the system that are available for inspection by the Office of Energy;

(D) The range of installed costs to purchasers of the device;

(E) Any important installation or operating instructions; and

(F) Any other information that the Office of Energy determines is necessary.

(c) A new application for contractor system approval shall be filed when there is a change in the information supplied under paragraph (b) of this subsection.

(d) The Office of Energy may issue contractor system certificates to each contractor who on October 3, 1989, has a valid dealer system certification which shall authorize the sale and installation of the same domestic water heating alternative energy devices authorized by the dealer certification.

(e) If the Office of Energy finds that an alternative energy device can meet the standards adopted under ORS 469.165, the administrator may issue an alternative energy device system certificate to the taxpayer installing or having an alternative energy device installed.

(f) An application for an alternative energy device system certificate shall be made in writing on a form provided by the Office of Energy and shall contain:

(A) A specific description of the alternative energy device, including, but not limited to, the material, equipment and mechanism used in the device, operating procedure, sizing, siting method and installation procedure;

(B) The installed cost of the device; and

(C) A statement that the taxpayer has all permits required for installation of the device.

(5) To claim the tax credit, the verification form described in subsection (3) of this section shall be submitted with the taxpayer's Oregon personal income tax return for the year the alternative energy device is purchased. A copy of the contractor's certification certificate or alternative energy device system certificate also shall be submitted.

(6) The verification form and contractor's certificate or alternative energy device system certificate described under this section shall be effective for purposes of tax relief allowed under ORS 316.116.

(7) The verification form and contractor's certificate described under this section may be transferred, by an applicant who does not qualify for tax relief under ORS 316.116, to the first purchaser of a dwelling who intends to use it as a principal or secondary residence.

(8) A tax credit under ORS 316.116 is allowed only with respect to an alternative energy device that is placed in service on or before December 31, 2001. [1977 c.196 §4; 1979 c.670 §4; 1981 c.894 §5; 1983 c.346 §2; 1987 c.492 §3; 1989 c.880 §3; 1995 c.746 §20]

Note: See note under 469.160.

469.172 Ineligible devices. The following devices are not eligible for the alternative energy device tax credit under ORS 316.116:

(1) Standard furnaces;

(2) Standard back-up heating systems;

(3) Woodstoves or wood furnaces, or any part of a heating system that burns wood;

(4) Air-to-air and air-to-water heat pumps or any device that uses ambient air to make heat;

(5) Heat pump water heaters;

(6) Structures that cover or enclose a swimming pool;

(7) Swimming pools, hot tubs or spas used to store heat;

(8) Above ground, uninsulated swimming pools, hot tubs or spas;

(9) Photovoltaic systems installed on recreational vehicles;

(10) Devices that use water, wind or geothermal resources for space heating, cooling, electrical energy, domestic water heating or swimming pool, spa or hot tub heating;

(11) Conversion of an existing alternative energy device to another type of alternative energy device;

(12) Repair or replacement of an existing alternative energy device; or

(13) Any other device identified by the Office of Energy. [1989 c.880 §7; 1995 c.746 §20a]

Note: See note under 469.160.

469.175 [1977 c.196 §5; 1979 c.670 §5; 1981 c.894 §6; 1983 c.346 §3; 1987 c.492 §4; repealed by 1989 c.880 §4 (469.176 enacted in lieu of 469.175)]

469.176 Performance assumptions and prescriptive measures for tax credits. (1) In order to carry out the provisions of ORS 469.160 to 469.180, the Office of Energy shall develop performance assumptions and prescriptive measures to determine the eligibility and tax credit amount for alternative energy devices for dwellings.

(2) The Office of Energy shall use the performance assumptions and prescriptive measures to develop information for the Department of Revenue to use to allow taxpayers to determine their eligibility and tax credit amount. The Office of Energy may review this information on an annual basis to take into consideration new technology and performance assumption accuracy.

(3) For the purpose of determining the first year energy yield of an alternative energy device, the Office of Energy shall use the following assumptions and test standards:

(a) Solar Rating and Certification Corporation standard SRCC 100, 200, American Society of Heating, Refrigerating and Air-Conditioning Engineers 93-77, or the American Refrigeration Institute standard 325-85 test at 50 degrees entering water temperature, as appropriate. The testing requirements under this paragraph shall not apply to an owner-built alternative energy device.

(b) For an alternative energy device used as a source for domestic water heating energy, a hot water use of 75 gallons per day at 120 degrees Fahrenheit. The load of 75 gallons per day at 120 degrees Fahrenheit shall be achieved by including conservation measures in the installation of the alternative energy device.

(c) For an alternative energy device used as a source for space heating or cooling, the heating or cooling energy load as determined by a heat loss or gain calculation performed in accordance with the methods established

by the American Society of Heating, Refrigerating and Air-Conditioning Engineers.

(d) For an alternative energy device used as a source for electrical energy, the first year energy yield shall be based upon the electrical energy load of the dwelling as determined according to the procedure established by the Office of Energy.

(e) For an alternative energy device used as a source for swimming pool, spa or hot tub heating, the first year energy yield shall be based on the heating load of the swimming pool, spa or hot tub as determined according to the procedure established by the Office of Energy. [1989 c.880 §5 (enacted in lieu of 469.175)]

469.180 Forfeiture of tax credits; revocation of contractor certificate; inspection; effect of failure to allow inspection. (1) Upon the Department of Revenue's own motion, or upon request of the Office of Energy, the Department of Revenue may initiate proceedings for the forfeiture of a tax credit allowed under ORS 316.116 if:

(a) The verification was fraudulent because of a misrepresentation by the taxpayer;

(b) The verification was fraudulent because of a misrepresentation by the contractor;

(c) The alternative energy device has not been installed or operated in substantial compliance with the requirements of ORS 469.160 to 469.180; or

(d) The taxpayer failed to consent to an inspection of the installed alternative energy device by the Office of Energy after a reasonable, written request for such an inspection by the Office of Energy.

(2) Pursuant to the procedures for a contested case under ORS 183.310 to 183.550, the administrator of the Office of Energy may order the revocation of a contractor certificate issued under ORS 469.170 if the administrator finds that:

(a) The contractor certificate was obtained by fraud or misrepresentation by the contractor certificate holder;

(b) The contractor's performance for the alternative energy device for which the contractor is issued a certificate under ORS 469.170 does not meet industry standards; or

(c) The contractor has misrepresented to the customer either the tax credit program or the nature or quality of the alternative energy device.

(3) If the tax credit allowed under ORS 316.116 for the installation of an alternative energy device is ordered forfeited due to an action of the taxpayer under subsection (1)(a), (c) or (d) of this section, all prior tax relief provided to the taxpayer shall be for-

feited and the Department of Revenue shall proceed to collect those taxes not paid by the taxpayer as a result of the tax credit relief under ORS 316.116.

(4) If the tax credit for the installation of an alternative energy device is ordered forfeited due to an action of the contractor under subsection (1)(b) of this section, the Department of Revenue shall proceed to collect, from the contractor, an amount equivalent to those taxes not paid by the taxpayer as a result of the tax credit relief under ORS 316.116. So long as the forfeiture is due to an action of the contractor and not to an action of the taxpayer, the assessment of such taxes shall be levied on the contractor and not on the taxpayer. Notwithstanding ORS 314.835, the Department of Revenue may disclose information from income tax returns or reports to the extent such disclosure is necessary to collect amounts from contractors under this subsection.

(5) In order to obtain information necessary to verify eligibility and amount of the tax credit, the Office of Energy or its representative may inspect an alternative energy device that has been installed. The inspection shall be made only with the consent of the owner of the dwelling. Failure to consent to the inspection is grounds for the forfeiture of any tax credit relief under ORS 316.116. The Department of Revenue shall proceed to collect any taxes due according to subsection (4) of this section. For electrical generating alternative energy devices, the Office of Energy may obtain energy consumption records for the dwelling the device serves, for a 12-month period, in order to verify eligibility and amount of the tax credit. [1977 c.196 §6; 1979 c.670 §6; 1981 c.894 §7; 1983 c.346 §4; 1987 c.492 §5; 1989 c.880 §8; 1993 c.684 §1]

RENEWABLE ENERGY RESOURCES

469.185 Definitions for ORS 469.185 to 469.225. As used in ORS 469.185 to 469.225:

(1) "Alternative fuel fleet vehicle" means a vehicle in a fleet as defined by the administrator of the Office of Energy by rule that is used in connection with the conduct of a trade or business and that is manufactured or modified to use an alternative fuel, including but not limited to electricity, ethanol, methanol, gasohol and propane or compressed natural gas, regardless of energy consumption savings.

(2) "Cost" means the capital costs and expenses necessarily incurred in the acquisition, erection, construction and installation of a facility.

(3) "Energy facility" means any capital investment for which the first year energy savings yields a simple payback period of

greater than one year. An energy facility includes:

(a) Any land, structure, building, installation, excavation, machinery, equipment or device, or any addition to, reconstruction of or improvement of, land or an existing structure, building, installation, excavation, machinery, equipment or device necessarily acquired, erected, constructed or installed by any person in connection with the conduct of a trade or business and actually used in the processing or utilization of renewable energy resources to:

(A) Replace a substantial part or all of an existing use of electricity, petroleum or natural gas;

(B) Provide the initial use of energy where electricity, petroleum or natural gas would have been used;

(C) Generate electricity to replace an existing source of electricity or to provide a new source of electricity for sale by or use in the trade or business; or

(D) Perform a process that obtains energy resources from material that would otherwise be solid waste as defined in ORS 459.005.

(b) Any acquisition of, addition to, reconstruction of or improvement of land or an existing structure, building, installation, excavation, machinery, equipment or device necessarily acquired, erected, constructed or installed by any person in connection with the conduct of a trade or business in order to substantially reduce the consumption of purchased energy.

(c) A necessary feature of a new commercial building or multiple unit dwelling, as dwelling is defined by ORS 469.160, that causes that building or dwelling to exceed an energy performance standard in the state building code.

(d) The replacement of an electric motor with another electric motor that substantially reduces the consumption of electricity.

(4) "Facility" means an energy facility, recycling facility, alternative fuel fleet vehicle or facilities necessary to operate alternative fuel fleet vehicles, including but not limited to an alternative fuel fleet vehicle refueling station.

(5) "Recycling facility" means equipment used by a trade or business solely for recycling:

(a) Including:

(A) Equipment used solely for hauling and refining used oil;

(B) New vehicles or modifications to existing vehicles used solely to transport used recyclable materials that cannot be used fur-

ther in their present form or location such as glass, metal, paper, aluminum, rubber and plastic;

(C) Trailers, racks or bins that are used for hauling used recyclable materials and are added to or attached to existing waste collection vehicles; and

(D) Any equipment used solely for processing recyclable materials such as bailers, flatteners, crushers, separators and scales.

(b) But not including equipment used for transporting or processing scrap materials that are recycled as a part of the normal operation of a trade or business as defined by the administrator.

(6)(a) "Renewable energy resource" includes, but is not limited to, straw, forest slash, wood waste or other wastes from farm or forest land, industrial waste, solar energy, wind power, water power or geothermal energy.

(b) "Renewable energy resource" does not include a hydroelectric or geothermal electric generating facility larger than one megawatt of installed capacity unless the facility qualifies as a research, development or demonstration facility. [1979 c.512 §3; 1981 c.894 §17; 1985 c.745 §1; 1991 c.711 §1]

469.190 Policy. In the interest of the public health, safety and welfare, it is the policy of the State of Oregon to encourage the conservation of electricity, petroleum and natural gas by providing tax relief for Oregon facilities that conserve energy resources or meet energy requirements through the use of renewable resources. [1979 c.512 §2]

469.195 Priority given to certain projects; criteria. In determining the eligibility of facilities for tax credits, preference shall be given to those projects which:

(1) Provide energy savings for real or personal property within the state inhabited as the principal residence of a tenant, including:

(a) Nonowner occupied single family dwellings; and

(b) Multiple unit residential housing; or

(2) Provide long-term energy savings from the use of renewable resources or conservation of energy resources. [1979 c.512 §4; 1985 c.745 §2]

469.200 Annual limits to costs of facilities in granting tax credits. (1) The total of all costs of facilities that receive a preliminary certification from the administrator of the Office of Energy for tax credits in any calendar year shall not exceed \$40 million. The administrator annually may set aside \$2 million of the \$40 million limit to be allocated, in accordance with applicable standards and application deadlines, to re-

search, development or demonstration facilities of new renewable resource generating and conservation technologies. The administrator shall determine the dollar amount certified for any facility and the priority between applications for certification based upon the criteria contained in ORS 469.185 to 469.225 and applicable rules and standards adopted under ORS 469.185 to 469.225.

(2)(a) With respect to the balance of the annual certification limit, the maximum cost certified for any facility that directly improves the efficiency of manufacturing processes, uses renewable resources in manufacturing processes or recovers waste heat from cogeneration systems shall not exceed \$2 million. The maximum cost for any other facility shall not exceed \$100,000.

(b) The maximum cost certified under this section may exceed the amount described in paragraph (a) of this subsection in the case of an investor-owned utility as defined in ORS 469.631, but only for the purpose of allowing the utility to finance:

(A) Rental housing unit energy conservation measures as provided in ORS 469.636; or

(B) For commercial and industrial customers, alternative fuel fleet vehicles or facilities necessary to operate alternative fuel fleet vehicles including but not limited to an alternative fuel fleet vehicle refueling station as provided in ORS 469.878.

(3) Not more than \$2.5 million of the \$40 million annual certification limit shall be allocated to facilities required to operate alternative fuel fleet vehicles. [1979 c.512 §5; 1981 c.894 §18; 1985 c.745 §3; 1987 c.158 §98; 1991 c.711 §3; 1993 c.684 §2; 1995 c.746 §15a]

469.205 Application for renewable energy resource facility tax credit; eligibility; contents; fees. (1) Prior to erection, construction, installation or acquisition of a proposed facility any person may apply to the Office of Energy for preliminary certification under ORS 469.210 if:

(a) The erection, construction, installation or acquisition of the facility is to be commenced on or after October 3, 1979;

(b) The facility complies with the standards or rules adopted by the administrator of the Office of Energy; and

(c) The applicant meets one of the following criteria:

(A) The applicant will be the owner or contract purchaser of the facility at the time of erection, construction, installation or acquisition of the proposed facility, and:

(i) The applicant is the owner, contract purchaser or lessee of a trade or business that plans to utilize the facility in connection with Oregon property;

(ii) The applicant is the owner, contract purchaser or lessee of a trade or business that plans to lease the facility to a person who will utilize the facility in connection with Oregon property; or

(iii) The applicant is a person to whom a tax credit has been transferred under ORS 469.208.

(B) Notwithstanding ORS 315.354 (9)(a) and (b), the applicant is a public utility as defined in ORS 757.005 or a subsidiary or an affiliated interest of a public utility as defined in ORS 757.015, for purposes of financing rental housing unit energy conservation measures as described in ORS 469.636 or alternative fuel fleet vehicles for commercial or industrial customers as provided in ORS 469.878.

(C) Notwithstanding ORS 315.354 (9)(a) and (b), the applicant is a public utility as defined in ORS 757.005 or a subsidiary or an affiliated interest of a public utility as defined in ORS 757.015, for purposes of financing alternative fuel fleet vehicles or associated facilities.

(2) An application for preliminary certification shall be made in writing on a form prepared by the Office of Energy and shall contain:

(a) A statement that the applicant or the lessee of the applicant's facility:

(A) Intends to convert from a purchased energy source to a renewable energy resource;

(B) Plans to acquire, construct or install a facility that will use a renewable energy resource or solid waste instead of electricity, petroleum or natural gas;

(C) Plans to use a renewable energy resource in the generation of electricity for sale or to replace an existing or proposed use of an existing source of electricity;

(D) Plans to acquire, construct or install a facility that substantially reduces the consumption of purchased energy;

(E) Plans to acquire, construct or install equipment for recycling as defined in ORS 469.185 (5);

(F) Plans to acquire an alternative fuel fleet vehicle or to convert an existing vehicle to an alternative fuel fleet vehicle; or

(G) Plans to acquire, construct or install a facility necessary to operate alternative fuel fleet vehicles.

(b) A detailed description of the proposed facility and its operation and information showing that the facility will operate as represented in the application.

(c) Information on the amount by which consumption of electricity, petroleum or na-

tural gas by the applicant or the lessee of the applicant's facility will be reduced, and on the amount of energy that will be produced for sale, as the result of using the facility.

(d) The projected cost of the facility.

(e) Any other information the administrator of Office of Energy considers necessary to determine whether the proposed facility is in accordance with the provisions of ORS 469.185 to 469.225, and any applicable rules or standards adopted by the administrator.

(3) An application for preliminary certification shall be accompanied by a fee established under ORS 469.217. The director may refund the fee if the application for certification is rejected.

(4) The administrator may allow an applicant to file the preliminary application after the start of erection, construction, installation or acquisition of the facility if the administrator finds:

(a) Filing the application before the start of erection, construction, installation or acquisition is inappropriate because special circumstances render filing earlier unreasonable; and

(b) The facility would otherwise qualify for tax credit certification pursuant to ORS 469.185 to 469.225. [1979 c.512 §6; 1981 c.894 §19; 1985 c.745 §4; 1989 c.765 §7; 1991 c.711 §2; 1993 c.684 §3; 1995 c.746 §16]

469.207 Tax credit for rental housing units; eligibility. (1) Except as provided in subsection (3) of this section, an applicant under ORS 469.205 (1)(c)(A)(iii) or (B) shall be eligible for a tax credit for energy conservation measures installed in rental housing units pursuant to ORS 469.636. The tax credit shall apply to only the first \$5,000 of actually installed energy conservation measure costs per dwelling unit.

(2) An owner, contract purchaser or lessee of a rental housing unit for which energy conservation measures have been financed by an applicant under subsection (1) of this section is ineligible for an energy conservation measure tax credit for such measures.

(3) No applicant under ORS 469.205 (1)(c)(A)(iii) or (B) shall be eligible for a tax credit for energy conservation measures installed in rental housing units pursuant to ORS 469.636 if the rental housing units are constructed on or after January 1, 1996. [1985 c.745 §9; 1993 c.684 §4; 1995 c.746 §16a]

469.208 Transferability of rental housing unit tax credit. (1) The owner of a rental housing unit may transfer a tax credit for energy conservation measures installed in rental housing units under ORS 469.207 in

exchange for a cash payment equal to the present value of the tax credit. To be eligible for a transfer, the energy conservation measures must have been recommended in an energy audit as provided in ORS 469.633, 469.651 or 469.675.

(2) The Office of Energy may establish by rule uniform discount rates to be used in calculating the present value of a tax credit under this section. [1993 c.684 §6]

469.210 Submission of plans and specifications; preliminary certification; request for hearing upon denial. (1) The administrator of the Office of Energy may require the submission of plans and specifications and, after examination thereof, may request corrections and revisions of the plans and specifications.

(2) If the administrator determines that the proposed acquisition, erection, construction or installation is technically feasible and should operate in accordance with the representations made by the applicant, and is in accordance with the provisions of ORS 469.185 to 469.225 and any applicable rules or standards adopted by the administrator, the administrator shall issue a preliminary certificate approving the acquisition, erection, construction or installation of the facility. If the administrator determines that the acquisition, erection, construction or installation does not comply with the provisions of ORS 469.185 to 469.225 and applicable rules and standards, the administrator shall issue an order denying certification.

(3) If within 120 days of the receipt of an application for preliminary certification, the administrator fails to issue a preliminary certificate of approval or an order denying certification, the preliminary certificate shall be considered to have been denied.

(4) Within 60 days from the date of mailing of the order under subsection (2) of this section or from a denial under subsection (3) of this section, any person whose preliminary application has been denied may request a hearing. The request shall be in writing, shall state the grounds for hearing and shall be mailed to the administrator. The hearing shall be conducted in accordance with the provisions of ORS 183.310 to 183.550 applicable to contested cases.

(5) Except as a result of an appeal under subsection (4) of this section involving an application filed on or before December 31, 2001, a preliminary certificate shall not be issued under this section after December 31, 2001. [1979 c.512 §7; 1995 c.746 §17]

469.215 Final certification; eligibility; application; content; appeal. (1) No certification shall be issued by the administrator

of the Office of Energy under this section unless the facility was acquired, erected, constructed or installed under a preliminary certificate of approval issued under ORS 469.210 and in accordance with the applicable provisions of ORS 469.185 to 469.225 and any applicable rules or standards adopted by the administrator.

(2) Any person may apply to the Office of Energy for final certification of a facility:

(a) After having obtained preliminary certification for the facility under ORS 469.210; and

(b) After completion of erection, construction or installation of the proposed facility.

(3) An application for final certification shall be made in writing on a form prepared by the Office of Energy and shall contain:

(a) A statement that the conditions of the preliminary certification have been complied with;

(b) The actual cost of the facility certified to by a certified public accountant who is not an employee of the applicant or, if the actual cost of the facility is less than \$50,000, copies of receipts for purchase and installation of the facility;

(c) A statement that the facility is in operation or, if not in operation, that the applicant has made every reasonable effort to make the facility operable; and

(d) Any other information determined by the administrator to be necessary prior to issuance of a final certificate, including inspection of the facility by the Office of Energy.

(4) The administrator shall act on an application for certification before the 60th day after the filing of the application under this section. The administrator, after consultation with the Public Utility Commission, may issue the certificate together with such conditions as the administrator determines are appropriate to promote the purposes of this section and ORS 315.354, 469.185, 469.200, 469.205 and 469.878. The action of the administrator shall include certification of the actual cost of the facility. However, in no event shall the administrator certify an amount for tax credit purposes which is more than 10 percent in excess of the amount approved in the preliminary certificate issued for the facility.

(5) If the administrator rejects an application for final certification, or certifies a lesser actual cost of the facility than was claimed in the application, the administrator shall send to the applicant written notice of the action, together with a statement of the findings and reasons therefor, by certified

mail, before the 60th day after the filing of the application. Failure of the administrator to act constitutes rejection of the application.

(6) If the application is rejected for any reason, or if the applicant is dissatisfied with the certification of cost, then, within 60 days of the date of mailing of the notice under subsection (5) of this section or from a denial under subsection (5) of this section, the applicant may request a hearing to appeal the rejection under the provisions of ORS 183.310 to 183.550 governing contested cases.

(7) Upon approval of an application for final certification of a facility, the administrator shall certify the facility. Each certificate shall bear a separate serial number for each device. Where one or more devices constitute an operational unit, the administrator may certify the operational unit under one certificate.

(8) Except as a result of an appeal under subsection (6) of this section, the administrator shall not grant final certification under this section for any facility after December 31, 2004. [1979 c.512 §8; 1981 c.894 §20; 1985 c.745 §5; 1989 c.765 §8; 1991 c.711 §4; 1995 c.746 §18]

469.217 Fees for certification. By rule and after hearing, the administrator of the Office of Energy may adopt a schedule of reasonable fees which the Office of Energy may require of applicants for preliminary or final certification under ORS 469.185 to 469.225. Before the adoption or revision of the fees, the Office of Energy shall estimate the total cost of the program to the Office of Energy. The fees shall be used to recover the anticipated cost of filing, investigating, granting and rejecting applications for certification and shall be designed not to exceed the total cost estimated by the Office of Energy. Any excess fees shall be held by the Office of Energy and shall be used by the Office of Energy to reduce any future fee increases. The fee may vary according to the size and complexity of the facility. The fee shall not be considered as part of the cost of the facility to be certified. [1985 c.745 §8]

469.220 Certificate required for tax credits; certification not to exceed five years. A certificate issued under ORS 469.215 is required for purposes of obtaining tax credits in accordance with ORS 315.354. Such certification shall be granted for a period not to exceed five years. The five-year period shall begin with the tax year of the applicant during which a certified facility is placed into operation, or the year the facility is certified under ORS 469.215, at the election of the applicant. [1979 c.512 §9]

469.225 Revocation of certificate; forfeiture of tax credits; collection. (1)

Under the procedures for a contested case under ORS 183.310 to 183.550, the administrator of the Office of Energy may order the revocation of the certificate issued under ORS 469.215 if the administrator finds that:

(a) The certification was obtained by fraud or misrepresentation; or

(b) The holder of the certificate has failed substantially to construct or to make every reasonable effort to operate the facility in compliance with the plans, specifications and procedures in such certificate.

(2) As soon as the order of revocation under this section becomes final, the administrator shall notify the Department of Revenue of such order.

(3) If the certificate is ordered revoked pursuant to subsection (1)(a) of this section, all prior tax credits provided to the holder of the certificate by virtue of such certificate shall be forfeited and upon notification under subsection (2) of this section the Department of Revenue immediately shall proceed to collect those taxes not paid by the certificate holder as a result of the tax credits provided to the holder under ORS 315.354. The Department of Revenue shall have the benefit of all laws of this state pertaining to the collection of income and excise taxes. No assessment of such taxes shall be necessary and no statute of limitation shall preclude the collection of such taxes.

(4) If the certificate is ordered revoked pursuant to subsection (1)(b) of this section, the certificate holder shall be denied any further relief under ORS 315.354 in connection with such facility from and after the date that the order of revocation becomes final. [1979 c.512 §10]

OIL HEAT COMMISSION

(Generally)

469.228 Definitions for ORS 469.228 to 469.298. As used in ORS 469.228 to 469.298, unless the context requires otherwise:

(1) "Administrator" means the administrator of the Oil Heat Commission.

(2) "Building" means any oil space heated building with human habitation, except a building owned by a government agency.

(3) "Commission" means the Oil Heat Commission.

(4) "Heating oil" means Number 1 or 2 heating oil that is delivered to a tank and used to create heat. It does not include any petroleum products that are subject to the requirements of section 3a, Article IX of the Oregon Constitution, ORS 319.020 or 319.530 or are otherwise used as transportation fuels.

(5) "Heating oil tank" means any one or combination of above ground or underground tanks and above ground or underground pipes connected to the tank, which is used to contain heating oil used for space heating a building with human habitation or water heating not used for commercial processing.

(6) "Oil marketer" means a person who supplies heating oil at retail in this state.

(7) "Person" has the meaning given that term in ORS 174.100.

(8) "Qualified remedial action service provider" means a person who provides remedial action services for a fee and who satisfies the requirements established by the commission under ORS 469.248.

(9) "Release" means any spilling, leaking, emitting, escaping or leaching into the environment.

(10)(a) "Remedial action" means those actions consistent with a permanent remedial action taken instead of or in addition to removal actions, in the event of the release of heating oil from a heating oil tank into the environment, to prevent or minimize the release of heating oil from a heating oil tank so that it does not migrate to cause substantial danger to present or future public health, safety, welfare or the environment. "Remedial action" includes, but is not limited to:

(A) Such actions at the location of the release as storage, confinement, perimeter protection using dikes, trenches or ditches, clay cover, neutralization, cleanup of released heating oil from a heating oil tank and associated contaminated materials, recycling or reuse, diversion, destruction, segregation of reactive wastes, collection of lacerate and runoff, on-site treatment or incineration, provision of alternative drinking and household water supplies, and any monitoring reasonably required to assure that such actions protect the public health, safety, welfare and the environment.

(B) Off-site transport and off-site storage, treatment, destruction or secure disposition of heating oil released from a heating oil tank and associated contaminated materials.

(C) Such actions as may be necessary to monitor, assess, evaluate or investigate a release of heating oil from a heating oil tank.

(b) "Remedial action" may include the full or partial reimbursement of costs incurred to install a heating oil tank that offers equal or greater environmental protection than the tank being replaced. Reimbursement shall be based on ability to pay.

(11)(a) "Remedial action costs" means reasonable costs which are attributable to or associated with a removal or remedial action

in accordance with the standards set forth in ORS 465.315 and rules adopted pursuant to ORS 465.400 (2) and 469.248.

(b) "Remedial action costs" does not include a service provided for a fee unless the service is performed by a qualified remedial action service provider.

(12)(a) "Removal" means:

(A) The cleanup or removal from the environment of heating oil released from a heating oil tank;

(B) Such actions as may be necessary in the event of a release of heating oil from a heating oil tank into the environment;

(C) Such actions as may be necessary to monitor, assess and evaluate the release of heating oil from a heating oil tank;

(D) The disposal of removed material; or

(E) The taking of such other actions as may be necessary to prevent, minimize or mitigate damage to the public health, safety, welfare or to the environment, which may otherwise result from a release of heating oil from a heating oil tank.

(b) "Removal" also includes, but is not limited to, security fencing or other measures to limit access, provisions of alternative drinking and household water supplies, temporary evacuation and housing of threatened individuals and action taken under ORS 465.260 relating to a release of heating oil from a heating oil tank. [1989 c.926 §1; 1991 c.67 §134; 1991 c.641 §5; 1993 c.617 §1]

Note: 469.228 to 469.298 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 469 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

469.230 Purpose; functions. The purpose of the Oil Heat Commission is to provide for economic development of this state, to promote the health, safety and welfare of the people of this state and to stabilize and protect the oil heat industry of this state. To carry out these purposes, the commission may provide:

(1) For research to develop and discover technologically advanced and more efficient oil heat equipment and to disseminate reliable information founded upon that and otherwise available research.

(2) For programs to encourage energy conservation among oil heat users through home weatherization and through developing and disseminating educational materials regarding energy conservation. The development of such programs shall be coordinated with the Office of Energy.

(3) For programs to encourage energy conservation among oil heat users through

the use of energy efficient oil heat equipment.

(4) For programs to offer financial assistance to low income oil heat users to help defray the cost of fuel, modern equipment installation and weatherization expenses.

(5) Programs for qualified educational training of oil heat industry employees with regard to the maintenance of oil heating equipment to insure proper installation for safe and efficient operation, and disseminate information regarding the safe and efficient operation and maintenance of oil heat equipment.

(6) Programs for training oil marketers' drivers, delivery personnel and inventory staff, for the safe, efficient transfer of heating oil from a point of wholesale to the end user to avoid waste and contamination and, in the event of a release, to properly contain and clean up the affected environment.

(7) For the establishment and administration of a Heating Oil Remedial Action Account, as established in ORS 469.269, to pay certain costs associated with remedial action. [1989 c.926 §3]

Note: See note under 469.228.

(Commission)

469.232 Oil Heat Commission; terms; confirmation; expenses. (1) There is created as an independent public corporation an Oil Heat Commission consisting of seven members appointed by the Governor. Five members shall be from industry and two members shall be from the public.

(2) The term of office of each member is three years, but a member serves at the pleasure of the Governor. If there is a vacancy for any cause, the Governor shall make an appointment to become immediately effective for the unexpired term.

(3) One industry member of the commission shall be appointed from each of the congressional districts referred to in ORS 188.130. In making appointments of industry members to the commission, the Governor may take into consideration any nominations or recommendations made by oil marketers or oil marketers' organizations. Each member shall continue in office until a successor is appointed.

(4) All appointments of members to the commission by the Governor are subject to confirmation by the Senate pursuant to section 4, Article III, Oregon Constitution.

(5) Members, officers and employees of the commission shall receive their actual and necessary travel and other expenses incurred in the performance of their official duties

according to ORS 292.495. [1989 c.926 §§4,10; 1993 c.617 §2]

Note: ORS 188.130, which describes the boundaries of Congressional districts, has been invalidated by order of the United States District Court. See note appearing before ORS 188.135. Editorial adjustment of ORS 469.232 to reflect the court order has not been made.

Note: See note under 469.228.

469.234 Qualifications of members; vacancy. (1) Members of the commission shall have the following qualifications which shall continue during the term of office:

(a) Each shall be a citizen of the United States.

(b) Each shall be a bona fide resident of this state.

(2) The industry members of the commission shall have the following qualifications which shall continue during the term of office:

(a) An active interest in the development of the oil heat industry in Oregon, demonstrated through membership in an oil marketers' organization, public service or otherwise.

(b) Currently and for at least five years previously, operate as an oil marketer or be employed by an oil marketer in this state.

(3) The public members of the commission shall not be current oil marketers or oil marketer employees.

(4) The members of the commission shall reflect as much as is reasonably possible the age, gender, race, ethnic and cultural diversity of the state.

(5) The administrator shall immediately declare the office of any appointed member of the commission vacant whenever the administrator finds that the member has ceased to meet the qualifications of subsections (1) to (3) of this section or is unable to perform the duties of office. [1989 c.926 §§5,9; 1993 c.617 §4]

Note: See note under 469.228.

469.236 Ex officio members. The administrator of the Office of Energy and the Director of the Department of Environmental Quality, or the representatives of the administrator of the Office of Energy and the Director of the Department of Environmental Quality, shall be ex officio members of the commission, without right to vote. ORS 469.232 and 469.234 do not apply to ex officio members. [1989 c.926 §6]

Note: See note under 469.228.

469.240 Meetings. (1) The commission shall establish a meeting place anywhere within this state, but the selection of the location shall be guided by consideration for the convenience of the majority of those most likely to have business with the commission or be affected by its acts.

(2) The commission shall meet as soon as practicable for the purpose of organizing. The commission shall elect a chairperson from among its members. It shall transact such other business as is necessary to start the work of the commission. Thereafter, the commission shall meet regularly once each six months and at other times as called by the chairperson. The chairperson may call special meetings at any time and shall call a special meeting when requested by two or more members of the commission. [1989 c.926 §§11,12]

Note: See note under 469.228.

469.241 Applicability of Oregon Tort Claims Act to commission and employees. Notwithstanding the provisions of any other law, the independent corporation created by ORS 469.232, its officers and employees shall be covered under the provisions of ORS 30.260 to 30.300 and 278.120 to 278.425. [1993 c.617 §22]

Note: 469.241 to 469.245, 469.247, 469.249, 469.253 and 469.259 were added to and made a part of 469.228 to 469.298 by legislative action but were not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

Note: See note under 469.228.

469.242 Exemption from State Personnel Relations Law. (1) The Oil Heat Commission and its employees are not subject to the provisions of the State Personnel Relations Law.

(2) A member of the commission is not a state employee subject to the provisions of the State Personnel Relations Law.

(3) A member of the commission is not an employee as defined in ORS 657.015, and no taxes or benefits under ORS chapter 657 may be paid on behalf of a member solely by reason of membership on the commission. [1993 c.617 §20]

Note: See notes under 469.228 and 469.241.

469.243 Eligibility of employees for group benefit plans. Notwithstanding the provisions of any other law, the employees of the independent corporation created by ORS 469.232 shall be eligible to participate in one of the group benefit plans described in ORS 243.135, until the Oil Heat Commission elects to provide alternate coverage. [1993 c.617 §21]

Note: See notes under 469.228 and 469.241.

469.244 [1989 c.926 §§16,25; repealed by 1993 c.617 §28]

469.245 Eligibility of employees to participate in Public Employees' Retirement System. (1) An employee of the Oil Heat Commission who is a member of the Public Employees' Retirement System on August 10, 1993, shall continue as a member of the Public Employees' Retirement System for service performed after August 10, 1993.

(2) An employee of the commission who was hired before August 10, 1993, and who is serving the six-month period of employment required by ORS 238.015 shall become a member of the system upon completion of the required period of employment.

(3) An employee of the commission who is hired on or after August 10, 1993, may not become a member of the system unless the employee gives written notice to the commission within 30 days after the employee is hired. The commission shall give written notice to the Public Employees' Retirement Board of an employee who has elected to become a member of the system within 30 days after the commission receives written notice from the employee. All service performed by the employee before the giving of notices provided for in this subsection shall be considered by the Public Employees' Retirement Board in computing the six-month period of employment required of the employee under the provisions of ORS 238.015.

(4) A member of the commission may not become a member of the Public Employees' Retirement System solely by reason of membership on the commission. [1993 c.617 §19]

Note: See notes under 469.228 and 469.241.

469.246 Powers of commission. The Oil Heat Commission may:

(1) Provide funds or grants for scientific research to discover and develop information and data regarding the efficient use of heating oil and the protection of the environment from heating oil tank releases.

(2) Disseminate reliable information founded upon the research undertaken by the commission.

(3) Study state and federal legislation, with respect to matters concerning the effect on the oil heat industry, and represent and protect the interests of the oil heat industry with respect to any legislation or proposed legislation or executive action which may affect that industry.

(4) Sue and be sued as a commission, without individual liability for acts of the commission within the scope of the powers conferred upon it by ORS 469.228 to 469.298.

(5) Enter into contracts which it considers appropriate to the carrying out of the purposes of the commission as authorized by ORS 469.228 to 469.298.

(6) Make grants to research agencies for financing special or emergency studies or for the purchase or acquisition of facilities necessary to carry out the purposes of the commission as authorized by ORS 469.228 to 469.298.

(7) Cooperate with any local, state or national organization or agency engaged in

work or activities similar to that of the commission and enter into contracts with or make grants to such organizations or agencies for carrying on joint programs.

(8) Act jointly and in cooperation with the Federal Government or any agency thereof in the administration of any program of the government or a governmental agency considered by the commission to be beneficial to the heating oil industry of this state and expend funds in connection therewith, provided that such program is compatible with the powers conferred by law.

(9) Prosecute, in the name of the State of Oregon, any suit or action for the collection of the assessment provided for in ORS 469.254.

(10) Advertise and publish information concerning the efficient use of heating oil and the protection of the environment.

(11) Accept grants, donations or gifts, from any source for expenditures for any purposes consistent with the powers conferred on the commission.

(12) Make appropriations and disbursements from funds received by the commission and pay all necessary administrative and other expenses consistent with the authority of the commission.

(13) In the commission's own name acquire, lease, rent, own and manage real property, which shall be subject to ad valorem taxation.

(14) Construct, equip and furnish buildings or other structures or facilities.

(15) Purchase, rent, lease or otherwise acquire all supplies, materials, equipment and services necessary to carry out the functions of the commission.

(16) Sell or otherwise dispose of any property acquired.

(17) Appoint subordinate officers and employees of the commission and prescribe their duties and authorities, including such delegation as the commission may consider appropriate and fix their compensation. [1989 c.926 §§13,18; 1991 c.67 §135; 1993 c.617 §5]

Note: See note under 469.228.

469.247 Accounting system; annual financial statement; report to Governor and legislature. (1) The Oil Heat Commission may contract with accountants to develop, install or revise accounting systems for the commission. All such contracts shall be in a form prescribed or approved by the Secretary of State, if such guidance is available to the commission within 30 days after the commission requests such guidance. A copy of the completed contract shall be furnished to the Secretary of State.

(2) The commission shall complete annually a financial statement presenting a true, accurate and complete record of the financial operations of the commission. The original statement shall be certified as true, accurate and complete by the administrator and filed with the Secretary of State within 120 days after the end of the fiscal year.

(3) The administrator shall make the financial statement available for public review at the office of the commission during regular working hours and shall include the financial statement in the report filed with the Legislative Assembly under subsection (4) of this section.

(4) Not later than January 1 of each odd-numbered year, the commission shall file with the Legislative Assembly and the Governor a report covering the activities and operations of the commission for the preceding two years. The report shall include a copy of the financial statement filed with the Secretary of State under subsection (2) of this section and a copy of the audit by the Secretary of State and the responses by the commission to the audit under ORS 469.253. [1993 c.617 §16]

Note: See notes under 469.228 and 469.241.

469.248 Rules. The Oil Heat Commission shall adopt rules to carry out the provisions of ORS 469.228 to 469.298. The rules shall include but need not be limited to:

(1) Procedures for processing remedial action claims that assure speedy processing and payment of claims by the commission.

(2) Procedures for determining the commission's level of involvement in responding to a release in coordination with the Department of Environmental Quality and in compliance with applicable department rules.

(3) Requirements a person must satisfy to become a qualified remedial action service provider.

(4) A definition of "reasonable remedial action costs."

(5) Limitations on reimbursement of reasonable remedial action costs. [1989 c.926 §39; 1991 c.67 §136; 1993 c.617 §6]

Note: See note under 469.228.

469.249 Petty cash fund. (1) The Oil Heat Commission may establish and maintain a petty cash fund, not to exceed a total of \$500, from moneys in the Heating Oil Remedial Action Account or the Heating Oil Education and Conservation Account.

(2) Moneys in the petty cash fund may be used for:

- (a) Making change;
- (b) Paying postage due on permitted mail;
- (c) Advancing travel expenses;

(d) Paying miscellaneous and incidental office expenses; and

(e) Other related incidental expenses of the commission. [1993 c.617 §18]

Note: See notes under 469.228 and 469.241.

469.250 Duties to provide advice and consultation related to remedial action, energy conservation and education. (1) The Director of the Department of Environmental Quality shall provide advice and consultation to the commission to clarify or carry out the purposes of ORS 469.228 to 469.298 related to remedial action.

(2) The administrator of the Office of Energy shall provide advice and consultation to the commission to clarify or carry out the purposes of ORS 469.228 to 469.298 related to energy conservation and education. [1989 c.926 §§7,8; 1991 c.67 §137]

Note: See note under 469.228.

469.252 [1989 c.926 §§14,15; repealed by 1993 c.617 §28]

469.253 Audit by Secretary of State; commission response. The Secretary of State shall audit the Oil Heat Commission consistent with the provisions of ORS 297.210. Not later than 90 days after the Secretary of State completes and delivers an audit to the commission, the commission shall notify the Secretary of State in writing of each action taken or proposed to be taken, if any, to respond to the findings and recommendations of the audit. Upon request of the commission, the Secretary of State may extend the 90-day period for good cause. [1993 c.617 §17]

Note: See notes under 469.228 and 469.241.

(Assessments)

469.254 Collection of assessments from oil marketers; amount. (1) The commission may collect an assessment, the amount of which the commission shall determine and may adopt by order on or before July 1 of each year, from each oil marketer, excluding gross receipts derived from equipment sales or service or other unrelated products or services. No assessment shall apply to any gross revenues derived prior to the date the commission order assessing such assessment was made. The order shall establish the portion of the assessment to be collected for the Heating Oil Education and Conservation Account and the portion of the assessment to be collected for the Heating Oil Remedial Action Account.

(2) The amount of the assessment provided for in subsection (1) of this section shall not exceed three and one-half percent of the gross revenue derived from the business of being an oil marketer, excluding gross revenue derived from equipment sales

or service or other unrelated products or services.

(3) The amount of the assessment provided for in subsection (1) of this section shall be determined so that the amount of revenues collected will not substantially exceed the amount of the estimated expenditures stated in the final budget prepared by the commission, including appropriate levels of reserves.

(4) Moneys collected under this section shall be deposited in the Heating Oil Education and Conservation Account established under ORS 469.267 and in the Heating Oil Remedial Action Account established under ORS 469.269 in accordance with the allocation established in the order issued under subsection (1) of this section. [1989 c.926 §19; 1993 c.617 §7]

Note: See note under 469.228.

469.256 [1989 c.926 §29; repealed by 1993 c.617 §29]

469.258 Reports by oil marketers. (1) Each oil marketer shall make reports to the commission on forms prescribed by the commission.

(2) No oil marketer shall fail to make the report or shall make the report falsely.

(3) The commission shall fix dates upon which reports shall be made by all oil marketers. Upon such dates, all assessment moneys shall be turned over to the commission which shall make suitable records thereof. [1989 c.926 §20; 1991 c.641 §6]

Note: See note under 469.228.

469.259 Failure to file report or pay assessment. (1) If any oil marketer fails or refuses to file any report required by ORS 469.258 and fails or refuses to pay the assessment due under ORS 469.254, the commission may estimate the oil marketer's gross revenue and make a demand for the assessments due.

(2) If an oil marketer fails to pay the assessment required under ORS 469.254, the commission may add the cost of collection to the penalty for nonpayment or late payment imposed under ORS 469.290 and 469.292. [1991 c.641 §2; 1993 c.617 §8]

Note: See notes under 469.228 and 469.241.

469.260 Records of persons required to pay assessments; rules; inspections and audits. (1) Each person required to pay an assessment under ORS 469.228 to 469.298 shall keep accurate records sufficient to enable the commission to determine by inspection and audit the accuracy of assessments paid or due to the commission and of reports made or due to the commission.

(2) The commission may adopt rules establishing what records oil marketers shall

keep to comply with subsection (1) of this section.

(3) The commission, or any person authorized by the commission, may inspect and audit the records referred to in subsection (1) of this section for the purpose referred to in subsection (1) of this section.

(4) No person shall refuse to permit an inspection and audit under subsection (3) of this section during business hours. [1989 c.926 §21; 1991 c.67 §138]

Note: See note under 469.228.

469.262 Cancellation of delinquent assessment. (1) The commission, by order, may cancel an assessment which has been delinquent for five years or more, if it determines that:

(a) The amount of the assessment is less than \$1 and that further collection effort or expense does not justify the collection thereof; or

(b) The assessment is wholly uncollectible.

(2) The order shall contain adequate information as to why the assessment cannot be collected. [1989 c.926 §24]

Note: See note under 469.228.

(Finances)

469.267 Heating Oil Education and Conservation Account. (1) The Heating Oil Education and Conservation Account is established separate and distinct from the General Fund in the State Treasury.

(2) All moneys collected under ORS 469.254 shall be deposited in the State Treasury and the portion of the moneys assessed for the Heating Oil Education and Conservation Account shall be credited to the Heating Oil Education and Conservation Account.

(3) The State Treasurer may invest and reinvest moneys in the account in the manner provided by law.

(4) The moneys in the account are continuously appropriated to the commission to be used for the following purposes:

(a) To pay the expenses of the commission; and

(b) For funding education and conservation programs.

(5) The commission by rule shall establish a maximum dollar limit for the account balance for which assessments may be collected taking into consideration the purposes of the account under subsection (4) of this section, including appropriate levels of reserves. [1989 c.926 §26; 1993 c.617 §9]

Note: See note under 469.228.

469.269 Heating Oil Remedial Action Account. (1) The Heating Oil Remedial Action Account is established separate and distinct from the General Fund in the State Treasury.

(2) The assessments collected under ORS 469.254 shall be deposited into the State Treasury and the portion of the moneys assessed for the Heating Oil Remedial Action Account shall be credited to the Heating Oil Remedial Action Account.

(3) The State Treasurer may invest and reinvest moneys in the account in the manner provided by law.

(4) The moneys in the account are appropriated continuously to the commission to be used as provided in subsection (5) of this section.

(5) Moneys in the account may be used by the commission for the following purposes:

- (a) Payment of remedial action costs; and
- (b) Payment of the costs of administering the account including but not limited to:
 - (A) Expenses of the commission;
 - (B) Costs of reviewing claims; and
 - (C) Costs of research to reduce costs and enhance environmental protection.

(6) The commission by rule shall establish a maximum dollar limit for the account balance for which assessments may be collected taking into account the purposes of the account under subsection (5) of this section, including appropriate levels of reserves. [1989 c.926 §27; 1993 c.617 §10]

Note: See note under 469.228.

469.270 [1989 c.926 §28; 1991 c.67 §139; repealed by 1993 c.617 §29]

(Remedial Action Costs)

469.274 Claims for remedial action costs; notice; final claim. (1) Any person liable for the cleanup of a release under ORS 466.645, when incurring any remedial action costs, or the Department of Environmental Quality, when incurring any remedial action costs, shall give written notice of claim to the commission within 20 days after the release is discovered.

(2) The notice required under subsection (1) of this section shall provide all information required by the Oil Heat Commission by rule, including but not limited to an estimate of total costs to complete the remedial action.

(3) The notice may be revised as needed, subject to acceptance by the commission.

(4) The final claim, including written proof of the remedial action costs under ORS

469.276, may not exceed the cost estimate provided in the notice of claim or the revised notice of claim, as accepted by the commission.

(5) A person who is responsible for remedial action but who is unable to pay in advance the remedial action costs may apply to the commission for certification that the remedial action costs incurred qualify for reimbursement under ORS 469.278. The commission shall pay for such costs upon completion of the remedial action and compliance with the requirements of ORS 469.276.

(6) The commission, upon receipt of a notice of claim, shall furnish to the claimant a form for filing a proof of the remedial action costs incurred.

(7) According to the provisions of ORS 316.746, payments by the commission for remedial action costs shall be subtracted from the federal taxable income in the computation of state taxable income of the person who is responsible for the remedial action. [1989 c.926 §§31,32; 1991 c.641 §7; 1993 c.617 §11]

Note: See note under 469.228.

469.276 Time for filing proof of claim; failure to file. (1) Written proof of the remedial action costs must be filed with the commission within 90 days after the date the remedial action costs are incurred. Failure to furnish proof within the time required shall not invalidate or reduce any claim if it was not reasonably possible to give proof within such time, provided proof is furnished as soon as reasonably possible and in no event, except in the absence of legal capacity, later than one year from the time proof is otherwise required.

(2) No person shall willfully conceal or misrepresent any material fact or circumstances concerning a claim for or proof of remedial action costs.

(3) A violation of subsection (2) of this section shall be a basis for a rejection of a claim for remedial action costs. [1989 c.926 §33]

Note: See note under 469.228.

469.278 Time for payment of claims. (1) Subject to ORS 469.286, claims for remedial action costs payable from the Heating Oil Remedial Action Account shall be determined and shall be paid, in full or in part, or rejected within 60 days of receipt of due written proof of remedial action costs.

(2) The commission may extend by up to 30 days the time provided in subsection (1) for determining, paying or rejecting claims by giving notice of the extension to the person seeking the remedial action costs. [1989 c.926 §34]

Note: See note under 469.228.

469.280 Demand for hearing; contents; time for filing. Any person who has complied with ORS 469.276, but has received less than the full amount of the claim for reasons other than provided in ORS 469.286, may seek up to the full amount of the claim by filing a demand for a hearing with the commission. The demand shall identify the name and address of the claimant, the date proof of the remedial action costs was filed and the date of the determination paying the claim, in full or in part, or rejecting the claim. The demand for a hearing must be filed within 30 days of the determination paying the claim, in full or in part, or rejecting the claim. [1989 c.926 §35]

Note: See note under 469.228.

469.282 Hearing; final order. (1) If timely demand for a hearing is filed, the commission shall hold a hearing on the order as provided by ORS 183.310 to 183.550. In the absence of a timely demand for a hearing, no person shall be entitled to judicial review of the determination.

(2) After the hearing, the commission shall enter a final order vacating, modifying or affirming the determination. [1989 c.926 §36]

Note: See note under 469.228.

469.284 Judicial review. A person aggrieved by an order of the commission which has been the subject of a timely application for hearing before the commission shall be entitled to judicial review of the order under ORS 183.310 to 183.550. [1989 c.926 §37]

Note: See note under 469.228.

469.286 Effect of insufficient money to pay claims; partial payment. Notwithstanding any other provision of ORS 469.228 to 469.298:

(1) The commission has no obligation to pay any claims for remedial action costs if the moneys in the account are insufficient to pay all of the claims for which notice of claim or other forms of written proof have been filed, but which have not yet been determined, paid or rejected. The commission may adopt rules providing for the partial installment or deferred payment of claims for remedial action costs whenever the moneys within the account are insufficient;

(2) If the commission determines that the revenues to be received by the Heating Oil Remedial Action Account will be insufficient to pay all claims and provide appropriate levels of reserves, the commission may adopt rules limiting the amount or percentage of payment by the commission of remedial action costs; and

(3) The commission may provide for different payment schedules by customer class, including but not limited to:

- (a) Owner-occupied residential;
- (b) Nonowner-occupied residential;
- (c) Nonprofit; and
- (d) Other customer classes. [1989 c.926 §38; 1991 c.67 §140; 1993 c.617 §12]

Note: See note under 469.228.

(Enforcement)

469.290 Fine for failure to pay assessment. If any oil marketer fails to pay the assessments required by ORS 469.254 within 60 days of the time set by the commission, the oil marketer shall pay an additional fine equal to twice the amount of the assessment. [1989 c.926 §23; 1991 c.641 §8; 1993 c.617 §13]

Note: See note under 469.228.

469.292 Penalty for late payment. Any person who delays transmittal of funds 10 calendar days beyond the time set by the commission shall pay five percent of the amount due then and one percent of the amount due for each month of delay thereafter. [1989 c.926 §22; 1991 c.641 §9]

Note: See note under 469.228.

(Miscellaneous)

469.296 Administration and enforcement of ORS 469.228 to 469.298. (1) Except as otherwise provided in ORS 469.228 to 469.298, the provisions of ORS chapters 240, 276, 279, 282, 283, 291 and 292 do not apply to the Oil Heat Commission or to the administration and enforcement of ORS 469.228 to 469.298.

(2) Notwithstanding subsection (1) of this section, ORS 279.800 to 279.833, 282.210, 282.220 and 282.230 apply to the commission. [1989 c.926 §17; 1993 c.617 §14]

Note: See note under 469.228.

469.298 Short title. ORS 469.228 to 469.298 may be cited as the Oil Heat Commission Act. [1989 c.926 §2]

Note: See note under 469.228.

REGULATION OF ENERGY FACILITIES

(General Provisions)

469.300 Definitions for ORS 469.300 to 469.619. As used in ORS 469.300 to 469.570, 469.590 to 469.619, 469.930 and 469.992, unless the context requires otherwise:

(1) "Administrator" means the administrator of the Office of Energy created under ORS 469.030.

(2) "Applicant" means any person who makes application for a site certificate in the manner provided in ORS 469.300 to 469.570, 469.590 to 469.619, 469.930 and 469.992.

(3) "Application" means a request for approval of a particular site or sites for the

construction and operation of an energy facility or the construction and operation of an additional energy facility upon a site for which a certificate has already been issued, filed in accordance with the procedures established pursuant to ORS 469.300 to 469.570, 469.590 to 469.619, 469.930 and 469.992.

(4) "Associated transmission lines" means new transmission lines constructed to connect an energy facility to the first point of junction of such transmission line or lines with either a power distribution system or an interconnected primary transmission system or both or to the Northwest Power Grid.

(5) "Combustion turbine power plant" means a thermal power plant consisting of one or more fuel-fired combustion turbines and any associated waste heat combined cycle generators.

(6) "Construction" means work performed on a site, excluding surveying, exploration or other activities to define or characterize the site, the cost of which exceeds \$250,000.

(7) "Council" means the Energy Facility Siting Council established under ORS 469.450.

(8) "Electric utility" means individuals, regulated electrical companies, people's utility districts, joint operating agencies, electric cooperatives, municipalities or any combination thereof, engaged in or authorized to engage in the business of generating, transmitting or distributing electric energy. "Electric utility" includes any person or public agency generating electric energy from an energy facility for its own consumption.

(9)(a) "Energy facility" means any of the following:

(A) An electric power generating plant with a nominal electric generating capacity of 25 megawatts or more, including but not limited to:

(i) Thermal power;

(ii) Geothermal, solar or wind power produced from a single energy generation area; or

(iii) Combustion turbine power plant.

(B) A nuclear installation as defined in this section.

(C) A high voltage transmission line of more than 10 miles in length with a capacity of 230,000 volts or more to be constructed in more than one city or county in this state, but excluding:

(i) Lines proposed for construction entirely within 500 feet of an existing corridor occupied by high voltage transmission lines with a capacity of 230,000 volts or more; and

(ii) Lines of 57,000 volts or more that are rebuilt and upgraded to 230,000 volts along the same right of way.

(D) A solar collecting facility using more than 100 acres of land.

(E) A pipeline that is:

(i) At least six inches in diameter, and five or more miles in length, used for the transportation of crude petroleum or a derivative thereof, liquified natural gas, a geothermal energy form in a liquid state or other fossil energy resource, excluding a pipeline conveying natural or synthetic gas;

(ii) At least 16 inches in diameter, and five or more miles in length, used for the transportation of natural or synthetic gas, but excluding:

(I) A pipeline proposed for construction of which less than five miles of the pipeline is more than 50 feet from a public road, as defined in ORS 368.001; or

(II) A parallel or upgraded pipeline up to 24 inches in diameter that is constructed within the same right of way as an existing 16-inch or larger pipeline that has a site certificate, if all studies and necessary mitigation conducted for the existing site certificate meet or are updated to meet current site certificate standards; or

(iii) At least 16 inches in diameter and five or more miles in length used to carry a geothermal energy form in a gaseous state but excluding a pipeline used to distribute heat within a geothermal heating district established under ORS chapter 523.

(F) A synthetic fuel plant which converts a natural resource including, but not limited to, coal, oil or biomass to a gas, liquid or solid product capable of being burned to produce the equivalent of 2×10^9 Btu of heat a day.

(G) A storage facility for liquified natural gas constructed after September 29, 1991, that is designed to hold at least 70,000 gallons.

(H) A surface facility related to an underground gas storage reservoir that, at design injection or withdrawal rates, will receive or deliver more than 50 million cubic feet of natural or synthetic gas per day, or require more than 4,000 horsepower of natural gas compression to operate, but excluding:

(i) The underground storage reservoir;

(ii) The injection, withdrawal or monitoring wells and individual wellhead equipment; and

(iii) An underground gas storage reservoir into which gas is injected solely for testing or reservoir maintenance purposes or

to facilitate the secondary recovery of oil or other hydrocarbons.

(b) "Energy facility" does not include a hydroelectric facility.

(10) "Energy generation area" means an area within which the effects of two or more small generating plants may accumulate so the small generating plants have effects of a magnitude similar to a single generating plant of 25 megawatts or more. An "energy generation area" for facilities using a geothermal resource and covered by a unit agreement, as provided in ORS 522.405 to 522.545 or by federal law, shall be defined in that unit agreement. If no such unit agreement exists, an energy generation area for facilities using a geothermal resource shall be the area that is within two miles, measured from the electrical generating equipment of the facility, of an existing or proposed geothermal electric power generating plant, not including the site of any other such plant not owned or controlled by the same person.

(11) "Extraordinary nuclear occurrence" means any event causing a discharge or dispersal of source material, special nuclear material or by-product material as those terms are defined in ORS 453.605, from its intended place of confinement off-site, or causing radiation levels off-site, that the United States Nuclear Regulatory Commission or its successor determines to be substantial and to have resulted in or to be likely to result in substantial damages to persons or property off-site.

(12) "Facility" means an energy facility together with any related or supporting facilities.

(13) "Geothermal reservoir" means an aquifer or aquifers containing a common geothermal fluid.

(14) "Local government" means a city or county.

(15) "Nominal electric generating capacity" means the maximum net electric power output of an energy facility based on the average temperature, barometric pressure and relative humidity at the site during the times of the year when the facility is intended to operate.

(16) "Nuclear incident" means any occurrence, including an extraordinary nuclear occurrence, that results in bodily injury, sickness, disease, death, loss of or damage to property or loss of use of property due to the radioactive, toxic, explosive or other hazardous properties of source material, special nuclear material or by-product material as those terms are defined in ORS 453.605.

(17) "Nuclear installation" means any power reactor; nuclear fuel fabrication plant; nuclear fuel reprocessing plant; waste disposal facility for radioactive waste; and any facility handling that quantity of fissionable materials sufficient to form a critical mass. "Nuclear installation" does not include any such facilities which are part of a thermal power plant.

(18) "Nuclear power plant" means an electrical or any other facility using nuclear energy with a nominal electric generating capacity of 25 megawatts or more, for generation and distribution of electricity, and associated transmission lines.

(19) "Office of Energy" means the Office of Energy created under ORS 469.030.

(20) "Person" means an individual, partnership, joint venture, private or public corporation, association, firm, public service company, political subdivision, municipal corporation, government agency, people's utility district, or any other entity, public or private, however organized.

(21) "Project order" means the order, including any amendments, issued by the Office of Energy under ORS 469.330.

(22)(a) "Radioactive waste" means all material which is discarded, unwanted or has no present lawful economic use, and contains mined or refined naturally occurring isotopes, accelerator produced isotopes and by-product material, source material or special nuclear material as those terms are defined in ORS 453.605. The term does not include those radioactive materials identified in OAR 345-50-020, 345-50-025 and 345-50-035, adopted by the council on December 12, 1978, and revised periodically for the purpose of adding additional isotopes which are not referred to in OAR 345-50 as presenting no significant danger to the public health and safety.

(b) Notwithstanding paragraph (a) of this subsection, "radioactive waste" does not include uranium mine overburden or uranium mill tailings, mill wastes or mill by-product materials as those terms are defined in Title 42, United States Code, section 2014, on June 25, 1979.

(23) "Related or supporting facilities" means any structure, proposed by the applicant, to be constructed or substantially modified in connection with the construction of an energy facility, including associated transmission lines, reservoirs, storage facilities, intake structures, road and rail access, pipelines, barge basins, office or public buildings, and commercial and industrial structures. "Related or supporting facilities" does not include geothermal or underground gas storage reservoirs, production, injection

or monitoring wells or wellhead equipment or pumps.

(24) "Site" means any proposed location of an energy facility and related or supporting facilities.

(25) "Site certificate" means the binding agreement between the State of Oregon and the applicant, authorizing the applicant to construct and operate a facility on an approved site, incorporating all conditions imposed by the council on the applicant.

(26) "Thermal power plant" means an electrical facility using any source of thermal energy with a nominal electric generating capacity of 25 megawatts or more, for generation and distribution of electricity, and associated transmission lines, including but not limited to a nuclear-fueled, geothermal-fueled or fossil-fueled power plant, but not including a portable power plant the principal use of which is to supply power in emergencies. "Thermal power plant" includes a nuclear-fueled thermal power plant that has ceased to operate.

(27) "Transportation" means the transport within the borders of the State of Oregon of radioactive material destined for or derived from any location.

(28) "Underground gas storage reservoir" means any subsurface sand, strata, formation, aquifer, cavern or void, whether natural or artificially created, suitable for the injection, storage and withdrawal of natural gas or other gaseous substances. "Underground gas storage reservoir" includes a pool as defined in ORS 520.005.

(29) "Utility" includes:

(a) An individual, a regulated electrical company, a people's utility district, a joint operating agency, an electric cooperative, municipality or any combination thereof, engaged in or authorized to engage in the business of generating, transmitting or distributing electric energy;

(b) A person or public agency generating electric energy from an energy facility for its own consumption; and

(c) A person engaged in this state in the transmission or distribution of natural or synthetic gas.

(30) "Waste disposal facility" means a geographical site in or upon which radioactive waste is held or placed but does not include a site at which radioactive waste used or generated pursuant to a license granted under ORS 453.635 is stored temporarily, a site of a thermal power plant used for the temporary storage of radioactive waste from that plant for which a site certificate has been issued pursuant to this chapter or a site used for temporary storage of radioactive

waste from a reactor operated by a college, university or graduate center for research purposes and not connected to the Northwest Power Grid. As used in this subsection, "temporary storage" includes storage of radioactive waste on the site of a nuclear-fueled thermal power plant for which a site certificate has been issued until a permanent storage site is available by the Federal Government. [Formerly 453.305; 1977 c.796 §1; 1979 c.283 §1; 1981 c.587 §1; 1981 c.629 §2; 1981 c.707 §1; 1981 c.866 §1; 1991 c.480 §4; 1993 c.544 §3; 1993 c.569 §3; 1995 c.505 §6; 1995 c.551 §10]

469.310 Policy. In the interests of the public health and the welfare of the people of this state, it is the declared public policy of this state that the siting, construction and operation of energy facilities shall be accomplished in a manner consistent with protection of the public health and safety and in compliance with the energy policy and air, water, solid waste, land use and other environmental protection policies of this state. It is, therefore, the purpose of ORS 469.300 to 469.570, 469.590 to 469.619, 469.930 and 469.992 to exercise the jurisdiction of the State of Oregon to the maximum extent permitted by the United States Constitution and to establish in cooperation with the Federal Government a comprehensive system for the siting, monitoring and regulating of the location, construction and operation of all energy facilities in this state. [Formerly 453.315]

(Siting)

469.320 Site certificate required; exceptions. (1) Except as provided in subsection (2) of this section, no facility shall be constructed or expanded unless a site certificate has been issued for the site thereof in the manner provided in ORS 469.300 to 469.570, 469.590 to 469.619, 469.930 and 469.992. No facility shall be constructed or operated except in conformity with the requirements of ORS 469.300 to 469.570, 469.590 to 469.619, 469.930 and 469.992.

(2) No site certificate shall be required for:

(a) An energy facility for which no site certificate has been issued that, on August 2, 1993, had operable electric generating equipment for a modification that uses the same fuel type and increases electric generating capacity, if:

(A) The site is not enlarged; and

(B) The ability of the energy facility to use fuel for electricity production under peak steady state operating conditions is not more than 200 million Btu per hour greater than it was on August 2, 1993, or the energy facility expansion is called for in the short-term plan of action of an energy resource

plan that has been acknowledged by the Public Utility Commission of Oregon.

(b) Construction or expansion of any interstate natural gas pipeline or associated underground natural gas storage facility authorized by and subject to the continuing regulation of the Federal Energy Regulatory Commission or successor agency.

(c) An energy facility, except coal and nuclear power plants, if the energy facility:

(A) Sequentially produces electrical energy and useful thermal energy from the same fuel source; and

(B) Under normal operating conditions, has a useful thermal energy output of no less than 33 percent of the total energy output or the fuel chargeable to power heat rate value is not greater than 6,000 Btu per kilowatt hour.

(d) Temporary storage, at the site of a nuclear-fueled thermal power plant for which a site certificate has been issued by the State of Oregon, of radioactive waste from the plant.

(3) No sooner than one year after August 2, 1993, the council may review, and if necessary, revise the fuel chargeable to power heat rate value set forth in subsection (2)(c)(B) of this section. In making its determination, the council shall ensure that the fuel chargeable to power heat rate value for facilities set forth in subsection (2)(c)(B) of this section remains significantly lower than the fuel chargeable to power heat rate value for the best available, commercially viable thermal power plant technology at the time of the revision.

(4) Any person who proposes to construct or enlarge an energy facility and who claims an exemption under subsection (2)(a) or (c) of this section from the requirement to obtain a site certificate shall request the Energy Facility Siting Council to determine whether the proposed facility qualifies for the claimed exemption. The council shall make its determination within 60 days after the request for exemption is filed. An appeal from the council's determination on a request for exemption shall be made under ORS 469.403, except that the scope of review by the Supreme Court shall be the same as a review by a circuit court under ORS 183.484. The record on review by the Supreme Court shall be the record established in the council proceeding on the exemption.

(5) Notwithstanding subsection (1) of this section, a separate site certificate shall not be required for:

(a) Transmission lines, storage facilities, pipelines or similar related or supporting facilities, if such related or supporting facili-

ties are addressed in and are subject to a site certificate for another energy facility; or

(b) Expansion within the site or within the energy generation area of a facility for which a site certificate has been issued, if the existing site certificate has been amended to authorize expansion.

(6) If the substantial loss of the steam host causes a facility exempt under subsection (2)(c) of this section to substantially fail to meet the exemption requirements under subsection (2)(c) of this section, the electric generating facility shall cease to operate one year after the substantial loss of the steam host unless an application for a site certificate has been filed in accordance with the provisions of ORS 469.300 to 469.570.

(7) As used in this section:

(a) "Total energy output" means the sum of useful thermal energy output and useful electrical energy output.

(b) "Useful thermal energy" means the verifiable thermal energy used in any viable industrial or commercial process, heating or cooling application. [Formerly 453.325; 1977 c.86 §1; 1979 c.730 §8; 1982 s.s.1 c.6 §1; 1987 c.200 §5; 1991 c.480 §5; 1993 c.569 §4; 1995 c.505 §7]

469.330 Notice of intent to file application for site certificate; public notice; standards, application requirements and study requirements; project order. (1) Each applicant for a site certificate shall submit to the Energy Facility Siting Council a notice of intent to file an application for a site certificate. The notice of intent must provide information about the proposed site and the characteristics of the facility sufficient for the preparation of the Office of Energy's project order.

(2) The council shall cause public notice to be given upon receipt of a notice of intent by the council. The public notice shall provide a description of the proposed site and facility in sufficient detail to inform the public of the location and proposed use of the site.

(3) Following review of the notice of intent and any public comments received in response to the notice of intent, the Office of Energy may hold a preapplication conference with state agencies and local governments that have regulatory or advisory responsibility with respect to the facility. After the preapplication conference, the Office of Energy shall issue a project order establishing the statutes, administrative rules, council standards, local ordinances, application requirements and study requirements for the site certificate application. A project order is not a final order.

(4) A project order issued under subsection (3) of this section may be amended

at any time by either the Office of Energy or the council. [Formerly 453.335; 1977 c.794 §9; 1989 c.88 §1; 1993 c.569 §5; 1995 c.505 §8]

469.340 [1975 c.552 §37; 1975 c.606 §26a; repealed by 1981 c.629 §3]

469.350 Application for site certificate; comment and recommendation. (1) Applications for site certificates shall be made to the Energy Facility Siting Council in a form prescribed by the council and accompanied by the fee required by ORS 469.421.

(2) Copies of the notice of intent and of the application shall be sent for comment and recommendation within specified deadlines established by the council to the Department of Environmental Quality, the Water Resources Commission, the State Fish and Wildlife Commission, the Water Resources Director, the State Geologist, the State Forestry Department, the Public Utility Commission of Oregon, the State Department of Agriculture, the Department of Land Conservation and Development, any other state agency that has regulatory or advisory responsibility with respect to the facility and any city or county affected by the application.

(3) The Office of Energy shall notify the applicant whether the application is complete. When the Office of Energy determines an application is complete, the Office of Energy shall notify the applicant and provide notice to the public. [Formerly 453.345; 1977 c.794 §10; 1989 c.88 §2; 1993 c.569 §6; 1995 c.505 §9]

469.360 Evaluation of site applications; costs; payment. (1) The Energy Facility Siting Council shall evaluate each site certificate application. As part of its evaluation, the council may commission an independent study by an independent contractor, state agency, local government or any other person, of any aspect of the proposed facility within its statutory authority to review. The council may compensate a state agency or local government for expenses related to:

(a) Review of the notice of intent, the application or a request for an expedited review;

(b) The state agency's or local government's participation in a council proceeding; and

(c) The performance of specific studies necessary to complete the council's statutory evaluation of the application.

(2) The council may enter into a contract under subsection (1) of this section only after the council makes a determination that the council is unable to fully evaluate the application without assistance and identifies specific issues to be addressed and only pursuant to a written contract or agreement with the independent contractor, state

agency, local government or other person. The council shall compensate the independent contractor, state agency, local government or other person only to the extent the costs are directly related to issues identified by the council. These expenses shall not include expenses of other state agencies for which a fee is otherwise provided under state law or local ordinance. [Formerly 453.355; 1987 c.450 §1; 1989 c.88 §3; 1993 c.569 §7; 1995 c.505 §10]

469.370 Draft proposed order for hearing; issues raised; final order; expedited processing. (1) Based on its review of the application and the comments and recommendations on the application from state agencies and local governments, the Office of Energy shall prepare and issue a draft proposed order on the application.

(2) Following issuance of the draft proposed order, the Energy Facility Siting Council shall hold one or more public hearings on the application for a site certificate in the affected area and elsewhere, as the council considers necessary. Notice of the hearing shall be mailed at least 20 days before the hearing. The notice shall, at a minimum:

(a) Comply with the requirements of ORS 197.763 (2), with respect to the persons notified;

(b) Include a description of the facility and the facility's general location;

(c) Include the name of an agency representative to contact and the telephone number where additional information may be obtained;

(d) State that copies of the application and draft proposed order are available for inspection at no cost and will be provided at a reasonable cost; and

(e) State that failure to raise an issue in person or in writing prior to the close of the record of the public hearing with sufficient specificity to afford the decision maker an opportunity to respond to the issue precludes consideration of the issue in a contested case.

(3) Any issue that may be the basis for a contested case shall be raised not later than the close of the record at or following the final public hearing prior to issuance of the Office of Energy's proposed order. Such issues shall be raised with sufficient specificity to afford the council, the Office of Energy and the applicant an adequate opportunity to respond to each issue. A statement of this requirement shall be made at the commencement of any public hearing on the application.

(4) After reviewing the application, the draft proposed order and any testimony given

at the public hearing and after consulting with other agencies, the Office of Energy shall issue a proposed order recommending approval or rejection of the application. The Office of Energy shall issue public notice of the proposed order, that shall include notice of a contested case hearing specifying a deadline for requests to participate as a party or limited party and a date for the prehearing conference.

(5) Following receipt of the proposed order from the Office of Energy, the council shall conduct a contested case hearing on the application for a site certificate in accordance with the applicable provisions of ORS 183.310 to 183.550 and any procedures adopted by the council. The applicant shall be a party to the contested case. The council may permit any other person to become a party to the contested case in support of or in opposition to the application only if the person appeared in person or in writing at the public hearing on the site certificate application. Issues that may be the basis for a contested case shall be limited to those raised on the record of the public hearing under subsection (3) of this section, unless:

(a) The Office of Energy failed to follow the requirements of subsection (2) or (3) of this section; or

(b) The action recommended in the proposed order, including any recommended conditions of the approval, differs materially from that described in the draft proposed order, in which case only new issues related to such differences may be raised.

(6) If no person requests party status to challenge the Office of Energy's proposed order, the proposed order shall be forwarded to the council and the contested case hearing shall be concluded.

(7) At the conclusion of the contested case, the council shall issue a final order, either approving or rejecting the application based upon the standards adopted under ORS 469.501 and any additional statutes, rules or local ordinances determined to be applicable to the facility by the project order, as amended. The council shall make its decision by the affirmative vote of at least four members approving or rejecting any application for a site certificate. The council may amend or reject the proposed order, so long as the council provides public notice of its hearing to adopt a final order, and provides an opportunity for the applicant and any party to the contested case to comment on material changes to the proposed order, including material changes to conditions of approval resulting from the council's review. The council's order shall be considered a final order for purposes of appeal.

(8) Rejection or approval of an application, together with any conditions that may be attached to the certificate, shall be subject to judicial review as provided in ORS 469.403.

(9) The council shall either approve or reject an application for a site certificate:

(a) Within 24 months after filing an application for a nuclear installation, or for a thermal power plant, other than that described in paragraph (b) of this subsection, with a name plate rating of more than 200,000 kilowatts;

(b) Within nine months after filing of an application for a site certificate for a combustion turbine power plant, a geothermal-fueled power plant or an underground storage facility for natural gas;

(c) Within six months after filing an application for a site certificate for an energy facility, if the application is:

(A) To expand an existing industrial facility to include an energy facility;

(B) To expand an existing energy facility to achieve a nominal electric generating capacity of between 25 and 50 megawatts; or

(C) To add injection or withdrawal capacity to an existing underground gas storage facility; or

(d) Within 12 months after filing an application for a site certificate for any other energy facility.

(10) At the request of the applicant, the council shall allow expedited processing of an application for a site certificate for an energy facility with a generating capacity of less than 100 megawatts. No notice of intent shall be required. Following approval of a request for expedited review, the Office of Energy shall issue a project order, which may be amended at any time. The council shall either approve or reject an application for a site certificate within six months after filing the site certificate application if there are no intervenors in the contested case conducted under subsection (5) of this section. If there are intervenors in the contested case, the council shall either approve or reject an application within nine months after filing the site certificate application. For purposes of this subsection, the generating capacity of a thermal power plant is the nameplate rating of the electrical generator proposed to be installed in the plant. For a geothermal, wind or solar facility, the generating capacity is the electrical generating capacity available for delivery at the point the facility is connected to the transmission system, as demonstrated through a power sales contract or other objective means.

(11) Failure of the council to comply with the deadlines set forth in subsection (9) or (10) of this section shall not result in the automatic issuance or denial of a site certificate.

(12) The council shall specify in the site certificate a date by which construction of the facility must begin. Except for the portion of output to be used by the applicant, before construction begins, a site certificate for a thermal power plant shall require a sales contract with an energy supplier or combination of energy suppliers for at least 80 percent of the output from the energy facility.

(13) For a facility that is subject to and has been or will be reviewed by a federal agency under the National Environmental Policy Act, 42 U.S.C. Section 4321, et seq., the council shall conduct its site certificate review, to the maximum extent feasible, in a manner that is consistent with and does not duplicate the federal agency review. Such coordination shall include, but need not be limited to:

(a) Elimination of duplicative application, study and reporting requirements;

(b) Council use of information generated and documents prepared for the federal agency review;

(c) Development with the federal agency and reliance on a joint record to address applicable council standards;

(d) Whenever feasible, joint hearings and issuance of a site certificate decision in a time frame consistent with the federal agency review; and

(e) To the extent consistent with applicable state standards, establishment of conditions in any site certificate that are consistent with the conditions established by the federal agency. [Formerly 453.365; 1977 c.296 §14; 1977 c.794 §11; 1977 c.895 §1; 1985 c.569 §17; 1993 c.544 §4; 1993 c.569 §8; 1995 c.79 §288; 1995 c.505 §11]

469.371 [1985 c.569 §5; 1991 c.480 §6; repealed by 1993 c.544 §9]

469.372 [1985 c.569 §14; 1985 c.673 §196; repealed by 1993 c.544 §9]

469.374 [1985 c.569 §15; repealed by 1993 c.544 §9]

469.375 Required findings for radioactive waste disposal facility certificate. The council shall not issue a site certificate for a waste disposal facility for uranium mine overburden or uranium mill tailings, mill wastes or mill by-product or for radioactive waste or radioactively contaminated containers or receptacles used in the transportation, storage, use or application of radioactive material, unless, accompanying its decision it finds:

(1) The site is:

(a) Suitable for disposal of such wastes, and the amount of the wastes, intended for disposal at the site;

(b) Not located in or adjacent to:

(A) An area determined to be potentially subject to river or creek erosion within the lifetime of the facility;

(B) Within the 500-year flood plain of a river, taking into consideration the area determined to be potentially subject to river or creek erosion within the lifetime of the facility;

(C) An active fault or an active fault zone;

(D) An area of ancient, recent or active mass movement including land sliding, flow or creep;

(E) An area subject to ocean erosion; or

(F) An area having experienced volcanic activity within the last two million years.

(2) There is no available disposal technology and no available alternative site for disposal of such wastes that would better protect the health, safety and welfare of the public and the environment;

(3) The disposal of such wastes and the amount of the wastes, at the site will be compatible with the regulatory programs of Federal Government for disposal of such wastes;

(4) The disposal of such wastes, and the amount of the wastes, at the site will be coordinated with the regulatory programs of adjacent states for disposal of such wastes;

(5) That following closure of the site, there will be no release of radioactive materials or radiation from the waste;

(6) That suitable deed restrictions have been placed on the site recognizing the hazard of the material; and

(7) That, where federal funding for remedial actions is not available, a surety bond in the name of the state has been provided in an amount determined by the Office of Energy to be sufficient to cover any costs of closing the site and monitoring it or providing for its security after closure and to secure performance of any site certificate conditions. The bond may be withdrawn when the council finds that:

(a) The radioactive waste has been disposed of at a waste disposal facility for which a site certificate has been issued; and

(b) A fee has been paid to the State of Oregon sufficient for monitoring the site after closure.

(8) If any section, portion, clause or phrase of this section is for any reason held to be invalid or unconstitutional the remain-

ing sections, portions, clauses and phrases shall not be affected but shall remain in full force or effect, and to this end the provisions of this section are severable. [Formerly 459.625; 1979 c.283 §3; 1981 c.587 §3; 1985 c.4]

469.380 [Formerly 453.375; 1977 c.794 §12; 1977 c.895 §2; 1993 c.569 §9; repealed by 1995 c.505 §32]

469.390 [Formerly 453.385; repealed by 1993 c.569 §31]

469.400 [Formerly 453.395; 1977 c.794 §13; 1977 c.895 §3; repealed by 1993 c.569 §10 (469.401 and 469.403 enacted in lieu of 469.400)]

469.401 Energy facility site certificate; conditions; effect of issuance on state and local government agencies. (1) Upon approval, the site certificate with any conditions prescribed by the Energy Facility Siting Council shall be executed by the chairperson of the council and by the applicant. The certificate shall authorize the applicant to construct, operate and retire the proposed facility subject to the conditions set forth in the site certificate. The duration of the site certificate shall be the life of the facility.

(2) The site certificate shall contain conditions for the protection of the public health and safety, for the time for completion of construction, and to ensure compliance with the standards, statutes and rules described in ORS 469.501 and 469.503. The site certificate shall require both parties to abide by local ordinances and state law and the rules of the council in effect on the date the site certificate is executed, except that upon a clear showing of a significant threat to the public health, safety or the environment that requires application of later-adopted laws or rules, the council may require compliance with such later-adopted laws or rules. For a permit addressed in the site certificate, the site certificate shall provide for facility compliance with applicable state and federal laws adopted in the future to the extent that such compliance is required under the respective state agency statutes and rules.

(3) Subject to the conditions set forth in the site certificate, any certificate signed by the chairperson of the council shall bind the state and all counties and cities and political subdivisions in this state as to the approval of the site and the construction and operation of the proposed facility. After issuance of the site certificate, any affected state agency, county, city and political subdivision shall, upon submission by the applicant of the proper applications and payment of the proper fees, but without hearings or other proceedings, promptly issue the permits, licenses and certificates addressed in the site certificate, subject only to conditions set forth in the site certificate. After the site certificate is issued, the only issue to be decided in an administrative or judicial review

of a state agency or local government permit for which compliance with governing law was considered and determined in the site certificate proceeding shall be whether the permit is consistent with the terms of the site certificate. Each state or local government agency that issues a permit, license or certificate shall continue to exercise enforcement authority over the permit, license or certificate.

(4) Nothing in ORS chapter 469 shall be construed to preempt the jurisdiction of any state agency or local government over matters that are not included in and governed by the site certificate. Such matters include but are not limited to employee health and safety, building code compliance, wage and hour or other labor regulations, local government fees and charges or other design or operational issues that do not relate to siting the proposed facility. [1993 c.569 §11 (469.401 and 469.403 enacted in lieu of 469.400); 1995 c.505 §12]

469.402 Delegation of review of future action required by site certificate. If the Energy Facility Siting Council elects to impose conditions on a site certificate, that require subsequent review and approval of a future action, the council may delegate the future review and approval to the Office of Energy if, in the council's discretion, the delegation is warranted under the circumstances of the case. [1995 c.505 §27]

Note: 469.402 was added to and made a part of 469.300 to 469.570 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

469.403 Rehearing on approval or rejection of application for site certificate; appeal; judicial review vested in Supreme Court. (1) Any party to a contested case proceeding may apply for rehearing within 30 days from the date the approval or rejection is served. The date of service shall be the date on which the Energy Facility Siting Council delivered or mailed its approval or rejection in accordance with ORS 183.470. The application for rehearing shall set forth specifically the ground upon which the application is based. No objection to the council's approval or rejection of an application for a site certificate shall be considered on rehearing without good cause shown unless the basis for the objection is urged with reasonable specificity before the council in the site certificate process. Upon such application, the council shall have the power to grant or deny rehearing or to abrogate or modify its order without further hearing. Unless the council acts upon the application for rehearing within 30 days after the application is filed, the application shall be considered denied. The filing of an application for rehearing shall not, unless specifically

ordered by the council, operate as a stay of the site certificate for the facility.

(2) Any party to a contested case proceeding on a site certificate application may appeal the council's approval or rejection of the site certificate application. Issues on appeal shall be limited to those raised by the parties to the contested case proceeding before the council.

(3) Jurisdiction for judicial review of the council's approval or rejection of an application for a site certificate is conferred upon the Supreme Court. Proceedings for review shall be instituted by filing a petition in the Supreme Court. The petition shall be filed within 60 days after the date of service of the council's final order or within 30 days after the date the petition for rehearing is denied or deemed denied. Date of service shall be the date on which the council delivered or mailed its order in accordance with ORS 183.470.

(4) The filing of the petition for judicial review shall stay the order, except that the Supreme Court may lift the stay upon a showing that:

(a) The delay in construction will result in substantial economic injury to the applicant; and

(b) Construction will not result in irreparable harm to resources protected by applicable council standards or applicable agency or local government standards.

(5) No bond or other undertaking shall be required for operation of the stay under subsection (4) of this section.

(6) Except as otherwise provided in ORS 469.320 and this section, the review by the Supreme Court shall be the same as the review by the Court of Appeals described in ORS 183.482. The Supreme Court shall give priority on its docket to such a petition for review. [1993 c.569 §12 (469.401 and 469.403 enacted in lieu of 469.400); 1995 c.505 §13]

469.405 Amendment of site certificate.

A site certificate may be amended with the approval of the Energy Facility Siting Council. The council may establish by rule the type of amendment that must be considered in a contested case proceeding. Judicial review of an amendment to a site certificate shall be as provided in ORS 469.403. [1995 c.505 §2]

Note: 469.405 was added to and made a part of 469.300 to 469.570 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

469.410 Energy facility site certificate applications filed or under construction prior to July 2, 1975; conditions of site certificate; monitoring programs. (1) Any

applicant for a site certificate for an energy facility shall be deemed to have met all the requirements of ORS 176.820, 192.501 to 192.505, 192.690, 469.010 to 469.225, 469.300 to 469.570, 469.990, 757.710 and 757.720 relating to eligibility for a site certificate and a site certificate shall be issued by the Energy Facility Siting Council for:

(a) Any transmission lines for which application has been filed with the Federal Government and the Public Utility Commission of Oregon prior to July 2, 1975; and

(b) Any energy facility under construction on July 2, 1975.

(2) Each applicant for a site certificate under this section shall pay the fees required by ORS 469.421 (2) to (9), if applicable, and shall execute a site certificate in which the applicant agrees:

(a) To abide by the conditions of all licenses, permits and certificates required by the State of Oregon or any subdivision in the state to operate the energy facility and issued prior to July 2, 1975; and

(b) On and after July 2, 1975, to abide by the rules of the administrator of the Office of Energy adopted pursuant to ORS 469.040 (1)(d) and rules of the council adopted pursuant to ORS 469.300 to 469.570, 469.590 to 469.619 and 469.930.

(3) The council has continuing authority over the site for which the site certificate is issued and may inspect, or direct the Office of Energy to inspect, or request another state agency or local government to inspect, the site at any time in order to ensure that the facility is being operated consistently with the terms and conditions of the site certificate and any applicable health or safety standards.

(4) The council shall establish programs for monitoring the environmental and ecological effects of the operation and the decommissioning of energy facilities subject to site certificates issued prior to July 2, 1975, to ensure continued compliance with the terms and conditions of the site certificate and any applicable health or safety standards.

(5) Site certificates executed by the Governor under ORS 469.400 (1991 Edition) prior to July 2, 1975, shall bind successor agencies created hereunder in accordance with the terms of such site certificates. Any holder of a site certificate issued prior to July 2, 1975, shall abide by the rules of the administrator adopted pursuant to ORS 469.040 (1)(d) and rules of the council adopted pursuant to ORS 469.300 to 469.570, 469.590 to 469.619, 469.930 and 469.992. [1975 c.606 §24; 1983 c.740 §184; 1989 c.88 §5; 1993 c.569 §13; 1995 c.505 §15]

469.420 [Formerly 453.405; 1977 c.813 §1; 1979 c.234 §1; 1981 c.792 §3; repealed by 1981 c.792 §4 (469.421 enacted in lieu of 469.420)]

469.421 Fees; exemptions; assessment of certain utilities and suppliers; penalty.

(1) Subject to the provisions of ORS 469.441, any person submitting a notice of intent, a request for exemption under ORS 469.320, a request for an expedited review under ORS 469.370, an application for a site certificate or a request to amend a site certificate shall pay all expenses incurred by the Energy Facility Siting Council, the Office of Energy and the Oregon Department of Administrative Services related to the review and decision of the council. These expenses may include legal expenses, expenses incurred in processing and evaluating the application, issuing a final order or site certificate, commissioning an independent study by a contractor, state agency or local government under ORS 469.360, and changes to the rules of the council that are specifically required and related to the particular site certificate application.

(2) Every person submitting a notice of intent to file for a site certificate, a request for exemption or a request for expedited review shall submit the fee required under the fee schedule established under ORS 469.441 to the Office of Energy when the notice or request is submitted to the council. To the extent possible, the full cost of the evaluation shall be paid from the fee paid under this subsection. However, if costs of the evaluation exceed the fee, the person submitting the notice or request shall pay any excess costs shown in an itemized statement prepared by the council. In no event shall the council incur evaluation expenses in excess of 110 percent of the fee initially paid unless the council provides prior notification to the applicant and a detailed projected budget the council believes necessary to complete the project. If costs are less than the fee paid, the excess shall be refunded to the person submitting the notice or request.

(3) Before submitting a site certificate application, the applicant shall request from the Office of Energy an estimate of the costs expected to be incurred in processing the application. The Office of Energy shall inform the applicant of that amount and require the applicant to make periodic payments of such costs pursuant to a cost reimbursement agreement. The cost reimbursement agreement shall provide for payment of 25 percent of the estimated costs when the applicant submits the application. If costs of the evaluation exceed the estimate, the applicant shall pay any excess costs shown in an itemized statement prepared by the council. In no event shall the council incur evaluation expenses in excess

of 110 percent of the fee initially estimated unless the council provided prior notification to the applicant and a detailed projected budget the council believes is necessary to complete the project. If costs are less than the fee paid, the council shall refund the excess to the applicant.

(4) Any person who is delinquent in the payment of fees under subsections (1) to (3) of this section shall be subject to the provisions of subsection (11) of this section.

(5) Subject to the provisions of ORS 469.441, each holder of a certificate shall pay an annual fee, due every July 1 following issuance of a site certificate. For each fiscal year, upon approval of the Office of Energy's budget authorization by a regular session of the Legislative Assembly or as revised by the Emergency Board, the administrator promptly shall enter an order establishing an annual fee based on the amount of revenues that the administrator estimates is needed to fund the cost of assuring that the facility is being operated consistently with the terms and conditions of the site certificate and any applicable health or safety standards. In determining this cost, the administrator shall include both the actual direct cost to be incurred by the council, the Office of Energy and the Oregon Department of Administrative Services to assure that the facility is being operated consistently with the terms and conditions of the site certificate and any applicable health or safety standards, and the general costs to be incurred by the council, the Office of Energy and the Oregon Department of Administrative Services to assure that all certificated facilities are being operated consistently with the terms and conditions of the site certificates and any applicable health or safety standards that cannot be allocated to an individual, licensed facility. Not more than 20 percent of the annual fee charged each facility shall be for the recovery of these general costs. The fees for direct costs shall reflect the size and complexity of the facility and its certificate conditions.

(6) Each holder of a site certificate executed after July 1 of any fiscal year shall pay a fee for the remaining portion of the year. The amount of the fee shall be set at the cost of regulating the facility during the remaining portion of the year determined in the same manner as the annual fee.

(7) When the actual costs of regulation incurred by the council, the Office of Energy and the Oregon Department of Administrative Services for the year, including that portion of the general regulation costs that have been allocated to a particular facility, are less than the annual fees for that facility, the unexpended balance shall be refunded to

the site certificate holder. When the actual regulation costs incurred by the council, the Office of Energy and the Oregon Department of Administrative Services for the year, including that portion of the general regulation costs that have been allocated to a particular facility, are projected to exceed the annual fee for that facility, the administrator may issue an order revising the annual fee.

(8) In addition to any other fees required by law, each energy resource supplier shall pay to the Office of Energy annually its share of an assessment to fund the activities of the Energy Facility Siting Council, the Oregon Department of Administrative Services and the Office of Energy, determined by the administrator in the following manner:

(a) Upon approval of the budget authorization of the Energy Facility Siting Council, the Oregon Department of Administrative Services and the Office of Energy by a regular session of the Legislative Assembly, the administrator shall promptly enter an order establishing the amount of revenues required to be derived from an assessment pursuant to this subsection in order to fund the activities of the Energy Facility Siting Council, the Oregon Department of Administrative Services and the Office of Energy, including those enumerated in ORS 469.030 and others authorized by law, for the first fiscal year of the forthcoming biennium. On or before June 1 of each even-numbered year, the administrator shall enter an order establishing the amount of revenues required to be derived from an assessment pursuant to this subsection in order to fund the activities of the Energy Facility Siting Council, the Oregon Department of Administrative Services and the Office of Energy, including those enumerated in ORS 469.030 and others authorized by law, for the second fiscal year of the biennium which order shall take into account any revisions to the biennial budget of the Energy Facility Siting Council, the Office of Energy and the Oregon Department of Administrative Services made by the Emergency Board or by a special session of the Legislative Assembly subsequent to the most recently concluded regular session of the Legislative Assembly.

(b) Each order issued by the administrator pursuant to paragraph (a) of this subsection shall allocate the aggregate assessment set forth therein to energy resource suppliers in accordance with paragraph (c) of this subsection.

(c) The amount assessed to an energy resource supplier shall be based on the ratio which that supplier's annual gross operating revenue derived within this state in the preceding calendar year bears to the total gross operating revenue derived within this state

during that year by all energy resource suppliers. The assessment against an energy resource supplier shall not exceed five-tenths of one percent of the supplier's gross operating revenue derived within this state in the preceding calendar year. The administrator shall exempt from payment of an assessment any individual energy resource supplier whose calculated share of the annual assessment is less than \$250.

(d) The administrator shall send each energy resource supplier subject to assessment pursuant to this subsection a copy of each order issued, by registered or certified mail. The amount assessed to the energy resource supplier pursuant to the order shall be considered to the extent otherwise permitted by law a government-imposed cost and recoverable by the energy resource supplier as a cost included within the price of the service or product supplied.

(e) The amounts assessed to individual energy resource suppliers pursuant to paragraph (c) of this subsection shall be paid to the Office of Energy as follows:

(A) Amounts assessed for the first fiscal year of a biennium shall be paid not later than 90 days following the close of the regular session of the Legislative Assembly; and

(B) Amounts assessed for the second fiscal year of a biennium shall be paid not later than July 1 of each even-numbered year.

(f) An energy resource supplier shall provide the administrator, on or before May 1 of each year, a verified statement showing its gross operating revenues derived within the state for the preceding calendar year. The statement shall be in the form prescribed by the administrator and is subject to audit by the administrator. The statement shall include an entry showing the total operating revenue derived by petroleum suppliers from fuels sold that are subject to the requirements of section 3, Article IX of the Oregon Constitution, ORS 319.020 with reference to aircraft fuel and motor vehicle fuel, and ORS 319.530. The administrator may grant an extension of not more than 15 days for the requirements of this subsection if:

(A) The energy supplier makes a showing of hardship caused by the deadline;

(B) The energy supplier provides reasonable assurance that the energy supplier can comply with the revised deadline; and

(C) The extension of time does not prevent the Energy Facility Siting Council, the Oregon Department of Administrative Services or the Office of Energy from fulfilling their statutory responsibilities.

(g) As used in this section:

(A) "Energy resource supplier" means an electric utility, natural gas utility or petroleum supplier supplying electricity, natural gas or petroleum products in Oregon.

(B) "Gross operating revenue" means gross receipts from sales or service made or provided within this state during the regular course of the energy supplier's business, but does not include either revenue derived from interutility sales within the state or revenue received by a petroleum supplier from the sale of fuels that are subject to the requirements of section 3, Article IX of the Oregon Constitution, ORS 319.020 or 319.530.

(C) "Petroleum supplier" has the meaning given that term in ORS 469.020.

(h) In determining the amount of revenues which must be derived from any class of energy resource suppliers by assessment pursuant to this subsection, the administrator shall take into account all other known or readily ascertainable sources of revenue to the Energy Facility Siting Council, the Oregon Department of Administrative Services and the Office of Energy, including, but not limited to, fees imposed under this section and federal funds, and may take into account any funds previously assessed pursuant to ORS 469.420 (1979 Replacement Part) or section 7, chapter 792, Oregon Laws 1981.

(i) Orders issued by the administrator pursuant to this section shall be subject to judicial review under ORS 183.484. The taking of judicial review shall not operate to stay the obligation of an energy resource supplier to pay amounts assessed to it on or before the statutory deadline.

(9)(a) In addition to any other fees required by law, each operator of a nuclear fueled thermal power plant or nuclear installation within this state shall pay to the Office of Energy annually on July 1, an assessment in an amount determined by the administrator to be necessary to fund the activities of the state and the counties associated with emergency preparedness for a nuclear fueled thermal power plant or nuclear installation. The assessment shall not exceed \$461,250 per year. Moneys collected as assessments under this subsection are continuously appropriated to the Office of Energy for this purpose.

(b) The Office of Energy shall maintain and shall cause other state agencies and counties to maintain time and billing records for the expenditure of any fees collected from an operator of a nuclear fueled thermal power plant under paragraph (a) of this subsection.

(10) Reactors operated by a college, university or graduate center for research pur-

poses and electric utilities not connected to the Northwest Power Grid are exempt from the fee requirements of subsections (5), (8) and (9) of this section.

(11)(a) All fees assessed by the administrator against holders of site certificates for facilities that have an installed capacity of 500 megawatts or greater may be paid in several installments, the schedule for which shall be negotiated between the administrator and the site certificate holder.

(b) Energy resource suppliers or applicants or holders of a site certificate who fail to pay a fee provided under subsections (1) to (9) of this section or the fees required under ORS 469.360 after it is due and payable shall pay, in addition to that fee, a penalty of two percent of the fee a month for the period that the fee is past due. Any payment made according to the terms of a schedule negotiated under paragraph (a) of this subsection shall not be considered past due. The administrator may bring an action to collect an unpaid fee or penalty in the name of the State of Oregon in a court of competent jurisdiction. The court may award reasonable attorney fees to the prevailing party in an action under this subsection. The court may award reasonable attorney fees to the administrator if the administrator prevails in an action under this subsection. The court may award reasonable attorney fees to a defendant who prevails in an action under this subsection if the court determines that the administrator had no objectively reasonable basis for asserting the claim or no reasonable basis for appealing an adverse decision of the trial court. [1981 c.792 §5 (enacted in lieu of 469.420); 1983 c.273 §5; 1987 c.450 §2; 1989 c.88 §4; 1993 c.569 §14; 1995 c.505 §14; 1995 c.542 §1; 1995 c.551 §11; 1995 c.618 §74a; 1995 c.696 §22]

Note: Section 29, chapter 505, Oregon Laws 1995, provides:

Sec. 29. In addition to any other amount included in the annual fee assessed under ORS 469.421 (5), the administrator of the Office of Energy shall include in the amount assessed from natural gas and electrical energy suppliers for the 1995 annual fee, each natural gas and electrical energy supplier's proportionate share of \$150,000 for the expenses of the task force established under section 3 of this Act during the biennium beginning July 1, 1995. [1995 c.505 §29]

469.430 Site inspections. The Energy Facility Siting Council has continuing authority over the site for which the site certificate is issued and may inspect, or direct the Office of Energy to inspect, or request another state agency or local government to inspect, the site at any time in order to assure that the facility is being operated consistently with the terms and conditions of the site certificate. The council shall avoid duplication of effort with site inspections by other state and federal agencies and local governments that have issued permits or li-

censes for the facility. [Formerly 453.415; 1993 c.569 §15; 1995 c.505 §16]

469.440 Grounds for revocation or suspension of certificates. Pursuant to the procedures for contested cases in ORS 183.310 to 183.550, a certificate may be revoked or suspended:

(1) For failure to comply with the terms or conditions of the certificate;

(2) For violation of the provisions of ORS 469.525 to 469.570, 469.590 to 469.619, 469.930 and 469.992 or rules adopted pursuant to ORS 469.525 to 469.570, 469.590 to 469.619, 469.930 and 469.992; or

(3) If the site certificate was executed prior to July 2, 1975, for violation of the provisions of ORS 469.300 to 469.520 or rules adopted pursuant to ORS 469.300 to 469.520 or for failure to comply with applicable health or safety standards. [Formerly 453.425; 1993 c.569 §16; 1995 c.505 §17]

469.441 Justification of fees charged; judicial review. (1) All expenses incurred by the council and the Office of Energy under ORS 469.360 (1) and 469.421 that are charged to or allocated to the fee paid by an applicant or the holder of a site certificate shall be necessary, just and reasonable. Upon request, the Office of Energy or the council shall provide a detailed justification for all charges to the applicant or site certificate holder. Not later than January 1 of each odd-numbered year, the council by order shall establish a schedule of fees which those persons submitting a notice of intent, a request for an exemption or a request for an expedited review must submit under ORS 469.421 at the time of submitting the notice of intent, request for exemption or request for expedited review. The fee schedule shall be designed to recover the council's actual costs of evaluating the notice of intent, request for exemption or request for expedited review subject to any applicable expenditure limitation in the council's budget. Fees shall be based upon actual, historical costs incurred by the council and Office of Energy to the extent historical costs are available. The fees established by the schedule shall reflect the size and complexity of the project for which a notice of intent, request for exemption or request for expedited review is submitted, whether the notice of intent, request for exemption or request for expedited review is for a new or existing facility and other appropriate variables having an effect on the expense of evaluation.

(2) If a dispute arises regarding the necessity or reasonableness of expenses charged to or allocated to the fee paid by an applicant or site certificate holder, the applicant or holder may seek judicial review for

the amount of expenses charged or allocated in circuit court as provided in ORS 183.480, 183.484, 183.490 and 183.500. If the applicant or holder establishes that any of the charges or allocations are unnecessary or unreasonable, the council or the Office of Energy shall refund the amount found to be unnecessary or unreasonable. The applicant or holder shall not waive the right to judicial review by paying the portion of the fee or expense in dispute. [1989 c.88 §8; 1993 c.569 §17]

(High Voltage Transmission Lines)

469.442 Procedure prior to construction of transmission line in excess of 230,000 volts; review committee. (1) Any person who proposes to construct a transmission line in excess of 230,000 volts capacity that is not otherwise under the jurisdiction of the Energy Facility Siting Council shall:

(a) Give public notice of the proposed action at least six months before beginning any process to obtain local permits required for the proposed transmission line. Notification shall be given:

(A) By publication once a week for four consecutive weeks in a newspaper of general circulation in the county or counties in which the transmission line is to be constructed; and

(B) To the governing bodies and planning directors of cities and counties which are within or partially within the project study area.

(b) Provide an opportunity for public comment on the proposed transmission line and conduct public meetings to review the proposal.

(c) Respond specifically and in writing to local concerns and recommendations regarding the proposed transmission line.

(2) The administrator of the Office of Energy shall establish a committee to include technical experts and members of the public to coordinate public review of a proposed transmission line under subsection (1) of this section when requested to do so by ordinance or resolution of the affected governing body.

(3) At the conclusion of the public review, the committee shall make a summary report to the affected governing body including public concerns and recommendations concerning the proposed transmission line.

(4) The scope of work and cost of conducting the review shall be negotiated between the Office of Energy and the project sponsor. The negotiated cost shall be paid by the project sponsor.

(5) Subsections (1) to (4) of this section shall not apply to a person who proposes to construct transmission lines entirely within 500 feet of an existing corridor occupied by transmission lines with a capacity in excess of 230,000 volts. [1987 c.200 §2; 1993 c.569 §18]

469.445 [1987 c.200 §3; repealed by 1993 c.569 §31]

(Administration)

469.450 Energy Facility Siting Council; appointment; confirmation; term; restrictions. (1) There is established an Energy Facility Siting Council to be located within the Oregon Department of Administrative Services and consisting of seven public members, who shall be appointed by the Governor, subject to confirmation by the Senate in the manner prescribed in ORS 171.562 and 171.565.

(2) The term of office of each member is four years, but a member serves at the pleasure of the Governor. Before the expiration of the term of a member, the Governor shall appoint a successor whose term begins on July 1 next following. A member is eligible for reappointment but no member shall serve more than two full terms. If there is a vacancy for any cause, the Governor shall make an appointment to become immediately effective for the unexpired term.

(3) No member of the council shall be an employee, director or retired employee or director of or a consultant to or have any pecuniary interest, other than an incidental interest which is disclosed and made a matter of public record at the time of the appointment to the council, in any corporation or utility operating or interested in establishing an energy facility in this state or in any manufacturer of related equipment.

(4) No member shall for two years after the expiration of the term of the member accept employment with any owner or operator of any energy facility that is subject to ORS 469.300 to 469.570, 469.590 to 469.619, 469.930 and 469.992.

(5) Employment of a person in violation of this section shall be grounds for revocation of any license issued by this state or any agency thereof and held by the owner or operator of the energy facility that employs such person. [Formerly 453.435; 1995 c.551 §12]

469.460 Officers; meetings; compensation and expenses. (1) The council shall annually elect from among its members a chairman and vice chairman with such powers and duties as the council imposes in accordance with ORS 469.300 to 469.570, 469.590 to 469.619, 469.930 and 469.992. The council may meet as often as it requires at a time and place determined by the council. Five members constitute a quorum. The

Governor or the chairman of the council may call a special meeting, to be held at any place in this state designated by the person calling the meeting, upon 24 hours' notice to each member and to the public.

(2) Council members shall be entitled to compensation and expenses as provided in ORS 292.495. [Formerly 453.445]

469.470 Powers and duties. The Energy Facility Siting Council shall:

(1) Conduct and prepare, independently or in cooperation with others, studies, investigations, research and programs relating to all aspects of site selection.

(2) In accordance with the applicable provisions of ORS 183.310 to 183.550, and subject to the provisions of ORS 469.501 (3), adopt standards and rules to perform the functions vested by law in the council including the adoption of standards and rules for the siting of energy facilities pursuant to ORS 469.501, and implementation of the energy policy of the State of Oregon set forth in ORS 469.010 and 469.310.

(3) Encourage voluntary cooperation by the people, municipalities, counties, industries, agriculture, and other pursuits, in performing the functions vested by law in the council.

(4) Advise, consult, and cooperate with other agencies of the state, political subdivisions, industries, other states, the Federal Government and affected groups, in furtherance of the purposes of ORS 469.300 to 469.570, 469.590 to 469.619, 469.930 and 469.992.

(5) Consult with the Water Resources Commission on the need for power and other areas within the expertise of the council when the Water Resources Commission is determining whether to allocate water for hydroelectric development.

(6) Perform such other and further acts as may be necessary, proper or desirable to carry out effectively the duties, powers and responsibilities of the council described in ORS 469.300 to 469.570, 469.590 to 469.619, 469.930 and 469.992. [Formerly 453.455; 1991 c.480 §7; 1993 c.544 §5; 1993 c.569 §19; 1995 c.505 §18]

469.480 Local government advisory group; special advisory groups; compensation and expenses; Electric and Magnetic Field Committee. (1) The Energy Facility Siting Council shall designate as a special advisory group the governing body of any local government within whose jurisdiction the facility is proposed to be located.

(2) In addition to advisory groups required by subsection (1) of this section the council may establish such special advisory groups as are considered necessary. Such ad-

visory groups shall include membership as determined by the council to represent interests and disciplines as needed to carry out the responsibility assigned to such advisory groups, which shall report findings, recommendations and decisions to the council.

(3) Subject to applicable laws regulating travel and other expenses of state officers and employees, members of any advisory committee appointed under subsection (1) of this section shall receive no compensation but may receive their actual and necessary travel and other expenses incurred in the performance of their official duties.

(4) The council by rule shall form an Electric and Magnetic Field Committee which shall meet at the call of the council chair. The committee shall include representatives of the public, utilities, manufacturers and state agencies. The committee shall monitor information being developed on electric and magnetic fields and report the committee's findings to the council. The council shall report the findings of the Electric and Magnetic Field Committee to the Legislative Assembly. [Formerly 453.475; 1991 c.491 §1; 1993 c.569 §20; 1995 c.551 §17]

(Rules; Standards; Compliance)

469.490 Adoption of rules; determination of validity. All rules adopted by the Energy Facility Siting Council pursuant to ORS 469.300 to 469.570, 469.590 to 469.619, 469.930 and 469.992 shall be adopted in the manner required by ORS 183.310 to 183.550. The validity of any rule adopted by the council may be determined only upon a petition by any person to the Supreme Court. The petition must be filed within 60 days after the date the rule becomes effective under ORS 183.355. The review by the Supreme Court of the validity of any rule adopted by the council shall otherwise be according to ORS 183.400. The Supreme Court shall give priority on its docket to such a petition for review. [Formerly 453.495; 1995 c.505 §19]

469.500 [Formerly 453.505; repealed by 1993 c.569 §21 (469.501, 469.503, 469.505 and 469.507 enacted in lieu of 469.500 and 469.510)]

469.501 Energy facility siting, construction, operation and retirement standards; exemptions. (1) The Energy Facility Siting Council shall adopt standards for the siting, construction, operation and retirement of facilities. The standards may include but need not be limited to the following:

(a) The organizational, managerial and technical expertise of the applicant to construct and operate the proposed facility.

(b) Seismic hazards.

(c) Areas designated for protection by the state or Federal Government, including but

not limited to monuments, wilderness areas, wildlife refuges, scenic waterways and similar areas.

(d) The financial ability and qualifications of the applicant.

(e) Effects of the facility, taking into account mitigation, on fish and wildlife, including threatened and endangered fish, wildlife or plant species.

(f) Impacts of the facility on historic, cultural or archaeological resources listed on, or determined by the State Historic Preservation Officer to be eligible for listing on, the National Register of Historic Places or the Oregon State Register of Historic Properties.

(g) Protection of public health and safety, including necessary safety devices and procedures.

(h) The accumulation, storage, disposal and transportation of nuclear waste.

(i) Impacts of the facility on recreation, scenic and aesthetic values.

(j) Reduction of solid waste and wastewater generation to the extent reasonably practicable.

(k) Ability of the communities in the affected area to provide sewers and sewage treatment, water, storm water drainage, solid waste management, housing, traffic safety, police and fire protection, health care and schools.

(L) The need for the proposed facility, consistent with the state energy policy set forth in ORS 469.010 and 469.310. In adopting the need standard, the council shall consider all of the costs of the emission from energy facilities of gases that contribute to global warming. The standard for need shall include but need not be limited to the following:

(A) The council shall accord a conclusive presumption of need for a facility or a facility substantially similar to the proposed facility the output of which is identified for acquisition in the short-term plan of action of an energy resource plan adopted, approved or acknowledged by a municipal utility, people's utility district, electrical cooperative or other governmental body that makes or implements energy policy, if the plan:

(i) Includes a range of forecasts of electricity demand growth and firm electricity resources over the planning period using a reasonable method of forecasting;

(ii) Considers and evaluates a reasonable range of practicable demand and supply resource alternatives on a consistent and comparable basis;

(iii) Includes the development and evaluation of alternative resource plans to meet

potential energy needs over the planning time period;

(iv) Analyzes the uncertainties associated with alternative resource plans;

(v) Aims to minimize total long run resource costs while taking into account reliability, compatibility with the power system, strategic flexibility and external environmental costs and benefits;

(vi) Includes a short-term plan of action;

(vii) Is consistent with the energy policy of the state as set forth in ORS 469.010; and

(viii) Was adopted, approved or acknowledged after a full, fair and open public participation and comment process.

(B) A least cost plan acknowledged by the Public Utility Commission of Oregon shall be deemed to comply with the requirements set forth for a plan in subparagraph (A) of this paragraph.

(C) For an Oregon municipal utility, people's utility district or electrical cooperative, the council shall find a facility is needed if the council determines that the facility is economically prudent and consistent with the state's energy policy of minimizing long run total resource costs while taking into account reliability, compatibility with the power system, strategic flexibility and external environmental costs and benefits to replace power purchases available to the utility with the power output from the facility.

(m) Compliance with the statewide planning goals adopted by the Land Conservation and Development Commission as specified by ORS 469.503.

(n) Soil protection.

(2) The council may adopt exemptions, except for coal or nuclear power plants, from any need standard adopted under subsection (1)(L) of this section if the exemption is consistent with the state's energy policy set forth in ORS 469.010 and 469.310. In addition to any other exemption the council has adopted by rule prior to July 5, 1995, up to 500 megawatts of natural gas fired facilities shall be exempt from any need standard if the applications for such facilities are deemed complete on or before July 1, 1997.

(3) The council may issue a site certificate for a facility that does not meet one or more of the standards adopted under subsection (1) of this section if the council determines that the overall public benefits of the facility outweigh the damage to the resources protected by the standards the facility does not meet. [1993 c.569 §22 (469.501, 469.503, 469.505 and 469.507 enacted in lieu of 469.500 and 469.510); 1995 c.505 §20]

Note: Sections 3, 26 and 31, chapter 505, Oregon Laws 1995, provide:

Sec. 3. (1) The Legislative Assembly finds that the energy industry has become increasingly competitive since the adoption of the state energy policy and since energy facility siting statutes were enacted in 1975, and that significant changes also have occurred in energy industry regulation and energy planning. In recognition of these changes, a task force is created to review the public's interest in the siting of energy facilities. The task force shall consist of seven members. Five members of the task force shall be appointed by the Governor, one shall be a member of the Senate appointed by the President of the Senate and one shall be a member of the House of Representatives appointed by the Speaker of the House of Representatives. The task force shall develop and present recommendations to the Governor and the Sixty-ninth Legislative Assembly addressing the appropriate public interest in the siting of energy facilities.

(2) The Office of Energy shall enter into an agreement with an independent contractor to provide staff support necessary to the performance of the functions of the task force.

(3) Members of the task force who are members of the Legislative Assembly shall be entitled to an allowance as authorized by ORS 171.072. Other members of the task force are entitled to compensation and expenses under ORS 292.495. Claims for expenses incurred in performing functions of the task force shall be paid out of funds available for that purpose.

(4) The task force may accept contributions of funds and assistance from the United States, its agencies, or from any other source, public or private, and agree to conditions thereon not inconsistent with the purposes of the task force. All such funds are to aid in financing the functions of the task force and shall be deposited in the General Fund of the State Treasury to the credit of separate accounts for the task force and shall be disbursed for the purpose for which contributed in the same manner as funds appropriated for the task force. [1995 c.505 §3]

Sec. 26. Notwithstanding ORS 469.501 (1), until the date on which the Sixty-ninth Legislative Assembly adjourns sine die, the Energy Facility Siting Council shall not adopt standards on any subject not listed in ORS 469.501 (1). [1995 c.505 §26]

Sec. 31. Sections 3 and 26 of this Act are repealed on January 1, 1998. [1995 c.505 §31]

469.503 Requirements for approval of energy facility site certificate; compliance with statewide planning goals; effect on local comprehensive plan and land use regulations; recommendations of special advisory group. (1) In order to issue a site certificate, the Energy Facility Siting Council shall determine that the preponderance of the evidence on the record supports the following conclusions:

(a) The facility complies with the standards adopted by the council pursuant to ORS 469.501 or the overall public benefits of the facility outweigh the damage to the resources protected by the standards the facility does not meet.

(b) Except as provided in this section for land use compliance and except for those statutes and rules for which the decision on compliance has been delegated by the Federal Government to a state agency other

than the council, the facility complies with all other Oregon statutes and administrative rules identified in the project order, as amended, as applicable to the issuance of a site certificate for the proposed facility. If compliance with applicable Oregon statutes and administrative rules, other than those involving federally delegated programs, would result in conflicting conditions in the site certificate, the council may resolve the conflict consistent with the public interest. A resolution may not result in the waiver of any applicable state statute.

(c) The facility complies with the statewide planning goals adopted by the Land Conservation and Development Commission.

(2) A proposed facility shall be found in compliance with the statewide planning goals under subsection (1)(c) of this section if:

(a) The facility has received local land use approval under the acknowledged comprehensive plan and land use regulations of the affected local government; or

(b) The council determines:

(A) The facility complies with 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 in effect on the date the application is submitted; and

(B) The facility complies with any Land Conservation and Development Commission administrative rules and goals and any land use statutes directly applicable to the facility under ORS 197.646 (3); or

(C) For an energy facility or a related or supporting facility that must be evaluated against the applicable substantive criteria pursuant to subsection (6) of this section, that the proposed facility does not comply with one or more of the applicable substantive criteria but does otherwise comply with the applicable statewide planning goals, or that an exception to any applicable statewide planning goal is justified under subsection (3) of this section; or

(D) For a facility that the council elects to evaluate against the statewide planning goals pursuant to subsection (6) of this section, that the proposed facility complies with the applicable statewide planning goals or that an exception to any applicable statewide planning goal is justified under subsection (3) of this section.

(3) The council may find goal compliance for a facility that does not otherwise comply with one or more statewide planning goals by taking an exception to the applicable goal. Notwithstanding the requirements of ORS 197.732, the statewide planning goal pertain-

ing to the exception process or any rules of the Land Conservation and Development Commission pertaining to the exception process goal, the council may take an exception to a goal if the council finds:

(a) The land subject to the exception is physically developed to the extent that the land is no longer available for uses allowed by the applicable goal;

(b) The land subject to the exception is irrevocably committed as described by the rules of the Land Conservation and Development Commission to uses not allowed by the applicable goal because existing adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable; or

(c) The following standards are met:

(A) Reasons justify why the state policy embodied in the applicable goal should not apply;

(B) The significant environmental, economic, social and energy consequences anticipated as a result of the proposed facility have been identified and adverse impacts will be mitigated in accordance with rules of the council applicable to the siting of the proposed facility; and

(C) The proposed facility is compatible with other adjacent uses or will be made compatible through measures designed to reduce adverse impacts.

(4) If compliance with applicable substantive local criteria and applicable statutes and state administrative rules would result in conflicting conditions in the site certificate, the council shall resolve the conflict consistent with the public interest. A resolution may not result in a waiver of any applicable state statute.

(5) An applicant for a site certificate shall elect whether to demonstrate compliance with the statewide planning goals under subsection (2)(a) or (b) of this section. The applicant shall make the election on or before the date specified by the council by rule.

(6) Upon request by the Office of Energy, the special advisory group established under ORS 469.480 shall recommend to the council, within the time stated in the request, the applicable substantive criteria under subsection (2)(b)(A) of this section. If the special advisory group does not recommend applicable substantive criteria within the time established in the Office of Energy's request, the council may either determine and apply the applicable substantive criteria under subsection (2)(b) of this section or determine compliance with the statewide planning goals under subsection (2)(b)(C) or (D) of this section. If the special advisory group recom-

mends applicable substantive criteria for an energy facility described in ORS 469.300 (9)(a)(A) to (H) or a related or supporting facility that does not pass through more than one local government jurisdiction or more than three zones in any one jurisdiction, the council shall apply the criteria recommended by the special advisory group. If the special advisory group recommends applicable substantive criteria for an energy facility described in ORS 469.300 (9)(a)(C) to (E) or a related or supporting facility that passes through more than one jurisdiction or more than three zones in any one jurisdiction, the council shall review the recommended criteria and determine whether to evaluate the proposed facility against the applicable substantive criteria recommended by the special advisory group, against the statewide planning goals or against a combination of the applicable substantive criteria and statewide planning goals. In making its determination, the council shall consult with the special advisory group and shall consider:

(a) The number of jurisdictions and zones in question;

(b) The degree to which the applicable substantive criteria reflect local government consideration of energy facilities in the planning process; and

(c) The level of consistence of the applicable substantive criteria from the various zones and jurisdictions.

(7) The council is not subject to ORS 197.180 and a state agency may not require an applicant for a site certificate to comply with any rules or programs adopted under ORS 197.180.

(8) On or before its next periodic review, each affected local government shall amend its comprehensive plan and land use regulations as necessary to reflect the decision of the council pertaining to a site certificate application.

(9) Notwithstanding ORS 34.020 or 197.825 or any other provision of law, the affected local government's land use approval of a proposed facility under subsection (2)(a) of this section and the special advisory group's recommendation of applicable substantive criteria under subsection (6) of this section shall be subject to judicial review only as provided in ORS 469.403. If the applicant elects to comply with subsection (2)(a) of this section, the provisions of this subsection shall apply only to proposed projects for which the land use approval of the local government occurs after the date a notice of intent or an application for expedited processing is submitted to the Office of Energy.

(10) The Office of Energy, in cooperation with other state agencies, shall provide, to the extent possible, technical assistance and information about the siting process to local governments that request such assistance or that anticipate having an facility proposed in their jurisdiction. [1993 c.569 §23 (469.501, 469.503, 469.505 and 469.507 enacted in lieu of 469.500 and 469.510); 1995 c.505 §21]

469.505 Consultation with other agencies. (1) In making a determination regarding compliance with statutes, rules and ordinances administered by another agency or compliance with requirements of ORS 469.300 to 469.570 and 469.590 to 469.619 where another agency has special expertise, consultation with the other agency shall occur during the notice of intent and site certificate application process. Any permit application for which the permitting decision has been delegated by the Federal Government to a state agency other than the Energy Facility Siting Council shall be reviewed, whenever feasible, simultaneously with the council's review of the site certificate application. Any hearings required on such permit applications shall be consolidated, whenever feasible, with hearings under ORS 469.300 to 469.570 and 469.590 to 469.619.

(2) Before resolving any conflicting conditions in site certificates under ORS 469.503 (1)(b) and (4), the council shall notify and consult with the agencies and local governments responsible for administering the statutes, administrative rules or substantive local criteria that result in the conflicting conditions regarding potential conflict resolution. [1993 c.569 §24 (469.501, 469.503, 469.505 and 469.507 enacted in lieu of 469.500 and 469.510)]

469.507 Monitoring environmental and ecological effects of construction and operation of energy facilities. (1) The site certificate holder shall establish programs for monitoring the environmental and ecological effects of the construction and operation of facilities subject to site certificates to assure continued compliance with the terms and conditions of the certificate. The programs shall be subject to review and approval by the Energy Facility Siting Council.

(2) The site certificate holder shall perform the testing and sampling necessary for the monitoring program or require the operator of the plant to perform the necessary testing or sampling pursuant to guidelines established by the Energy Facility Siting Council or its designee. The council and the administrator of the Office of Energy shall have access to operating logs, records and reprints of the certificate holder, including those required by federal agencies.

(3) The monitoring program may be conducted in cooperation with any federally operated program if the information available from the federal program is acceptable to the council, but no federal program shall be substituted totally for monitoring supervised by the council or its designee.

(4) The monitoring program shall include monitoring of the transportation process for all radioactive material removed from any nuclear fueled thermal power plant or nuclear installation. [1993 c.569 §25 (469.501, 469.503, 469.505 and 469.507 enacted in lieu of 469.500 and 469.510); 1995 c.505 §22]

469.510 [Formerly 453.515; 1977 c.794 §15; repealed by 1993 c.569 §21 (469.501, 469.503, 469.505 and 469.507 enacted in lieu of 469.500 and 469.510)]

469.520 Cooperation of state governmental bodies; adoption of rules by state agencies on energy facility development.

(1) Each state agency and political subdivision in this state that is concerned with energy facilities shall inform the Office of Energy, promptly of its activities and programs relating to energy and radiation.

(2) Each state agency proposing to adopt, amend or rescind a rule relating to energy facility development first shall file a copy of its proposal with the council, which may order such changes as it considers necessary to conform to state policy as stated in ORS 469.010 and 469.310.

(3) The effective date of a rule relating to energy facility development, or an amendment or rescission thereof, shall not be sooner than 10 days subsequent to the filing of a copy of such proposal with the council. [Formerly 453.525]

(Plant Operations; Radioactive Wastes)

469.525 Radioactive waste disposal facilities prohibited; exceptions. Notwithstanding any other provision of this chapter, no waste disposal facility for any radioactive waste shall be established, operated or licensed within this state, except as follows:

(1) Wastes generated before June 1, 1981, through industrial or manufacturing processes which contain only naturally occurring radioactive isotopes which are disposed of at sites approved by the council in accordance with ORS 469.375.

(2) Medical, industrial and research laboratory wastes contained in small, sealed, discrete containers in which the radioactive material is dissolved or dispersed in an organic solvent or biological fluid for the purpose of liquid scintillation counting and experimental animal carcasses shall be disposed of or treated at a hazardous waste disposal facility licensed by the Department of Environmental Quality and in a manner

consistent with rules adopted by the Department of Environmental Quality after consultation with and approval by the Health Division.

(3) Maintenance of radioactive coal ash at the site of a thermal power plant for which a site certificate has been issued pursuant to this chapter shall not constitute operation of a waste disposal facility so long as such coal ash is maintained in accordance with the terms of the site certificate as amended from time to time as necessary to protect the public health and safety. [Formerly 459.630; 1979 c.283 §2; 1981 c.587 §2]

469.530 Review and approval of security programs. The council and the administrator of the Office of Energy shall review and approve all security programs attendant to a nuclear-fueled thermal power plant, a nuclear installation and the transportation of radioactive material derived from or destined for a nuclear-fueled thermal power plant or a nuclear installation. The council shall provide reasonable public notice of a meeting of the council held for purposes of such review and approval. [Formerly 453.535; 1981 c.707 §3; 1989 c.6 §1]

469.533 Office of Energy rules for health protection and evacuation procedures in nuclear emergency. Notwithstanding ORS chapter 401, the Office of Energy in cooperation with the Health Division and the Office of Emergency Management shall establish rules for the protection of health and procedures for the evacuation of people and communities who would be affected by radiation in the event of an accident or a catastrophe in the operation of a nuclear power plant or nuclear installation. [Formerly 453.765; 1983 c.586 §43]

469.534 County procedures. Each county in this state that has a nuclear-fueled thermal power plant located within county boundaries and each county within this state that has any portion of its area located within 50 miles of a site within this state of a nuclear-fueled thermal power plant shall develop written procedures that are compatible with the rules adopted by the Office of Energy under ORS 469.533. The Office of Energy shall review the county procedures to determine whether they are compatible with the rules of the Office of Energy. [1983 c.586 §46]

469.535 Governor may assume control of emergency operations during nuclear accident or catastrophe. Notwithstanding ORS chapter 401, when an emergency exists because of an accident or catastrophe in the operation of a nuclear power plant or nuclear installation or in the transportation of radioactive material, the Governor, for the duration of the emergency, may:

(1) Assume complete control of all emergency operations in the area affected by the accident or catastrophe, direct all rescue and salvage work and do all things deemed advisable and necessary to alleviate the immediate conditions.

(2) Assume control of all police and law enforcement activities in such area, including the activities of all local police and peace officers.

(3) Close all roads and highways in such area to traffic or by order of the administrator of the Office of Energy limit the travel on such roads to such extent as the administrator deems necessary and expedient.

(4) Designate persons to coordinate the work of public and private relief agencies operating in such area and exclude from such area any person or agency refusing to cooperate with other agencies engaged in emergency work.

(5) Require the aid and assistance of any state or other public or quasi-public agencies in the performance of duties and work attendant upon the emergency conditions in such area. [1983 c.586 §47]

469.536 Public utility to disseminate information under ORS 469.533. A public utility which operates a nuclear power plant or nuclear installation shall disseminate to the governing bodies of cities and counties that may be affected information approved by the Office of Energy which explains rules or procedures adopted under ORS 469.533. [Formerly 453.770]

469.540 Reductions or curtailment of operations for violation of safety standards; notice; time period for repairs; transport and disposal of radioactive materials. (1) In instances where the administrator of the Office of Energy determines either from the monitoring or surveillance of the administrator that there is danger of violation of a safety standard adopted under ORS 469.501 from the continued operation of a plant or installation, the administrator may order temporary reductions or curtailment of operations until such time as proper safety precautions can be taken.

(2) An order of reduction or curtailment shall be entered only after notice to the thermal power plant or installation and only after a reasonable time, considering the extent of the danger, has been allowed for repairs or other alterations that would bring the plant or installation into conformity with applicable safety standards.

(3) The administrator may order compliance or impose other safety conditions on the transport or disposal of radioactive materials or wastes if the administrator believes that ORS 469.300 to 469.619 and 469.930 or rules

adopted pursuant thereto are being violated or are in danger of being violated. [Formerly 453.545; 1989 c.6 §2; 1993 c.569 §26]

469.550 Order for halt of plant operations or activities with radioactive material; notice. (1) Whenever in the judgment of the administrator of the Office of Energy from the results of monitoring or surveillance of operation of any nuclear-fueled thermal power plant or nuclear installation or based upon information from the council there is cause to believe that there is clear and immediate danger to the public health and safety from continued operation of the plant or installation, the administrator shall, in cooperation with appropriate state and federal agencies, without hearing or prior notice, order the operation of the plant halted by service of the order on the plant superintendent or other person charged with the operation thereof. Within 24 hours after such order, the administrator must appear in the appropriate circuit court to petition for the relief afforded under ORS 469.570 and may commence proceedings for revocation of the site certificate if grounds therefor exist.

(2) Whenever, in the judgment of the administrator based upon monitoring or surveillance by the administrator, or based upon information from the council, there is cause to believe that there is clear and immediate danger to the public health and safety from the accumulation or storage of radioactive material located at a nuclear-fueled thermal power plant or a nuclear installation, the administrator shall in cooperation with appropriate state and federal agencies, without hearing or prior notice, order such accumulation, storage, disposal or transportation halted or immediately impose safety precautions by service of the order on the officer responsible for the accumulation, storage, disposal or transportation. Within 24 hours after such an order, the administrator must appear in the appropriate circuit court to petition for the relief afforded under ORS 469.570.

(3)(a) If the administrator believes there is a clear and immediate danger to public health or safety, the administrator shall halt the transportation or disposal of radioactive material or waste.

(b) The administrator shall serve an order to halt the transportation or disposal of radioactive material on the person responsible for the transport or disposal. The order may be served without prior hearing or notice.

(c) Within 24 hours after the administrator serves an order under paragraph (b) of this subsection, the administrator shall petition the appropriate circuit court for relief under ORS 469.570.

(4) The Governor, in the absence of the administrator, may issue orders and petition for judicial relief as provided in this section. [Formerly 453.555; 1977 c.794 §16; 1989 c.6 §3]

469.553 Active uranium mill or mill tailings disposal facility site certification required; procedure for review; fees. (1) Any person desiring to construct or operate an active uranium mill or uranium mill tailings disposal facility after June 25, 1979, shall file with the Energy Facility Siting Council a site certificate application.

(2) The Energy Facility Siting Council shall review an application for a site certificate under this section using the procedure prescribed in ORS 469.350, 469.360, 469.370, 469.375, 469.401 and 469.403, for energy facilities. The council is authorized to assess fees in accordance with ORS 469.421 in connection with site certificates applied for or issued under this section. [1979 c.283 §7; 1987 c.633 §1; 1993 c.569 §27; 1995 c.505 §25]

469.556 Rules governing uranium-related activities. The Energy Facility Siting Council shall adopt rules governing the location, construction and operation of uranium mills and uranium mill tailings disposal facilities and the treatment, storage and disposal of uranium mine overburden for the protection of the public health and safety and the environment. [1979 c.283 §8]

469.559 Cooperative agreements authorized between council and federal officials and agencies; rules; powers of Governor; exception for inactive or abandoned site. (1) Notwithstanding the authority of the Health Division pursuant to ORS 453.605 to 453.800 to regulate radiation sources or the requirements of ORS 469.525, the Energy Facility Siting Council may enter into and carry out cooperative agreements with the Secretary of Energy pursuant to Title I and the Nuclear Regulatory Commission pursuant to Title II of the Uranium Mill Tailings Radiation Control Act of 1978, Public Law 95-604, and perform or cause to be performed any and all acts necessary to be performed by the state, including the acquisition by condemnation or otherwise, retention and disposition of land or interests therein, in order to implement that Act and rules, standards and guidelines adopted pursuant thereto. The Energy Facility Siting Council may adopt, amend or repeal rules in accordance with ORS 183.310 to 183.550 and may receive and disburse funds in connection with the implementation and administration of this section.

(2) The Energy Facility Siting Council and the Office of Energy may enter into and carry out cooperative agreements and arrangements with any agency of the Federal Government implementing the Comprehen-

sive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. section 9601 et seq., to clean up wastes and contaminated material, including overburden, created by uranium mining before June 29, 1989. Any such project need not obtain a site certificate from the council, but shall nevertheless comply with all applicable, relevant or appropriate state standards including but not limited to those set forth in ORS 469.375 and rules adopted by the council and other state agencies to implement such standards.

(3) The Governor may do any and all things necessary to implement the requirements of the federal Acts referred to in subsections (1) and (2) of this section.

(4) Notwithstanding ORS 469.553, after June 25, 1979, no site certificate is required for the cleanup and disposal of an inactive or abandoned uranium mill tailings site as authorized under subsection (1) of this section and Title I of the Uranium Mill Tailings Radiation Control Act of 1978, Public Law 95-604. [1979 c.283 §9; 1987 c.633 §2; 1989 c.496 §1]

Note: The additions of 453.752, 453.754, 453.761, 453.766, 453.771, 453.775, 453.780, 453.785, 453.790, 453.795 and 453.800 by chapter 444, Oregon Laws 1995, to the series 453.605 to 453.745 expand references to the series to 453.605 to 453.800. However, these sections do not become operative until July 1, 1996. See sections 1 and 15, chapter 444, Oregon Laws 1995.

(Records)

469.560 Records; public inspection; confidential information. (1) Except as provided in subsection (2) of this section and ORS 192.501 to 192.505, any information filed or submitted pursuant to ORS 469.300 to 469.570, 469.590 to 469.619, 469.930 and 469.992 shall be made available for public inspection and copying during regular office hours of the Office of Energy at the expense of any person requesting copies.

(2) Any information, other than that relating to the public safety, relating to secret process, device, or method of manufacturing or production obtained in the course of inspection, investigation or activities under ORS 469.300 to 469.570, 469.590 to 469.619, 469.930 and 469.992 shall be kept confidential and shall not be made a part of public record of any hearing. [Formerly 453.565]

(Insurance)

469.565 Property insurance required; exceptions; filing of policy. (1) A person owning and operating a nuclear power plant in this state under a license issued by the United States Nuclear Regulatory Commission or under a site certificate issued under ORS 469.300 to 469.570, 469.590 to 469.619, 469.930 and 469.992 shall obtain and maintain property insurance in the maximum

insurable amount available for each nuclear incident occurring within this state, as required by this section. The insurance shall cover property damage occurring within a nuclear plant and its related or supporting facilities as a result of the nuclear incident.

(2) Insurance required under this section does not apply to:

(a) Any claim of an employee of a person obtaining insurance under this section, if the claim is made under a state or federal workers' compensation Act and if the employee is employed at the site of and in connection with the nuclear power plant at which the nuclear incident occurred; or

(b) Any claim arising out of an act of war.

(3) A person obtaining insurance under this section shall maintain insurance for the term of the license issued to the nuclear power plant by the United States Nuclear Regulatory Commission and for any extension of the term, and until all radioactive material has been removed from the nuclear power plant and transportation of the radioactive material from the nuclear power plant has ended.

(4) A person obtaining insurance under this section shall file a copy of the insurance policy, any amendment to the policy and any superseding insurance policy with the administrator of the Office of Energy.

(5) Property insurance required under this section is in addition to and not in lieu of insurance coverage provided under the Price-Anderson Act (42 U.S.C. 2210).

(6) Property insurance required by subsections (1) to (5) of this section may include private insurance, self-insurance, utility industry association self-assurance pooling programs, or a combination of all three.

(7) A person may fulfill the requirements for an insurance policy under subsections (1) to (5) of this section by obtaining policies of one or more insurance carriers if the policies together meet the requirements of subsections (1) to (5) of this section. [1981 c.866 §§3,4]

469.567 Eligible insurers. (1) In order to provide the private insurance specified under ORS 469.565, an insurer must be authorized to provide or transact insurance in this state.

(2) An insurer providing property insurance required under ORS 469.565 (1) to (5) may obtain reinsurance as defined in ORS 731.126. [1981 c.866 §5]

(Enforcement)

469.570 Court orders for enforcement. Without prior administrative proceedings, a circuit court may issue such restraining or-

ders, and such temporary and permanent injunctive relief as is necessary to secure compliance with ORS 469.320, 469.410, 469.421, 469.430, 469.440, 469.442, 469.507, 469.525 to 469.559, 469.560, 469.565, 469.567, 469.590 to 469.619, 469.930 and 469.992 or with the terms and conditions of a site certificate. [Formerly 453.575; 1995 c.505 §23]

469.580 [1977 c.296 §13; repealed by 1993 c.569 §31]

(Siting of Nuclear-fueled Thermal Power Plants)

469.590 Definitions for ORS 469.590 to 469.595. As used in ORS 469.590 to 469.595:

(1) "High-level radioactive waste" means spent nuclear fuel or the radioactive by-products from the reprocessing of spent nuclear fuel.

(2) "Spent nuclear fuel" means nuclear fuel rods or assemblies which have been irradiated in a power reactor and subsequently removed from that reactor. [1981 c.1 §2]

469.593 Findings. The people of this state find that if no permanent repository for high-level radioactive waste is provided by the Federal Government, the residents of the state may face the undue financial burden of paying for construction of a repository for such wastes. Therefore, the people of this state enact ORS 469.590 to 469.601. [1981 c.1 §1]

469.594 Storage of high-level radioactive waste after expiration of license prohibited; continuing responsibility for storage; implementation agreements. (1) Notwithstanding ORS 469.300 (30), no high-level radioactive waste should be stored at the site of a nuclear-fueled thermal power plant after the expiration of the operating license issued to the nuclear power plant by the United States Nuclear Regulatory Commission.

(2) Notwithstanding subsection (1) of this section, a person operating a nuclear power plant under a license issued by the United States Nuclear Regulatory Commission shall remain responsible for proper temporary storage of high-level radioactive materials at the site of the nuclear power plant after termination of a license and until such materials are removed from the site for permanent storage.

(3) The Office of Energy and the operators of nuclear-fueled thermal plants shall pursue agreements with the United States Office of Energy and the United States Nuclear Regulatory Commission to fulfill the provisions of this section. [1985 c.434 §2; 1991 c.480 §11; 1993 c.569 §28; 1995 c.505 §24]

469.595 Condition to site certificate for nuclear-fueled thermal power plant. Be-

fore issuing a site certificate for a nuclear-fueled thermal power plant, the Energy Facility Siting Council must find that an adequate repository for the disposal of the high-level radioactive waste produced by the plant has been licensed to operate by the appropriate agency of the Federal Government. The repository must provide for the terminal disposition of such waste, with or without provision for retrieval for reprocessing. [1981 c.1 §3]

469.597 Election procedure; elector approval required. (1) Notwithstanding the provisions of ORS 469.370, if the council finds that the requirements of ORS 469.595 have been satisfied and proposes to issue a site certificate for a nuclear-fueled thermal power plant, the proposal shall be submitted to the electors of this state for their approval or rejection at the next available statewide general election. The procedures for submitting a proposal to the electors under this section shall conform, as nearly as possible to those for state measures, including but not limited to procedures for printing related material in the voters' pamphlet.

(2) A site certificate for a nuclear-fueled thermal power plant shall not be issued until the electors of this state have approved the issuance of the certificate at an election held pursuant to subsection (1) of this section. [1981 c.1 §§4,5]

469.599 Public Utility Commission's duty. The Public Utility Commission shall not authorize the issuance of stocks, bonds or other evidences of indebtedness to finance any nuclear-fueled thermal power plant pursuant to ORS 757.400 to 757.460 until the Energy Facility Siting Council has made the finding required under ORS 469.595. [1981 c.1 §6]

469.601 Effect of ORS 469.595 on applications and applicants. ORS 469.595 does not prohibit:

(1) The council from receiving and processing applications for site certificates for nuclear-fueled thermal power plants under ORS 469.300 to 469.570, 469.590 to 469.619 and 469.930; or

(2) An applicant for a site certificate under ORS 469.300 to 469.570, 469.590 to 469.619 and 469.930 from obtaining any other necessary licenses, permits or approvals for the planning or siting of a nuclear-fueled thermal power plant. [1981 c.1 §8]

(Transportation of Radioactive Material)

469.603 Intent to regulate transportation of radioactive material. It is the intention of the Legislative Assembly that the state shall regulate the transportation of radioactive material to the full extent allow-

able under and consistent with federal laws and regulations. [1981 c.707 §2]

469.605 Permit to transport required; application; delegation of authority to issue permits. (1) No person shall ship or transport radioactive material identified by the council by rule as posing a significant hazard to public health and safety or the environment if improperly transported into or within the State of Oregon without first obtaining a permit from the Office of Energy.

(2) Such permit shall be issued for a period not to exceed one year and shall be valid for all shipments within that period of time unless specifically limited by permit conditions.

(3) Application for a permit under this section shall be made in a form and manner prescribed by the administrator of the Office of Energy and may include:

(a) A description of the kind, quantity and radioactivity of the material to be transported;

(b) A description of the route or routes proposed to be taken and the transport schedule;

(c) A description of any mode of transportation; and

(d) Other information required by the administrator to evaluate the application.

(4) The administrator shall collect a fee from all applicants for permits under this section in an amount reasonably calculated to provide for the costs to the Office of Energy of performing the duties of the Office of Energy under ORS 469.550 (3), 469.570, 469.603 to 469.619 and 469.992. Fees collected under this subsection shall be deposited in the Office of Energy Account established under ORS 469.120.

(5) The administrator shall issue a permit only if the application demonstrates that the proposed transportation will comply with all applicable rules adopted under ORS 469.603 to 469.619 and if the proposed route complies with federal law as provided in ORS 469.606.

(6) The administrator may delegate the authority to issue permits for the transportation of radioactive material to the Department of Transportation. In exercising such authority, the Department of Transportation shall comply with the applicable provisions of ORS 469.603 to 469.619 and rules adopted by the administrator or the Energy Facility Siting Council under ORS 469.603 to 469.619. Permits issued by the Department of Transportation under this subsection shall be enforced according to the provisions of ORS 825.258. The administrator also may delegate other authority granted under ORS 469.605 to 469.619 to other state agencies if the de-

legation will maintain or enhance the quality of the transportation safety program. [1981 c.707 §5; 1989 c.6 §4; 1991 c.233 §3]

469.606 Determination of best and safest route. (1) Upon receipt of an application required under ORS 469.605 for which radioactive material is proposed to be transported by highway, the Office of Energy shall confer with the following persons to determine whether the proposed route is safe, and complies with applicable routing requirements of the United States Department of Transportation and the United States Nuclear Regulatory Commission:

(a) The Oregon Department of Transportation, or a designee of the Oregon Department of Transportation;

(b) The Energy Facility Siting Council, or a designee of the Energy Facility Siting Council; and

(c) The Oregon Transportation Commission, or a designee of the Oregon Transportation Commission.

(2) If, after consultation with the persons set forth in subsection (1) of this section, a determination is made that the proposed route is not the best and safest route for transporting the material, the administrator of the Office of Energy shall deny the application except as provided in subsection (3) of this section.

(3) If the applicant is prohibited by a statute, rule or other action of an adjacent state or a political subdivision in an adjacent state from using the route that complies with federal law, the administrator:

(a) Shall petition the United States Department of Transportation for an administrative determination of preemption of the ban, pursuant to section 13 of the Hazardous Materials Transportation Uniform Safety Act of 1990, P.L. 101-615.

(b) May issue a permit as provided under ORS 469.605 (5) with conditions necessary to assure safe transport over a route available to the applicant, until the United States Department of Transportation determines whether the prohibition by the other state or political subdivision is preempted. [1991 c.233 §2]

469.607 Authority of council. (1) After consultation with the Department of Transportation and other appropriate state, local and federal agencies, the Energy Facility Siting Council by rule:

(a) May fix requirements for notification, record keeping, reporting, packaging and emergency response;

(b) May designate those routes by highway, railroad, waterway and air where

transportation of radioactive material can be accomplished safely;

(c) May specify conditions of transportation for certain classes of radioactive material, including but not limited to, specific routes, permitted hours of movement, requirements for communications capabilities between carriers and emergency response agencies, speed limits, police escorts, check-points, operator or crew training or other operational requirements to enhance public health and safety; and

(d) May establish requirements for insurance, bonding or other indemnification on the part of any person transporting radioactive material into or within the State of Oregon under ORS 469.603 to 469.619 and 469.992.

(2) The requirements imposed by subsection (1) of this section must be consistent with federal Department of Transportation and Nuclear Regulatory Commission rules.

(3) Rules adopted under this section shall be adopted in accordance with the provisions of ORS 183.310 to 183.550. [1981 c.707 §6; 1989 c.6 §5; 1995 c.733 §45]

469.609 Annual report to state agencies and local governments on shipment of radioactive wastes. Annually, the administrator of the Office of Energy shall report to interested state agencies and all local government agencies trained under ORS 469.611 on shipment of radioactive material made during the preceding year. The administrator's report shall include:

(1) The type and quantity of material transported;

(2) Any mode of transportation used;

(3) The route or routes taken; and

(4) Any other information at the discretion of the administrator. [1981 c.707 §8; 1989 c.6 §6]

469.611 Emergency preparedness and response program; radiation emergency response team; training. Notwithstanding ORS chapter 401:

(1) The administrator of the Office of Energy shall coordinate emergency preparedness and response with appropriate agencies of government at the local, state and national levels to assure that the response to a radioactive material transportation accident is swift and appropriate to minimize damage to any person, property or wildlife. This program shall include the preparation of localized plans setting forth agency responsibilities for on-scene response.

(2) The administrator shall:

(a) Apply for federal funds as available to train, equip and maintain an appropriate re-

sponse capability at the state and local level; and

(b) Request all available training and planning materials.

(3) The Health Division shall maintain a trained and equipped radiation emergency response team available at all times for dispatch to any radiological emergency. Before arrival of the Health Division at the scene of a radiological accident, the administrator may designate other technical advisors to work with the local response agencies.

(4) The Health Division shall assist the administrator to insure that all emergency services organizations along major transport routes for radioactive materials are offered training and retraining in the proper procedures for identifying and dealing with a radiological accident pending the arrival of persons with technical expertise. The Health Division shall report annually to the administrator on training of emergency response personnel. [1981 c.707 §9; 1983 c.586 §44; 1989 c.6 §7]

469.613 Records; inspection. (1) Any person obtaining a permit under ORS 469.605 shall establish and maintain any records, make any reports and provide any information as the council may by rule or order require to assure compliance with the conditions of the permit or other rules affecting the transportation of radioactive materials and submit the reports and make the records and information available at the request of the administrator of the Office of Energy. Any requirement imposed by the council under this subsection shall be consistent with regulations of the United States Department of Transportation and the United States Nuclear Regulatory Commission.

(2) The administrator may authorize any employee or agent of the administrator to enter upon, inspect and examine, at reasonable times and in a reasonable manner for the purpose of administration or enforcement of the provisions of ORS 469.550, 469.570, 469.603 to 469.619 and 469.992 or rules adopted thereunder, the records and property of persons within this state who have applied for permits under ORS 469.605.

(3) The administrator shall provide for:

(a) The inspection of each highway route controlled shipment prior to or upon entry of the shipment into this state or at the point of origin for the transportation of highway route controlled shipments within the state; and

(b) Inspection of a representative sample of shipments containing material required to bear a radioactive placard as specified by federal regulations. [1981 c.707 §10; 1989 c.6 §8]

469.615 Indemnity for claims against state insurance coverage certification; reimbursement for costs incurred in nuclear incident. (1) A person transporting radioactive materials in this state shall indemnify the State of Oregon and its political subdivisions and agents for any claims arising from the release of radioactive material during that transportation and pay for the cost of response to an accident involving the radioactive material.

(2) With respect to radioactive materials, the administrator of the Office of Energy shall ascertain and certify that insurance coverage required under 42 U.S.C. 2210 is in force and effect at the time the permit is issued under ORS 469.605.

(3) A person who owns, designs or maintains facilities, structures, vehicles or equipment used for handling, transportation, shipment, storage or disposal of nuclear material shall reimburse the state for all expenses reasonably incurred by the state or a political subdivision of the state, in protecting the public health and safety and the environment from a nuclear incident or the imminent danger of a nuclear incident caused by the person's acts or omissions. These expenses include but need not be limited to, costs incurred for precautionary evacuations, emergency response measures and decontamination or other clean-up measures. As used in this subsection "nuclear incident" has the meaning given that term in 42 U.S.C. 2014(q).

(4) Nothing in subsection (3) of this section shall affect any provision of subsection (1) or (2) of this section. [1981 c.707 §11; 1987 c.705 §9; 1989 c.6 §9]

469.617 Report to legislature; content.

The administrator of the Office of Energy shall prepare and submit to the Governor for transmittal to the Legislative Assembly, on or before the beginning of each regular legislative session, a comprehensive report on the transportation of radioactive material in Oregon and provide an evaluation of the adequacy of the state's emergency response agencies. The report shall include, but need not be limited to:

(1) A brief description and compilation of any accidents and casualties involving the transportation of radioactive material in Oregon;

(2) An evaluation of the effectiveness of enforcement activities and the degree of compliance with applicable rules;

(3) A summary of outstanding problems confronting the Office of Energy in administering ORS 469.550, 469.570, 469.603 to 469.619 and 469.992; and

(4) Such recommendations for additional legislation as the council considers necessary and appropriate. [1981 c.707 §12; 1989 c.6 §10]

469.619 Office of Energy to make federal regulations available. The Office of Energy shall maintain and make available copies of all federal regulation and federal code provisions referred to in ORS 469.300, 469.550, 469.570, 469.603 to 469.619 and 469.992. [1981 c.707 §14; 1989 c.6 §11]

469.621 [1981 c.707 §7; repealed by 1993 c.742 §101]

RESIDENTIAL ENERGY CONSERVATION ACT

(Investor-owned Utilities)

469.631 Definitions for ORS 469.631 to 469.645. As used in ORS 469.631 to 469.645:

(1) "Administrator" means the administrator of the Office of Energy.

(2) "Cash payment" means a payment made by the investor-owned utility to the dwelling owner or to the contractor on behalf of the dwelling owner for energy conservation measures.

(3) "Commercial lending institution" means any bank, mortgage banking company, trust company, savings bank, savings and loan association, credit union, national banking association, federal savings and loan association or federal credit union maintaining an office in this state.

(4) "Commission" means the Public Utility Commission of Oregon.

(5) "Cost-effective" means that an energy conservation measure that provides or saves a specific amount of energy during its life cycle results in the lowest present value of delivered energy costs of any available alternative. However, the present value of the delivered energy costs of an energy conservation measure shall not be treated as greater than that of a nonconservation energy resource or facility unless that cost is greater than 110 percent of the present value of the delivered energy cost of the nonconservation energy resource or facility.

(6) "Dwelling" means real or personal property within the state inhabited as the principal residence of a dwelling owner or a tenant. "Dwelling" includes a manufactured dwelling as defined in ORS 446.003, a floating home as defined in ORS 830.700 and a single unit in multiple-unit residential housing. "Dwelling" does not include a recreational vehicle as defined in ORS 446.003.

(7) "Dwelling owner" means the person:

(a) Who has legal title to a dwelling, including the mortgagor under a duly recorded mortgage of real property, the trustor under a duly recorded deed of trust or a purchaser

under a duly recorded contract for the purchase of real property; and

(b) Whose dwelling receives space heating from the investor-owned utility.

(8) "Energy audit" means:

(a) The measurement and analysis of the heat loss and energy utilization efficiency of a dwelling;

(b) An analysis of the energy savings and dollar savings potential that would result from providing energy conservation measures for the dwelling;

(c) An estimate of the cost of the energy conservation measures that includes:

(A) Labor for the installation of items designed to improve the space heating and energy utilization efficiency of the dwelling; and

(B) The items installed; and

(d) A preliminary assessment, including feasibility and a range of costs, of the potential and opportunity for installation of:

(A) Passive solar space heating and solar domestic water heating in the dwelling; and

(B) Solar swimming pool heating, if applicable.

(9) "Energy conservation measures" means measures that include the installation of items and the items installed to improve the space heating and energy utilization efficiency of a dwelling. These items include, but are not limited to, caulking, weatherstripping and other infiltration preventative materials, ceiling and wall insulation, crawl space insulation, vapor barrier materials, timed thermostats, insulation of heating ducts, hot water pipes and water heaters in unheated spaces, storm doors and windows, double glazed windows and dehumidifiers. "Energy conservation measures" does not include the dwelling owner's own labor.

(10) "Investor-owned utility" means an electric or gas utility regulated by the commission as a public utility under ORS chapter 757.

(11) "Residential customer" means a dwelling owner or tenant who, either directly or indirectly, pays a share of the cost for service billed by an investor-owned utility for electric or natural gas service received at the dwelling.

(12) "Space heating" means the heating of living space within a dwelling.

(13) "Tenant" means a tenant as defined in ORS 90.100 or any other tenant. [1981 c.778 §2; 1989 c.233 §1; 1989 c.648 §66; 1995 c.551 §13]

469.633 Investor-owned utility program. Each investor-owned utility shall have an approved residential energy conservation

program that, to the commission's satisfaction:

(1) Makes available to all residential customers of the utility information about:

- (a) Energy conservation measures; and
- (b) Energy conservation measure financing available to dwelling owners.

(2) Provides within 60 days of a request by a residential customer or a dwelling owner, assistance and technical advice concerning various methods of saving energy in that customer's or dwelling owner's dwelling including, but not limited to, an energy audit of the customer's or dwelling owner's dwelling.

(3) Provides financing for cost-effective energy conservation measures approved by the commission to a dwelling owner who occupies the dwelling as a residential customer or rents the dwelling to a tenant who is a residential customer. The minimum financing program shall give the dwelling owner a choice between a cash payment and a loan. The dwelling owner may not receive both a cash payment and a loan. Completion of an energy audit of the dwelling offered under the program required by this section or described in ORS 469.685 shall be a condition of eligibility for either a cash payment or a loan. Unless the commission approves higher levels of assistance, the financing program shall provide:

(a) The following minimum levels of assistance:

(A) A loan for a dwelling owner with approved credit upon the following terms approved by the commission:

- (i) A principal amount of up to \$5,000;
- (ii) For an electric utility, an interest rate that does not exceed six and one-half percent annually or, for a gas utility, an annual interest rate 10 percentage points lower than the rate published by the Federal Housing Administration for Title I property improvement loans (24 C.F.R. § 201.4 (a)) on the date of the loan application, but not lower than six and one-half percent or higher than 12 percent; and
- (iii) A reasonable repayment period that does not exceed 10 years; and

(B) A cash payment to a dwelling owner eligible under ORS 469.641 for the lesser of:

(i) Twenty-five percent of the cost of the energy conservation measures provided in the dwelling; or

(ii) \$350.

(b) That an otherwise eligible dwelling owner may obtain up to \$5,000 in loans or \$350 in cash payments for each dwelling.

(c) That there may be up to two loans or cash payments provided for each dwelling.

(d) That a dwelling owner who acquires a dwelling for which a previous loan was obtained under this section and ORS 469.631 may obtain a loan or a cash payment for energy conservation measures for the newly acquired dwelling under circumstances including, but not necessarily limited to, when:

(A) The new dwelling owner chooses the same financing option chosen by the previous dwelling owner who obtained financing under ORS 469.631 to 469.645; and

(B) There remain cost-effective energy conservation measures to be undertaken with regard to the dwelling.

(e) If the commission so determines, that energy conservation measures for any of the following building and improvement activities may not be financed under the financing program:

- (A) Construction of a new dwelling; or
- (B) If the construction increases or otherwise changes the living space in the dwelling:

(i) An addition or substantial alteration;

or

(ii) Remodeling.

(f) If the investor-owned utility so determines, that no cash payment shall be allowed or paid for the cost of energy conservation measures provided more than one year before the date of the application for payment.

(4) Provides for verification through a reasonable number of inspections that energy conservation measures financed by the investor-owned utility are installed. The verification provisions of the residential energy conservation program shall further provide that:

(a) An installation shall be performed in such a workmanlike manner and with such materials as to satisfy prevailing industry standards; and

(b) The investor-owned utility shall provide a post-installation inspection upon the dwelling owner's request.

(5) For an electric utility, provides, upon the dwelling owner's request, information relevant to the specific site of a dwelling with access to:

(a) Water resources that have hydroelectric potential;

(b) Wind, which means the natural movement of air at an annual average speed of at least eight miles an hour; or

(c) A resource area known to have geothermal space heating potential.

(6) Provides that the investor-owned utility will mail to a dwelling owner an offer to provide energy conservation measures in accordance with ORS 469.631 to 469.645 when a tenant who is the residential customer:

(a) Requests that the offer be mailed to the dwelling owner; and

(b) Furnishes the dwelling owner's name and address with the request. [1981 c.778 §3; 1985 c.745 §6; 1989 c.233 §2; 1991 c.67 §141; 1991 c.78 §1]

469.634 Contributions for urban and community forest activities by customers of investor-owned utilities; uses. (1) The Public Utility Commission of Oregon by rule shall establish a system to allow customers of investor-owned utilities to voluntarily contribute an amount that is to be used for urban and community forest activities within the area served by the utility. The amount shall be in addition to the customer's utility bill. Investor-owned utilities may choose to use the system established by the commission.

(2) The utility shall pay to the State Forester the amount designated under subsection (1) of this section. The State Forester shall deposit the moneys collected under this section into the Urban and Community Forestry Subaccount established under ORS 526.060.

(3) The State Forester shall use the moneys collected under this section for urban and community forest activities. The State Forester by rule, in consultation with the Public Utility Commission of Oregon and local utilities, shall establish guidelines to distribute moneys collected under this section through the Urban and Community Forestry Assistance Program. The guidelines shall include a requirement that moneys are distributed for energy conservation, by means of tree plantings, care and maintenance.

(4) A utility shall not use more than 16 percent of the moneys collected under this section for administrative expenses. The State Forester shall not use more than 16 percent of the moneys collected under this section for administrative expenses.

(5) As used in this section, "urban and community forest activities" means activities that promote cost-effective energy conservation. These activities may include the planting, managing and maintaining of residential, street and park trees on public and private land. [1993 c.388 §2]

Note: Section 6, chapter 388, Oregon Laws 1993, provides:

Sec. 6. This Act [469.634, 469.652] is repealed on December 31, 1999, if no utility by that date has collected moneys for urban and community forest activities pursuant to this Act. [1993 c.388 §6]

469.635 Alternative program of investor-owned utilities. (1) An investor-owned utility may meet the program submission requirements of ORS 469.633 by submitting only the portions of its residential energy conservation program that are added to or revised in its program approved under section 4, chapter 889, Oregon Laws 1977, in order to make that earlier program fulfill the requirements of ORS 469.633.

(2) An investor-owned utility shall offer a dwelling owner a financing program for cost-effective energy conservation measures that includes the option of a cash payment or a loan unless the investor-owned utility offers another financing program determined by the commission to meet or exceed the program required in ORS 469.633 (3). A program shall be considered to meet or exceed the program required in ORS 469.633 (3) if it includes a financial incentive to the residential customer with a present value on November 1, 1981, that is equal to or greater than the present value of the larger of:

(a) The loan subsidy pursuant to ORS 469.633 (3)(a)(A); or

(b) The cash payment pursuant to ORS 469.633 (3)(a)(B).

(3) An investor-owned utility that has adopted an approved residential energy conservation services program under the National Energy Conservation Policy Act (Public Law 95-619, as amended on November 1, 1981) or signed an energy conservation agreement with the Bonneville Power Administration of the United States Department of Energy for a residential weatherization program under section 6(a) of the Pacific Northwest Electric Power Planning and Conservation Act (Public Law 96-501, as adopted December 5, 1980) that is determined by the commission to meet or exceed the requirements in ORS 469.633 and 469.641 shall not be required to submit a separate program. However, the provisions of ORS 469.637, 469.639, 469.643 and 469.645 nevertheless shall be applicable.

(4) In addition to the residential energy conservation program required in ORS 469.633, an investor-owned utility may offer other energy conservation programs if the commission determines the programs will promote cost-effective energy conservation. [1981 c.778 §7; 1991 c.78 §2]

469.636 Additional financing program by investor-owned utility for rental dwelling. In addition to the residential energy conservation program approved under ORS 469.633, an investor-owned utility may offer an additional financing program for energy conservation measures for a dwelling owner who rents the dwelling to a tenant

whose dwelling unit receives energy for space heating from the investor-owned utility. The financing program may consist, at a minimum, of either of the following:

(1) Offering low-interest loans to fund the entire cost of installed energy conservation measures up to \$5,000 per dwelling unit. In addition to the loan subsidy provided under ORS 469.633 (3), the loan shall be further subsidized by applying the present value to the public utility of the tax credit received under ORS 469.185 to 469.225. Any portion of the present value of the tax credit shall accrue to the dwelling owner rather than to the investor-owned utility.

(2) Offering cash payments in addition to the cash payments required in ORS 469.633 (3). The additional cash payment shall be equal to the present value of the tax credit received under ORS 469.185 to 469.225. [1985 c.745 §11; 1989 c.765 §9]

469.637 Energy conservation part of utility service of investor-owned utility. The provision of energy conservation measures to a dwelling shall be considered part of the utility service rendered by the investor-owned utility. [1981 c.778 §4]

469.639 Billing for energy conservation measures. (1) Except as provided in subsection (2) of this section, the commission may require as part of an investor-owned utility residential energy conservation program that, for dwelling owners with approved credit, the utility add to the periodic utility bill for the owner-occupied dwelling for which energy conservation measures have been provided pursuant to ORS 469.631 to 469.645 an amount agreed to between the dwelling owner and the investor-owned utility.

(2) The commission shall allow an investor-owned utility to charge or bill a dwelling owner separately from the periodic utility bill for energy conservation measures provided pursuant to ORS 469.631 to 469.645 if that utility wishes to do so. [1981 c.778 §5]

469.641 Conditions for cash payments to dwelling owner by investor-owned utility. Except as provided in section 31, chapter 778, Oregon Laws 1981, an investor-owned utility shall not make a cash payment to a dwelling owner for energy conservation measures unless:

(1) The measures were provided in the dwelling on or after November 1, 1981; and

(2) The measures will not be paid for with other investor-owned utility grants or loans. [1981 c.778 §6; 1991 c.877 §39]

469.643 Formula for customer charges. The commission shall adopt by rule

a formula under which the investor-owned utility shall charge all customers to recover:

(1) The cost to the investor-owned utility of the services required to be provided under ORS 469.633; and

(2) Any bad debts, including casualty losses, attributable to dwelling owner default on a loan for energy conservation measures. [1981 c.778 §8]

469.645 Implementation of program by investor-owned utility. After the commission has approved the residential energy conservation program of an investor-owned utility required by ORS 469.633, the investor-owned utility promptly shall implement that program. [1981 c.778 §9]

(Publicly Owned Utilities)

469.649 Definitions for ORS 469.649 to 469.659. As used in ORS 469.649 to 469.659:

(1) "Administrator" means the administrator of the Office of Energy.

(2) "Cash payment" means a payment made by the publicly owned utility to the dwelling owner or to the contractor on behalf of the dwelling owner for energy conservation measures.

(3) "Commercial lending institution" means any bank, mortgage banking company, trust company, savings bank, savings and loan association, credit union, national banking association, federal savings and loan association or federal credit union maintaining an office in this state.

(4) "Cost-effective" means that an energy conservation measure that provides or saves a specific amount of energy during its life cycle results in the lowest present value of delivered energy costs of any available alternative. However, the present value of the delivered energy costs of an energy conservation measure shall not be treated as greater than that of a nonconservation energy resource or facility unless that cost is greater than 110 percent of the present value of the delivered energy cost of the nonconservation energy resource or facility.

(5) "Dwelling" means real or personal property within the state inhabited as the principal residence of a dwelling owner or a tenant. "Dwelling" includes a manufactured dwelling as defined in ORS 446.003, a floating home as defined in ORS 830.700 and a single unit in multiple-unit residential housing. "Dwelling" does not include a recreational vehicle as defined in ORS 446.003.

(6) "Dwelling owner" means the person:

(a) Who has legal title to a dwelling, including the mortgagor under a duly recorded mortgage of real property, the trustor under a duly recorded deed of trust or a purchaser

under a duly recorded contract for the purchase of real property; and

(b) Whose dwelling receives space heating from the publicly owned utility.

(7) "Energy audit" means:

(a) The measurement and analysis of the heat loss and energy utilization efficiency of a dwelling;

(b) An analysis of the energy savings and dollar savings potential that would result from providing energy conservation measures for the dwelling;

(c) An estimate of the cost of the energy conservation measures that includes:

(A) Labor for the installation of items designed to improve the space heating and energy utilization efficiency of the dwelling; and

(B) The items installed; and

(d) A preliminary assessment, including feasibility and a range of costs, of the potential and opportunity for installation of:

(A) Passive solar space heating and solar domestic water heating in the dwelling; and

(B) Solar swimming pool heating, if applicable.

(8) "Energy conservation measures" means measures that include the installation of items and the items installed to improve the space heating and energy utilization efficiency of a dwelling. These items include, but are not limited to, caulking, weatherstripping and other infiltration preventative materials, ceiling and wall insulation, crawl space insulation, vapor barrier materials, timed thermostats, insulation of heating ducts, hot water pipes and water heaters in unheated spaces, storm doors and windows, double glazed windows and dehumidifiers. "Energy conservation measures" does not include the dwelling owner's own labor.

(9) "Publicly owned utility" means a utility that:

(a) Is owned or operated in whole or in part, by a municipality, cooperative association or people's utility district; and

(b) Distributes electricity.

(10) "Residential customer" means a dwelling owner or tenant who is billed by a publicly owned utility for electric service received at the dwelling.

(11) "Space heating" means the heating of living space within a dwelling.

(12) "Tenant" means a tenant as defined in ORS 90.100 or any other tenant. [1981 c.778 §10; 1989 c.648 §67; 1995 c.551 §14]

469.651 Publicly owned utility program. Within 30 days after November 1, 1981, each publicly owned utility shall sub-

mit to the administrator of the Office of Energy a residential energy conservation program that:

(1) Makes available to all residential customers of the utility information about:

(a) Energy conservation measures; and

(b) Energy conservation measure financing available to dwelling owners.

(2) Provides within 60 days of a request by a residential customer of the publicly owned utility or a dwelling owner, assistance and technical advice concerning various methods of saving energy in that customer's or dwelling owner's dwelling including, but not limited to, an energy audit of the customer's or dwelling owner's dwelling.

(3) Provides financing for cost-effective energy conservation measures at the request of a dwelling owner who occupies the dwelling as a residential customer or rents the dwelling to a tenant who is a residential customer. The financing program shall give the dwelling owner a choice between a cash payment and a loan. The dwelling owner may not receive both a cash payment and a loan. Completion of an energy audit of the dwelling offered under the program required by this section or described in ORS 469.685 shall be a condition of eligibility for either a cash payment or a loan. The financing program shall provide:

(a) The following minimum levels of assistance:

(A) A loan for a dwelling owner with approved credit upon the following terms:

(i) A principal amount of up to \$4,000; or

(ii) An interest rate that does not exceed six and one-half percent annually; and

(iii) A reasonable repayment period that does not exceed 10 years; and

(B) A cash payment to a dwelling owner eligible under ORS 469.657 for the lesser of:

(i) Twenty-five percent of the cost of the energy conservation measures provided in the dwelling; or

(ii) \$350;

(b) That an otherwise eligible dwelling owner may obtain up to \$4,000 in loans or \$350 in cash payments for each dwelling;

(c) That there may be up to \$4,000 in loans or \$350 in cash payments for each dwelling;

(d) That a change in ownership of a dwelling shall not prevent the new dwelling owner from obtaining a loan or a cash payment for energy conservation measures for the newly acquired dwelling under circumstances including, but not necessarily limited to, when:

(A) The new dwelling owner chooses the same financing option chosen by the previous dwelling owner who obtained financing under ORS 469.649 to 469.659; and

(B) The amount of the financing is within the limit for that dwelling prescribed in paragraph (c) of this subsection;

(e) If the publicly owned utility so determines, that energy conservation measures for any of the following building and improvement activities may not be financed under the financing program:

(A) Construction of a new dwelling; or

(B) If the construction increases or otherwise changes the living space in the dwelling:

(i) An addition or substantial alteration; or

(ii) Remodeling; and

(f) If the publicly owned utility so determines, that no cash payment shall be allowed or paid for the cost of energy conservation measures provided more than one year before the date of the application for payment.

(4) Provides for verification through a reasonable number of inspections that energy conservation measures financed by the publicly owned utility are installed. The verification provisions of the residential energy conservation program shall further provide that:

(a) An installation shall be performed in such a workmanlike manner and with such materials as to satisfy prevailing industry standards; and

(b) The publicly owned utility shall provide a post-installation inspection upon the dwelling owner's request.

(5) Provides, upon the dwelling owner's request, information relevant to the specific site of a dwelling with access to:

(a) Water resources that have hydroelectric potential;

(b) Wind, which means the natural movement of air at an annual average speed of at least eight miles an hour; or

(c) A resource area known to have geothermal space-heating potential.

(6) Provides that the publicly owned utility will mail to a dwelling owner an offer to provide energy conservation measures in accordance with ORS 469.649 to 469.659 when a tenant who is the residential customer:

(a) Requests that the offer be mailed to the dwelling owner; and

(b) Furnishes the dwelling owner's name and address with the request. [1981 c.778 §11]

469.652 Contributions for urban and community forest activities by customers

of publicly owned utilities; uses. (1) Publicly owned utilities may establish a system to allow customers of publicly owned utilities to voluntarily contribute an amount that is to be used for urban and community forest activities within the area served by the utility. The amount shall be in addition to the customer's utility bill.

(2) The utility shall pay to the State Forester the amount designated under subsection (1) of this section. The State Forester shall deposit the moneys collected under this section into the Urban and Community Forestry Subaccount established under ORS 526.060.

(3) The State Forester shall use the moneys collected under this section for urban and community forest activities. The State Forester by rule, in consultation with local utilities, shall establish guidelines to distribute moneys collected under this section through the Urban and Community Forestry Assistance Program. The guidelines shall include a requirement that moneys are distributed for energy conservation, by means of tree plantings, care and maintenance.

(4) A utility shall not use more than 16 percent of the moneys collected under this section for administrative expenses. The State Forester shall not use more than 16 percent of the moneys collected under this section for administrative expenses.

(5) As used in this section, "urban and community forest activities" means activities that promote cost-effective energy conservation. These activities may include the planting, managing and maintaining of residential, street and park trees on public and private land. [1993 c.388 §4]

Note: See note under 469.634.

469.653 Alternative program of publicly owned utility. (1) A publicly owned utility may meet the program submission requirements of ORS 469.651 by submitting only the portions of its residential energy conservation program that are added to or revised in its program approved under section 4, chapter 887, Oregon Laws 1977, in order to make that earlier program fulfill the requirements of ORS 469.651.

(2) A publicly owned utility shall offer a dwelling owner a financing program for cost-effective energy conservation measures that includes the option of a cash payment or a loan unless the publicly owned utility offers another financing program that meets or exceeds the program required in ORS 469.651 (3). A program shall be considered to meet or exceed the program required in ORS 469.651 (3) when it includes a financial incentive to the residential customer with a

present value on November 1, 1981, that is equal to or greater than the present value of the larger of:

(a) The loan subsidy pursuant to ORS 469.651 (3)(a)(A); or

(b) The cash payment pursuant to ORS 469.651 (3)(a)(B).

(3) A publicly owned utility whose governing body has adopted an approved residential energy conservation services program under the National Energy Conservation Policy Act (Public Law 95-619, as amended on November 1, 1981) or signed an energy conservation agreement with the Bonneville Power Administration of the United States Department of Energy for a residential weatherization program under section 6(a) of the Pacific Northwest Electric Power Planning and Conservation Act (Public Law 96-501, as adopted December 5, 1980) that meets or exceeds the requirements of ORS 469.651 and 469.657 shall not be required to submit a separate program. However, the provisions of ORS 469.655 and 469.659 nevertheless shall be applicable. [1981 c.778 §14]

469.655 Energy conservation as part of utility service of publicly owned utility. The provision of energy conservation measures to a dwelling shall be considered part of the utility service rendered by the publicly owned utility. [1981 c.778 §12]

469.657 Conditions for cash payments to dwelling owner by publicly owned utility. Except as provided in section 31, chapter 778, Oregon Laws 1981, a publicly owned utility shall not make a cash payment to a dwelling owner for energy conservation measures unless:

(1) The measures were provided in the dwelling on or after November 1, 1981.

(2) The measures will not be paid for with other publicly owned utility grants or loans. [1981 c.778 §13; 1991 c.877 §40]

469.659 Implementation by publicly owned utility. After the publicly owned utility has submitted to the administrator of the Office of Energy the residential energy conservation program required by ORS 469.651, the publicly owned utility promptly shall implement that program. [1981 c.778 §15]

(Oil Dealers)

469.673 Definitions for ORS 469.673 to 469.683. As used in ORS 469.673 to 469.683:

(1) "Administrator" means the administrator of the Office of Energy.

(2) "Cash payment" means a payment made by the Office of Energy to the dwelling owner or to the contractor on behalf of the

dwelling owner for energy conservation measures.

(3) "Commercial lending institution" means any bank, mortgage banking company, trust company, savings bank, savings and loan association, credit union, national banking association, federal savings and loan association or federal credit union maintaining an office in this state.

(4) "Cost-effective" means that an energy conservation measure that provides or saves a specific amount of energy during its life cycle results in the lowest present value of delivered energy costs of any available alternative. However, the present value of the delivered energy costs of an energy conservation measure shall not be treated as greater than that of a nonconservation energy resource or facility unless that cost is greater than 110 percent of the present value of the delivered energy cost of the nonconservation energy resource or facility.

(5) "Dwelling" means real or personal property within the state inhabited as the principal residence of a dwelling owner or a tenant. "Dwelling" includes a manufactured dwelling as defined in ORS 446.003, a floating home as defined in ORS 830.700 and a single unit in multiple-unit residential housing. "Dwelling" does not include a recreational vehicle as defined in ORS 446.003.

(6) "Dwelling owner" means the person:

(a) Who has legal title to a dwelling, including the mortgagor under a duly recorded mortgage of real property, the trustor under a duly recorded deed of trust or a purchaser under a duly recorded contract for the purchase of real property; and

(b) Whose dwelling receives space heating from a fuel oil dealer.

(7) "Energy audit" means:

(a) The measurement and analysis of the heat loss and energy utilization efficiency of a dwelling;

(b) An analysis of the energy savings and dollar savings potential that would result from providing energy conservation measures for the dwelling;

(c) An estimate of the cost of the energy conservation measures that includes:

(A) Labor for the installation of items designed to improve the space heating and energy utilization efficiency of the dwelling; and

(B) The items installed; and

(d) A preliminary assessment, including feasibility and a range of costs, of the potential and opportunity for installation of:

(A) Passive solar space heating and solar domestic water heating in the dwelling; and

(B) Solar swimming pool heating, if applicable.

(8) "Energy conservation measures" means measures that include the installation of items and the items installed that are primarily designed to improve the space heating and energy utilization efficiency of a dwelling. These items include, but are not limited to, caulking, weatherstripping and other infiltration preventative materials, ceiling and wall insulation, crawl space insulation, vapor barrier materials, timed thermostats, insulation of heating ducts, hot water pipes and water heaters in unheated spaces, storm doors and windows, double glazed windows, and dehumidifiers. "Energy conservation measures" does not include the dwelling owner's own labor.

(9) "Fuel oil dealer" means a person, association, corporation or other form of organization that supplies fuel oil at retail for the space heating of dwellings.

(10) "Office of Energy" means the Office of Energy created under ORS 469.030.

(11) "Residential customer" means a dwelling owner or tenant who is billed by a fuel oil dealer for fuel oil service received at the dwelling.

(12) "Space heating" means the heating of living space within a dwelling.

(13) "Tenant" means a tenant as defined in ORS 90.100 or any other tenant. [1981 c.778 §16; 1987 c.749 §8; 1989 c.648 §68; 1995 c.551 §15]

469.675 Oil dealer program. Within 30 days after November 1, 1981, each fuel oil dealer shall submit for the approval of the administrator of the Office of Energy a residential energy conservation program that, to the administrator's satisfaction:

(1) Makes available to all residential customers of the fuel oil dealer information about:

(a) Energy conservation measures; and

(b) Energy conservation measure financing available to dwelling owners.

(2) Provides within 60 days of a request by a residential customer of the fuel oil dealer or a dwelling owner, assistance and technical advice concerning various methods of saving energy in that customer's or dwelling owner's dwelling including, but not limited to, an energy audit of the customer's or dwelling owner's dwelling. [1981 c.778 §17]

469.677 Contracts for information, assistance and technical advice; standards for energy audits. (1) The administrator of the Office of Energy shall contract and a fuel oil dealer may rely upon the administrator to contract for the information, assistance and

technical advice required to be provided by a fuel oil dealer under ORS 469.675.

(2) The administrator shall adopt standards for energy audits required under ORS 469.675 by rule in accordance with the rule-making provisions of ORS 183.310 to 183.550. [1981 c.778 §18]

469.679 Implementation by fuel dealer. After the administrator of the Office of Energy has approved the residential energy conservation program of a fuel oil dealer required by ORS 469.675, the fuel oil dealer promptly shall implement that program. [1981 c.778 §19]

469.681 Petroleum supplier assessment; computation; effect of failure to pay; interest. (1) Each petroleum supplier shall pay to the Office of Energy annually its share of an assessment to fund:

(a) Information, assistance and technical advice required of fuel oil dealers under ORS 469.675 for which the administrator of the Office of Energy contracts under ORS 469.677; and

(b) Cash payments to a dwelling owner or contractor for energy conservation measures.

(2) The amount of the assessment required by subsection (1) of this section shall be determined by the administrator in a manner consistent with the method prescribed in ORS 469.421. The aggregate amount of the assessment shall not exceed \$400,000. In making this assessment, the administrator shall exclude all gallons of distillate fuel oil sold by petroleum suppliers that are subject to the requirements of section 3, Article IX of the Oregon Constitution, ORS 319.020 or 319.530.

(3) If any petroleum supplier fails to pay any amount assessed to it under this section within 30 days after the payment is due, the Attorney General, on behalf of the Office of Energy, may institute a proceeding in the circuit court to collect the amount due.

(4) Interest on delinquent assessments shall be added to and paid at the rate of one and one-half percent of the payment due per month or fraction of a month from the date the payment was due to the date of payment.

(5) The assessment required by subsection (1) of this section is in addition to any assessment required by ORS 469.421 (8), and any other fee or assessment required by law.

(6) As used in this section, "petroleum supplier" means a petroleum refiner in this state or any person engaged in the wholesale distribution of distillate fuel oil in the State of Oregon. [1981 c.778 §23; 1983 c.273 §3; 1987 c.450 §3; 1989 c.88 §6; 1993 c.434 §1; 1993 c.569 §29; 1995 c.79 §289]

469.683 Oil-Heated Dwellings Energy Audit Account. (1) There is established, separate and distinct from the General Fund, the Oil-Heated Dwellings Energy Audit Account. Moneys deposited in the account under subsections (2) to (5) of this section shall be used to pay the cost of the information, assistance and technical advice required of fuel oil dealers under ORS 469.675 for which the administrator of the Office of Energy contracts under ORS 469.677.

(2) The Office of Energy shall pay into the State Treasury all assessment moneys received by the Office of Energy under ORS 469.681 during the preceding calendar month. The State Treasurer shall deposit the moneys to the credit of the Oil-Heated Dwellings Energy Audit Account.

(3) The moneys in the Oil-Heated Dwellings Energy Audit Account are continuously appropriated to the Office of Energy for the purpose of:

(a) Paying the cost of information, assistance and technical advice required of fuel oil dealers under ORS 469.675 for which the administrator contracts under ORS 469.677; and

(b) Providing cash payments to a dwelling owner or contractor for energy conservation measures.

(4) Notwithstanding ORS 293.140, any interest attributable to moneys in the Oil-Heated Dwellings Energy Audit Account shall accrue to that account.

(5) The Office of Energy shall keep a record of all moneys deposited in the Oil-Heated Dwellings Energy Audit Account. [1981 c.778 §§24,25; 1989 c.966 §55; 1993 c.434 §2]

(Miscellaneous)

469.685 Use of earlier energy audit. A dwelling owner served by an investor-owned utility, as defined in ORS 469.631, or a publicly owned utility, as defined in ORS 469.649, who applies for financing under the provisions of ORS 316.744, 317.386, 318.090 and 469.631 to 469.687, may use without obtaining a new energy audit an energy audit obtained from an energy supplier under chapter 887, Oregon Laws 1977, or a public utility under chapter 889, Oregon Laws 1977, before November 1, 1981. [1981 c.778 §30]

469.687 Title for ORS 469.631 to 469.687. ORS 316.744, 317.386, 318.090 and 469.631 to 469.687 shall be known as the Oregon Residential Energy Conservation Act. [1981 c.778 §1]

ENERGY CONSERVATION PROGRAMS (Single Family Residence)

469.700 Energy efficiency ratings; public information; "single family residence" defined. (1) The Building Codes Structures Board, after public hearing, shall adopt a recommended voluntary energy efficiency rating system for single family residences and provide the Office of Energy with a copy thereof.

(2) The rating system shall provide a single numerical value or other simple concise means to measure the energy efficiency of any single family residence, taking into account factors including, but not limited to, the heat loss characteristics of ceilings, walls, floors, windows, doors and heating ducts.

(3) Upon adoption of the rating system under subsections (1) and (2) of this section, the Office of Energy shall publicize the availability of the system, and encourage its voluntary use in real estate transactions.

(4) As used in subsections (1) to (3) of this section, "single family residence" means a structure designed as a residence for one family and sharing no common wall with another residence of any type. [1977 c.413 §§1,2,3; 1993 c.744 §113]

(Low Interest Loans)

469.710 Definitions for ORS 469.710 to 469.720. As used in ORS 469.710 to 469.720 and in section 28, chapter 894, Oregon Laws 1981, unless the context requires otherwise:

(1) "Annual rate" means the yearly interest rate specified on the note, and is not the annual percentage rate, if any, disclosed to the applicant to comply with the federal Truth in Lending Act.

(2) "Commercial lending institution" means any bank, mortgage banking company, trust company, savings bank, savings and loan association, credit union, national banking association, federal savings and loan association or federal credit union maintaining an office in this state.

(3) "Cost-effective" means that an energy conservation measure that provides or saves a specific amount of energy during its life cycle results in the lowest present value of delivered energy costs of any available alternative. However, the present value of the delivered energy costs of an energy conservation measure shall not be treated as greater than that of a nonconservation energy resource or facility unless that cost is greater than 110 percent of the present value of the delivered energy cost of the nonconservation energy resource or facility.

(4) "Dwelling" means real or personal property within the state inhabited as the principal residence of a dwelling owner or a tenant. "Dwelling" includes a manufactured dwelling as defined in ORS 446.003, a floating home as defined in ORS 830.700 and a single unit in multiple-unit residential housing. "Dwelling" does not include a recreational vehicle as defined in ORS 446.003.

(5) "Dwelling owner" means the person who has legal title to a dwelling, including the mortgagor under a duly recorded mortgage of real property, the trustor under a duly recorded deed of trust or a purchaser under a duly recorded contract for purchase of real property.

(6) "Energy audit" means:

(a) The measurement and analysis of the heat loss and energy utilization efficiency of a dwelling;

(b) An analysis of the energy savings and dollar savings potential that would result from providing energy conservation measures for the dwelling;

(c) An estimate of the cost of the energy conservation measures that includes:

(A) Labor for the installation of items designed to improve the space heating and energy utilization efficiency of the dwelling; and

(B) The items installed; and

(d) A preliminary assessment, including feasibility and a range of costs, of the potential and opportunity for installation of:

(A) Passive solar space heating and solar domestic water heating in the dwelling; and

(B) Solar swimming pool heating, if applicable.

(7) "Energy conservation measures" means measures that include the installation of items and the items installed that are primarily designed to improve the space heating and energy utilization efficiency of a dwelling. These items include, but are not limited to, caulking, weatherstripping and other infiltration preventative materials, ceiling and wall insulation, crawl space insulation, vapor barrier materials, timed thermostats, insulation of heating ducts, hot water pipes and water heaters in unheated spaces, storm doors and windows, double glazed windows and dehumidifiers. "Energy conservation measures" does not include the dwelling owner's own labor.

(8) "Finance charge" means the total of all interest, loan fees and other charges related to the cost of obtaining credit and includes any interest on any loan fees financed by the lending institution.

(9) "Fuel oil dealer" means a person, association, corporation or any other form of organization that supplies fuel oil at retail for the space heating of dwellings.

(10) "Residential fuel oil customer" means a dwelling owner or tenant who is billed by a fuel oil dealer for fuel oil service for space heating received at the dwelling.

(11) "Space heating" means the heating of living space within a dwelling.

(12) "Wood heating resident" means a person whose primary space heating is provided by the combustion of wood. [1981 c.894 §22; 1987 c.749 §5; 1989 c.648 §69]

469.715 Low interest loans for cost-effective energy conservation; rate. (1) Dwelling owners who are or who rent to residential fuel oil customers, or who are or who rent to wood heating residents, shall be eligible for low-interest loans for cost-effective energy conservation measures through commercial lending institutions.

(2) The annual rate shall not exceed six and one-half percent annually for loans provided by commercial lending institutions to dwelling owners who are or who rent to residential fuel oil customers, or who are or who rent to wood heating residents for the purpose of financing energy conservation measures pursuant to ORS 469.710 to 469.720. [1981 c.894 §§23,24; 1987 c.749 §6]

469.717 When installation to be completed. (1) Installation of the energy conservation measures must be completed within 90 days after receipt of loan funds. The Office of Energy may provide an inspection at the owner's request.

(2) Notwithstanding the provisions of subsection (1) of this section, the Office of Energy may inspect installation of energy conservation measures to verify that all loan or other state subsidy funds have been used for energy conservation measures recommended in the audit, that installation has been performed in a workmanlike manner and that materials used satisfy prevailing industry standards. If requested to do so by the Office of Energy, the dwelling owner shall provide the Office of Energy with copies of receipts and any other documents verifying the cost of energy conservation measures. [1987 c.749 §3]

469.719 Eligibility of lender for tax credit not affected by owner's failure. Eligibility of the lender for any tax credit under section 28, chapter 894, Oregon Laws 1981, shall not be affected by any dwelling owner's failure to use the loan for qualifying energy conservation measures. [1987 c.749 §4]

469.720 Energy audit required; permission to inspect required; owner not to receive other incentives. (1) A dwelling

owner who is or who rents to a residential fuel oil customer or who is or who rents to a wood heating resident, may not apply for low-interest financing under ORS 469.710 to 469.720 unless:

(a) The dwelling owner, customer or resident has first requested and obtained an energy audit from a fuel oil dealer, a publicly owned utility or an investor-owned utility or from a person under contract with the Oregon Office of Energy under ORS 316.744, 317.111, 317.386, 318.090 and 469.631 to 469.687;

(b) The dwelling owner first submits to the Office of Energy written permission to inspect the installations to verify that installation of energy conservation measures has been made;

(c) The dwelling owner presents to the lending institution a copy of the energy audit together with certification that the dwelling in question receives space heating from fuel oil or wood and a copy of the written permission to inspect submitted to the Office of Energy under paragraph (b) of this subsection; and

(d) The dwelling owner does not receive any other state incentives for that part of the cost of the energy conservation measures to be financed by the loan.

(2) Any dwelling owner applying for low-interest financing under ORS 469.710 to 469.720 who is or who rents to a residential fuel oil customer, or who is or who rents to a wood heating resident, may use without obtaining a new energy audit any assistance and technical advice obtained from an energy supplier before November 1, 1981, under chapter 887, Oregon Laws 1977, or from a public utility under chapter 889, Oregon Laws 1977, including an estimate of cost for installation of weatherization materials. [1981 c.894 §§25,26; 1987 c.749 §7]

(Public Buildings)

469.730 Declaration of purpose. It is the purpose of ORS 469.730 to 469.745 to promote voluntary measures to conserve energy in public buildings or groups of buildings constructed prior to January 1, 1978, through the adoption of energy conservation standards. [1977 c.853 §1]

469.735 Definitions for ORS 469.730 to 469.745. As used in ORS 469.730 to 469.745, unless the context requires otherwise:

(1) "Department" means the Department of Consumer and Business Services.

(2) "Director" means the Director of the Department of Consumer and Business Services.

(3) "Public building" means any publicly or privately owned building constructed prior to January 1, 1978, including the outdoor areas adjacent thereto, which:

(a) Is open to and frequented by the public; or

(b) Serves as a place of employment. [1977 c.853 §2; 1987 c.414 §154; 1993 c.744 §114]

469.740 Energy conservation standards for public buildings; bases. In accordance with ORS 183.310 to 183.550 and after consultation with the Building Codes Structures Board and the Office of Energy, the Director of the Department of Consumer and Business Services shall adopt rules establishing energy conservation standards for public buildings. The standards shall provide means of measuring and reducing total energy consumption and shall take into account:

(1) The climatic conditions of the areas in which particular buildings are located; and

(2) The three basic systems comprising any functioning building, which are:

(a) Energized systems such as those required for heating, cooling, lighting, ventilation, conveyance and business equipment operation.

(b) Nonenergized systems such as floors, ceilings, walls, roof and windows.

(c) Human systems such as maintenance, operating and management personnel, tenants and other users. [1977 c.853 §3; 1987 c.414 §154a; 1993 c.744 §115]

469.745 Voluntary compliance program. To provide the public with a guide for energy conservation, the administrator of the Office of Energy shall adopt a program for voluntary compliance by the public with the standard adopted by the Director of the Department of Consumer and Business Services under ORS 469.740. [1977 c.853 §4; 1987 c.414 §155]

469.750 State purchase of alternative fuels. (1) Any state agency, board, commission, department or division that is authorized to purchase or otherwise acquire fuel for the systems providing heating, air conditioning, lighting and the supply of domestic hot water for public buildings and grounds may enter into long-term contracts for the purchase of alternative fuels. Such contracts may be for terms not longer than 20 years.

(2) As used in this section:

(a) "Alternative fuels" includes all fuels other than petroleum, natural gas, coal and products derived therefrom. The term includes, but is not limited to, solid wastes or fuels derived from solid wastes.

(b) "Public buildings and grounds" has the meaning given that term in ORS 276.210. [1981 c.386 §6]

Note: 469.750 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 469 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

(State Agency Projects)

469.752 Definitions for ORS 469.752 to 469.756. As used in ORS 469.752 to 469.756, unless the context requires otherwise:

(1) "Office of Energy" means the Office of Energy created under ORS 469.030.

(2) "Project" means a state agency's improvement of the efficiency of energy use through conservation, development of cogeneration facilities or use of renewable resources. "Project" does not include a plan of a state agency to improve the efficiency of energy use in a state rented facility if the payback period for the project exceeds the term of the current state lease for that facility.

(3) "Savings" means any reduction in energy costs or net income derived from the sale of energy generated through a project.

(4) "State agency" has the meaning given that term in ORS 278.005. [1991 c.487 §1; 1993 c.86 §1; 1995 c.551 §16]

Note: 469.752 to 469.756 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 469 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

469.754 Authority of state agencies to establish projects; use of savings. (1) State agencies are authorized to enter into such contractual and other arrangements as may be necessary or convenient to design, develop, operate and finance projects on-site at state owned or state rented facilities. In developing such projects, state agencies shall offer a right of first refusal of two months for conservation and direct use renewable resources and three months for cogeneration and generating renewable resources to each local utility providing utility service to the agency to jointly develop, finance, operate and otherwise act together in the development and operation of such projects. The Office of Energy shall adopt rules to establish the procedure by which the right of first refusal shall be administered. In adopting the rules, the Office of Energy shall insure that the local utility providing utility service to the state agency is entitled to the first right to negotiate with the state agency and that the utility is entitled to match any offer made by any other entity to participate in the project. The Office of Energy also shall adopt procedures that insure that the right to first negotiate and the right to match any

offer applies to the sale of electrical or steam output from the project.

(2)(a) For as long as a project established under ORS 469.752 to 469.756 produces savings:

(A) A state agency's budget shall not be cut because of savings due to the project; and

(B) A state agency shall retain 50 percent of the net savings to the state agency after any project debt service.

(b) Savings from a project shall be deposited in a revolving fund administered by the state agency.

(3) A state agency shall spend the savings under subsection (2) of this section to increase productivity through:

(a) Energy efficiency projects;

(b) High-tech improvements, such as the purchase or installation of new desk-top or lap-top computers or the linkage of computers into systems or networks; or

(c) Infrastructure improvements.

(4) The moneys credited to the revolving fund may be invested and reinvested as provided in ORS 293.701 to 293.790. Notwithstanding ORS 293.105 (3) or any other provision of law, interest or other earnings on moneys in the revolving fund shall be credited to the revolving fund.

(5) The remaining 50 percent of net savings to the state agency after any project debt service shall be deposited in the General Fund.

(6) Nothing in ORS 469.752 to 469.756 authorizes a state agency to sell electricity to an entity other than an investor owned utility, a publicly owned utility, an electric cooperative utility or the Bonneville Power Administration.

(7) Nothing in ORS 469.752 to 469.756 limits the authority of a state agency conferred by any other provision of law, or affects any authority, including the authority of a municipality, to regulate utility service under existing law. [1991 c.487 §2; 1993 c.86 §2]

Note: See note under 469.752.

469.756 Rules; technical assistance; evaluations. The Office of Energy in consultation with other state agencies and utilities shall adopt rules, guidelines and procedures that are necessary to establish savings for projects and to implement other provisions of ORS 469.752 to 469.756, including, but not limited to, rules prescribing the procedures to be followed by an agency in negotiating with local utilities to develop agreements suitable for the joint development of projects, and procedures to determine which local utility, if any, shall be

chosen to jointly develop the project. The Office of Energy may enter into agreements under ORS chapter 190 with state agencies to provide technical assistance in selecting appropriate projects and to evaluate and determine energy and cost savings. [1991 c.487 §3]

Note: See note under 469.752.

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

469.800 Oregon participation in Pacific Northwest Electric Power and Conservation Planning Council. The State of Oregon agrees to participate in the formation of the Pacific Northwest Electric Power and Conservation Planning Council pursuant to the Pacific Northwest Electric Power Planning and Conservation Act of 1980, Public Law 96-501. Participation of the State of Oregon in the council is essential to assure adequate representation for the citizens of Oregon in decision making to achieve cost-effective energy conservation, to encourage the development of renewable energy resources, to establish a representative regional power planning process, to assure the Pacific Northwest region of an efficient and adequate power supply and to fulfill the other purposes stated in section 2 of Public Law 96-501. [1981 c.49 §1]

469.805 State members of council; confirmation; qualifications. (1) The Governor, subject to Senate confirmation pursuant to section 4, Article III of the Oregon Constitution, shall appoint two persons to serve as members of the Pacific Northwest Electric Power and Conservation Planning Council for terms of three years.

(2) In making the appointments under subsection (1) of this section, the Governor shall consider but is not limited to:

(a) Prior experience, training and education as related to the duties and functions of the council and the priorities contained in section 4 of Public Law 96-501.

(b) General knowledge of the concerns, conditions and problems of the physical, social and economic environment of the State of Oregon.

(c) The need for diversity of experience and education related to the functions and duties of the council and priorities of Public Law 96-501.

(3) Of the persons appointed under subsection (1) of this section, not more than one member of the Oregon delegation to the council shall reside within the boundary of an area that includes the First and Third Congressional Districts as described in ORS 188.130 and the Portland, Oregon, Standard

Metropolitan Statistical Area. [1981 c.49 §2; 1995 c.156 §1]

Note: ORS 188.130, which describes the boundaries of Congressional districts, has been invalidated by order of the United States District Court. See note appearing before ORS 188.135. Editorial adjustment of ORS 469.805 to reflect the court order has not been made.

469.810 Conflicts of interest prohibited. (1) A council member, or member of the council member's household, as defined in ORS 244.020, shall not own or have any beneficial interest in any stock or indebtedness of any utility or direct service industry.

(2) A council member, or a member of a council member's household, as defined in ORS 244.020, shall not be a director, officer, agent or employee of any utility or direct service industry.

(3) A council member, or a member of a council member's household, as defined in ORS 244.020, shall not be a director, officer, agent or employee of or hold any proprietary interest in any consulting firm which does business with any utility or direct service industry.

(4) A council member, or a member of the council member's household, as defined in ORS 244.020, shall not receive any compensation from any utility or direct service industry arising out of the member's business, trade or profession.

(5) A council member shall be considered a public official and be subject to the provisions of ORS chapter 244, including the reporting requirements thereof.

(6) A council member shall be a citizen of the United States and have been a resident of the State of Oregon for one year preceding appointment.

(7) A council member shall not hold any other elected or appointed public lucrative office or be principally engaged in any other business or vocation.

(8) As used in this section:

(a) "Beneficial interest" does not include an interest in a pension fund, a mutual fund or an insurance fund.

(b) "Consulting firm" means any corporation, partnership or sole proprietorship whose principal business is providing personal services.

(c) "Utility or direct service industry" means a utility or direct service industry customer that purchases electrical energy directly from the Bonneville Power Administration. [1981 c.49 §3; 1987 c.566 §23]

469.815 Status of members; duties; attendance at public meetings; technical assistance. (1) Persons appointed by the Governor and confirmed by the Senate to serve as council members shall be considered

to be full-time state public officials. Council members shall perform the duties of members of the council as specified in Public Law 96-501, consistently with the priorities contained in section 4 thereof and as otherwise provided in state law.

(2) If public meetings are held in the State of Oregon, pursuant to section 4(g)(1) of Public Law 96-501, council members must either attend the meeting or otherwise become familiar with the nature and content of the meeting.

(3) A council member may request, and state agencies shall provide, technical assistance to assist the council member in performing the council member's duties. [1981 c.49 §4]

469.820 Term; reappointment; vacancy. (1) Each council member shall serve a term ending January 15 of the third year following appointment. A council member, except upon removal as provided in ORS 469.830 (2), continues to serve as a member of the council until a successor is appointed and confirmed.

(2) A council member is eligible for reappointment, subject to Senate confirmation, but no member shall serve more than three consecutive terms. A council member who serves 18 months or more of a term shall be considered to have served a full term. However, with respect to the initial term consisting of two years, a council member who serves 12 months or more shall be considered to have served a full term.

(3) Within 30 days of the creation of a vacancy in the position of a council member, the Governor shall appoint a person to serve the succeeding term or the remainder of the unexpired term. However, the Governor need not appoint a person to serve the remainder of the unexpired term if the vacancy occurs within 30 days or less of the expiration of the term. [1981 c.49 §5]

469.825 Prohibited activities of members. (1) A person who has been a council member shall not engage in any of the activities prohibited by ORS 469.810 (2) and (3), within one year after ceasing to be a council member.

(2) A person who has been a council member shall not appear as a representative of any party on any matter before the council within three years after ceasing to be a council member.

(3) A person who has been a council member shall not represent, aid, counsel, consult or advise for financial gain any person on any matter before the council within three years after ceasing to be a council member.

(4) A person who has been a council member shall not appear for financial gain as a representative of or aid, counsel or advise any party before the council or the Bonneville Power Administration or communicate with the council or the Bonneville Power Administration with the intent to influence the outcome of any decision on any matter in which the council member was substantially and personally involved while on the council.

(5) Notwithstanding the status of council members as state officers, the provisions of 18 U.S.C. 207 relating to post-employment activities shall be considered to be state law in so far as they do not conflict therewith, applicable to council members appointed pursuant to ORS 469.800 to 469.845 and 469.990 (3), regardless of the salary paid to the council members.

(6) Subsections (2) to (5) of this section shall not apply to any appearance, attendance, communication or other action on behalf of the State of Oregon; nor shall subsections (2) to (5) of this section apply to an appearance or communication made in response to a subpoena. [1981 c.49 §6]

469.830 Removal of members; grounds; procedure. (1) Council members shall serve at the pleasure of the Governor, except as provided in subsection (2) of this section.

(2) The Governor shall remove a council member for the following causes:

(a) Failure to attend three consecutive council meetings except for good cause.

(b) Conviction of a felony.

(c) Violation of ORS chapter 244.

(d) Violation of ORS 469.810.

(3) Before removal of a council member by the Governor, the council member shall be given a written statement of the reasons for removal and, upon request by the member, an opportunity to be heard publicly on such reasons before the Governor. A copy of the statement of reasons and a transcript of the record of the hearing shall be filed with the Secretary of State. [1981 c.49 §7]

469.835 Salary of members; staff. (1) Each council member shall receive a salary not to exceed the salary of a member of the Public Utility Commission, or the maximum salary authorized under section 4(a)(3) of Public Law 96-501.

(2) Each council member is entitled to appoint one secretarial staff assistant who shall be in the unclassified service. [1981 c.49 §8; 1989 c.171 §64]

469.840 Northwest Regional Power and Conservation Account; uses. (1) There is established a Northwest Regional Power and

Conservation Account. Moneys received pursuant to Public Law 96-501 shall be placed in the account.

(2) The account created by subsection (1) of this section is continuously appropriated for disbursement to state agencies, including but not limited to the Public Utility Commission, the Office of Energy, the State Department of Fish and Wildlife and the Water Resources Department to carry out the purposes of Public Law 96-501, subject to legislative approval or limitation by law or Emergency Board action. [1981 c.49 §9; 1987 c.158 §99]

469.845 Annual report to Governor and legislature. Council members shall prepare a report which shall be presented to the Governor and to the President of the Senate and the Speaker of the House of Representatives of the Legislative Assembly on October 1 of each year. The report shall include a review of the council's actions during the prior year. [1981 c.49 §10]

COMMERCIAL ENERGY CONSERVATION SERVICES PROGRAM

469.860 Definitions for ORS 469.860 to 469.900. (1) As used in ORS 469.865 to 469.875, 469.900 (1) and (2) and subsection (2) of this section:

(a) "Commercial building" means a public building as defined in ORS 456.746.

(b) "Commission" means the Public Utility Commission.

(c) "Conservation services" means providing energy audits or technical assistance for energy conservation measures as part of a program approved under ORS 469.860 to 469.900.

(d) "Electric utility" means a public utility, as defined in ORS 757.005, which produces, transmits, delivers or furnishes electric power and is regulated by the commission under ORS chapter 757.

(e) "Energy conservation measure" means a measure primarily designed to improve the efficiency of energy use in a commercial building. "Energy conservation measures" include, but are not limited to, improved operation and maintenance measures, energy use analysis procedures, lighting system improvements, heating, ventilating and air conditioning system modifications, furnace and boiler efficiency improvements, automatic control systems including wide dead band thermostats, heat recovery devices, infiltration controls, envelope weatherization, solar water heaters and water heating heat pumps.

(2) As used in ORS 469.865 and 469.900 (2), "gas utility" means a public utility, as

defined in ORS 757.005, which delivers or furnishes natural gas to customers for heat, light or power.

(3) As used in ORS 469.880 to 469.895 and 469.900 (3):

(a) "Commercial building" means a public building as defined in ORS 455.560.

(b) "Conservation services" has the meaning given in subsection (1) of this section.

(c) "Energy conservation measure" has the meaning given in subsection (1) of this section.

(d) "Publicly owned utility" means an electric utility owned or operated, in whole or in part, by a municipality, cooperative association or people's utility district. [1981 c.708 §§1,7,13]

Note: 469.860 (1) and (2) and 469.863 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 469 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

469.863 Gas utility to adopt commercial energy audit program. (1) Within 365 days after November 1, 1981, the commission shall adopt rules governing energy conservation programs provided by gas utilities under this section and may provide for coordination among electric utilities and gas utilities that serve the same commercial building.

(2) Within 180 days after the effective date of the rules adopted by the commission under subsection (1) of this section, each gas utility shall present for the commission's approval a commercial energy audit program which shall, to the commission's satisfaction:

(a) Make information about energy conservation measures available to any commercial building customer of the gas utility, upon request;

(b) Regularly notify all customers in commercial buildings of the availability of the services described in this section;

(c) Provide to any commercial building customer of the gas utility, upon request, an on-site energy audit of the customer's commercial building, including, but not limited to, an estimate of the cost of the recommended energy conservation measure; and

(d) Set a reasonable time schedule for effective implementation of the elements set forth in this section. [1981 c.708 §8]

Note: See note under 469.860.

469.865 Electric utility to adopt commercial energy conservation services program. (1) Within 180 days after the adoption of the rules by the commission under section 2, chapter 708, Oregon Laws 1981, each electric utility shall present for the commission's approval a commercial en-

ergy conservation services program which shall, to the commission's satisfaction:

(a) Make information about energy conservation available to any commercial building customer of the electric utility, upon request;

(b) Regularly notify all customers in commercial buildings of the availability of the services described in this section; and

(c) Provide to any commercial building customer of the electric utility, upon request, an on-site energy audit of the customer's commercial building, including, but not limited to, an estimate of the cost of the energy conservation measures.

(2) The programs submitted and approved under this section shall include a reasonable time schedule for effective implementation of the elements set forth in subsection (1) of this section in the service areas of the electric utility. [1981 c.708 §3]

469.870 Application of ORS 469.865, 469.870 and 469.900 (1) to electric utility. ORS 469.865, 469.900 (1) and this section shall not apply to an electric utility if the commission determines that its existing commercial energy conservation services program meets or exceeds the requirements of those sections. [1981 c.708 §4]

469.875 Fee for gas utility audit. The commission shall determine whether the gas utility may charge a reasonable fee to the customer for the energy audit service and, if so, the fee amount. [1981 c.708 §9]

469.878 Alternative fuels program. (1) An investor-owned utility may offer cash payments to assist the utility's commercial and industrial customers in purchasing alternative fuel fleet vehicles or facilities necessary to operate alternative fuel fleet vehicles including but not limited to an alternative fuel fleet vehicle refueling station. The utility may pay the customer the present value to the utility of the tax credit to which the customer would be entitled under ORS 469.185 to 469.225.

(2) As used in this section, "cash payment" and "investor-owned utility" have the meanings given those terms in ORS 469.631. [1991 c.711 §6; 1993 c.18 §123; 1995 c.746 §18a]

469.880 Energy audit program. Each publicly owned utility serving Oregon shall, either independently or as part of an association, provide an energy audit program for its commercial customers. The administrator shall adopt rules governing the commercial energy audit program established under this section and may provide for coordination among electric utilities and gas utilities that serve the same commercial building. [1981 c.708 §14; 1987 c.158 §100]

469.885 Publicly owned utility to adopt commercial energy audit program; fee. (1) Within 180 days after the adoption of rules by the administrator of the Office of Energy under ORS 469.880, each publicly owned utility shall present for the administrator's approval a commercial energy audit program which shall, to the administrator's satisfaction:

(a) Make information about energy conservation available to any commercial building customer of the publicly owned utility, upon request;

(b) Regularly notify all customers in commercial buildings of the availability of the services described in this section;

(c) Provide to any commercial building customer of the publicly owned utility, upon request, an on-site energy audit of the customer's commercial building, including, but not limited to, an estimate of the cost of the energy conservation measures; and

(d) Set a reasonable time schedule for effective implementation of the elements set forth in this section.

(2) The commercial energy audit program submitted under subsection (1) of this section shall specify whether the publicly owned utility proposes to charge the customer a fee for the energy audit and, if so, the fee amount. [1981 c.708 §§15,16]

469.890 Publicly owned utility to adopt commercial energy conservation program; fee. (1) Within 365 days after November 1, 1981, the administrator of the Office of Energy shall adopt rules governing energy conservation programs prescribed by ORS 469.895, 469.900 (3) and this section and may provide for coordination among electric utilities and gas utilities that serve the same commercial building. Within 180 days of the adoption of rules by the administrator, each covered publicly owned utility shall present for the administrator's approval a commercial energy conservation services program which shall, to the administrator's satisfaction:

(a) Make information about energy conservation available to all commercial building customers of the covered publicly owned utility, upon request;

(b) Regularly notify all customers in commercial buildings of the availability of the services described in this section; and

(c) Provide to any commercial building customer of the covered publicly owned utility, upon request, an on-site energy audit of the customer's commercial building, including, but not limited to, an estimate of the cost of energy conservation measures.

(2) The programs submitted and approved under this section shall include a reasonable time schedule for effective implementation of the elements set forth in subsection (1) of this section in the service areas of the covered publicly owned utility.

(3) The commercial energy conservation services program submitted under subsections (1) and (2) of this section shall specify whether the covered publicly owned utility proposes to charge the customer a fee for the energy audit and, if so, the fee amount. [1981 c.708 §§18,19]

469.895 Application of ORS 469.890 to 469.900 to publicly owned utility. (1) ORS 469.890, 469.900 (3) and this section apply in any calendar year to a publicly owned utility only if during the second preceding calendar year sales of electric energy by the publicly owned utility for purposes other than resale exceeded 750 million kilowatt-hours. For the purpose of ORS 469.890, 469.900 (3) and this section, a publicly owned utility with sales for nonresale purposes in excess of 750 million kilowatt-hours during the second preceding calendar year shall be known as a "covered publicly owned utility."

(2) ORS 469.890, 469.900 (3) and this section shall not apply to a covered publicly owned utility if the administrator of the Office of Energy determines that its existing commercial energy conservation services program meets or exceeds the requirements of those sections.

(3) Before the beginning of each calendar year, the administrator shall publish a list identifying each covered publicly owned utility to which ORS 469.890, 469.900 (3) and this section shall apply during that calendar year.

(4) Any covered publicly owned utility is exempt from the requirements of ORS 469.880 and 469.885. [1981 c.708 §17]

469.900 Duty of commission to avoid conflict with federal requirements. (1) The commission shall insure that each electric utility's commercial energy conservation services program does not conflict with federal statutes and regulations applicable to electric utilities and energy conservation in commercial buildings.

(2) The commission shall insure that each gas utility's commercial energy conservation services program does not conflict with federal statutes and regulations applicable to gas utilities and energy conservation in commercial buildings.

(3) The administrator of the Office of Energy shall insure that each covered publicly owned utility's commercial energy conservation services program does not conflict with federal statutes and regulations applicable to covered publicly owned utilities and

energy conservation in commercial buildings. [1981 c.708 §§5,10,20]

Note: 469.900 (1) and (2) were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 469 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

NORTHWEST INTERSTATE COMPACT ON LOW-LEVEL RADIOACTIVE WASTE MANAGEMENT

469.930 Northwest Interstate Compact on Low-Level Radioactive Waste Management. The Northwest Interstate Compact on Low-Level Radioactive Waste Management is enacted into law by the State of Oregon and entered into with all other jurisdictions lawfully joining therein in a form as provided for as follows:

ARTICLE I Policy and Purpose

The party states recognize that low-level radioactive wastes are generated by essential activities and services that benefit the citizens of the states. It is further recognized that the protection of the health and safety of the citizens of the party states and the most economical management of low-level radioactive wastes can be accomplished through cooperation of the states in minimizing the amount of handling and transportation required to dispose of such wastes and through the cooperation of the states in providing facilities that serve the region. It is the policy of the party states to undertake the necessary cooperation to protect the health and safety of the citizens of the party states and to provide for the most economical management of low-level radioactive wastes on a continuing basis. It is the purpose of this compact to provide the means for such a cooperative effort among the party states so that the protection of the citizens of the states and the maintenance of the viability of the states' economies will be enhanced while sharing the responsibilities of radioactive low-level waste management.

ARTICLE II Definitions

As used in this compact:

(1) "Facility" means any site, location, structure or property used or to be used for the storage, treatment or disposal of low-level waste, excluding federal waste facilities.

(2) "Low-level waste" means waste material which contains radioactive nuclides emitting primarily beta or gamma radiation, or both, in concentrations or quantities which exceed applicable federal or state standards for unrestricted release. Low-level

waste does not include waste containing more than 10 nanocuries of transuranic contaminants per gram of material, nor spent reactor fuel, nor material classified as either high-level waste or waste which is unsuited for disposal by near-surface burial under any applicable federal regulations.

(3) "Generator" means any person, partnership, association, corporation or any other entity whatsoever which, as a part of its activities, produces low-level radioactive waste.

(4) "Host state" means a state in which a facility is located.

ARTICLE III Regulatory Practices

Each party state hereby agrees to adopt practices which will require low-level waste shipments originating within its borders and destined for a facility within another party state to conform to the applicable packaging and transportation requirements and regulations of the host state. Such practices shall include:

(1) Maintaining an inventory of all generators within the state that have shipped or expect to ship low-level waste to facilities in another party state.

(2) Periodic unannounced inspection of the premises of such generators and the waste management activities thereon.

(3) Authorization of the containers in which such waste may be shipped and a requirement that generators use only that type of container authorized by the state.

(4) Assurance that inspections of the carriers which transport such waste are conducted by proper authorities and appropriate enforcement action is taken for violations.

(5) After receiving notification from a host state that a generator within the party state is in violation of applicable packaging or transportation standards, the party state will take appropriate action to assure that such violations do not recur. Such action may include inspection of every individual low-level waste shipment by that generator.

(6) Each party state may impose fees upon generators and shippers to recover the cost of the inspections and other practices under this Article. Nothing in this Article shall be construed to limit any party state's authority to impose additional or more stringent standards on generators or carriers than those required under this Article.

ARTICLE IV Regional Facilities

(1) Facilities located in any party state, other than facilities established or main-

tained by individual low-level waste generators for the management of their own low-level waste, shall accept low-level waste generated in any party state if such waste has been packaged and transported according to applicable laws and regulations.

(2) No facility located in any party state may accept low-level waste generated outside of the region comprised of the party states, except as provided in Article V.

(3) Until such time as paragraph (2) of this Article takes effect as provided in Article VI, facilities located in any party state may accept low-level waste generated outside of any of the party states only if such waste is accompanied by a certificate of compliance issued by an official of the state in which such waste shipment originated. Such certificate shall be in such form as may be required by the host state and shall contain at least the following:

(a) The generator's name and address;

(b) A description of the contents of the low-level waste container;

(c) A statement that the low-level waste being shipped has been inspected by the official who issued the certificate or by an agent of the official or by a representative of the United States Nuclear Regulatory Commission, and found to have been packaged in compliance with applicable federal regulations and such additional requirements as may be imposed by the host state; and

(d) A binding agreement by the state of origin to reimburse any party state for any liability or expense incurred as a result of an accidental release of such waste, during shipment or after such waste reaches the facility.

(4) Each party state shall cooperate with the other party states in determining the appropriate site of any facility that might be required within the region comprised of the party states, in order to maximize public health and safety while minimizing the use of any one party state as the host of such facilities on a permanent basis. Each party state further agrees that decisions regarding low-level waste management facilities in the region will be reached through a good faith process which takes into account the burdens borne by each of the party states as well as the benefits each has received.

(5) The party states recognize that the issue of hazardous chemical waste management is similar in many respects to that of low-level waste management. Therefore, in consideration of the State of Washington allowing access to its low-level waste disposal facility by generators in other party states, party states such as Oregon and Idaho which host hazardous chemical waste disposal fa-

cilities will allow access to such facilities by generators within other party states. Nothing in this compact shall be construed to prevent any party state from limiting the nature and type of hazardous chemical or low-level wastes to be accepted at facilities within its borders or from ordering the closure of such facilities, so long as such action by a host state is applied equally to all generators within the region comprised of the party states.

(6) Any host state may establish a schedule of fees and requirements related to its facility to assure that closure, perpetual care, and maintenance and contingency requirements are met, including adequate bonding.

ARTICLE V
Northwest Low-Level
Waste Compact Committee

The governor of each party state shall designate one official of that state as the person responsible for administration of this compact. The officials so designated shall together comprise the Northwest low-level waste compact committee. The committee shall meet as required to consider matters arising under this compact. The parties shall inform the committee of existing regulations concerning low-level waste management in their states and shall afford all parties a reasonable opportunity to review and comment upon any proposed modifications in such regulations. Notwithstanding any provision of Article IV to the contrary, the committee may enter into arrangements with states, provinces, individual generators or regional compact entities outside the region comprised of the party states for access to facilities on such terms and conditions as the committee may deem appropriate. However, it shall require a two-thirds vote of all such members, including the affirmative vote of the member of any party state in which a facility affected by such arrangement is located, for the committee to enter into such arrangement.

ARTICLE VI
Eligible Parties and Effective Date

(1) Each of the following states is eligible to become a party to this compact: Alaska, Hawaii, Idaho, Montana, Oregon, Utah, Washington and Wyoming. As to any eligible party, this compact shall become effective upon enactment into law by that party, but it shall not become initially effective until enacted into law by two states. Any party state may withdraw from this compact by enacting a statute repealing its approval.

(2) After the compact has initially taken effect pursuant to paragraph (1) of this Article any eligible party state may become a

party to this compact by the execution of an executive order by the governor of the state. Any state which becomes a party in this manner shall cease to be a party upon the final adjournment of the next general or regular session of its legislature or July 1, 1983, whichever occurs first, unless the compact has by then been enacted as a statute by that state.

(3) Paragraph (2) of Article IV of this compact shall take effect on July 1, 1983, if consent is given by Congress. As provided in Public Law 96-573, Congress may withdraw its consent to the compact after every five-year period.

ARTICLE VII
Severability

If any provision of this compact, or its application to any person or circumstance, is held to be invalid, all other provisions of this compact, and the application of all of its provisions to all other persons and circumstances, shall remain valid; and to this end the provisions of this compact are severable.

[1981 c.497 §1]

469.935 State appointee subject to Senate confirmation. The Oregon appointee to the Northwest Low-Level Waste Compact Committee shall be subject to Senate confirmation pursuant to section 4, Article III of the Oregon Constitution. [1981 c.497 §3]

Note: 469.935 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 469 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

469.950 Authority to enter into interstate cooperative agreements to control power costs and rates. The State of Oregon shall pursue and may enter into an interstate cooperative agreement with the states of Washington, Idaho and Montana for the purpose of making collective efforts to control Bonneville Power Administration wholesale power costs and rates by studying and developing a region-wide response to:

(1) Federal attempts to increase arbitrarily the interest rates on federal funds previously used to build public facilities in the Pacific Northwest.

(2) Federal initiatives to sell the Bonneville Power Administration.

(3) Bonneville Power Administration rate increase and budget expenditure proposals in excess of their actual needs.

(4) Regional uses of surplus firm power, including uses by existing or newly attracted Pacific Northwest industries, to provide long-term use of the surplus for job development.

(5) Power transmission intertie access. [1985 c.780 §1]

Note: 469.950 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 469 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

PENALTIES

469.990 Penalties. (1) In addition to any penalties under subsection (2) of this section, a person who discloses confidential information in violation of ORS 469.090, willfully or with criminal negligence, as defined by ORS 161.085, may be subject to removal from office or immediate dismissal from public employment.

(2)(a) Willful disclosure of confidential information in violation of ORS 469.090 is punishable upon conviction, by a fine of not more than \$10,000 or imprisonment for up to one year, or both, for each offense.

(b) Disclosure of confidential information in violation of ORS 469.090 with criminal negligence, as defined by ORS 161.085, is punishable, upon conviction, by a fine of not more than \$1,000 for each offense.

(3) Any person who violates ORS 469.825 commits a Class A misdemeanor. [1975 c.606 §20; subsection (3) enacted as 1981 c.49 §11]

469.991 Penalties for violation of ORS 469.228 to 469.298. (1) Violation of any provision of ORS 469.228 to 469.298 is punishable, upon conviction, by a fine of not more than \$500 or by imprisonment in the county jail for not more than 90 days, or both.

(2) District and justice courts shall have concurrent jurisdiction with circuit courts in all prosecutions under ORS 469.228 to 469.298. [1989 c.926 §40; 1991 c.67 §142]

Note: 469.991 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 469 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

469.992 Civil penalties. (1) The administrator of the Office of Energy or the Energy Facility Siting Council may impose civil penalties for violation of ORS 469.300 to 469.619 and 469.930, for violations of rules adopted under ORS 469.300 to 469.619 and 469.930, or for violation of any site certificate issued under ORS 469.300 to 469.601. A civil penalty in an amount of not more than \$25,000 per day for each day of violation may be assessed.

(2) Violation of an order entered pursuant to ORS 469.550 is punishable upon conviction by a fine of \$50,000. Each day of violation constitutes a separate offense.

(3) A civil penalty in an amount not less than \$100 per day nor more than \$1,000 per day may be assessed by the administrator or

the Energy Facility Siting Council for a willful failure to comply with a subpoena served by the administrator pursuant to ORS 469.080 (2).

(4) A civil penalty in an amount of not more than \$25,000 per day for each day in violation of any provision of ORS 469.603 to 469.619 may be assessed by the circuit court upon complaint of any person injured by the violation. [Formerly 453.994; 1977 c.794 §17; 1981 c.707 §13; 1983 c.273 §4; 1987 c.153 §101; 1989 c.6 §12; 1991 c.480 §8]

Note: Sections 17 and 18, chapter 653, Oregon Laws 1991, including amendments by section 8, chapter 480, Oregon Laws 1991, provide:

469.992. (1) The administrator of the Office of Energy or the Energy Facility Siting Council may impose civil penalties for violation of ORS 469.300 to 469.619 and 469.930, for violations of rules adopted under ORS 469.300 to 469.619 and 469.930, or for violation of any site certificate issued under ORS 469.300 to 469.601. A civil penalty in an amount of not more than \$25,000 per day for each day of violation may be assessed.

(2) Violation of an order entered pursuant to ORS 469.550 is punishable upon conviction by a fine of \$50,000. Each day of violation constitutes a separate offense.

(3) A civil penalty in an amount not less than \$100 per day nor more than \$1,000 per day may be assessed by the administrator or the Energy Facility Siting Council for a willful failure to comply with a subpoena served by the administrator pursuant to ORS 469.080 (2).

(4) A civil penalty in an amount of not more than \$25,000 per day for each day in violation of any provision of ORS 469.603 to 469.619 or section 14 of this 1991 Act may be assessed by the circuit court upon complaint of any person injured by the violation. [1991 c.653 §17]

Sec. 18. Sections 12 to 16 of this Act and the amendments to ORS 469.992 by section 17 of this Act do not become operative until the Federal Government or a state that has entered into an agreement under 42 U.S.C. 2021 exempts from regulation or changes the regulatory status of any radioactive material that is subject to regulation on January 1, 1989. [1991 c.653 §18]

469.994 Civil penalty when contractor certificate revoked. (1) The administrator of the Office of Energy may impose a civil penalty against a contractor if a contractor certificate is revoked under ORS 469.180. The amount of the penalty shall be equal to the total amount of tax relief estimated to have been provided under ORS 316.116 to purchasers of the system for which a contractor's certificate has been revoked.

(2) The Office of Energy may not collect any of the amount of a civil penalty imposed under subsection (1) of this section from a purchaser of the system for which the final certificate has been revoked. However, the Department of Revenue shall proceed under ORS 469.180 (3) to collect taxes not paid by a taxpayer if the tax credit is ordered forfeited because of that taxpayer's fraud or misrepresentation under ORS 469.180 (1)(a).

(3) Civil penalties under this section shall be imposed as provided in ORS 183.090.

(4) A penalty recovered under this section shall be paid into the State Treasury and credited to the General Fund and is available for general governmental expenses.

[1981 c.894 §8; 1983 c.346 §5; 1989 c.706 §18; 1989 c.880 §13a; 1991 c.734 §38]

KLAMATH COGENERATION PROJECT

SITE CERTIFICATE

APPENDIX F

Enrolled
House Bill 3283

Sponsored by COMMITTEE ON ENVIRONMENT AND ENERGY

CHAPTER00428.....

AN ACT

Relating to energy facility siting; creating new provisions; amending ORS 469.310, 469.370, 469.501, 469.503 and 469.505; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 469.310 is amended to read:

469.310. In the interests of the public health and the welfare of the people of this state, it is the declared public policy of this state that the siting, construction and operation of energy facilities shall be accomplished in a manner consistent with protection of the public health and safety and in compliance with the energy policy and air, water, solid waste, land use and other environmental protection policies of this state. It is, therefore, the purpose of ORS 469.300 to 469.570, 469.590 to 469.619, 469.930 and 469.992 to exercise the jurisdiction of the State of Oregon to the maximum extent permitted by the United States Constitution and to establish in cooperation with the Federal Government a comprehensive system for the siting, monitoring and regulating of the location, construction and operation of all energy facilities in this state. It is furthermore the policy of this state, notwithstanding ORS 469.010 (2)(f) and 469.020 (4), that the need for new generating facilities, as defined in ORS 469.503, is sufficiently addressed by reliance on competition in the market rather than by consideration of cost-effectiveness and shall not be a matter requiring determination by the Energy Facility Siting Council in the siting of a generating facility, as defined in ORS 469.503.

SECTION 2. ORS 469.370 is amended to read:

469.370. (1) Based on its review of the application and the comments and recommendations on the application from state agencies and local governments, the Office of Energy shall prepare and issue a draft proposed order on the application.

(2) Following issuance of the draft proposed order, the Energy Facility Siting Council shall hold one or more public hearings on the application for a site certificate in the affected area and elsewhere, as the council considers necessary. Notice of the hearing shall be mailed at least 20 days before the hearing. The notice shall, at a minimum:

- (a) Comply with the requirements of ORS 197.763 (2), with respect to the persons notified;
- (b) Include a description of the facility and the facility's general location;
- (c) Include the name of an agency representative to contact and the telephone number where additional information may be obtained;
- (d) State that copies of the application and draft proposed order are available for inspection at no cost and will be provided at a reasonable cost; and

(e) State that failure to raise an issue in person or in writing prior to the close of the record of the public hearing with sufficient specificity to afford the decision maker an opportunity to respond to the issue precludes consideration of the issue in a contested case.

(3) Any issue that may be the basis for a contested case shall be raised not later than the close of the record at or following the final public hearing prior to issuance of the Office of Energy's proposed order. Such issues shall be raised with sufficient specificity to afford the council, the Office of Energy and the applicant an adequate opportunity to respond to each issue. A statement of this requirement shall be made at the commencement of any public hearing on the application.

(4) After reviewing the application, the draft proposed order and any testimony given at the public hearing and after consulting with other agencies, the Office of Energy shall issue a proposed order recommending approval or rejection of the application. The Office of Energy shall issue public notice of the proposed order, that shall include notice of a contested case hearing specifying a deadline for requests to participate as a party or limited party and a date for the prehearing conference.

(5) Following receipt of the proposed order from the Office of Energy, the council shall conduct a contested case hearing on the application for a site certificate in accordance with the applicable provisions of ORS 183.310 to 183.550 and any procedures adopted by the council. The applicant shall be a party to the contested case. The council may permit any other person to become a party to the contested case in support of or in opposition to the application only if the person appeared in person or in writing at the public hearing on the site certificate application. Issues that may be the basis for a contested case shall be limited to those raised on the record of the public hearing under subsection (3) of this section, unless:

(a) The Office of Energy failed to follow the requirements of subsection (2) or (3) of this section; or

(b) The action recommended in the proposed order, including any recommended conditions of the approval, differs materially from that described in the draft proposed order, in which case only new issues related to such differences may be raised.

(6) If no person requests party status to challenge the Office of Energy's proposed order, the proposed order shall be forwarded to the council and the contested case hearing shall be concluded.

(7) At the conclusion of the contested case, the council shall issue a final order, either approving or rejecting the application based upon the standards adopted under ORS 469.501 and any additional statutes, rules or local ordinances determined to be applicable to the facility by the project order, as amended. The council shall make its decision by the affirmative vote of at least four members approving or rejecting any application for a site certificate. The council may amend or reject the proposed order, so long as the council provides public notice of its hearing to adopt a final order, and provides an opportunity for the applicant and any party to the contested case to comment on material changes to the proposed order, including material changes to conditions of approval resulting from the council's review. The council's order shall be considered a final order for purposes of appeal.

(8) Rejection or approval of an application, together with any conditions that may be attached to the certificate, shall be subject to judicial review as provided in ORS 469.403.

(9) The council shall either approve or reject an application for a site certificate:

(a) Within 24 months after filing an application for a nuclear installation, or for a thermal power plant, other than that described in paragraph (b) of this subsection, with a name plate rating of more than 200,000 kilowatts;

(b) Within nine months after filing of an application for a site certificate for a combustion turbine power plant, a geothermal-fueled power plant or an underground storage facility for natural gas;

(c) Within six months after filing an application for a site certificate for an energy facility, if the application is:

(A) To expand an existing industrial facility to include an energy facility;

(B) To expand an existing energy facility to achieve a nominal electric generating capacity of between 25 and 50 megawatts; or

- (C) To add injection or withdrawal capacity to an existing underground gas storage facility; or
- (d) Within 12 months after filing an application for a site certificate for any other energy facility.

(10) At the request of the applicant, the council shall allow expedited processing of an application for a site certificate for an energy facility with a generating capacity of less than 100 megawatts. No notice of intent shall be required. Following approval of a request for expedited review, the Office of Energy shall issue a project order, which may be amended at any time. The council shall either approve or reject an application for a site certificate within six months after filing the site certificate application if there are no intervenors in the contested case conducted under subsection (5) of this section. If there are intervenors in the contested case, the council shall either approve or reject an application within nine months after filing the site certificate application. For purposes of this subsection, the generating capacity of a thermal power plant is the nameplate rating of the electrical generator proposed to be installed in the plant. For a geothermal, wind or solar facility, the generating capacity is the electrical generating capacity available for delivery at the point the facility is connected to the transmission system, as demonstrated through a power sales contract or other objective means.

(11) Failure of the council to comply with the deadlines set forth in subsection (9) or (10) of this section shall not result in the automatic issuance or denial of a site certificate.

(12) The council shall specify in the site certificate a date by which construction of the facility must begin. *[Except for the portion of output to be used by the applicant, before construction begins, a site certificate for a thermal power plant shall require a sales contract with an energy supplier or combination of energy suppliers for at least 80 percent of the output from the energy facility.]*

(13) For a facility that is subject to and has been or will be reviewed by a federal agency under the National Environmental Policy Act, 42 U.S.C. Section 4321, et seq., the council shall conduct its site certificate review, to the maximum extent feasible, in a manner that is consistent with and does not duplicate the federal agency review. Such coordination shall include, but need not be limited to:

- (a) Elimination of duplicative application, study and reporting requirements;
- (b) Council use of information generated and documents prepared for the federal agency review;
- (c) Development with the federal agency and reliance on a joint record to address applicable council standards;
- (d) Whenever feasible, joint hearings and issuance of a site certificate decision in a time frame consistent with the federal agency review; and
- (e) To the extent consistent with applicable state standards, establishment of conditions in any site certificate that are consistent with the conditions established by the federal agency.

SECTION 3. ORS 469.501 is amended to read:

469.501. (1) The Energy Facility Siting Council shall adopt standards for the siting, construction, operation and retirement of facilities. The standards may *[include]* address but need not be limited to the following subjects:

- (a) The organizational, managerial and technical expertise of the applicant to construct and operate the proposed facility.
- (b) Seismic hazards.
- (c) Areas designated for protection by the state or Federal Government, including but not limited to monuments, wilderness areas, wildlife refuges, scenic waterways and similar areas.
- (d) The financial ability and qualifications of the applicant.
- (e) Effects of the facility, taking into account mitigation, on fish and wildlife, including threatened and endangered fish, wildlife or plant species.
- (f) Impacts of the facility on historic, cultural or archaeological resources listed on, or determined by the State Historic Preservation Officer to be eligible for listing on, the National Register of Historic Places or the Oregon State Register of Historic Properties.
- (g) Protection of public health and safety, including necessary safety devices and procedures.
- (h) The accumulation, storage, disposal and transportation of nuclear waste.
- (i) Impacts of the facility on recreation, scenic and aesthetic values.
- (j) Reduction of solid waste and wastewater generation to the extent reasonably practicable.

(k) Ability of the communities in the affected area to provide sewers and sewage treatment, water, storm water drainage, solid waste management, housing, traffic safety, police and fire protection, health care and schools.

(L) The need for *[the]* proposed nongenerating *[facility]* facilities as defined in ORS 469.503, consistent with the state energy policy set forth in ORS 469.010 and 469.310. **The council may consider least-cost plans when adopting a need standard or in determining whether an applicable need standard has been met. The council shall not adopt a standard requiring a showing of need or cost-effectiveness for generating facilities as defined in ORS 469.503. *[In adopting the need standard, the council shall consider all of the costs of the emission from energy facilities of gases that contribute to global warming. The standard for need shall include but need not be limited to the following:]***

[(A) The council shall accord a conclusive presumption of need for a facility or a facility substantially similar to the proposed facility the output of which is identified for acquisition in the short-term plan of action of an energy resource plan adopted, approved or acknowledged by a municipal utility, people's utility district, electrical cooperative or other governmental body that makes or implements energy policy, if the plan:]

[(i) Includes a range of forecasts of electricity demand growth and firm electricity resources over the planning period using a reasonable method of forecasting;]

[(ii) Considers and evaluates a reasonable range of practicable demand and supply resource alternatives on a consistent and comparable basis;]

[(iii) Includes the development and evaluation of alternative resource plans to meet potential energy needs over the planning time period;]

[(iv) Analyzes the uncertainties associated with alternative resource plans;]

[(v) Aims to minimize total long run resource costs while taking into account reliability, compatibility with the power system, strategic flexibility and external environmental costs and benefits;]

[(vi) Includes a short-term plan of action;]

[(vii) Is consistent with the energy policy of the state as set forth in ORS 469.010; and]

[(viii) Was adopted, approved or acknowledged after a full, fair and open public participation and comment process.]

[(B) A least cost plan acknowledged by the Public Utility Commission of Oregon shall be deemed to comply with the requirements set forth for a plan in subparagraph (A) of this paragraph.]

[(C) For an Oregon municipal utility, people's utility district or electrical cooperative, the council shall find a facility is needed if the council determines that the facility is economically prudent and consistent with the state's energy policy of minimizing long run total resource costs while taking into account reliability, compatibility with the power system, strategic flexibility and external environmental costs and benefits to replace power purchases available to the utility with the power output from the facility.]

(m) Compliance with the statewide planning goals adopted by the Land Conservation and Development Commission as specified by ORS 469.503.

(n) Soil protection.

(o) For energy facilities that emit carbon dioxide, the impacts of those emissions on climate change. For fossil-fueled power plants, as defined in ORS 469.503, the council shall apply a standard as provided for by ORS 469.503 (2).

(2) The council may adopt exemptions *[except for coal or nuclear power plants,]* from any need standard adopted under subsection (1)(L) of this section if the exemption is consistent with the state's energy policy set forth in ORS 469.010 and 469.310. *[In addition to any other exemption the council has adopted by rule prior to July 5, 1995, up to 500 megawatts of natural gas fired facilities shall be exempt from any need standard if the applications for such facilities are deemed complete on or before July 1, 1997.]*

(3) The council may issue a site certificate for a facility that does not meet one or more of the standards adopted under subsection (1) of this section if the council determines that the overall public benefits of the facility outweigh the damage to the resources protected by the standards the facility does not meet.

SECTION 4. ORS 469.503 is amended to read:

469.503. ~~[(1)]~~ In order to issue a site certificate, the Energy Facility Siting Council shall determine that the preponderance of the evidence on the record supports the following conclusions:

~~[(a)]~~ (1) The facility complies with the standards adopted by the council pursuant to ORS 469.501 or the overall public benefits of the facility outweigh the damage to the resources protected by the standards the facility does not meet.

(2) If the energy facility is a fossil-fueled power plant, the energy facility complies with any applicable carbon dioxide emissions standard adopted by the council or enacted by statute. Base load gas plants shall comply with the standard set forth in subsection (2)(a) of this section. Other fossil-fueled power plants shall comply with any applicable standard adopted by the council by rule pursuant to subsection (2)(b) of this section. Subsections (2)(c) and (d) of this section prescribe the means by which an applicant may comply with the applicable standard.

(a) The net carbon dioxide emissions rate of the proposed base load gas plant shall not exceed 0.70 pounds of carbon dioxide emissions per kilowatt hour of net electric power output, with carbon dioxide emissions and net electric power output measured on a new and clean basis. Notwithstanding the foregoing, no sooner than two years after the effective date of this 1997 Act, the council may by rule modify the carbon dioxide emissions standard for base load gas plants if the council finds that the most efficient stand-alone combined cycle, combustion turbine, natural gas-fired energy facility that is commercially demonstrated and operating in the United States has a net heat rate of less than 7,200 Btu per kilowatt hour higher heating value adjusted to ISO conditions. In modifying the carbon dioxide emission standard, the council shall determine the rate of carbon dioxide emissions per kilowatt hour of net electric output of such energy facility, adjusted to ISO conditions, and reset the carbon dioxide emissions standard at 17 percent below this rate.

(b) The council shall adopt carbon dioxide emissions standards for other types of fossil-fueled power plants. Such carbon dioxide emissions standards shall be promulgated by rule. In adopting or amending such carbon dioxide emissions standards, the council shall consider and balance at least the following principles, the findings on which shall be contained in the rule-making record:

- (A) Promote facility fuel efficiency;
- (B) Promote efficiency in the resource mix;
- (C) Reduce net carbon dioxide emissions;
- (D) Promote cogeneration that reduces net carbon dioxide emissions;
- (E) Promote innovative technologies and creative approaches to mitigating, reducing or avoiding carbon dioxide emissions;
- (F) Minimize transaction costs;
- (G) Include an alternative process that separates decisions on the form and implementation of offsets from the final decision on granting a site certificate;
- (H) Allow either the applicant or third parties to implement offsets;
- (I) Be attainable and economically achievable for various types of power plants;
- (J) Promote public participation in the selection and review of offsets;
- (K) Promote prompt implementation of offset projects;
- (L) Provide for monitoring and evaluation of the performance of offsets; and
- (M) Promote reliability of the regional electric system.

(c) The council shall determine whether the applicable carbon dioxide emissions standard is met by first determining the gross carbon dioxide emissions that are reasonably likely to result from the operation of the proposed energy facility. Such determination shall be based on the proposed design of the energy facility. The council shall adopt site certificate conditions to ensure that the predicted carbon dioxide emissions are not exceeded on a new and clean basis. For any remaining emissions reduction necessary to meet the applicable standard, the applicant may elect to use any of subparagraphs (A) to (D) of this paragraph, or any combination thereof. The council shall determine the amount of carbon dioxide emissions

reduction that is reasonably likely to result from the applicant's offsets and whether the resulting net carbon dioxide emissions meet the applicable carbon dioxide emissions standard. If the council or a court on judicial review concludes that the applicant has not demonstrated compliance with the applicable carbon dioxide emissions standard under subparagraphs (A), (B) or (D) of this paragraph, or any combination thereof, and the applicant has agreed to meet the requirements of subparagraph (C) of this paragraph for any deficiency, the council or a court shall find compliance based on such agreement.

(A) The facility will sequentially produce electrical and thermal energy from the same fuel source, and the thermal energy will be used to displace another source of carbon dioxide emissions that would have otherwise continued to occur, in which case the council shall adopt site certificate conditions ensuring that the carbon dioxide emissions reduction will be achieved.

(B) The applicant or a third party will implement particular offsets, in which case the council may adopt site certificate conditions ensuring that the proposed offsets are implemented but shall not require that predicted levels of avoidance, displacement or sequestration of carbon dioxide emissions be achieved. The council shall determine the quantity of carbon dioxide emissions reduction that is reasonably likely to result from each of the proposed offsets based on the criteria in sub-subparagraphs (i) to (iii) of this subparagraph. In making this determination, the council shall not allow credit for offsets that have already been allocated or awarded credit for carbon dioxide emissions reduction in another regulatory setting. In addition, the fact that an applicant or other parties involved with an offset may derive benefits from the offset other than the reduction of carbon dioxide emissions is not, by itself, a basis for withholding credit for an offset.

(i) The degree of certainty that the predicted quantity of carbon dioxide emissions reduction will be achieved by the offset;

(ii) The ability of the council to determine the actual quantity of carbon dioxide emissions reduction resulting from the offset, taking into consideration any proposed measurement, monitoring and evaluation of mitigation measure performance; and

(iii) The extent to which the reduction of carbon dioxide emissions would occur in the absence of the offsets.

(C) The applicant or a third party agrees to provide funds in an amount deemed sufficient to produce the reduction in carbon dioxide emissions necessary to meet the applicable carbon dioxide emissions standard, in which case the funds shall be used as specified in paragraph (d) of this subsection. Unless modified by the council as provided below, the payment of 57 cents shall be deemed to result in a reduction of one ton of carbon dioxide emissions. The council shall determine the offset funds using the monetary offset rate and the level of emissions reduction required to meet the applicable standard. If a site certificate is approved based on this subparagraph, the council may not adjust the amount of such offset funds based on the actual performance of offsets. After three years from the effective date of this 1997 Act, the council may by rule increase or decrease the monetary offset rate of 57 cents per ton of carbon dioxide emissions. Any change to the monetary offset rate shall be based on empirical evidence of the cost of carbon dioxide offsets and the council's finding that the standard will be economically achievable with the modified rate for natural gas-fired power plants. Following the initial three-year period, the council may increase or decrease the monetary offset rate no more than 50 percent in any two-year period.

(D) Any other means that the council adopts by rule for demonstrating compliance with any applicable carbon dioxide emissions standard.

(d) If the applicant elects to meet the applicable carbon dioxide emissions standard in whole or in part under paragraph (c)(C) of this subsection the applicant shall identify the qualified organization. The applicant may identify an organization that has applied for, but has not received, an exemption from federal income taxation, but the council may 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. The site certificate holder shall provide a bond or comparable security in a form reasonably acceptable to the council to ensure the payment of the offset funds and the amount required under subparagraph (A)(ii) of this paragraph. Such security shall be provided by the date specified in the site certificate, which shall be no later than the commencement of construction of the facility. The site certificate shall require that the offset funds be disbursed as specified in subparagraph (A) of this paragraph, unless the council finds that no qualified organization exists, in which case the site certificate shall require that the offset funds be disbursed as specified in subparagraph (B) of this paragraph.

(A) The site certificate holder shall disburse the offset funds and any other funds required by sub-subparagraph (ii) of this subparagraph to the qualified organization as follows:

(i) When the site certificate holder receives written notice from the qualified organization certifying that the qualified organization is contractually obligated to pay any funds to implement offsets using the offset funds, the site certificate holder shall make the requested amount available to the qualified organization unless the total of the amount requested and any amounts previously requested exceeds the offset funds, in which case only the remaining amount of the offset funds shall be made available. The qualified organization shall use at least 80 percent of the offset funds for contracts to implement offsets. The qualified organization may use up to 20 percent of the offset funds for monitoring, evaluation, administration and enforcement of contracts to implement offsets.

(ii) At the request of the qualified organization and in addition to the offset funds, the site certificate holder shall pay the qualified organization an amount equal to 10 percent of the first \$500,000 of the offset funds and 4.286 percent of any offset funds in excess of \$500,000. This amount shall not be less than \$50,000 unless a lesser amount is specified in the site certificate. This amount compensates the qualified organization for its costs of selecting offsets and contracting for the implementation of offsets.

(iii) Notwithstanding any provision to the contrary, a site certificate holder subject to this subparagraph shall have no obligation with regard to offsets, the offset funds or the funds required by sub-subparagraph (ii) of this subparagraph other than to make available to the qualified organization the total amount required under paragraph (c) of this subsection and sub-subparagraph (ii) of this subparagraph, nor shall any nonperformance, negligence or misconduct on the part of the qualified organization be a basis for revocation of the site certificate or any other enforcement action by the council with respect to the site certificate holder.

(B) If the council finds there is no qualified organization, the site certificate holder shall select one or more offsets to be implemented pursuant to criteria established by the council. The site certificate holder shall give written notice of its selections to the council and to any person requesting notice. On petition by the Office of Energy, or by any person adversely affected or aggrieved by the site certificate holder's selection of offsets, or on the council's own motion, the council may review such selection. The petition must be received by the council within 30 days of the date the notice of selection is placed in the United States mail, with first-class postage prepaid. The council shall approve the site certificate holder's selection unless it finds that the selection is not consistent with criteria established by the council. The site certificate holder shall contract to implement the selected offsets within 18 months after commencing construction of the facility unless good cause is shown requiring additional time. The contracts shall obligate the expenditure of at least 85 percent of the offset funds for the implementation of offsets. No more than 15 percent of the offset funds may be spent on monitoring, evaluation and enforcement of the contract to implement the selected offsets. The council's criteria for selection of offsets shall be based on the criteria set forth in paragraphs (b)(C) and (c)(B) of this subsection and may also consider the costs of particular types of offsets in relation to the expected benefits of such offsets. The council's criteria shall not require the site certificate holder to select particular offsets, and shall allow the site certificate holder a reasonable range of choices in selecting offsets. In addition, notwithstanding any other provision of this section, the site certificate holder's financial li-

ability for implementation, monitoring, evaluation and enforcement of offsets pursuant to this subsection shall be limited to the amount of any offset funds not already contractually obligated. Nonperformance, negligence or misconduct by the entity or entities implementing, monitoring or evaluating the selected offset shall not be a basis for revocation of the site certificate or any other enforcement action by the council with respect to the site certificate holder.

(C) Every qualified organization that has received funds under this paragraph shall, at five-year intervals beginning on the date of receipt of such funds, provide the council with the information the council requests about the qualified organization's performance. The council shall evaluate the information requested and, based on such information, shall make any recommendations to the Legislative Assembly that the council deems appropriate.

(e) As used in this subsection:

(A) "Adjusted to ISO conditions" means carbon dioxide emissions and net electric power output as determined at 59 degrees Fahrenheit, 14.7 pounds per square inch atmospheric pressure and 60 percent humidity.

(B) "Base load gas plant" means a generating facility that is fueled by natural gas, except for periods during which an alternative fuel may be used and when such alternative fuel use shall not exceed 10 percent of expected fuel use in Btu, higher heating value, on an average annual basis, and where the applicant requests and the council adopts no condition in the site certificate for the generating facility that would limit hours of operation other than restrictions on the use of alternative fuel. The council shall assume a 100-percent capacity factor for such plants and a 30-year life for the plants for purposes of determining gross carbon dioxide emissions.

(C) "Fossil-fueled power plant" means a generating facility that produces electric power from natural gas, petroleum, coal or any form of solid, liquid or gaseous fuel derived from such material.

(D) "Generating facility" means those energy facilities that are defined in ORS 469.300 (9)(a)(A), (B) and (D).

(E) "Gross carbon dioxide emissions" means the predicted carbon dioxide emissions of the proposed energy facility measured on a new and clean basis.

(F) "Net carbon dioxide emissions" means gross carbon dioxide emissions of the proposed energy facility, less carbon dioxide emissions avoided, displaced or sequestered by any combination of cogeneration or offsets.

(G) "New and clean basis" means the average carbon dioxide emissions rate per hour and net electric power output of the energy facility, without degradation, as determined by a 100-hour test at full power completed during the first 12 months of commercial operation of the energy facility, with the results adjusted for the average annual site condition for temperature, barometric pressure and relative humidity and use of alternative fuels, and using a rate of 117 pounds of carbon dioxide per million Btu of natural gas fuel and a rate of 161 pounds of carbon dioxide per million Btu of distillate fuel, if such fuel use is proposed by the applicant. The council may by rule adjust the rate of pounds of carbon dioxide per million Btu for natural gas or distillate fuel. The council may by rule set carbon dioxide emissions rates for other fuels.

(H) "Nongenerating facility" means those energy facilities that are defined in ORS 469.300 (9)(a)(C) and (E) to (H).

(I) "Offset" means an action that will be implemented by the applicant, a third party or through the qualified organization to avoid, sequester or displace emissions of carbon dioxide.

(J) "Offset funds" means the amount of funds determined by the council to satisfy the applicable carbon dioxide emissions standard pursuant to paragraph (c)(C) of this subsection.

(K) "Qualified organization" means an entity that:

(i) Is exempt from federal taxation under section 501(c)(3) of the Internal Revenue Code as amended and in effect on December 31, 1996;

(ii) Either is incorporated in the State of Oregon or is a foreign corporation authorized to do business in the State of Oregon;

(iii) Has in effect articles of incorporation that require that offset funds received pursuant to this section are used for offsets that will result in the direct reduction, elimination, sequestration or avoidance of carbon dioxide emissions, that require that decisions on the use of such funds are made by a body composed of seven voting members of which three are appointed by the council, three are Oregon residents appointed by the Bullitt Foundation or an alternative environmental nonprofit organization named by the body, and one is appointed by the applicants for site certificates that are subject to paragraph (d) of this subsection and the holders of such site certificates, and that require nonvoting membership on the decision-making body for holders of site certificates that have provided funds not yet disbursed under paragraph (d)(A) of this subsection;

(iv) Has made available on an annual basis, beginning after the first year of operation, a signed opinion of an independent certified public accountant stating that the qualified organization's use of funds pursuant to this statute conforms with generally accepted accounting procedures except that the qualified organization shall have one year to conform with generally accepted accounting principles in the event of a nonconforming audit;

(v) Has to the extent applicable, except for good cause, entered into contracts obligating at least 60 percent of the offset funds to implement offsets within two years after the commencement of construction of the facility; and

(vi) Has to the extent applicable, except for good cause, complied with paragraph (d)(A)(i) of this subsection.

[(b)] (3) Except as provided in [this section] section 5 of this 1997 Act for land use compliance and except for those statutes and rules for which the decision on compliance has been delegated by the Federal Government to a state agency other than the council, the facility complies with all other Oregon statutes and administrative rules identified in the project order, as amended, as applicable to the issuance of a site certificate for the proposed facility. If compliance with applicable Oregon statutes and administrative rules, other than those involving federally delegated programs, would result in conflicting conditions in the site certificate, the council may resolve the conflict consistent with the public interest. A resolution may not result in the waiver of any applicable state statute.

[(c)] (4) The facility complies with the statewide planning goals adopted by the Land Conservation and Development Commission.

[(2) A proposed facility shall be found in compliance with the statewide planning goals under subsection (1)(c) of this section if:]

[(a) The facility has received local land use approval under the acknowledged comprehensive plan and land use regulations of the affected local government; or]

[(b) The council determines:]

[(A) The facility complies with 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 in effect on the date the application is submitted; and]

[(B) The facility complies with any Land Conservation and Development Commission administrative rules and goals and any land use statutes directly applicable to the facility under ORS 197.646 (3); or]

[(C) For an energy facility or a related or supporting facility that must be evaluated against the applicable substantive criteria pursuant to subsection (6) of this section, that the proposed facility does not comply with one or more of the applicable substantive criteria but does otherwise comply with the applicable statewide planning goals, or that an exception to any applicable statewide planning goal is justified under subsection (3) of this section; or]

[(D) For a facility that the council elects to evaluate against the statewide planning goals pursuant to subsection (6) of this section, that the proposed facility complies with the applicable statewide planning goals or that an exception to any applicable statewide planning goal is justified under subsection (3) of this section.]

[(3) The council may find goal compliance for a facility that does not otherwise comply with one or more statewide planning goals by taking an exception to the applicable goal. Notwithstanding the requirements of ORS 197.732, the statewide planning goal pertaining to the exception process or any rules of the Land Conservation and Development Commission pertaining to the exception process goal, the council may take an exception to a goal if the council finds:]

[(a) The land subject to the exception is physically developed to the extent that the land is no longer available for uses allowed by the applicable goal;]

[(b) The land subject to the exception is irrevocably committed as described by the rules of the Land Conservation and Development Commission to uses not allowed by the applicable goal because existing adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable; or]

[(c) The following standards are met:]

[(A) Reasons justify why the state policy embodied in the applicable goal should not apply;]

[(B) The significant environmental, economic, social and energy consequences anticipated as a result of the proposed facility have been identified and adverse impacts will be mitigated in accordance with rules of the council applicable to the siting of the proposed facility; and]

[(C) The proposed facility is compatible with other adjacent uses or will be made compatible through measures designed to reduce adverse impacts.]

[(4) If compliance with applicable substantive local criteria and applicable statutes and state administrative rules would result in conflicting conditions in the site certificate, the council shall resolve the conflict consistent with the public interest. A resolution may not result in a waiver of any applicable state statute.]

[(5) An applicant for a site certificate shall elect whether to demonstrate compliance with the statewide planning goals under subsection (2)(a) or (b) of this section. The applicant shall make the election on or before the date specified by the council by rule.]

[(6) Upon request by the Office of Energy, the special advisory group established under ORS 469.480 shall recommend to the council, within the time stated in the request, the applicable substantive criteria under subsection (2)(b)(A) of this section. If the special advisory group does not recommend applicable substantive criteria within the time established in the Office of Energy's request, the council may either determine and apply the applicable substantive criteria under subsection (2)(b) of this section or determine compliance with the statewide planning goals under subsection (2)(b)(C) or (D) of this section. If the special advisory group recommends applicable substantive criteria for an energy facility described in ORS 469.300 (9)(a)(A) to (H) or a related or supporting facility that does not pass through more than one local government jurisdiction or more than three zones in any one jurisdiction, the council shall apply the criteria recommended by the special advisory group. If the special advisory group recommends applicable substantive criteria for an energy facility described in ORS 469.300 (9)(a)(C) to (E) or a related or supporting facility that passes through more than one jurisdiction or more than three zones in any one jurisdiction, the council shall review the recommended criteria and determine whether to evaluate the proposed facility against the applicable substantive criteria recommended by the special advisory group, against the statewide planning goals or against a combination of the applicable substantive criteria and statewide planning goals. In making its determination, the council shall consult with the special advisory group and shall consider:]

[(a) The number of jurisdictions and zones in question;]

[(b) The degree to which the applicable substantive criteria reflect local government consideration of energy facilities in the planning process; and]

[(c) The level of consistence of the applicable substantive criteria from the various zones and jurisdictions.]

[(7) The council is not subject to ORS 197.130 and a state agency may not require an applicant for a site certificate to comply with any rules or programs adopted under ORS 197.180.]

[(8) On or before its next periodic review, each affected local government shall amend its comprehensive plan and land use regulations as necessary to reflect the decision of the council pertaining to a site certificate application.]

(9) Notwithstanding ORS 34.020 or 197.825 or any other provision of law, the affected local government's land use approval of a proposed facility under subsection (2)(a) of this section and the special advisory group's recommendation of applicable substantive criteria under subsection (6) of this section shall be subject to judicial review only as provided in ORS 469.403. If the applicant elects to comply with subsection (2)(a) of this section, the provisions of this subsection shall apply only to proposed projects for which the land use approval of the local government occurs after the date a notice of intent or an application for expedited processing is submitted to the Office of Energy.]

(10) The Office of Energy, in cooperation with other state agencies, shall provide, to the extent possible, technical assistance and information about the siting process to local governments that request such assistance or that anticipate having a facility proposed in their jurisdiction.]

SECTION 5. (1) A proposed facility shall be found in compliance with the statewide planning goals under ORS 469.503 (4) if:

(a) The facility has received local land use approval under the acknowledged comprehensive plan and land use regulations of the affected local government; or

(b) The council determines that:

(A) The facility complies with 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 in effect on the date the application is submitted, and with any Land Conservation and Development Commission administrative rules and goals and any land use statutes directly applicable to the facility under ORS 197.646 (3);

(B) For an energy facility or a related or supporting facility that must be evaluated against the applicable substantive criteria pursuant to subsection (5) of this section, that the proposed facility does not comply with one or more of the applicable substantive criteria but does otherwise comply with the applicable statewide planning goals, or that an exception to any applicable statewide planning goal is justified under subsection (2) of this section; or

(C) For a facility that the council elects to evaluate against the statewide planning goals pursuant to subsection (5) of this section, that the proposed facility complies with the applicable statewide planning goals or that an exception to any applicable statewide planning goal is justified under subsection (2) of this section.

(2) The council may find goal compliance for a facility that does not otherwise comply with one or more statewide planning goals by taking an exception to the applicable goal. Notwithstanding the requirements of ORS 197.732, the statewide planning goal pertaining to the exception process or any rules of the Land Conservation and Development Commission pertaining to an exception process goal, the council may take an exception to a goal if the council finds:

(a) The land subject to the exception is physically developed to the extent that the land is no longer available for uses allowed by the applicable goal;

(b) The land subject to the exception is irrevocably committed as described by the rules of the Land Conservation and Development Commission to uses not allowed by the applicable goal because existing adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable; or

(c) The following standards are met:

(A) Reasons justify why the state policy embodied in the applicable goal should not apply;

(B) The significant environmental, economic, social and energy consequences anticipated as a result of the proposed facility have been identified and adverse impacts will be mitigated in accordance with rules of the council applicable to the siting of the proposed facility; and

(C) The proposed facility is compatible with other adjacent uses or will be made compatible through measures designed to reduce adverse impacts.

(3) If compliance with applicable substantive local criteria and applicable statutes and state administrative rules would result in conflicting conditions in the site certificate, the council shall resolve the conflict consistent with the public interest. A resolution may not result in a waiver of any applicable state statute.

(4) An applicant for a site certificate shall elect whether to demonstrate compliance with the statewide planning goals under subsection (1)(a) or (b) of this section. The applicant shall make the election on or before the date specified by the council by rule.

(5) Upon request by the Office of Energy, the special advisory group established under ORS 469.480 shall recommend to the council, within the time stated in the request, the applicable substantive criteria under subsection (1)(b)(A) of this section. If the special advisory group does not recommend applicable substantive criteria within the time established in the Office of Energy's request, the council may either determine and apply the applicable substantive criteria under subsection (1)(b) of this section or determine compliance with the statewide planning goals under subsection (1)(b)(B) or (C) of this section. If the special advisory group recommends applicable substantive criteria for an energy facility described in ORS 469.300 (9)(a) or a related or supporting facility that does not pass through more than one local government jurisdiction or more than three zones in any one jurisdiction, the council shall apply the criteria recommended by the special advisory group. If the special advisory group recommends applicable substantive criteria for an energy facility described in ORS 469.300 (9)(a)(C) to (E) or a related or supporting facility that passes through more than one jurisdiction or more than three zones in any one jurisdiction, the council shall review the recommended criteria and determine whether to evaluate the proposed facility against the applicable substantive criteria recommended by the special advisory group, against the statewide planning goals or against a combination of the applicable substantive criteria and statewide planning goals. In making its determination, the council shall consult with the special advisory group and shall consider:

(a) The number of jurisdictions and zones in question;

(b) The degree to which the applicable substantive criteria reflect local government consideration of energy facilities in the planning process; and

(c) The level of consistency of the applicable substantive criteria from the various zones and jurisdictions.

(6) The council is not subject to ORS 197.180 and a state agency may not require an applicant for a site certificate to comply with any rules or programs adopted under ORS 197.180.

(7) On or before its next periodic review, each affected local government shall amend its comprehensive plan and land use regulations as necessary to reflect the decision of the council pertaining to a site certificate application.

(8) Notwithstanding ORS 34.020 or 197.825 or any other provision of law, the affected local government's land use approval of a proposed facility under subsection (1)(a) of this section and the special advisory group's recommendation of applicable substantive criteria under subsection (5) of this section shall be subject to judicial review only as provided in ORS 469.403. If the applicant elects to comply with subsection (1)(a) of this section, the provisions of this subsection shall apply only to proposed projects for which the land use approval of the local government occurs after the date a notice of intent or an application for expedited processing is submitted to the Office of Energy.

(9) The Office of Energy, in cooperation with other state agencies, shall provide, to the extent possible, technical assistance and information about the siting process to local governments that request such assistance or that anticipate having a facility proposed in their jurisdiction.

SECTION 6. Sections 7 and 8 of this Act are added to and made a part of ORS 469.300 to 469.570.

SECTION 7. Any site certificate holder that is required by its site certificate or by law to demonstrate need for the facility shall instead demonstrate compliance with the carbon dioxide emissions standard applicable to the type of facility subject to the site certificate before beginning construction. Such a demonstration shall be made as an amendment to the site certificate. Notwithstanding ORS 469.405 or any council rule, if the site certificate holder proceeds pursuant to ORS 469.503 (2)(c)(A) or (C), or both, the Energy Facility Siting Council

shall not conduct a contested case hearing on such amendment and the council's order shall not be subject to judicial review. Any dispute about the site certificate holder's demonstration of compliance with the applicable carbon dioxide emissions standard shall be settled through binding arbitration.

SECTION 8. (1) A recipient may by amendment of its application for a site certificate or by amendment of its site certificate increase the capacity of the facility if the Energy Facility Siting Council finds that:

(a) The facility will satisfy the conditions of the 500-megawatt exemption, unless modified by the council;

(b) The enlarged facility does not exceed 500 megawatts and meets the applicable carbon dioxide standard provided for in ORS 469.503 (2) for any increase in capacity beyond the capacity of the 500-megawatt exemption; and

(c) The enlarged facility meets all other applicable council standards.

(2) A recipient is deemed to meet any applicable need standard and carbon dioxide emissions standard for the nominal generating capacity of the 500-megawatt exemption provided that the recipient satisfies the conditions of the 500-megawatt exemption, unless the council modifies the conditions.

(3) As used in this section:

(a) "Recipient" means any base load gas plant, as defined in ORS 469.503, determined by the council to have the lowest net monetized air emissions among the applicants participating in a contested case proceeding.

(b) "500-megawatt exemption" means the council order in which a recipient was determined to have the lowest net monetized air emissions.

SECTION 9. ORS 469.505 is amended to read:

469.505. (1) In making a determination regarding compliance with statutes, rules and ordinances administered by another agency or compliance with requirements of ORS 469.300 to 469.570 and 469.590 to 469.619 where another agency has special expertise, consultation with the other agency shall occur during the notice of intent and site certificate application process. Any permit application for which the permitting decision has been delegated by the Federal Government to a state agency other than the Energy Facility Siting Council shall be reviewed, whenever feasible, simultaneously with the council's review of the site certificate application. Any hearings required on such permit applications shall be consolidated, whenever feasible, with hearings under ORS 469.300 to 469.570 and 469.590 to 469.619.

(2) Before resolving any conflicting conditions in site certificates under ORS 469.503 [(1)(b) and (4)] (3) and section 5 of this 1997 Act, the council shall notify and consult with the agencies and local governments responsible for administering the statutes, administrative rules or substantive local criteria that result in the conflicting conditions regarding potential conflict resolution.

SECTION 10. This Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this Act takes effect on its passage.

Passed by House April 30, 1997

Ramona J. Penady
Chief Clerk of House
John Lundquist
Speaker of House

Received by Governor

4:39 P.M. June 19, 1997

Approved:

11:45 A.M. June 26, 1997

John A. Pelt
Governor

Passed by Senate June 2, 1997

Burdette J. ...
President of Senate

Filed in Office of Secretary of State:

4:25 P.M. June 26, 1997

Paul H. ...
Secretary of State

KLAMATH COGENERATION PROJECT

SITE CERTIFICATE

APPENDIX G

Chapter 345 Oregon Department of Energy, Energy Facility Siting Council
OREGON ADMINISTRATIVE RULES 1997 COMPILATION

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DIVISION 11

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345-015-0062	Reopening Record Prior to Decision

Specific Procedures for Site Certificates Applications and Amendments of Site Certificates

345-015-0080	Participation by Other Government Agencies
345-015-0083	Prehearing Conference and Prehearing Order

345-015-0085	Hearing Officer's Proposed Order, Exceptions
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Procedures for Oregon Department of Energy Review of an Application for Site Certificate

345-015-0100	Notice of Intent to Submit an Application -- Submission
345-015-0110	Notice of Intent -- Public Notice
345-015-0120	Circulation of Submitted Notice of Intent to Other Agencies -- Department Memorandum
345-015-0130	Informal Hearings on Notices of Intent
345-015-0140	Department Review
345-015-0150	Council Decision on Pipeline and Transmission Line Corridors
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Procedures for Expedited Review of Certain Energy Facilities

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345-021-0055	Distribution of Filed Application
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Chapter 345 Oregon Department of Energy, Energy Facility Siting Council

OREGON ADMINISTRATIVE RULES 1997 COMPILATION

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345-023-0030	Electric Transmission Lines Demonstrating Need Under The Economically Reasonable Rule
345-023-0040	Natural Gas Pipelines Demonstrating Need under the Economically Reasonable Rule
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DIVISION 24

SPECIFIC STANDARDS FOR SITING NON-NUCLEAR FACILITIES AND RELATED OR SUPPORTING FACILITIES

Specific Standards for Wind Facilities

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Specific Standards for Surface Facilities Related to Underground Gas Storage Reservoirs

345-024-0030	Public Health and Safety Standards for Surface Facilities Related to Underground Gas Storage Reservoirs
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Specific Standards for Gas Pipelines

345-024-0050	Alternative Sites For Pipelines
345-024-0060	Public Health and Safety Standards for Pipelines

Specific Standards for Transmission Lines

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CONSTRUCTION AND OPERATION RULES FOR FACILITIES

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345-026-0080	Annual Status Report for Non-nuclear Facilities
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345-026-0105	Correspondence with Other State or Federal Agencies
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DIVISION 1

GENERAL PROVISIONS

345-001-0000

Permanent Rulemaking — Notice Required

(1) Prior to the adoption, amendment, or repeal of a permanent rule, the Council shall give notice of the proposed adoption, amendment, or repeal:

(a) In the Secretary of State's Bulletin referred to in ORS 183.360 at least 21 days before the effective date of the adoption, amendment or repeal;

(b) By mailing a copy of the notice at least 28 days before the effective date of adoption to persons on the Council's mailing list established pursuant to ORS 183.335(7); and

(c) By mailing a copy of the notice to the Associated Press and the Capitol Press Room.

(2) Notice of the proposed adoption, amendment or repeal of a permanent rule shall contain the following:

(a) Form SED 423 or Form SED 424 (available from the Secretary of State) or a facsimile acceptable to the Secretary of State;

(b) A statement of the need for the rule and a statement of how the rule is intended to meet the need;

(c) A list of the principal documents, reports or studies, if any, prepared by or relied upon by the Council in considering the need for and in preparing the rule, and a statement of the location at which those documents are available for public inspection. The list may be abbreviated if necessary, and, if so abbreviated, there shall be identified the location of a complete list; and

(d) A statement of fiscal impact identifying state agencies, units of local government and the public which may be economically affected by the adoption, amendment or repeal of the rule and an estimate of that economic impact on state agencies, units of local government and the public. In considering the economic effect of the proposed action on the public, the Council shall utilize available information to project any significant economic effect of that action on businesses which shall include a cost of compliance effect on small businesses affected.

(e) If an advisory committee is not appointed under the provisions of ORS 183.025(2), an explanation as to why no advisory committee was used to assist the agency in drafting the rule.

(3) Notwithstanding the requirements of ORS 183.335, when the Council is required to adopt rules or regulations promulgated by an agency of the federal government and the Council has no authority to alter or amend the content or language of those rules or regulations prior to their adoption, the Council may adopt these rules or regulations under the procedures prescribed in ORS 183.337.

Stat. Auth.: ORS Ch. 469

Stats. Implemented: ORS

Hist.: EFSC 1, f. & ef. 1-9-76; EFSC 4-1981, f. & ef. 3-25-81; EFSC 6-1986, f. & ef. 9-12-86; EFSC 2-1992, f. & cert. ef. 8-28-92; Renumbered from 345-10-031; EFSC 5-1994, f. & cert. ef. 11-30-94

345-001-0005

Rulemaking -- Model Rules

The Attorney General's Uniform and Model Rules of Procedure (November 1995) governing rulemaking, OAR 137-001-0005 through 137-001-0085, are by this reference hereby incorporated and adopted by the Council.

Stat. Auth.: ORS 469.470

Stat. Implemented: ORS 469.490

Hist.: NTEC 1, f. 12-16-71, ef. 1-1-72; NTEC 6, f. 11-19-73, ef. 12-11-73;

345-001-0010

Definitions

In this chapter, the following definitions apply unless the context requires otherwise or a term is specifically defined within a division or a rule:

(1) "Applicable Least-cost Plan" means the least-cost acquisition plan or integrated resource plan prepared by or for the specified energy supplier. For any energy supplier primarily providing retail electric service in the State of California that has not prepared a least-cost plan or integrated resource plan, the plan for that energy supplier may be based on the 1992 Electricity Report prepared by the California Energy Commission, until superseded by a subsequent report. For any energy supplier primarily providing retail electric service in the Pacific Northwest Region, as defined in 16 USC §839(a)(14), that has not prepared a least-cost plan or integrated resource plan, the plan for that energy supplier may be based on the 1991 Power Plan prepared by the Pacific Northwest Electric Power and Conservation Planning Council, until superseded by a subsequent report.

(2) "Associated Transmission Lines" means new transmission line or lines constructed to connect an energy facility to the first point of junction of such transmission line or lines with either a power distribution system or an interconnected primary transmission system or both to the Northwest Power Grid.

(3) "Background Radiation" means the direct radiation (gamma) and concentrations of potential radionuclide contaminants in construction materials and environment in the vicinity of the plant not associated with the nuclear operation and retirement of the facility. Background shall be determined as follows:

(a) For direct radiation, the results of any background measurements taken prior to operation of the facility shall be provided and 6 to 10 measurements shall be taken in areas in the vicinity of the site with materials and/or geological formations representative of the site that have not been affected by the operation and retirement of the facility. Background shall be calculated at the average and at the 95% confidence level.

(b) Environmental samples shall be taken for soil, sediment, water, and other materials present at the facility site that could have been affected by facility operations and retirement. Measurements for these samples shall be calculated at the average and 95% confidence levels, based on 6 to 10 measurements. Background environmental samples shall be taken at locations on site or in the immediate vicinity of the site which are unaffected by plant operations. Background shall be calculated at the average and 95% confidence levels, based on 6 to 10 measurements at each location.

(c) For construction material such as concrete, asphalt, block, brick and other materials used to construct the buildings and systems at the site, representative samples of materials unaffected by site operations shall be selected and surveyed. Six to ten samples of each material shall be taken to determine the level of naturally occurring and artificially induced concentrations of naturally occurring radioactivity present. Measurements shall include direct radiation (beta-gamma and alpha), wipes, and qualitative and quantitative laboratory analyses. Concentrations of fission and activation products from historical fallout shall be characterized as well.

(d) All measurements shall be made using appropriate instruments, properly calibrated, and in sufficient number to determine compliance with requirements.

(4) "Biomass Energy Facility" means an electric generating plant which burns wood, solid waste as defined in ORS 459.005, agricultural products, plant or animal waste or gases from the digestion of such materials as fuels to run engine or turbine-generators to produce electricity or to produce steam, which is then converted to electrical energy.

(5) "Certificate Holder" means the person to whom a Site

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Certificate has been granted by the Council pursuant to this chapter.

(6) "Chair" means the chairman or chairwoman of the Energy Facility Siting Council.

(7) "Committed Firm Energy and Capacity Resources" means generating facilities or power purchase contracts that are assured to be available to the energy supplier over a defined time period. Committed firm energy and capacity resources include existing generating facilities, existing power purchase contracts and planned generating facilities that sponsors have made firm commitments to develop.

(8) "Construction" means work performed on a site the cost of which exceeds \$250,000. It does not include surveying, exploration or other activities to define or characterize the site.

(9) "Corridor" means a location for a transmission line or a pipeline as defined in ORS 469.300(10). A corridor may be wide enough to accommodate two or more alternative transmission line or pipeline routes.

(10) "Council" means the Energy Facility Siting Council established under ORS 469.450.

(11) "Damage to Resources" means that damage determined by the Council to be acceptable or inconsequential in ultimate effect in the event a standard or standards of the Council are waived in the decision to issue a site certificate. In considering such a waiver, the Council shall apply the following criteria in making findings regarding acceptable or inconsequential damage:

(a) the uniqueness and significance of the resource affected;

(b) the degree to which the resource is already affected by development pressures;

(c) are there reasonable alternatives to allowing the damage to occur; and

(d) the magnitude of the anticipated impacts.

(12) "Department" means the Office of Energy created under ORS 469.030.

(13) "Direct Cost" means the discounted sum of all monetary costs to the ultimate consumer over the lifetime of the facility or resource plan or resource strategy.

(14) "Energy Facility" means an energy facility as defined in ORS 469.300(10). The term "energy facility" does not include any related or supporting facility. If a rule is intended to apply to both the energy facility and its related or supporting facilities, the term "facility" is used.

(15) "Energy Supplier" means

(a) A retail electric utility, a federal power marketing agency, or a local gas distribution company, or

(b) A person or public agency generating electric energy for its own consumption, lawfully purchasing electric energy directly from a generator for its own consumption, or transmitting or distributing natural or synthetic gas from an energy facility for its own consumption.

(16) "Existing Corridor" means the right-of-way of an existing transmission line, not to exceed 100 feet on either side of the physical center line of the transmission line or 100 feet from the physical centerline of the outside lines if the corridor contains more than one transmission line.

(17) "Exemption From Council Jurisdiction" means the approval of an application for exemption pursuant to ORS 469.320(4) and OAR 345-015-0350.

(18) "Facility" means an energy facility defined in ORS 469.300(10), together with any related or supporting facilities as defined in this rule, unless otherwise stated or unless the context clearly indicates otherwise.

(19) "Facility That Is Substantially Similar To the Proposed Facility" means:

(a) A facility that uses the same fuel and substantially similar technology, that has substantially the same in-service date, and that has a direct cost not substantially greater than that of the proposed facility; or

(b) A facility that is demonstrated to provide as good a mix of reliability, compatibility with the power system, strategic flexibility, environmental impact and direct cost as the proposed facility taking into account reasonable trade-offs among such factors.

(20) "Firm Deficits" means the year-by-year difference between forecast firm energy and capacity demands and committed firm energy and capacity resources.

(21) "Forecast Firm Energy and Capacity Demands" means the estimated annual and peak energy requirements of future retail customers and existing wholesale customers that the energy supplier is committed to supply on customer demand over a defined time period.

(22) "Fuel Chargeable to Power Heat Rate" means the net heat rate of electric power production during the first twelve months of commercial operation. Fuel chargeable to power heat rate shall be calculated by the following formula with all factors adjusted to the average temperature, barometric pressure and relative humidity at the site during the times of the year when the facility is intended to operate.

$FCP = (FI - FD) / P$, where

FCP = Fuel chargeable to power heat rate,

FI = Annual fuel input to the facility applicable to the cogeneration process in British thermal units (higher heating value),

FD = Annual fuel displaced in any industrial or commercial process, heating, or cooling application by supplying useful thermal energy from a cogeneration facility instead of from an alternate source, in British thermal units (higher heating value), and

P = Annual Net electric output of the cogeneration facility in kilowatt hours.

(23) "Fossil Fuel" means natural gas, petroleum, coal and any form of solid, liquid, or gaseous fuel derived from such materials which is used to produce useful heat.

(24) "Geothermal Reservoir" means an aquifer or aquifers containing a common geothermal fluid.

(25) "High Efficiency Cogeneration Facility" means an energy facility, except coal and nuclear power plants, which sequentially produces electrical and useful thermal energy from the same fuel source and under normal operating conditions has a useful thermal energy output of no less than 33 percent of the total energy output or a fuel chargeable to power heat rate of no greater than 6000 Btu per kilowatt hour.

(26) "Impact Area" means the area or areas specifically described in the Project Order issued pursuant to 345-015-0160(1), containing resources that may be significantly affected by the proposed facility. A proposed facility may have different impact areas for different types of resources.

(27) "Injection Well" means a well drilled in a known underground reservoir which is proposed to be used for injecting and withdrawing natural gas as required in normal operation of the storage field.

(28) "Land Use Approval" means a final quasi-judicial decision or determination made by a local government that:

(a) Applies existing comprehensive plan provisions or land use regulations to a proposed facility;

(b) Amends a comprehensive plan map or zoning map to accommodate a proposed facility;

(c) Amends comprehensive plan text or land use regulations to accommodate a proposed facility;

(d) Applies the statewide planning goals to a proposed facility; or

(e) Takes an exception to the statewide planning goals adopted by the Land Conservation and Development Commission for a proposed facility.

(29) "Local Government" means City or County.

(30) "Map" means a copy of a U.S.G.S. topographic map or its equivalent of appropriate size and scale. If practical, maps should be submitted on mylar and rolled, not folded. Mapping information may be submitted in digitized form for use with geographic information systems.

(31) "Mitigation" means taking one or more of the following actions listed in order of priority:

(a) Avoiding the impact altogether by not taking a certain action or parts of an action;

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(b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation;

(c) Partially or completely rectifying the impact by repairing, rehabilitating, or restoring the affected environment;

(d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action by monitoring and taking appropriate corrective measures;

(e) Partially or completely compensating for the impact by replacing or providing comparable substitute resources or environments; or

(f) Implementing other measures approved by the Council.

(32) "Natural Gas" means all gas and all other fluid hydrocarbons not defined as oil in ORS 520.005(6), including condensate originally in the gaseous phase in the reservoir.

(33) "Natural Gas Fired Facility" means an energy facility that is intended to be fueled by natural gas except for infrequent periods when the natural gas supply is interrupted, during which an alternate fuel may be used. Such alternate fuel use shall not exceed 10 percent of expected fuel use in British thermal units, higher heating value on an annual basis.

(34) "Net Electric Power Output" means the electric energy produced or capacity made available for use excluding electricity used in the production of electrical energy.

(35) "Net Emissions" means all emissions of the specified pollutant less any offset in the form of the reduction of other sources or sequestration of the same pollutant achieved by the applicant. The total resource cost shall include estimates of the purchase cost or resale value of tradeable sulfur dioxide emission allowances under the Clean Air Act, as amended, 42 USC §§7401 to 7642.

TABLE 1

Monetary value of emissions

Pollutant	Value
Nitrogen Oxides	\$2000/ton
PM-10 Particulates	\$2000/ton
Carbon Dioxide	\$10/ton

(36) "Nominal Electric Generating Capacity" means the maximum net electric power output of an energy facility based on the average temperature, barometric pressure and relative humidity at the site during the times of the year when the facility is intended to operate.

(37) "Overall Public Benefits" means those benefits determined by the Council to outweigh the potential damage to resources if a standard is waived. The Council shall consider the following criteria in making its findings:

(a) Consistency with Oregon energy policy,

(b) The importance of the proposed facility in terms of strategic flexibility

(c) Recommendations of a special advisory group, and

(d) Improvements to environmental quality afforded by the construction or operation of the facility.

(38) "Owner" means owner or lessee under a capital lease.

(39) "Permit" means any permit, license, certificate or other approval required by state statute, state administrative rule or local government ordinance.

(40) "Person" means an individual, partnership, joint venture, private or public corporation, association, cooperative, firm, public service company, political subdivision, municipal corporation, government agency, people's utility district, or any other entity, public or private, however organized.

(41) "Pool" means an underground reservoir containing a common accumulation of oil and natural gas. A zone of a structure which is completely separated from any other zone in the same structure is a pool.

(42) "Project Order" means the order, including any amendments, issued by the office under ORS 469.330.

(43) "Related or Supporting Facilities" means any structure

proposed to be built in connection with the energy facility, including but not limited to pipeline valves, regulators, compressors, vaults, enclosures, switching stations, substations, associated equipment, associated transmission lines, reservoirs, intake structures, road and rail access, pipelines, barge basins, office or public buildings, and commercial and industrial structures or other structure proposed by the applicant to be constructed or substantially modified in connection with the construction of the energy facility. "Related or supporting facilities" does not include geothermal or natural gas reservoirs, production, injection, withdrawal, or monitoring wells, or wellhead equipment or pumps. The Council interprets the terms "proposed to be built in connection with" as meaning that a structure is a related or supporting facility if it would not be built but for construction or operation of the energy facility. "Related or supporting facilities" does not include any structure existing prior to construction of the energy facility, unless such structure must be significantly modified solely to serve the energy facility.

(44) "Reviewing Agency" means any agency as defined in ORS 183.310(1), and any local government, 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. "Reviewing agency" includes but is not limited to agencies with the authority to issue or deny permits.

(45) "Significant" means having an important consequence, either alone or in combination with other factors, based upon the magnitude and likelihood of the impact on the affected human population or natural resources, or on the importance of the natural resource affected, considering the context of the action or impact, its intensity and the degree to which possible impacts are caused by the proposed action. Nothing in this definition is intended to require a statistical analysis of the magnitude or likelihood of a particular impact.

(46) "Site" means all land upon which a facility is located or proposed to be located. "Energy facility site" means all land upon which an energy facility is located or proposed to be located. "Related or supporting facilities site" means all land upon which related or supporting facilities for an energy facility are located or proposed to be located.

(47) "Site Certificate" means the binding agreement between the State of Oregon and the applicant, authorizing the applicant to construct and operate a facility on an approved site, incorporating all conditions imposed by the state on the applicant.

(48) "Special Nuclear Material" means Plutonium-233, or Uranium enriched in the isotope 233 or in the isotope 235.

(49) "Strategic Flexibility" means the value of a resource as part of a strategy to manage variance in costs or risks caused by future uncertainty.

(50) "Study area" means the area over which environmental impacts shall be assessed in the Notice of Intent. The study area is the area within the state measured by the distances described in this definition. If the facility is an electric power generating plant, excluding facilities powered by wind or solar energy, the distances shall be measured from the intersection of the transverse centerline axis and longitudinal centerline axis of the generator, or all such generators where the proposed facility includes multiple generators. If the facility is a synthetic fuel plant, a surface facility related to an underground gas storage reservoir, a liquified natural gas storage facility or a wind or solar powered electric generating plant, the distances below shall be from the proposed site boundary.

(a) For a facility that is a gas-fired combustion turbine electric power generating plant the following distances apply:

(A) For air quality, five miles;

(B) For surface water and groundwater quality and availability, 5 miles or the point of withdrawal, whatever is greater;

(C) For solid and hazardous wastes, the site boundary;

(D) For wildlife and wildlife habitat, except as provided in subsection (a)(E) of this rule, the site boundary;

(E) For threatened and endangered plant and animal species, 5 miles;

(F) For scenic and aesthetic areas, the line of sight from the highest point of the proposed energy facility site, not to exceed 30 miles;

(G) For cultural resources, the site boundary;

(H) For land use, one-half mile from the proposed site boundary;

(I) For recreational opportunities, 5 miles;

(J) For socio-economic impacts, 30 miles;

(K) For geological impacts, the site boundary; and

(L) For protected areas, 20 miles.

(b) For a facility that is a geothermal electric power generating plant, the following distances apply:

(A) For air quality, five miles;

(B) For surface water quality and availability, the site boundary or the point of withdrawal, whatever is greater, and for groundwater quality and availability, 5 miles;

(C) For solid and hazardous wastes, the site boundary;

(D) For wildlife and wildlife habitat, except as provided in subsection (b)(E) of this rule, the site boundary;

(E) For threatened and endangered plant and animal species, 5 miles;

(F) For scenic and aesthetic areas, the line of sight from the highest point of the proposed energy facility site, not to exceed 30 miles;

(G) For cultural resources, the site boundary;

(H) For land use, one-half mile from the proposed site boundary;

(I) For recreational opportunities, 5 miles;

(J) For socio-economic impacts, 30 miles;

(K) For geological impacts, the site boundary; and

(L) For protected areas, 20 miles.

(c) For a facility that is a biomass, oil-fired or coal-fired electric power generating plant, a synthetic fuel plant or a storage facility for liquified natural gas, the following distances apply:

(A) For air quality, ten miles;

(B) For surface water quality and availability, the point of withdrawal, or 1 mile upstream and 15 miles downstream, whatever is greater and for groundwater quality and availability, 10 miles;

(C) For solid and hazardous wastes, the site boundary;

(D) For wildlife and wildlife habitat, 10 miles;

(E) For threatened and endangered plant and animal species, 10 miles;

(F) For scenic and aesthetic areas, the line of sight from the highest point of the facility not to exceed 30 miles;

(G) For cultural resources, the site boundary;

(H) For land use, one-half mile from the proposed site boundary;

(I) For recreational opportunities, 10 miles;

(J) For socio-economic impacts, 30 miles;

(K) For geological impacts, the site boundary; and

(L) For protected areas, 20 miles.

(d) For a facility that is an electric power generating plant using solar power, the following distances apply:

(A) For air quality, the site boundary;

(B) For wildlife and wildlife habitat, the site boundary;

(C) For threatened and endangered plant and animal species, the site boundary;

(D) For scenic and aesthetic areas, the line of sight from the highest point of the facility not to exceed 30 miles;

(E) For cultural resources, the site boundary;

(F) For land use, one-half mile from the proposed site boundary;

(G) For recreational opportunities, 5 miles;

(H) For socio-economic impacts, 30 miles;

(I) For geological impacts, the site boundary; and

(J) For protected areas, 20 miles.

(e) For a facility that is an electric power generating plant using wind power, the following distances apply:

(A) For wildlife and wildlife habitat, the site boundary;

(B) For threatened and endangered plant and animal species, the site boundary;

(C) For scenic and aesthetic areas, the line of sight from the

highest point of the facility not to exceed 30 miles;

(D) For cultural resources, the site boundary;

(E) For land use, one-half mile from the proposed site boundary;

(F) For recreational opportunities, 5 miles;

(G) For socio-economic impacts, 30 miles;

(H) For geological impacts, the site boundary; and

(I) For protected areas, 20 miles.

(f) For a facility that is a pipeline or a transmission line, "study area" means the following areas:

(A) For surface water and groundwater quality and availability, the proposed corridor(s) described in the Notice of Intent;

(B) For wildlife and wildlife habitat, and threatened and endangered plant and animal species, the proposed corridor(s) described in the Notice of Intent;

(C) For scenic and aesthetic areas, the line of sight from the highest point of the facility not to exceed 30 miles;

(D) For cultural resources, the proposed corridor(s) described in the Notice of Intent;

(E) For land use, one-half mile from each side of the proposed corridor(s) described in the Notice of Intent;

(F) For recreational opportunities, the proposed corridor(s) described in the Notice of Intent;

(G) For geological impacts, the proposed corridor(s) described in the Notice of Intent; and

(H) For protected areas, 20 miles.

(g) For a facility that is a surface facility related to an underground gas storage reservoir, "study area" means the following areas:

(A) For surface water and groundwater quality and availability, the site boundary;

(B) For wildlife and wildlife habitat, and threatened and endangered plant and animal species, the site boundary;

(C) For scenic and aesthetic areas, the line of sight from the highest point of the facility not to exceed 30 miles;

(D) For cultural resources, the site boundary;

(E) For land use, one-half mile from the center of the proposed surface facility related to an underground gas storage reservoir;

(F) For recreational opportunities, the area within 5 miles of the site boundary;

(G) For socio-economic impacts, the area within 30 miles of the site boundary; and

(H) For geological impacts, the site boundary.

(h) For the purposes of this definition, "site boundary" means the site of the proposed facility and its related or supporting facilities, including but not limited to access road rights-of-way.

(51) "Substantial Loss of Steam Host" means the thermal energy user associated with a high efficiency cogeneration facility has made such long-term changes in its manner and magnitude of operation as to result in the loss of one or more work shifts for at least a year, accompanied by at least a 30 percent resultant reduction in the use of thermal energy.

(52) "Substantial Loss of Fuel Use Efficiency" means a reduction in fuel use efficiency at a high efficiency cogeneration facility to greater than 7000 Btu per kWh (fuel chargeable to power heat rate), or reduction of the fraction of energy output going to the thermal energy user associated with the facility to less than 20 percent, as a result of a substantial loss of steam host. Substantial loss of fuel use efficiency does not include efficiency losses due to equipment wear or condition.

(53) "Surface Facilities Related To an Underground Gas Storage Reservoir" means structures or equipment adjacent to and associated with an underground gas storage reservoir which are proposed to be built in connection with an underground gas storage reservoir and shall include, but are not limited to:

(a) Major facilities such as compressor stations, stripping plants and main line dehydration stations;

(b) Minor facilities such as offices, warehouses, equipment shops, odorant storage and injection equipment, and compressors rated less than 1,000 horsepower;

(c) Pipelines, such as gathering lines and liquid collection

lines; and

(d) Roads and road maintenance equipment housing at the reservoir site.

(54) "Thermal Power Plant" means an electrical facility using any source of thermal energy with a nominal electric generating capacity of 25 megawatts or more, for generation and distribution of electricity, and associated transmission lines, including but not limited to, a nuclear-fueled, geothermal-fueled or fossil-fueled power plant, but not including a portable power plant the principal use of which is to supply power in emergencies. "Thermal Power Plant" includes a nuclear-fueled thermal power plant that has ceased to operate.

(55) "Total Energy Output" means the sum of the net electric power output and useful thermal energy output.

(56) "Total Resource Cost" shall be calculated using consistent financial assumptions between resource types. "Total Resource Cost" means the sum of:

(a) The direct cost of conservation or other non-generation resources;

(b) 1.1 times the direct cost of generation facilities, including incremental transmission and distribution costs; and

(c) The discounted sum of the net emissions of pollutants listed in Table 1 of the definition of "Net Emissions" in this rule, multiplied by their respective monetary values.

(57) "Underground Gas Storage Reservoir" means any subsurface sand, strata, formation, aquifer, cavern or void, whether natural or artificially created, suitable for the injection, storage and withdrawal of natural gas or other gaseous fuel substances including a pool as defined in ORS 520.005.

(58) "Useful Thermal Energy" means the verifiable thermal energy used in any industrial or commercial process, heating or cooling application;

(59) "Utility" includes:

(a) An individual, a regulated electrical company, a people's utility district, a joint operating agency, an electric cooperative, municipality or any combination thereof, engaged in or authorized to engage in the business of generating, transmitting or distributing electric energy;

(b) A person or public agency generating electric energy from an energy facility for its own consumption; and

(c) A person engaged in this state in the transmission or distribution of natural or synthetic gas.

(60) "Vice-chair" means the vice-chairman or vice-chairwoman of the Energy Facility Siting Council.

(61) "Waste disposal facility" means a geographical site in or upon which radioactive waste is held or placed but does not include a site at which radioactive waste used or generated pursuant to a license granted under ORS 453.635 is stored temporarily, a site of a thermal power plant used for the temporary storage of radioactive waste from that plant for which a site certificate has been issued pursuant to this chapter or a site used for temporary storage of radioactive waste from a reactor operated by a college, university or graduate center for research purposes and not connected to the Northwest Power Grid. As used in this subsection, "temporary storage" includes storage of radioactive waste on the site of a nuclear-fueled thermal power plant for which a site certificate has been issued until a permanent storage site is available by the Federal Government.

(62) "Wildlife" means fish, wild birds, shellfish, intertidal animals, invertebrates, amphibians, reptiles and wild mammals.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Energy Facility Siting Council.]

Stat. Auth.: ORS 469.470

Stat. Implemented: ORS 469.300 to 469.570, 469.590 to 469.619 and 469.992
Hist.: EFSC 1-1980, f. & ef. 2-28-80; EFSC 1-1981, f. & ef. 1-19-81; EFSC 2-1981, f. & ef. 1-19-81; EFSC 8-1981, f. & ef. 10-29-81; EFSC 4-1982, f. & ef. 5-3-82; EFSC 4-1986, f. & ef. 9-5-86; EFSC 7-1986, f. & ef. 9-18-86; EFSC 2-1992, f. & cert. ef. 8-28-92; EFSC 1-1993, f. & cert. ef. 1-15-93; Portions of this rule renumbered from 345-79-025, 345-100-025, 345-111-020 & 345-125-025; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95

Purpose

(1) The purpose of the rules of this Chapter is to establish application requirements, review procedures and standards for the siting, construction, operation and retirement of energy facilities to assure that such facilities are sited, constructed, operated and retired in a manner consistent with protection of the public health and safety and in compliance with the energy policy and air, water, solid waste, land use and other environmental protection policies of Oregon.

(2) Except as indicated otherwise, the rules of this Chapter will be used by the Council to determine whether Site Certificate should be granted or denied and, if granted, to oversee the construction, operation and retirement of the facility. The rules of this Chapter will be used also in proceedings for amendment, suspension, revocation, transfer or termination of a Site Certificate.

(3) When the Council deems appropriate, it may adopt additional rules governing the siting of facilities. Any additional rules will be adopted sufficiently in advance of the close of testimony at a hearing on a Site Certificate to allow parties to address the rule, or if after the close of testimony, in sufficient time to allow the parties an opportunity to supplement their testimony to offer evidence relating to the new rule.

Stat. Auth.: ORS Ch. 469

Stats. Implemented: ORS

Hist.: EFSC 8-1978, f. & ef. 11-17-78; EFSC 1-1980, f. & ef. 2-28-80; EFSC 6-1980, f. & ef. 8-26-80; EFSC 9-1980, f. & ef. 12-22-80; EFSC 1-1981, f. & ef. 1-19-81; EFSC 2-1981, f. & ef. 1-19-81; EFSC 4-1986, f. & ef. 9-5-86; EFSC 7-1986, f. & ef. 9-18-86; EFSC 2-1992, f. & cert. ef. 8-28-92; Renumbered from 345-79-010, 345-80-010, 345-100-010, 345-111-005, 345-115-010 & 345-125-010; EFSC 5-1994, f. & cert. ef. 11-30-94

345-001-0030

Applicability

(1) The rules in this chapter are applicable to all matters under Council jurisdiction, except a Site Certificate which has been executed by the Council before November 30, 1994.

(2) A certificate holder may request amendment to the Site Certificate, under the provisions specified in the Site Certificate, to make applicable to the facility any newly adopted division of this chapter.

Stat. Auth.: ORS 469.470

Stat. Implemented: 469.310 and ORS 469.320

Hist.: EFSC 8-1978, f. & ef. 11-17-78; EFSC 1-1980, f. & ef. 2-28-80; EFSC 6-1980, f. & ef. 8-26-80; EFSC 9-1980, f. & ef. 12-22-80; EFSC 1-1981, f. & ef. 1-19-81; EFSC 2-1981, f. & ef. 1-19-81; EFSC 8-1981, f. & ef. 10-29-81; EFSC 4-1982, f. & ef. 5-3-82; EFSC 4-1986, f. & ef. 9-5-86; EFSC 7-1986, f. & ef. 9-18-86; EFSC 2-1992, f. & cert. ef. 8-28-92; Renumbered from 345-79-012, 345-79-015, 345-80-012, 345-80-015, 345-100-012, 345-100-015, 345-111-015, 345-115-012, 345-115-015, 345-125-012 & 345-125-015; EFSC 5-1993(Temp), f. & cert. ef. 8-16-93; EFSC 1-1994, f. & cert. ef. 1-28-94; EFSC 2-1994, f. & cert. ef. 5-6-94; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95

345-001-0035

Electric and Magnetic Fields Committee

An Electric and Magnetic Fields Committee of the Council is established.

(1) The committee shall be comprised of representatives of the public, utilities, manufactures, state agencies and Council members, appointed by the Chair. The Chair may delegate the authority to set meeting dates and agendas to the Committee.

(2) The committee shall monitor information available and being developed on the health effects of exposure to low frequency electric and magnetic fields and report the committee's findings periodically to the Council. The Council shall report the findings of the committee to the Energy Policy Review Committee and the Legislative Assembly.

Stat. Auth.: ORS Ch. 469

Stats. Implemented: ORS

Hist.: EFSC 1-1995, f. & cert. ef. 5-15-95

Information Exempt from Public Records Law

All information filed with or submitted to the department or Council under the requirements of this chapter shall be made available for public inspection and copying pursuant to ORS 469.560(1), OAR 345-001-0050, and this rule unless the person filing or submitting the information designates, at the time of filing or submission, what information that person considers exempt from the public records law, ORS Chapter 192 as provided for in ORS 469.560(2). The Council and department shall treat information so designated as confidential unless, upon a written request, the Council or the Attorney General, pursuant to ORS 192.450, determines that the exemption is not applicable.

Stat. Auth.: ORS Ch. 469

Stats. Implemented: ORS

Hist.: EFSC 1-1981, f. & ef. 1-19-81; EFSC 4-1986, f. & ef. 9-5-86; EFSC 2-1992, f. & cert. ef. 8-28-92; Renumbered from 345-100-055 & 345-125-100; EFSC 5-1994, f. & cert. ef. 11-30-94

345-001-0050

Public Records Availability and Fees for Copying

(1) Except for permanent records that have been turned over to the State Archives, all public records of the Council and the department are available for public inspection and copying at the department during usual business hours except for that information which has been designated exempt from the public records law in accordance with ORS Chapter 192, ORS 469.560(2), and OAR 345-001-0040.

(2) Public records may be inspected by and copied for any person who makes a written request containing the following information:

(a) Name, address and telephone number of the person requesting the record;

(b) The date on which the request was submitted to the department and the date by which the requester would like the inspection or copying to occur;

(c) A description of the record requested including an index reference if the matter is indexed; and

(d) Whether a certified copy is requested.

(3) No fees are charged for inspection of public records unless the records are stored off the premises of the department in which case the department may charge for the staff time necessary to make the records available to the requester. Except as provided in section (4) of this rule, fees for the reproduction of any department or Council document or proceeding shall be as follows:

(a) Requesters will be charged a fee not to exceed five cents (\$.05) per page of copy for use of the department's photocopying equipment in cases where no significant staff time is utilized by the request. For requests which require significant staff time, photocopying costs may include, in addition to a per-page charge, the cost of that staff time not to exceed ten dollars (\$10.00) per hour. Charges for photocopying costs shall be paid prior to delivery of documents except no advance payment shall be required of other government agencies or parties in proceedings before the Council;

(b) Requesters will be charged a fee of five dollars (\$5.00) per tape for copies of cassette tapes of Council proceedings. Requesters will be charged five dollars (\$5.00) per disk for any public document in a medium and format utilized by the department on 3-1/2 or 5-1/4 inch floppy disk;

(c) The department may charge fees for reimbursement of expenses in providing printed reports and FAX services to the public.

(4) Any fee established in sections (1) through (3) of this rule may be reduced or waived by the secretary of the Council if the reduction or waiver is in the public interest because making the record or document available benefits the general public. A person may request a fee reduction or waiver of a fee by submitting a Fee Reduction/Waiver Request Form to the secretary of the Council. Forms are available at the secretary's office in the department. A person who believes that there has been an unreasonable denial of a fee reduction or fee waiver may petition, in writing, the Attorney General or the district attorney pursuant to ORS 192.440 and

192.450.

(5) Any permanent record of the Council kept by the State Archivist can be reviewed at the State Archive building, 800 Summer St., Salem, OR 97310.

Stat. Auth.: ORS 469.470

Stat. Implemented: ORS 469.560

Hist.: EFSC 2-1992, f. & cert. ef. 8-28-92; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95

345-001-0060

Council Representation in Other Agency Hearings

(1) A Council member, an officer of the department, or an employee of the department is authorized to appear, but not make legal argument, on behalf of the Council in a hearing or in a class of contested case hearings in which the Attorney General or the Deputy Attorney General has given written consent to the Council member, the department officer, or department employee pursuant to ORS 183.450(7) to represent the Council. Prior to each contested case hearing in which the Council wishes to appear by a member, department officer or department employee, the Council shall request written consent from the Attorney General or the Deputy Attorney General for the designated representative to appear on behalf of the Council. A copy of the list of contested case hearings for which the Attorney General or the Deputy Attorney General has given consent is maintained by the department and the Department of Justice.

(2) Legal argument as used in this rule has the same meaning as in OAR 137-003-0008(1)(c) and (d).

Stat. Auth.: ORS Ch. 469

Stats. Implemented: ORS

Hist.: EFSC 1-1988, f. & cert. ef. 5-11-88; EFSC 2-1992, f. & cert. ef. 8-28-92; Renumbered from 345-10-028

340-001-0070

Declaratory Rulings

The Attorney General's Uniform Rules of Procedure (November 1993) governing declaratory rulings, OAR 137-002-0010 through 137-002-0060, are hereby incorporated by this reference and adopted.

Stat. Auth.: ORS Ch. 469

Stats. Implemented: ORS

Hist.: EFSC 2-1992, f. & cert. ef. 8-28-92; EFSC 5-1994, f. & cert. ef. 11-30-94

345-001-0080

Reconsideration and Rehearing -- Orders in Other Than Contested Cases

(1) A person entitled to judicial review under ORS 183.484 of a final order in other than a contested case may file a petition for reconsideration or rehearing with the Council within 60 days after the date of the order. A person seeking reconsideration or rehearing shall deliver or mail a copy of the petition to all other persons and agencies required by statute or rule to be notified.

(2) The petition shall set forth the specified grounds for reconsideration. The petition may be supported by a written argument.

(3) The petition may include a request for a stay of a final order if the petition complies with the requirements of OAR 137-03-090(2).

(4) The petition may be granted or denied by summary order, and, if no action is taken, shall be deemed denied as provided by ORS 183.484(2).

(5) Any Council member may move for reconsideration of a final order in other than a contested case within 60 days after the date of the order. Reconsideration shall be granted if approved by a majority of the Council. The procedural and substantive effect of granting reconsideration under this subsection shall be identical to the effect of granting a party's petition for reconsideration.

(6) Reconsideration shall not be granted after the filing of a petition for judicial review unless permitted by the court.

(7) A final order remains in effect during reconsideration until stayed or changed.

(8) At the conclusion of a reconsideration, the Council shall

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enter a new order, which may be an order affirming the existing order.

Stat. Auth.: ORS Ch. 469
Stats. Implemented: ORS
Hist.: EFSC 2-1992, f. & cert. ef. 8-28-92; EFSC 5-1994, f. & cert. ef. 11-30-94

345-001-0090

Interpretation of Added Capacity -- Existing Facilities

(1) Expansion or modification of a facility for which the Council has issued a Site Certificate is subject to the provisions of, and must be undertaken under, division 27 of this chapter.

(2) Energy facilities for which the Council has not issued a Site Certificate that had operable generating equipment on August 2, 1993 are exempt from the requirement to obtain a Site Certificate for a modification that uses the same fuel type and increases electric generating capacity if:

(a) The site is not enlarged; and

(b) The ability of the facility to use fuel for electricity production under peak steady state operating conditions is not more than 200 million BTU per hour greater than it was on August 2, 1993, or the facility expansion is called for in the short-term plan of action of an energy resource plan that has been acknowledged by the Public Utility Commission of Oregon.

(3) In a proceeding to issue a Site Certificate for an existing energy facility the Council shall limit its consideration to the effects that may result from the proposed expansion of the facility.

Stat. Auth.: ORS 469.470
Stat. Implemented: ORS 469.320
Hist.: EFSC 2-1992, f. & cert. ef. 8-28-92; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95

DIVISION 10

ADMINISTRATION

General Rules of Practice

345-010-0015 [Renumbered to 345-011-0070]

345-010-0021 [Renumbered to 345-011-0080]

345-010-0026 [Renumbered to 345-001-0005]

345-010-0028 [Renumbered to 345-001-0060]

345-010-0031 [Renumbered to 345-001-0000]

DIVISION 11

COUNCIL MEETINGS

345-011-0000

Authority and Purpose

The purpose of these rules is to provide procedures for the orderly conduct of meetings of the Council. These rules are adopted pursuant to ORS Chapter 183 and ORS 469.470.

Stat. Auth.: ORS Ch. 469
Stats. Implemented: ORS
Hist.: EFSC 7-1980, f. & ef. 10-9-80; EFSC 6-1986, f. & ef. 9-12-86; EFSC 1-1993, f. & cert. ef. 1-15-93

345-011-0005

Quorum and Rules of Order

(1) Five members of the Council constitute a quorum. The Council may meet to discuss any matter in the absence of a quorum, but may take no formal action on any matter unless a quorum is present.

(2) A majority of the Council members present at a meeting must concur in order for the Council to act on any matter before it; however, in accordance with ORS 469.370(1), a Council decision

to approve or reject an application for a site certificate requires the affirmative vote of at least four members.

(3) Any proposed Council action must be moved by a Council member and seconded by another Council member before a vote may be taken by the Council.

Stat. Auth.: ORS Ch. 469
Stats. Implemented: ORS
Hist.: EFSC 7-1980, f. & ef. 10-9-80; EFSC 6-1986, f. & ef. 9-12-86; EFSC 1-1993, f. & cert. ef. 1-15-93

345-011-0010

Officers

(1) The Council shall annually elect a chair, and vice-chair. The chair and vice-chair, shall serve for one year or until their successors are elected. A member may serve successive full terms as chair or vice-chair. The chair or vice-chair may be removed by a unanimous vote of the other Council members.

(2) The chair shall preside over all Council meetings; shall determine, in cooperation with the Council secretary, the location of the Council meetings; and shall execute all written documents which must be executed in the name of the Council. The administrator of the department's Division of Nuclear Safety and Energy Facilities shall serve as Council secretary.

(3) The chair may take action on behalf of the Council in emergencies which arise between meetings, subject to ratification by the Council. Where practicable, the chair shall advise all members by telephone of any action proposed to be taken in an emergency.

(4) The vice-chair shall act in lieu of the chair when the chair is unable to perform any of his or her responsibilities.

Stat. Auth.: ORS Ch. 469
Stats. Implemented: ORS
Hist.: EFSC 7-1980, f. & ef. 10-9-80; EFSC 2-1985, f. & ef. 2-5-85; EFSC 6-1986, f. & ef. 9-12-86; EFSC 1-1987, f. & ef. 4-21-87; EFSC 1-1993, f. & cert. ef. 1-15-93

345-011-0015

Meetings — Date and Location Notice

(1) The Council shall meet periodically as determined by a majority of the Council, at a time and place specified by the chair. The Council may vary the locations of its meetings in order to give persons throughout the state an opportunity to observe and participate in its activities. The Secretary, consistent with the requirements of ORS 192.610 to 192.690, shall give notice of each meeting of the Council.

(2) The Governor or chair may call a special meeting to be held at any place in this state, designated by the person calling the meeting, upon 24 hours' notice to each Council member and the public. In the event of an actual emergency, a meeting may be held upon such notice as is appropriate to the circumstances, but the minutes for such a meeting shall describe the emergency justifying less than 24 hours' notice.

Stat. Auth.: ORS Ch. 469
Stats. Implemented: ORS
Hist.: EFSC 7-1980, f. & ef. 10-9-80; EFSC 6-1986, f. & ef. 9-12-86; EFSC 1-1993, f. & cert. ef. 1-15-93

345-011-0020

Agendas for Regular Meetings

(1) The secretary shall prepare an agenda for each regular Council meeting after consulting with the chair. The agenda shall specify all matters scheduled to come before the Council at the meeting and shall identify the proponent of items placed thereon at the request of members of the public pursuant to the rules of this division.

(2) The agenda may contain a consent calendar, identifying items which are considered routine, such as minutes of previous meetings and personnel recognitions, which will be acted upon without public discussion. However, if a Council member objects to an item on the consent calendar, it will be removed from the consent calendar and placed on the regular agenda for discussion.

(3) Each agenda shall include a designated time period which has been reserved for the presentation of concerns by interested

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determination of compliance with the Council's land use standard pursuant to ORS 469.503(2)(b), the comments and recommendations of each local government with land use jurisdiction over the proposed facility shall include a complete list of applicable substantive criteria from the local government's comprehensive plan and land use regulations as well as any interpretations of ambiguous terms and matters arising from the local government's land use regulations. "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. If possible, the local government's recommendations, comments and interpretations should be made in the form of a resolution adopted by the local governing body. If the local government does not recommend applicable substantive criteria by the date specified for return of the comments and recommendations, the Council may either determine and apply the applicable substantive criteria or determine compliance with the statewide planning goals.

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

Stat. Auth.: ORS Ch. 469

Stats. Implemented: ORS

Hist.: EFSC 1-1993, f. & cert. ef. 1-15-93; EFSC 5-1994, f. & cert. ef. 11-30-94

345-021-0055

Distribution of Filed Application

(1) The applicant shall distribute 10 copies of the filed application to the department, and one copy to each reviewing agency, tribe, special advisory group, and affected local government, accompanied by the notice from the department specified in OAR 345-015-0200.

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

Stat. Auth.: ORS Ch. 469

Stats. Implemented: ORS

Hist.: EFSC 5-1994, f. & cert. ef. 11-30-94

345-021-0060

Reports from Other Agencies

Prior to the date specified in the notification described in OAR 345-015-0200, each reviewing agency shall submit to the department and mail to the applicant a report containing the following information:

(1) The status of applications, if any, for permits that have been filed with the reviewing agency and that must be issued by the reviewing agency if a Site Certificate is granted for the proposed facility;

(2) Identification of issues raised in the report that the agency considers to be significant;

(3) Its preliminary conclusions concerning the proposed facility's compliance with state statutes, administrative rules or ordinances administered by the reviewing agency;

(4) A preliminary list of conditions that the reviewing agency proposes for inclusion in the Site Certificate; and

(5) Any other information that the reviewing agency believes will be useful in reviewing the application in light of applicable standards.

Stat. Auth.: ORS Ch. 469

Stats. Implemented: ORS

Hist.: EFSC 1-1993, f. & cert. ef. 1-15-93; EFSC 5-1994, f. & cert. ef. 11-30-94

345-021-0080

Coordination of Agencies' Review of Applications for Proposed Facility

(1) Each reviewing agency is encouraged to conduct its review of the Application for Site Certificate, and other permits for the proposed facility filed with the reviewing agency, on a timeline and in a manner that enables the reviewing agency to:

(a) Make recommendations to the department and Council as to whether the applications comply with the state statutes, administrative rules or ordinances administered by the reviewing 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 Application for Site Certificate; 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 deadline for comment from the agencies under OAR 345-015-0200, the department may convene a meeting of the reviewing agency personnel identified in the reviewing agency responses, for the purpose of coordinating the department's and reviewing agencies' review of the Application for Site Certificate and other applications for permits for the proposed facility.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.350, 469.360, 469.370

Hist.: EFSC 1-1993, f. & cert. ef. 1-15-93; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95

340-021-0090

Amendment of Application

(1) Prior to the date of filing pursuant to OAR 345-015-0190, the applicant may amend the application without prior approval of the department. An amendment to an application pursuant to this section and ten copies of the amendment shall be filed with the department.

(2) After the date of filing pursuant to OAR 345-15-190, the applicant may not amend the application without the approval of the department or, if a contested case has been noticed pursuant to 345-015-0014, the Council's hearing officer. Notice of the amendment and service of copies of the amendment shall be in accordance with the order of the department or hearing officer and any applicable contested/case procedures.

(3) Information submitted in response to a request from the department does not constitute an amendment to the application, as provided in OAR 345-015-0190(3).

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.350, 469.360

Hist.: EFSC 1-1993, f. & cert. ef. 1-15-93; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95

345-021-0100

Hearing on Application -- Parties -- Burden of Proof

(1) The hearing officer shall conduct a contested case hearing on a filed application for a site certificate in accordance with the provisions of OAR Chapter 345, Division 15.

(2) The applicant for a site certificate shall have 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. Auth.: ORS 469.470

Stats. Implemented: ORS 469.350, 469.370

Hist.: EFSC 1-1993, f. & cert. ef. 1-15-93; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95

DIVISION 22

GENERAL STANDARDS FOR SITING NON-NUCLEAR FACILITIES

345-022-0000

General Standard of Review

(1) In order to issue a Site Certificate for a proposed facility the Council must determine that the preponderance of evidence on the record supports the following conclusions:

(a) The facility complies with the requirements of the Oregon Energy Facility Siting statutes, ORS 469.300 to ORS 469.570 and

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469.590 to 469.619, and the standards adopted by the Council pursuant to ORS 469.501 or the overall public benefits of the facility outweigh the damage to the resources protected by the standards the facility does not meet;

(b) Except as provided in OAR 345-022-0030 for land use compliance and except for those statutes and rules for which the decision on compliance has been delegated by the federal government to a state agency other than the Council, the facility complies with all other Oregon statutes and administrative rules identified in the project order as applicable to the issuance of a Site Certificate for the proposed facility. If compliance with applicable Oregon statutes and rules, other than those involving federally delegated programs, would result in conflicting conditions in the Site Certificate, the Council may resolve the conflict consistent with the public interest. A resolution may not result in the waiver of any applicable state statute.

(2) For the purposes of determining the conclusions required by subsection (1) of this rule, the Project Order issued pursuant to OAR 345-015-0160(1) or as later amended shall include a complete list of the state statutes and administrative rules and local ordinances applicable to the issuance of a Site Certificate for the facility.

(3) The Council may issue a Site Certificate for a facility that does not meet the standards adopted pursuant to ORS 469.501 if it determines that the overall public benefits of the facility outweigh the damage to the resource that is protected by the standard the facility does not meet. Notwithstanding this requirement, the Council may issue a Site Certificate for a facility that does not meet the standard set out at 345-022-0040 if it determines that the overall public benefits of the facility outweigh the damage to the resource that is protected by that standard, provided that the statutes or administrative rules governing the management of the protected area do not prohibit location of the proposed facility in that area.

(4) In making determinations regarding compliance with statutes, rules and ordinances normally administered by other agencies or compliance with requirements of the Oregon Energy Facility Siting Council statutes if other agencies have special expertise, consultation with such other agencies shall occur during the Notice of Intent and Site Certificate application process. Nothing in these rules is intended to interfere with the state's implementation of programs delegated to it by the federal government.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.310, 469.501 and 469.503

Hist.: EFSC 6-1980, f. & ef. 8-26-80; EFSC 1-1981, f. & ef. 1-19-81; EFSC 2-1981, f. & ef. 1-19-81; EFSC 4-1986, f. & ef. 9-5-86; EFSC 7-1986, f. & ef. 9-18-86; EFSC 9-1980, f. & ef. 12-22-80; EFSC 1-1993, f. & cert. ef. 1-15-93; Renumbered from 345-79-080, 345-80-075, 345-100-052, 345-111-055, 345-115-052 & 345-125-070(8); EFSC 5-1993(Temp), f. & cert. ef. 8-16-93; EFSC 1-1994, f. & cert. ef. 1-28-94; EFSC 2-1994, f. & cert. ef. 5-6-94; EFSC 2-1994, f. & cert. ef. 5-6-94; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95

345-022-0010

Organizational, Managerial, and Technical Expertise

(1) To issue a Site Certificate, the Council must find that the applicant has the organizational, managerial and technical expertise to construct and operate the facility. To conclude that the applicant has the organizational, managerial and technical expertise to construct and operate the proposed facility, the Council must determine that the applicant has a reasonable probability of successful construction and operation of the facility considering the experience of the applicant, the availability of technical expertise to the applicant, and, if the applicant has constructed or operated other facilities, the past performance of the applicant, including but not limited to the number and severity of regulatory citations, in constructing or operating a facility, type of equipment, or process similar to the proposed facility.

(2) If the applicant will not itself obtain any state or local government permit or approval for which the Council would ordinarily determine compliance with applicable standards, but will rely on a permit or approval issued to a third party, the

Council must determine that the named 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.

(3) If any third party named by the applicant does not have the necessary permit or approval at the time the Application for Site Certificate is approved, the Council may require as a condition that the Site Certificate holder may 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.

Stat. Auth.: ORS Ch. 469

Stats. Implemented: ORS

Hist.: EFSC 6-1980, f. & ef. 8-26-80; EFSC 9-1980, f. & ef. 12-22-80; EFSC 1-1981, f. & ef. 1-19-81; EFSC 2-1981, f. & ef. 1-19-81; EFSC 4-1986, f. & ef. 9-5-86; EFSC 7-1986, f. & ef. 9-18-86; EFSC 1-1993, f. & cert. ef. 1-15-93; Renumbered from 345-79-125, 345-80-080, 345-100-053, 345-111-060, 345-115-053 & 345-125-090; EFSC 5-1993(Temp), f. & cert. ef. 8-16-93; EFSC 1-1994, f. & cert. ef. 1-28-94; EFSC 2-1994, f. & cert. ef. 5-6-94; EFSC 5-1994, f. & cert. ef. 11-30-94

345-022-0020

Structural Standard

To issue a Site Certificate, the Council must find that:

(1) The applicant, through appropriate site-specific study, has adequately characterized the site in terms of seismic zone and expected ground response during the maximum credible and reasonably probable seismic events; and

(2) The facility can be designed, engineered, and constructed adequately to avoid potential dangers to human safety presented by seismic hazards affecting the site, as defined in ORS 455.447(1)(d) and including amplification, that are expected to result from all reasonably probable seismic events.0

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.310 and 469.501

Hist.: EFSC 1-1980, f. & ef. 2-28-80; EFSC 1-1981, f. & ef. 1-19-81; EFSC 2-1981, f. & ef. 1-19-81; EFSC 4-1982, f. & ef. 5-3-82; EFSC 4-1986, f. & ef. 9-5-86; EFSC 7-1986, f. & ef. 9-18-86; EFSC 1-1993, f. & cert. ef. 1-15-93; Renumbered from 345-79-060, 345-100-040, 345-111-035; 345-115-040 & 345-125-070; Readopted by EFSC 5-1993(Temp), f. & cert. ef. 8-16-93; Readopted by EFSC 1-1994, f. & cert. ef. 1-28-94; Readopted by EFSC 2-1994, f. & cert. ef. 5-6-94; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95

345-022-0022

Soil Protection

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.

Stat. Auth.: ORS Ch. 469

Stats. Implemented: ORS

Hist.: EFSC 5-1994, f. & cert. ef. 11-30-94

345-022-0030

Land Use

(1) To issue a Site Certificate, the Council must find that the facility complies with the statewide planning goals adopted by the Land Conservation and Development Commission.

(2) A proposed facility shall be found in compliance with section (1) of this rule if:

(a) The facility has received local land use approval under the acknowledged comprehensive plan and land use regulations of the affected local government; or

(b) Except as provided in subparagraph (C) of this paragraph, the Council determines:

(A) The facility complies with 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 in effect on the date the application

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is submitted; and

(B) The facility complies with any Land Conservation and Development Commission administrative rules and goals and any land use statutes directly applicable to the facility under ORS 197.646(3); or

(C) The proposed facility does not comply with one or more of the applicable substantive criteria described in paragraph (b)(A) of this subsection but the Council finds that the facility does otherwise comply with the statewide planning goals, or that an exception to any applicable statewide planning goal is justified under section (3) of this rule, or

(D) For a facility that the Council elects to evaluate against the statewide planning goals pursuant to section (5) of this rule, that the proposed facility complies with the applicable statewide planning goals or that an exception to any applicable statewide planning goal is justified under section (3) of this rule.

(3) The Council may find goal compliance for a facility that does not otherwise comply with one or more statewide planning goals by taking an exception to the applicable goal. Notwithstanding the requirements of ORS 197.732, the statewide planning goal pertaining to the exception process or any rules of the Land Conservation and Development Commission pertaining to the exception process, the Council may take an exception to a goal if the Council finds:

(a) The land subject to the exception is physically developed to the extent that the land is no longer available for uses allowed by the applicable goal;

(b) The land subject to the exception is irrevocably committed as described by the rules of the Land Conservation and Development Commission to uses not allowed by the applicable goal because existing adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable; or

(c) The following standards are met:

(A) Reasons justify why the state policy embodied in the applicable goal should not apply;

(B) The significant environmental, economic, social and energy consequences anticipated as a result of the proposed facility have been identified and adverse impacts will be mitigated in accordance with rules of the Council applicable to the siting of the proposed facility; and

(C) The proposed facility is compatible with other adjacent uses or will be made compatible through measures designed to reduce adverse impacts.

(4) If compliance with applicable substantive local criteria and applicable statutes and state administrative rules would result in conflicting conditions in the Site Certificate, the Council shall resolve the conflict consistent with the public interest. A resolution may not result in a waiver of any applicable state statute.

(5) If the special advisory group recommends applicable substantive criteria for an energy facility described in ORS 469.300(10)(a)(C) to (E) or a related or supporting facility that does not pass through more than one local government jurisdiction, or more than three zones in any one jurisdiction, the Council shall apply the criteria recommended by the special advisory group. If the special advisory group recommends applicable substantive criteria for an energy facility described in ORS 469.300(10)(a)(C) to (E) or a related or supporting facility that passes through more than one jurisdiction or more than three zones in any one jurisdiction, the Council shall review the recommended criteria and determine whether to evaluate the proposed facility against the applicable substantive criteria recommended by the special advisory group, against the statewide planning goals or against a combination of the applicable substantive criteria and statewide planning goals. In making a determination, the Council shall consult with the special advisory group, and shall consider:

(a) The number of jurisdictions and zones in question;

(b) The degree to which the applicable substantive criteria reflect local government consideration of energy facilities in the planning process; and

(c) The level of consistence of the applicable substantive criteria from the various zones and jurisdictions.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.310, 469.501 and 469.503

Hist.: EFSC 1-1980, f. & ef. 2-28-80; EFSC 6-1980, f. & ef. 8-26-80; EFSC 9-1980, f. & ef. 12-22-80; EFSC 1-1981, f. & ef. 1-19-81; EFSC 2-1981, f. & ef. 1-19-81; EFSC 4-1986, f. & ef. 9-5-86; EFSC 1-1993, f. & cert. ef. 1-15-93; Renumbered from 345-80-065, 345-100-045, 345-111-045, 345-125-070 & 345-125-080; EFSC 5-1993(Temp), f. & cert. ef. 8-16-93; EFSC 1-1994, f. & cert. ef. 1-28-94; EFSC 2-1994, f. & cert. ef. 5-6-94; EFSC 5-1994, f. & cert. ef. 11-30-94

345-022-0040

Protected Areas

(1) The facility must not be 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 facility located outside the areas listed below is not likely to result in significant adverse impact to the areas listed below:

(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;

(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:

(A) Coastal Oregon Marine Experiment Station, Astoria;

(B) Mid-Columbia Agriculture Research and Extension Center, Hood River

(C) Agriculture Research and Extension Center, Hermiston

(D) Columbia Basin Agriculture Research Center, Pendleton

(E) Columbia Basin Agriculture Research Center, Moro

(F) North Willamette Research and Extension Center, Aurora

(G) East Oregon Agriculture Research Center, Union

(H) Malheur Experiment Station, Ontario

(I) Eastern Oregon Agriculture Research Center, Burns

(J) Eastern Oregon Agriculture Research Center, Squaw Butte

(K) Central Oregon Experiment Station, Madras

(L) Central Oregon Experiment Station, Powell Butte

(M) Central Oregon Experiment Station, Redmond

(N) Central Station, Corvallis

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(O) Coastal Oregon Marine Experiment Station, Newport
(P) Southern Oregon Experiment Station, Medford
(Q) 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;

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

(2) Notwithstanding section (1) of this rule, the Council may issue a Site Certificate for a transmission line or a natural gas pipeline located in a protected area identified in section (1) of this rule, if other alternative routes or sites have been studied and determined by the Council to have greater impacts. Notwithstanding section (1) of this rule, the Council may issue a Site Certificate for surface facilities related to an underground gas storage reservoir whose pipelines and injection, withdrawal or monitoring wells and individual wellhead equipment and pumps are located in a protected area, if other alternative routes or sites have been studied and determined by the Council to be unsuitable.

(3) The provisions of section (1) of this rule shall not apply to transmission lines or natural gas pipelines routed within 500 feet of an existing utility corridor containing at least one transmission line with a voltage rating of 115 kilovolts or higher, or containing at least one natural gas pipeline of 8 inches or greater diameter which has operated at a pressure of 125 psig.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Energy Facility Siting Council.]

Stat. Auth.: ORS Ch. 469

Stats. Implemented: ORS

Hist.: EFSC 1-1980, f. & ef. 2-28-80; EFSC 6-1980, f. & ef. 8-26-80; EFSC 9-1980, f. & ef. 12-22-80; EFSC 1-1981, f. & ef. 1-19-81; EFSC 2-1981, f. & ef. 1-19-81; EFSC 4-1982, f. & ef. 5-3-82; EFSC 4-1986, f. & ef. 9-5-86; EFSC 7-1986, f. & ef. 9-18-86; EFSC 1-1993, f. & cert. ef. 1-15-93; Renumbered from 345-79-030, 345-80-060, 345-100-040, 345-111-035, 345-115-040 & 345-125-070; Readopted by EFSC 5-1993(Temp), f. & cert. ef. 8-16-93; Readopted by EFSC 1-1994, f. & cert. ef. 1-28-94; Readopted by EFSC 2-1994, f. & cert. ef. 5-6-94; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95

345-022-0050

Financial Assurance

To issue a Site Certificate, the Council must find that the applicant has a reasonable likelihood of obtaining a bond or comparable security, satisfactory to the Council, in an amount adequate to restore the site if the certificate holder:

- (1) Begins but does not complete construction of the facility;
- or
- (2) Permanently closes the facility before establishing a financial mechanism or instrument, satisfactory to the Council, that will assure funds will be available to adequately retire the facility and restore the site to a useful, non-hazardous condition.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.310, and 469.501

Hist.: EFSC 6-1980, f. & ef. 8-26-80; EFSC 9-1980, f. & ef. 12-22-80; EFSC 1-1981, f. & ef. 1-19-81; EFSC 2-1981, f. & ef. 1-19-81; EFSC 4-1986, f. & ef. 9-5-86; EFSC 7-1986, f. & ef. 9-18-86; EFSC 1-1993, f. & cert. ef. 1-15-93; Renumbered from 345-79-130, 345-80-085, 345-100-054, 345-111-065, 345-115-054 & 345-125-095; Readopted by EFSC 5-1993(Temp), f. & cert. ef. 8-16-93; Readopted by EFSC 1-1994, f. & cert. ef. 1-28-94; Readopted by EFSC 2-1994, f. & cert. ef. 5-6-94; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95

345-022-0060

Fish and Wildlife Habitat

To issue a Site Certificate, the Council must find that the design, construction, operation and retirement of the facility, taking into account mitigation, is consistent with the fish and wildlife habitat mitigation goals and standards of OAR 635-415-

0030.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.310, and 469.501

Hist.: NTEC 9, f. 2-13-75, ef. 3-11-75; EFSC 1-1980, f. & ef. 2-28-80; EFSC 6-1980, f. & ef. 8-26-80; EFSC 9-1980, f. & ef. 12-22-80; EFSC 1-1981, f. & ef. 1-19-81; EFSC 1-1985, f. & ef. 1-7-85; EFSC 4-1986, f. & ef. 9-5-86; EFSC 1-1993, f. & cert. ef. 1-15-93; Renumbered from 345-26-045, 345-80-060, 345-100-040, 345-115-040 & 345-125-070; Readopted by EFSC 5-1993(Temp), f. & cert. ef. 8-16-93; Readopted by EFSC 1-1994, f. & cert. ef. 1-28-94; Readopted by EFSC 2-1994, f. & cert. ef. 5-6-94; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95

345-022-0070

Threatened and Endangered Species

To issue a Site Certificate, the Council, after consultation with appropriate state agencies, must find that:

(1) The design, construction, operation and retirement of the proposed facility, taking into account mitigation, is consistent with any applicable conservation program adopted pursuant to ORS 496.172(3) or ORS 564.105(3); or

(2) If no conservation program applies, the design, construction, operation and retirement of the facility, taking mitigation into account, does not have the potential to significantly reduce the likelihood of the survival or recovery of any threatened or endangered species listed under ORS 496.172(2) or ORS 564.105(2).

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.310, and 469.501

Hist.: EFSC 1-1980, f. & ef. 2-28-80; EFSC 6-1980, f. & ef. 8-26-80; EFSC 9-1980, f. & ef. 12-22-80; EFSC 1-1981, f. & ef. 1-19-81; EFSC 2-1981, f. & ef. 1-19-81; EFSC 4-1982, f. & ef. 5-3-82; EFSC 4-1986, f. & ef. 9-5-86; EFSC 7-1986, f. & ef. 9-18-86; EFSC 1-1993, f. & cert. ef. 1-15-93; Renumbered from 345-79-075, 345-79-085, 345-80-060(6), 345-100-040, 345-111-035, 345-115-040 & 345-125-070; Readopted by EFSC 5-1993(Temp), f. & cert. ef. 8-16-93; Readopted by EFSC 1-1994, f. & cert. ef. 1-28-94; Readopted by EFSC 2-1994, f. & cert. ef. 5-6-94; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95

345-022-0080

Scenic and Aesthetic Values

To issue a Site Certificate, the Council must find that the design, construction, operation and retirement of the facility, taking into account mitigation, is not likely to result in significant adverse impact to scenic and aesthetic values identified as significant or important in applicable federal land management plans or in the local land use plan for the site or its vicinity.

Stat. Auth. ORS Ch. 469

Stats. Implemented: ORS

EFSC 4-1986, f. & ef. 9-5-86; EFSC 7-1986, f. & ef. 9-18-86; EFSC 1-1993, f. & cert. ef. 1-15-93; Renumbered from 345-79-065; Readopted by EFSC 5-1993(Temp), f. & cert. ef. 8-16-93; Readopted by EFSC 1-1994, f. & cert. ef. 1-28-94; Readopted by EFSC 2-1994, f. & cert. ef. 5-6-94; EFSC 5-1994, f. & cert. ef. 11-30-94

345-022-0090

Historic, Cultural and Archaeological Resources

To issue a Site Certificate, the Council must find that the construction, operation and retirement of the facility, taking into account mitigation, is not likely to result in significant adverse impacts to:

- (1) Historic or cultural resources that have been listed on, or would likely be listed on the National Register of Historic Places;
- (2) For a facility on private land, archaeological objects, as defined in ORS 358.905(1)(a), or archaeological sites, as defined in ORS 358.905(1)(c); and
- (3) For a facility on public land, archaeological sites, as defined in ORS 358.905(1)(c).

Stat. Auth.: ORS Ch. 469

Stats. Implemented: ORS

Hist.: NTEC 9, f. 2-13-75, ef. 3-11-75; EFSC 6-1980, f. & ef. 8-26-80; EFSC 9-1980, f. & ef. 12-22-80; EFSC 2-1981, f. & ef. 1-19-81; EFSC 4-1986, f. & ef. 9-5-86; EFSC 7-1986, f. & ef. 9-18-86; EFSC 1-1993, f. & cert. ef. 1-15-93; Renumbered from 345-26-135, 345-79-095, 345-80-060(7), 345-111-050,

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345-115-051 & 345-125-072; Readopted by EFSC 5-1993(Temp), f. & cert. ef. 8-16-93; Readopted by EFSC 1-1994, f. & cert. ef. 1-28-94; Readopted by EFSC 2-1994, f. & cert. ef. 5-6-94; EFSC 5-1994, f. & cert. ef. 11-30-94

11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95

DIVISION 23

NEED FOR FACILITY STANDARDS

345-022-0100

Recreation

To issue a Site Certificate, the Council must find that the design, construction and operation of a facility, taking into account mitigation, is not likely to result in a significant adverse impact to important recreational opportunities in the impact area. Factors which will be considered in judging the importance of a recreational opportunity include:

- (1) Any special designation or management of the location;
- (2) The degree of demand;
- (3) Uniqueness;
- (4) Outstanding or unusual qualities;
- (5) Availability or rareness; and
- (6) Irreplaceability or irretrievability of the opportunity.

Stat. Auth.: ORS Ch. 469

Stats. Implemented: ORS

Hist.: EFSC 1-1993, f. & cert. ef. 1-15-93; Readopted by EFSC 5-1993(Temp), f. & cert. ef. 8-16-93; Readopted by EFSC 1-1994, f. & cert. ef. 1-28-94; Readopted by EFSC 2-1994, f. & cert. ef. 5-6-94; EFSC 5-1994, f. & cert. ef. 11-30-94

345-022-0110

Socio-Economic Impacts

To issue a Site Certificate, the Council must find that the construction and operation of the facility, taking into account mitigation, is not likely to result in significant adverse impact to the ability of communities within the study area to provide the following governmental services: sewers and sewage treatment, water, stormwater drainage, solid waste management, housing, traffic safety, police and fire protection, health care and schools.

Stat. Auth.: ORS Ch. 469

Stats. Implemented: ORS

Hist.: EFSC 1-1980, f. & ef. 2-28-80; EFSC 6-1980, f. & ef. 8-26-80; EFSC 9-1980, f. & ef. 12-22-80; EFSC 1-1981, f. & ef. 1-19-81; EFSC 2-1981, f. & ef. 1-19-81; EFSC 4-1986, f. & ef. 9-5-86; EFSC 7-1986, f. & ef. 9-18-86; EFSC 1-1993, f. & cert. ef. 1-15-93; Renumbered from 345-79-135, 345-80-070, 345-100-050, 345-111-070, 345-115-050 & 345-125-085; Readopted by EFSC 5-1993(Temp), f. & cert. ef. 8-16-93; Readopted by EFSC 1-1994, f. & cert. ef. 1-28-94; Readopted by EFSC 2-1994, f. & cert. ef. 5-6-94; EFSC 5-1994, f. & cert. ef. 11-30-94

345-022-0120

Waste Minimization

(1) To the extent reasonably practicable, the applicant shall minimize generation of solid waste and wastewater in the construction, operation, and retirement of the facility, and when solid waste or wastewater is generated, recycle and reuse such wastes.

(2) To the extent reasonably practicable, the accumulation, storage, disposal and transportation of waste generated by the construction and operation of the facility must have minimal adverse impact on surrounding and adjacent areas.

Stat. Auth.: ORS Ch. 469

Stats. Implemented: ORS

Hist.: EFSC 2-1981, f. & ef. 1-19-81; EFSC 1-1993, f. & cert. ef. 1-15-93; Renumbered from 345-111-040; Readopted by EFSC 5-1993(Temp), f. & cert. ef. 8-16-93; Readopted by EFSC 1-1994, f. & cert. ef. 1-28-94; Readopted by EFSC 2-1994, f. & cert. ef. 5-6-94; EFSC 5-1994, f. & cert. ef. 11-30-94

345-022-0130

Retirement

To issue a Site Certificate, the Council must find that the site, taking into account mitigation, can be restored adequately to a useful, non-hazardous condition following facility retirement.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.310, and 469.501

Hist.: EFSC 1-1993, f. & cert. ef. 1-15-93; Readopted by EFSC 5-1993(Temp), f. & cert. ef. 8-16-93; Readopted by EFSC 1-1994, f. & cert. ef. 1-28-94; Readopted by EFSC 2-1994, f. & cert. ef. 5-6-94; EFSC 5-1994, f. & cert. ef.

345-023-0005

Demonstrating Need for a Facility

This division prescribes several methods by which need may be demonstrated. The following list is intended only to describe the referenced rules, and shall not be considered in determining the meaning of any of the referenced rules. Applicants shall choose under which rule need will be demonstrated at the time the application is filed.

(1) Certain energy facilities are exempt from the need for facility determination. These energy facilities are described in OAR 345-023-0010.

(2) Need for non-exempt electric generation facilities may be demonstrated under:

(a) The least-cost plan rule, OAR 345-023-0020(1), if the least-cost plan has been acknowledged by a governmental body that makes or implements energy policy; or

(b) The qualifying public utility rule, OAR 345-023-0020(3), for Oregon municipal utilities, people's utility districts or electrical cooperatives, or

(c) The load-resource balance rule, OAR 345-023-0050, if a least-cost plan has been prepared but not acknowledged by a governmental body that makes or implements energy policy, or

(d) Any combination of subsections (a)(b) and (c) of this section that demonstrates need for 80 percent of the nominal electric generating capacity of the facility.

(3) Need for electric transmission lines can be demonstrated under the least-cost plan rule, OAR 345-023-0020(1), or the economically reasonable rule for transmission lines, OAR 345-023-0030.

(4) Need for natural gas pipelines can be demonstrated under the least-cost plan rule, OAR 345-023-0020(1), or the economically reasonable rule for natural gas pipelines, OAR 345-023-0040.

(5) Need for storage facilities for liquified natural gas with storage capacity of three million gallons or greater can be demonstrated under the least-cost plan rule, OAR 345-023-0020(1).

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.501

Hist.: EFSC 3-1995, f. & cert. ef. 11-16-95

345-023-0010

Exemptions From Need For Facility Determination

(1) The following facility types and their related and supporting facilities shall be exempt from the requirement to demonstrate need:

(a) High efficiency cogeneration facilities;

(b) Facilities which produce electricity from biomass, if at least 50 percent of expected annual net electric output, under normal operating conditions, is provided by a fuel derived directly from organic matter, available on a renewable basis for conversion to energy, including but not limited to forest residues, agricultural crops and waste, wood and wood wastes, black liquor or other process organic wastes, animal wastes, and aquatic plants, and if the nominal electric generating capacity of the facility is not more than 100 megawatts and there is no more than 200 megawatts of nominal electric generating capacity from such biomass facilities with applications pending before the Council, including the proposed facility, and all biomass facilities for which Site Certificates are in effect at the time the application is filed;

(c) Facilities which produce electricity from geothermal resources as defined in ORS 522.005(11), if the nominal electric generating capacity of the facility is not more than 100 megawatts and there is no more than 250 megawatts of nominal electric generating capacity from such geothermal facilities with applications pending before the Council, including the proposed facility, and all geothermal facilities for which Site Certificates are

in effect at the time the application is filed;

(d) Facilities which produce electricity from wind if the nominal electric generating capacity of the facility is not more than 300 megawatts and there is not more than 1000 megawatts of nominal electric generating capacity from such wind facilities with applications pending before the Council, including the proposed facility, and all wind facilities for which Site Certificates are in effect at the time the application is filed;

(e) Facilities which produce electricity from solar energy where at least 50 percent of the expected annual net electric output under normal operating conditions is provided by solar insolation and if the nominal electric generating capacity of the facility is not more than 100 megawatts and there is no more than 200 megawatts of nominal electric generating capacity from such solar facilities with applications pending before the Council, including the proposed facility, and all solar facilities for which Site Certificates are in effect at the time the application is filed;

(f) Facilities related to underground natural gas storage reservoirs;

(g) Storage facilities for liquified natural gas with storage capacity less than three million (3,000,000) gallons; and

(h) A thermal power plant which does not burn coal, at which under normal operating conditions, all but 25 megawatts of the generating capacity will be used by facilities located within one mile of the plant and either:

(A) All of the owners of the thermal power plant are also owners of the facilities contracting for power;

(B) The owners of the facility contracting for power are subsidiaries of the owners of the thermal power plant; or

(C) The owners of the thermal power plant are subsidiaries of the owners of the facility contracting for power.

(2) Up to 500 megawatts of natural gas fired facilities if the applications for such facilities are deemed complete on or before July 1, 1997. The exemption shall be awarded by the Council based on the record in a single-issue limited-duration contested case proceeding described in subsection (2)(a) of this rule. The exemption shall be awarded to the proposal with the least environmental impact as determined by the evaluation process and the criteria set out in subsection (2)(b) through (2)(e) of this rule. Least environmental impact will be based on a sequential consideration of the facility's emissions of carbon dioxide and other air pollutants, impacts of water use and wastewater discharge, and impacts resulting from related or supporting facilities. The exemption shall be awarded to the proposal with the lowest impact in the first category, unless the Council determines there is no significant difference between two or more proposals. If there is no significant difference between two or more proposals in the first category, the proposals will be considered for impacts in the second category and the exemption shall be awarded to the facility with the lowest impacts in the second category, unless the Council determines there is no significant difference between two or more proposals. If the Council determines there are no significant differences between two or more proposals in the second category, the proposals will be considered for impacts in the third category and the exemption shall be awarded to the facility with the lowest impacts in the third category, unless the Council determines there is no significant difference between two or more proposals. If the Council determines there are no significant differences between two or more proposals in all three categories, the exemption shall be awarded to the facility with the oldest application determined complete by the department.

(a) (A) The Council shall consider requests for this exemption from any applicant or site certificate holder that submits such a request on or before March 1, 1996, provided the request for the exemption from need is accompanied by a site certificate application, an amendment to a filed application for a site certificate, or a request to amend a site certificate and the nominal electric generating capacity of the facility is not greater than 500 megawatts. The cost of the review and contested case on the exemption shall be paid by the applicants in equal shares. Requests for this exemption shall include the applicant's estimates of facility emissions and environmental impacts set out in subsections (2)(b) through (2)(d) of this rule. If alternative size or

configurations of the facility are to be considered, they shall be described in the application.

(B) The department shall notify the Council's general mailing list by February 15, 1996 that the deadline for submitting an exemption request and application is March 1, 1996 and that a contested case hearing will commence immediately after that;

(C) The contested case hearing shall be conducted in compliance with applicable contested case requirements set forth in ORS 183.413 through 183.497. The Council intends to make a decision on the award of the exemption on or near May 15, 1996. To that end it recommends the procedural steps and the schedule set out in this paragraph, for conduct of the contested case. For the purpose of the contested case, and with the exception of OAR 345-015-0023(2), the rules governing contested cases set forth in OAR 345-015-0001 through 345-015-0085 and OAR 137-003-0001 through 137-003-0092 and 137-001-0005 are advisory only, and should be observed only to the extent they do not impede adherence to the schedule set out in this paragraph. The department shall be authorized to participate as an interested agency. The council recommends adherence to the following schedule:

ACTIVITY	DAY OF CONTESTED CASE
Date by which exemption request must be submitted, applications made available to the public	Day 1
Requests for party status	Day 5
Ruling on parties, prehearing conference	Day 10
Interrogatories on applications	Day 15
Applicant responses	Day 20
Department and intervenors' direct testimony	Day 27
Interrogatories on Department, intervenor's direct testimony	Day 32
Responses	Day 37
Live cross examination and rebuttal (allow one week total)	Day 44
Date by which cross examination and rebuttal must be concluded	Day 51
Briefing by all parties, including proposed order and conditions	Day 58
Proposed Order	Day 65
Exceptions	Day 72
Council decision	Day 79

(D) If the facility awarded the exemption has a nominal electric generating capacity of less than 251 megawatts, the Council may award the remainder of the 500 megawatt exemption to the proposal with next lowest environmental impact, as described in subsections (2)(b) through (2)(d), provided that not more than 500 megawatts of nominal electric generating capacity of natural gas fired facilities is exempt under this rule in total. Notwithstanding OAR 345-023-0010(4), in the event this exemption becomes available due to denial or withdrawal of an application, the exemption shall be awarded to the facility or facilities with the next lowest environmental impact, as described in subsections (2)(b) through (2)(d), provided that not more than 500 megawatts of nominal electric generating capacity of natural gas fired facilities is exempt under this rule in total. Exemptions shall not become available to other facilities if a Site Certificate is revoked, lapsed, or otherwise terminated.

(b) The exemption shall be awarded to the proposal with the lowest value for monetized net air emissions per kWh of net electric output.

(A) Net air emissions shall be the facility's emissions of carbon dioxide (CO₂), oxides of nitrogen (NO_x) and PM-10 particulates (particles less than 10 microns) minus firm offsets of the same pollutants assured in the application. Net air emissions shall be monetized by applying the dollar values in Table 1 of

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OAR 345-001-0010(35), except that NO_x and PM-10 offsets outside Oregon shall be assigned a value of zero dollars per ton.

(B) CO₂ emissions from the facility shall be based on the annual fuel input to the facility times the carbon content of the fuel. Firm offsets from cogeneration shall be based on annual fuel displaced by firm cogeneration times the carbon content of the fuel displaced. The carbon content of fuels shall be based on the **State Workbook; Methodologies For Estimating Greenhouse Gas Emissions, Second Edition**, published by the United States Environmental Protection Agency, Revised January 1995, page 1-11, document number 230-B-95-001, except that renewable wood and biomass fuels shall have a value of zero pounds per Btu. To convert from pounds of carbon to pounds of carbon dioxide multiply pounds of carbon by 3.667.

(C) Firm offsets of air emissions shall be based on an estimate of emissions sequestered, avoided or displaced by the applicant's mitigation measures or cogeneration, provided such measures are guaranteed by an assurance bond or performance bond or can be made binding through other site certificate conditions. Firm offsets from cogeneration mean that the cogeneration is achieved by the applicant as part of the facility, demonstrated by a contractual agreement between the applicant and the cogeneration host and made binding through site certificate conditions. In determining the amount of the firm offsets of air emissions, the Council shall consider the timing of the offset, the uncertainty, quantifiability and verifiability of the estimate of the amount of offset and the applicant's proposed measurement, monitoring and evaluation of the performance of the offset.

(D) Proposals that have values for monetized net air emissions per kWh net electric output that are not significantly greater than the proposal with the lowest value for monetized net air emissions shall be considered tied with that proposal.

(c) If two or more proposals are tied for lowest value of monetized net air emissions under subsection (2)(b) of this rule, the exemption shall be awarded to the tied proposal with the lowest impact, as evaluated by the Council, on water.

(A) Impacts on water include:

(i) Consumptive use of water considering the quantity, quality, source and alternative uses of that water; and

(ii) Net discharges of waste water considering the quantity, quality, source and disposition of wastewater. The Council shall consider reduction in discharges that result from the beneficial use of waste water produced by the facility and for waste water used by the facility that would otherwise be discharged by another industrial, commercial or municipal process.

(B) Proposals that have impacts on waste and waste water not significantly greater than the proposal with the lowest impacts, as evaluated by the Council, shall be considered tied with the proposal with the lowest impact on water and wastewater.

(d) If two or more proposals are tied in terms of water and waste water impacts under subsection (2)(c), the exemption shall be awarded to the tied proposal with the least detrimental impact from related or supporting facilities as evaluated by the Council. The Council shall consider impacts from related or supporting facilities on land use.

(A) Impacts on land use include:

(i) Farming and forestry land uses outside the urban growth boundaries,

(ii) Existing land uses within urban growth boundaries;

(iii) Wildlife; and

(iv) Scenic values.

(B) Proposals that have impacts from related or supporting facilities that are not significantly greater than the proposal with the least detrimental impact, shall be considered tied with the proposal with the lowest impact.

(e) If two or more proposals are tied in terms of least detrimental impact from related or supporting facilities under subsection (2)(d), the exemption shall be awarded to the proposal with the oldest application determined complete by the department.

(3) Electric generation facilities, except coal or nuclear, for which all the net electric output is contracted to the Bonneville

Power Administration and which have a fuel chargeable to power heat rate of 8000 Btu per kWh or less, provided the Council finds that the Pacific Northwest Electric Power and Conservation Planning Council is authorized to review the acquisition of the output of the facility for consistency with the Plan under Section 6(c)(2) of the Pacific Northwest Electric Power 1991 Northwest Conservation and Electric Power Planning and Conservation Act 16 USCA 839d.(c)(2) (1980), and for consistency with the criteria in:

(a) **The Pacific Northwest Electric Power and Conservation Planning Council Statement of Policy Implementing section 6(c) of the Northwest Electric Power Planning and Conservation Act**, November 12, 1986;

(b) **Document No. 92-25, Process and Criteria To Be Used in 6(c) Review, Statement of Policy**, August 17, 1992; and

(c) The letter from Stan Grace, Chair, Northwest Power Planning Council, to Randall W. Hardy, Administrator, Bonneville Power Administration, dated July 28, 1993, setting out issues that are likely to be of particular concern to the power Planning Council in future 6(c) reviews.

(4) Except as provided in OAR 345-023-0010(2)(a)(D), in the event an exemption becomes available due to a denial or withdrawal of an application, the exemption shall go to the facility with the oldest application determined complete by the department and that would otherwise qualify for the exemption. Exemptions shall not become available to other facilities if a Site Certificate is revoked, lapsed, or otherwise terminated.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Energy Facility Siting Council.]

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.501

Hist.: EFSC 1-1993, f. & cert. ef. 1-15-93; EFSC 5-1993(Temp), f. & cert. ef. 8-16-93; EFSC 1-1994, f. & cert. ef. 1-28-94; EFSC 2-1994, f. & cert. ef. 5-6-94; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95

345-023-0020

Energy Facilities Demonstrating Need with a Least-cost Plan Adopted, Approved or Acknowledged by a Governmental Body That Makes or Implements Energy Policy

(1) The Council shall accord a conclusive presumption of need for a facility or a facility substantially similar to the proposed facility the net electric output of which is identified for acquisition in the short-term plan of action of an energy resource plan or combination of plans adopted, approved or acknowledged by a municipal utility, people's utility district, electrical cooperative or other governmental body that makes or implements energy policy, if the plan:

(a) Includes a range of forecasts of firm energy and capacity demands and committed firm energy and capacity resources over the planning period using a reasonable method of forecasting;

(b) Considers and evaluates a reasonable range of practicable demand and supply resource alternatives over the planning period on a consistent and comparable basis. Practicable alternatives are those that are demonstrated to be technically and economically achievable within the time frame considered to meet potential energy or capacity needs. Financial assumptions, including discount rates and treatment of resource lifetimes and end effects, shall be consistent and comparable between resources.

(A) For electric generation facilities, the alternatives considered shall include but not be limited to:

(i) Implementation of conservation, peak load management, voluntary customer interruption, and generating, transmission and distribution system efficiency improvements;

(ii) Direct use of natural gas, solar or geothermal resources at retail loads in the service area of the energy supplier as a substitute for use of electricity; and

(iii) Wholesale purchases and construction and operation of renewable resource generation, cogeneration, thermal generation facilities, and smaller or larger sized additions of generation facility types similar to the proposed facility.

(B) For electric transmission line facilities, the alternatives considered shall include but not be 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.

(C) For natural gas pipeline facilities, the alternatives considered shall include but not be 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 liquified natural gas and underground 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;

(c) Includes the development and evaluation of alternative resource plans to meet forecast energy or capacity needs over the planning time period;

(d) Analyzes the uncertainties associated with alternative resource plans or strategies. The range of uncertainties about the future must be sufficient to test the performance of each alternative resource strategy. The criteria used to evaluate performance of alternative resource strategies must be broad enough to judge the merits of a strategy from a societal perspective;

(e) Aims to minimize long-run total resource costs while taking into account reliability, compatibility with the power system, strategic flexibility and external environmental costs and benefits. The value provided by reliability, compatibility with the power system, strategic flexibility and external environmental costs and benefits may justify actions that increase the total resource cost of the plan. The Council shall recognize that the goals of a least-cost plan are to minimize expected total resource costs for society and the variance in those costs due to uncertainty about future conditions;

(f) Includes a short-term plan of action;

(g) Is consistent with the energy policy of the state as set forth in ORS 469.010. To be consistent with the energy policy of the state, the short-term plan of action shall describe actions that must be taken within a two to three year time frame to provide a reasonable assurance that future energy and capacity demands can be met while aiming to minimize total resource cost; and

(h) Was adopted, approved or acknowledged after a full, fair and open public participation and comment process. Such a process is one in which the public has reasonable and timely access to the decision-maker and to information and records legally available to the public.

(2) A least cost plan acknowledged by the Public Utility Commission of Oregon shall be deemed to comply with the requirements set forth for a plan in section (1) of this rule.

(3) For an Oregon municipal utility, people's utility district or electrical cooperative, or combination thereof, a facility is needed if the Council determines that the facility is economically prudent and consistent with the state's energy policy of minimizing long run total resource costs while taking into account reliability, compatibility with the power system, strategic flexibility and external environmental costs and benefits to replace power purchases available to the utility with the power output from the facility;

(a) For purposes of this section, the Oregon municipal utility, people's utility district, electrical cooperative, or combination thereof, proposed to use the power output from the facility to replace power purchases available to it shall be called "the qualifying public utility";

(b) The retail revenue requirements of the qualifying public utility shall be used to determine economic prudence taking into

account risk and uncertainty;

(c) The proposed resource acquisitions of the qualifying public utility, including the proposed facility, and resource acquisitions for the two years prior to the initial submission of the application shall be used to determine consistency with the state's energy policy of minimizing long run total resource costs.

(d) If, in the near-term, output from the facility is sold to an energy supplier other than the qualifying public utility, the Council shall condition the Site Certificate to require the use of the facility to serve the retail loads of the qualifying public utility within a time specified in the Site Certificate.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.501

Hist.: EFSC 2-1981, f. & ef. 1-19-81; EFSC 5-1981(Temp), f. & ef. 4-27-81; EFSC 7-1981, f. & ef. 6-29-81; EFSC 1-1983(Temp), f. & ef. 5-3-83; EFSC 1-1984, f. & ef. 8-7-84; EFSC 2-1986, f. & ef. 2-21-86; EFSC 7-1986, f. & ef. 9-18-86; EFSC 1-1993, f. & cert. ef. 1-15-93; Renumbered from 345-79-105 & 345-111-025; EFSC 5-1993(Temp), f. & cert. ef. 8-16-93; EFSC 1-1994, f. & cert. ef. 1-28-94; EFSC 2-1994, f. & cert. ef. 5-6-94; EFSC 3-1995, f. & cert. ef. 11-16-95

345-023-0030

Electric Transmission Lines Demonstrating Need under the Economically Reasonable Rule

(1) The Council may find the applicant has demonstrated need for an electric transmission line as defined in ORS 469.300, if the Council finds that:

(a) The facility will be required, within five years of its proposed in-service date, to enable the transmission system of which it is to be a part to carry peak demands or firm annual energy demands which are reasonably expected to occur in the service area or areas to be served by the facility;

(b) The facility is consistent with the minimum operating reliability criteria contained in the Western System Coordinating Council Bulk Power Supply Program 1994-2004, dated April 1, 1995; and

(c) The construction and operation of the facility is an economically reasonable method of meeting energy or peak demands and reliability criteria compared to the alternatives identified in the Application for Site Certificate application or in the Project Order as originally issued pursuant to OAR 345-015-0160 or as amended by the Council.

(2) For the purposes of this rule, peak demand in the service area or areas to be served by the proposed facility shall be presumed, subject to rebuttal, to:

(a) Be twice the firm energy demand in the service area or areas to be served by the proposed facility; and

(b) Increase or decrease during the ten (10) year period following the date of application for a Site Certificate at the same rate that demand for energy in such service area or areas will increase or decrease.

(3) Alternatives to construction of the proposed facility identified in the Project Order pursuant to OAR 345-015-0160 shall include, but are not limited to:

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

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

(c) 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

(d) Adding standard sized smaller or larger transmission line capacity.

(4) This rule shall not apply to electric transmission lines which are related or supporting facilities.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.501

Hist.: EFSC 9-1980, f. & ef. 12-22-80; EFSC 1-1993, f. & cert. ef. 1-15-93; Renumbered from 345-80-043; Readopted by EFSC 5-1993(Temp), f. & cert. ef. 8-16-93; Readopted by EFSC 1-1994, f. & cert. ef. 1-28-94; Readopted by EFSC 2-1994, f. & cert. ef. 5-6-94; EFSC 3-1995, f. & cert. ef. 11-16-95

345-023-0040

Natural Gas Pipelines Demonstrating Need under the Economically Reasonable Rule

(1) The Council may find the applicant has demonstrated need for a natural gas pipeline as defined in ORS 469.300 or a facility that stores liquified natural gas, if the Council finds that:

(a) The facility will be required within five years following its proposed in-service date, to enable the natural gas supply system of which it is to be a part to satisfy peak demands which are reasonably expected to occur in the service area or areas to be served by the proposed facility; and

(b) Construction and operation of the facility will be an economically reasonable method of meeting peak demands in comparison with the alternative identified in the Application for Site Certificate, or in the Project Order as originally issued pursuant to OAR 345-015-0160 or as amended by the Council.

(2) For purposes of this rule, peak demand in the service area or areas to be served by the proposed facility shall be rebuttably presumed to be based on weather conditions which have a one in twenty chance of occurrence in any year.

(3) Alternatives to construction of the proposed facility identified in the Project Order pursuant to OAR 345-015-0160 shall include, but are not limited to:

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

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

(c) 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

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

(4) This rule shall not apply to natural gas pipelines which are related or supporting facilities.:

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.501

Hist.: EFSC 4-1986, f. & ef. 9-5-86; EFSC 1-1993, f. & cert. ef. 1-15-93; Renumbered from 345-125-040; Readopted by EFSC 5-1993(Temp), f. & cert. ef. 8-16-93; Readopted by EFSC 1-1994, f. & cert. ef. 1-28-94; Readopted by EFSC 2-1994, f. & cert. ef. 5-6-94; EFSC 3-1995, f. & cert. ef. 11-16-95

345-023-0050

Electric Generation Facilities Demonstrating Need under the Load-Resource Balance Rule with a Least-cost Plan Not Adopted, Approved or Acknowledged by a Governmental Body That Makes or Implements Energy Policy

(1) An applicant has demonstrated need for an energy facility as defined in ORS 469.300(10)(a)(A)(D) and its related and supporting facilities if:

(a) The net electric output of the facility will be used by an energy supplier or suppliers for which a least-cost plan, together with any supplemental information provided by the applicant:

(A) Uses a reasonable method to produce a forecast of firm deficits that are expected to occur within four years of the date of application and that are at least equal to the maximum share of the proposed facility that will be used by such energy supplier or suppliers;

(B) Complies with subsections (b) through (g) of 345-023-0020(1); and

(C) Contains a short-term plan of action that calls for construction and operation of the proposed facility, or a facility that is substantially similar to the proposed facility, in the time period proposed by the applicant, to meet the firm deficits described in paragraph (1)(a)(A) of this rule that are expected to occur within four years of the date of application; and

(b) The record of the siting proceeding does not establish by a preponderance of the evidence that:

(A) The forecast firm deficit is overstated and that based on the revised firm deficit, the proposed facility is not required to meet forecast firm deficits within four years; or

(B) A practicable alternative that can meet firm deficits can

be substituted for the proposed facility in the least cost plan and provide a superior mix of total resource cost, reliability, compatibility with the power system, strategic flexibility and environmental impacts not included in total resource cost.

(2) Practicable alternatives that the Council may consider under this rule must be demonstrated to be technically and economically achievable within the time frame required to meet projected need, and shall include but are not limited to:

(a) Implementation of conservation, peak load management, voluntary customer interruption, and generating, transmission and distribution system efficiency improvements;

(b) Direct use of natural gas, solar or geothermal resources at retail loads in the service area of the energy supplier as a substitute for use of electricity; and

(c) Wholesale purchases and construction and operation of renewable resource generation, cogeneration, thermal generation facilities, and smaller or larger sized additions of generation facility types similar to the proposed facility.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.501

Hist.: EFSC 3-1995, f. & cert. ef. 11-16-95

DIVISION 24

SPECIFIC STANDARDS FOR SITING NON-NUCLEAR FACILITIES AND RELATED OR SUPPORTING FACILITIES

Specific Standards for Wind Facilities

345-024-0010

Design Standards for Wind Energy Facilities

(1) For the purposes of this rule, "Wind Energy Facility" means all wind turbines or other such devices and their related or supporting facilities which produce electric power from wind and are:

(a) Connected to a common switching station, or

(b) Constructed, maintained, or operated as a contiguous group of devices.

(2) A wind energy facility shall comply with the noise control rules in OAR 340, Division 35.

(3) A wind energy facility shall be designed to exclude members of the public from close proximity to the turbine blades and electrical equipment.

(4) A wind energy facility shall be designed to preclude structural failure of the tower or blades which could endanger the public safety and shall have adequate safety devices and testing procedures designed to warn of impending failure or to minimize the consequences of such failure.

Stat. Auth.: ORS Ch. 469

Stats. Implemented: ORS

Hist.: EFSC 6-1980, f. & ef. 8-26-80; EFSC 1-1993, f. & cert. ef. 1-15-93; Renumbered from 345-115-020 & 345-115-030; Readopted by EFSC 5-1993(Temp), f. & cert. ef. 8-16-93; Readopted by EFSC 1-1994, f. & cert. ef. 1-28-94; Readopted by EFSC 2-1994, f. & cert. ef. 5-6-94; EFSC 5-1994, f. & cert. ef. 11-30-94

Specific Standards for Surface Facilities Related to Underground Gas Storage Reservoirs

345-024-0030

Public Health and Safety Standards for Surface Facilities Related to Underground Gas Storage Reservoirs

(1) The following surface facilities related to underground gas storage reservoirs shall be located at distances in accordance with the schedule below from any existing permanent habitable dwelling:

(a) Major facilities -- 220 meters;

(b) Minor facilities, excluding compressors -- 15 meters;

(c) Compressors rated less than 1,000 horsepower -- 100 meters; and

(d) Roads and road maintenance equipment housing -- 15

meters.

(2) The surface facilities related to an underground gas storage reservoir shall be constructed and maintained in accordance with the applicable requirements of the U.S. Department of Transportation as set forth in 49 CFR, Part 192, and OAR 860-24-020 in effect as of the date of this rule.

(3) The surface facilities related to an underground gas storage reservoir shall be designed so that noise resulting from operation of the facilities shall not violate standards specified in OAR 340, Division 35, in effect as of the date of this rule.

(4) The surface facilities related to an underground gas storage reservoir shall be designed, constructed, operated and retired so as not to allow leakage of natural gas that endangers public health and safety.

(5) A program shall be developed using technology that is both practicable and reliable to monitor surface facilities related to underground gas storage reservoirs to ensure the public health and safety.

(6) The surface facilities related to an underground gas storage reservoir shall be designed, constructed and operated so as not to produce or contribute to seismic hazards that could endanger the public health and safety or result in damage to property.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Energy Facility Siting Council.]

Stat. Auth.: ORS Ch. 469

Stats. Implemented: ORS

Hist.: EFSC 1-1980, f. & ef. 2-28-80; EFSC 1-1981, f. & ef. 1-19-81; EFSC 1-1993, f. & cert. ef. 1-15-93; Renumbered from 345-100-036; Readopted by EFSC 5-1993(Temp), f. & cert. ef. 8-16-93; Readopted by EFSC 1-1994, f. & cert. ef. 1-28-94; EFSC 5-1994, f. & cert. ef. 11-30-94

Specific Standards for Gas Pipelines

345-024-0050

Alternative Sites For Pipelines

(1) This rule applies to energy facilities and to related or supporting facilities that meet the definition of pipeline set forth in ORS 469.300(10)(a)(E).

(2) In order to select a corridor for inclusion in the Application for Site Certificate, the Council shall evaluate the preferred and alternative corridors described in the Notice of Intent to file an Application for Site Certificate for a pipeline and must determine that the selected corridor will not result in more significant adverse impacts in comparison with the other corridor(s) described in the Notice of Intent.

(3) The Council shall waive the requirements of section (2) of this rule for those segments of the proposed pipeline which the applicant agrees to route:

(a) Within a corridor containing at least one natural gas pipeline 8 inches or greater in diameter and which has operated at a pressure of 125 psig; or

(b) Within the right-of-way of any public road.

(4) The Site Certificate for a pipeline shall specify a corridor as the approved site, and shall allow the Site Certificate holder to construct the pipeline anywhere within the corridor, subject to the conditions of the Site Certificate.

Stat. Auth.: ORS Ch. 469

Stats. Implemented: ORS

Hist.: EFSC 4-1986, f. & ef. 9-5-86; EFSC 2-1987(Temp), f. & ef. 10-21-87; EFSC 1-1993, f. & cert. ef. 1-15-93; Renumbered from 345-125-055; Readopted by EFSC 5-1993(Temp), f. & cert. ef. 8-16-93; Readopted by EFSC 1-1994, f. & cert. ef. 1-28-94; EFSC 5-1994, f. & cert. ef. 11-30-94

345-024-0060

Public Health And Safety Standards For Pipelines

(1) This rule applies to all pipelines under Council jurisdiction.

(2) Pipelines shall be constructed in accordance with the requirements of the U.S. Department of Transportation as set forth in Title 49, Code of Federal Regulations, Part 192, in effect as of the date of this rule.

(3) A pipeline shall be designed so that noise resulting from

operation of compressor stations and other related or supporting facilities shall not violate standards specified in OAR 340, Division 35, in effect as of the date of this rule.

(4) A pipeline shall have mechanical structures that allow the pipeline to be sealed off, in the event of leakage, in a manner that will minimize the release of flammable materials. This is rebuttably presumed to be satisfied by the requirements of Title 49, Code of Federal Regulations, Part 192, in effect as of the date of this rule.

(5) A program shall be developed using the best available practicable technology to monitor a proposed pipeline to ensure protection of public health and safety.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Energy Facility Siting Council.]

Stat. Auth.: ORS Ch. 469

Stats. Implemented: ORS

Hist.: EFSC 4-1986, f. & ef. 9-5-86; EFSC 101883, f. & cert. ef. 1-15-93; Renumbered from 345-125-065; Readopted by EFSC 5-1993(Temp), f. & cert. ef. 8-16-93; Readopted by EFSC 1-1994, f. & cert. ef. 1-28-94; EFSC 5-1994, f. & cert. ef. 11-30-94

Specific Standards for Transmission Lines

345-024-0080

Alternative Sites For Transmission Lines

(1) This rule applies to energy facilities and to related or supporting facilities that meet the definition of high voltage transmission line set forth in ORS 469.300(10)(a)(C).

(2) In order to select a corridor for inclusion in the Application for Site Certificate, the Council shall evaluate the preferred and alternative corridors described in the Notice of Intent to file an Application for Site Certificate for a transmission line and must determine that the selected corridor will not result in more significant adverse impacts in comparison with the other corridor(s) described in the Notice of Intent.

(3) The Council shall waive the requirements of section (2) of this rule for:

(a) Segments of a proposed transmission line which meet the exclusion criteria of ORS 469.300(10)(a)(C)(i) or (ii); or

(b) Transmission lines greater than 10 miles in length, portions of which do not meet the exclusion criteria of ORS 469.300(10)(a)(C)(i) or (ii), but only if the sum of the lengths of such portions does not exceed 10 miles.

(4) The Site Certificate for a transmission line shall specify a corridor as the approved site, and shall allow the Site Certificate holder to construct the transmission line anywhere within the corridor, subject to the conditions of the Site Certificate.

Stat. Auth.: ORS Ch. 469

Stats. Implemented: ORS

Hist.: EFSC 9-1980, f. & ef. 12-22-80; EFSC 1-1993, f. & cert. ef. 1-15-93; Renumbered from 345-80-051; Readopted by EFSC 5-1993(Temp), f. & cert. ef. 8-16-93; Readopted by EFSC 1-1994, f. & cert. ef. 1-28-94; EFSC 5-1994, f. & cert. ef. 11-30-94

345-024-0090

Design Standards For Transmission Lines

(1) This rule applies to all high voltage transmission lines under Council jurisdiction.

(2) A transmission line shall be designed so that alternating current electric fields shall not exceed 9 kV per meter at one meter above the ground surface in areas accessible to the public.

(3) A transmission line shall be designed so that induced currents resulting from the transmission line and related or supporting facilities will be as low as reasonably achievable. The applicant must develop and implement a program which shall provide reasonable assurance that all fences, gates, cattleguards, trailers, or other objects or structures of a permanent nature that could become inadvertently charged with electricity shall be grounded through the life of the line.

(4) A transmission line shall be designed, constructed, and operated in a manner consistent with the 1993 edition of National Electrical Safety Code (American National Standards Institute, Section C2, 1993 Edition).

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[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Energy Facility Siting Council.]

Stat. Auth.: ORS Ch. 469

Stats. Implemented: ORS

Hist.: EFSC 9-1980, f. & ef. 12-22-80; EFSC 1-1993, f. & cert. ef. 1-15-93; Renumbered from 345-80-055; Readopted by EFSC 5-1993(Temp), f. & cert. ef. 8-16-93; Readopted by EFSC 1-1994, f. & cert. ef. 1-28-94; EFSC 5-1994, f. & cert. ef. 11-30-94

DIVISION 26

CONSTRUCTION AND OPERATION RULES FOR FACILITIES

345-026-0005

Purpose

The purpose of the rules in this division is to assure that the construction, operation and retirement of facilities are accomplished in a manner consistent with the protection of the public health, safety, and welfare and the protection of the environment.

Stat. Auth.: ORS Ch. 469

Stats. Implemented: ORS

Hist.: NTEC 9, f. 2-13-75, ef. 3-11-75; EFSC 3-1994, f. & cert. ef. 6-28-94; EFSC 5-1994, f. & cert. ef. 11-30-94

345-026-0010

Legislative Authority

The rules in this division are promulgated pursuant to ORS Chapter 469, 1995 edition.

(1) Pursuant to ORS 469.430, the Council has continuing authority over the site for which a Site Certificate is issued and may inspect, or direct the office to inspect, or request another state agency or local government to inspect, the site at any time in order to assure that the facility is being operated consistently with the terms and conditions of the Site Certificate.

(2) For facilities subject to ORS 469.410 as having been built prior to July 2, 1975, the Council has continuing authority over the site for which a Site Certificate is issued and may inspect, or direct the office to inspect, or request another state agency or local government to inspect, the site at any time in order to ensure that the facility is being operated consistently with the terms and conditions of the Site Certificate and any applicable health or safety standards.

(3) Pursuant to ORS 469.410, the Council shall establish programs for monitoring the environmental and ecological effects of the operation and decommissioning of energy facilities subject to Site Certificates issued prior to July 2, 1975, to ensure continued compliance with the terms and conditions of the Site Certificate and any applicable health or safety standards.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.401, 469.410, 469.430

Hist.: NTEC 9, f. 2-13-75, ef. 3-11-75; EFSC 1-1985, f. & ef. 1-7-85; EFSC 3-1994, f. & cert. ef. 6-28-94; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95

345-026-0015

Scope and Construction

(1) Notwithstanding any other rule to the contrary, the rules in this division apply to all facilities for which a Site Certificate is executed on or after November 30, 1994, as well as the Trojan energy facility. Except for the Trojan energy facility, these rules do not apply to facilities for which a Site Certificate was executed before November 30, 1994, unless the Site Certificate is amended to include the applicability of the rules in this division.

(2) To the extent that any of these rules conflict or are inconsistent with administrative rules lawfully adopted by other state agencies, these rules shall be deemed controlling, except as prohibited by law. The Council shall resolve such conflicts in consultation with the affected agencies, and in a manner consistent with the public interest.

(3) To the extent that any of these rules conflict or are

inconsistent with a condition contained in a Site Certificate (or amendment thereto), the latter shall be deemed controlling.

(4) Site Certificate holders shall comply with all applicable lawful rules and requirements of federal agencies.

Stat. Auth.: ORS Ch. 183 & 469

Stats. Implemented: ORS

Hist.: NTEC 9, f. 2-13-75, ef. 3-11-75; EFSC 1-1985, f. & ef. 1-7-85; EFSC 3-1994, f. & cert. ef. 6-28-94; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 1-1995, f. & cert. ef. 5-15-95

345-026-0035 [Renumbered to 345-027-0020]

345-020-0040 [Renumbered to 345-027-0020]

345-026-0045 [Renumbered to 345-022-0060]

345-026-0048

Compliance Plans

Following receipt of the Site Certificate or an amendment of the Site Certificate, the Site Certificate holder shall implement a plan which verifies compliance with all Site Certificate terms and conditions and applicable statutes and rules. This shall be documented and maintained for department or Council inspection.

Stat. Auth.: ORS Ch. 183 & 469

Stats. Implemented: ORS

Hist.: EFSC 5-1994, f. & cert. ef. 11-30-94

345-026-0050

Inspections

(1) General provisions:

(a) Each Site Certificate holder shall afford to properly identified representatives of the Council or department opportunity to inspect the facility, including all materials, activities, related or supporting facilities, premises, and records pertaining to design, construction, operation or retirement of the facility at any time;

(b) The Site Certificate holder's representative may accompany Council or department inspectors during an inspection;

(c) Council or department inspectors may refuse to permit accompaniment by an individual who deliberately interferes with a fair and orderly inspection;

(d) Upon completion of each inspection, the inspector shall have a conference with the certificate holder's on-site manager or designee to discuss all pertinent findings. The inspector shall issue a written report of the inspection and this conference. Inspection reports shall be kept on file with the department;

(e) If any actual or potential violations of state, federal or local law, Council rules, or Site Certificate conditions or warranties are found, the inspector shall notify the Secretary, the Council and the certificate holder. All pertinent findings shall be reported to the Council at its next scheduled meeting.

(2) Requests for Inspections:

(a) Any person may request department inspection of a facility if the requestor believes:

(A) That a violation of state or local law, rules, Council order, or Site Certificate conditions or warranties has occurred or may imminently occur; or

(B) A situation exists that may lead to unnecessary exposure of an individual to hazardous materials or unsafe or dangerous conditions.

(b) The request for inspection must set forth the specific grounds for the request. The request shall be submitted to the department, or during an inspection to the department's representative. A requestor who is employed directly or indirectly by the certificate holder may ask that his or her name not be disclosed in any manner except where disclosure is required by law;

(c) Department staff shall promptly notify the certificate holder of the request and nature of the alleged violation, or other basis for the inspection;

(d) If the request concerns matters of state, federal or local law or rule not administered by the Council, department staff shall

forward the request to the appropriate agency;

(e) Department staff shall make a prompt evaluation of allegations related to matters under Council jurisdiction. If department staff concludes that there are reasonable grounds to believe that the alleged violation has occurred or is imminent, or that a situation exists that may lead to unnecessary exposure of an individual to hazardous materials or to unsafe or dangerous conditions, the department shall cause an inspection to be made as soon as practicable;

(f) If department staff determines that an inspection is not warranted, it shall give written notice of that conclusion to the requestor, stating its reasons. The requestor may then submit a written request for review to the Council. The Council shall provide the Site Certificate holder with a copy of the request by certified mail. The Site Certificate holder may submit written statement of its position with the Council, which shall provide a copy to the requestor by certified mail. At its discretion, the Council may hold an informal conference to discuss the merits of the request. The Council shall affirm, modify, or reverse the determination made by the department and shall furnish the requestor and the Site Certificate holder a written notification of its decision and the reasons therefor;

(g) Inspections conducted pursuant to this section need not be limited to matters referred to in the request for inspection;

(h) No certificate holder shall discharge or in any manner discriminate against any employee because he or she submitted a request for inspection, provided information to a Council or department representative, or otherwise exercised options afforded to the worker under these rules.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.410, 469.430

Hist.: NTEC 9, f. 2-13-75, ef. 3-11-75; EFSC 3-1994, f. & cert. ef. 6-28-94; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95

345-026-0080

Annual Status Report for Non-nuclear Facilities

(1) General Reporting Obligation for non-nuclear facilities:

(a) Each certificate holder shall, within 120 days of the end of each calendar year, submit an annual report to the Council addressing the subjects listed in this rule. The reporting date may be changed by mutual agreement of the Council Secretary and the certificate holder;

(b) To the extent that information required by this rule is contained in reports the certificate holder submits to other state, federal or local agencies, excerpts from such other reports may be submitted to satisfy this rule. The Council reserves the right to request full copies of such excerpted reports.

(2) Contents of Annual Report:

(a) Facility Status: An overview of site conditions, the status of facilities under construction, and a summary of the operating experience of facilities which are in operation. This section of the annual report shall describe any unusual events, such as earthquakes, extraordinary windstorms, major accidents, or the like, which occurred during the year and which had a significant adverse impact on the facility;

(b) Reliability and Efficiency of Power Production: For electric power plants:

(A) The plant availability and capacity factors for the reporting year. If equipment failures or plant breakdowns had a significant impact on those factors, describe them and plans to minimize or eliminate their recurrence;

(B) The efficiency with which the power plant converts fuel into electric energy. If fuel chargeable to power heat rate was evaluated when the facility was sited, efficiency shall be calculated using the same formula and assumptions, but using actual data.

(c) Status of Surety Information: The annual report shall provide documentation demonstrating that the bond or other security provided under OAR 345-027-0020(5) is in full force and effect and will remain in full force and effect for the term of the next reporting period;

(d) Industry Trends: The annual report shall discuss any significant industry trends that may affect the operations of the

facility;

(e) Monitoring Report: A list and description of all significant monitoring and mitigation activities performed during the previous year in accordance with Site Certificate terms and conditions, a summary of the results of those activities, and a discussion of any significant changes to any monitoring or mitigation program, including the reason for any such changes;

(f) Compliance Report: The certificate holder shall report all instances where it has not complied with a Site Certificate condition. For ease of review, this section of the report shall use numbered subparagraphs corresponding to the applicable sections of the Site Certificate;

(g) Facility Modification Report: The report shall summarize changes to the facility which the certificate holder has determined do not require a Site Certificate amendment in accordance with OAR 345-027-0050.

Stat. Auth.: ORS Ch. 183 & 469

Stats. Implemented: ORS

Hist.: NTEC 9, f. 2-13-75, ef. 3-11-75; EFSC 1-1985, f. & ef. 1-7-85; EFSC 3-1994, f. & cert. ef. 6-28-94; EFSC 5-1994, f. & cert. ef. 11-30-94

345-026-0100

Schedule Modification

The certificate holder shall promptly notify the department of any changes in major milestones for construction, decommissioning, operation, or retirement schedules. Major milestones shall be as identified by the certificate holder in its construction, retirement or decommissioning plan.

Stat. Auth.: ORS Ch. 469

Stats. Implemented: ORS

Hist.: NTEC 9, f. 2-13-75, ef. 3-11-75; EFSC 3-1994, f. & cert. ef. 6-28-94; EFSC 5-1994, f. & cert. ef. 11-30-94

345-026-0105

Correspondence With Other State or Federal Agencies

The Site Certificate holder and the department shall exchange copies of all correspondence related to compliance with statutes, rules and local ordinances on which the Council determined compliance, except for material withheld from public disclosure under state or federal law or under Council rules. Abstracts of reports may be submitted in place of full reports; however, full copies of abstracted reports must be provided at the request of the department.

Stat. Auth.: ORS Ch. 183 & 469

Stats. Implemented: ORS

Hist.: NTEC 9, f. 2-13-75, ef. 3-11-75; EFSC 1-1985, f. & ef. 1-7-85; EFSC 5-1994, f. & cert. ef. 11-30-94

345-026-0125

Construction Report

During construction of the energy facility and related or supporting facilities, the certificate holder shall submit semiannual Construction Progress Reports to the Council. Any significant changes to major milestones for construction shall be highlighted in the report. The report shall contain such information related to construction as specified in the Site Certificate.

Stat. Auth.: ORS Ch.

Stats. Implemented: ORS

Hist.: NTEC 9, f. 2-13-75, ef. 3-11-75; EFSC 5-1994, f. & cert. ef. 11-30-94

345-026-0130 [Renumbered to 345-027-0010]

345-026-0135 [Renumbered to 345-022-0090]

345-026-0170

Notification of Incidents

(1) The Site Certificate holder shall notify the department within 72 hours of any occurrence involving the facility if:

(a) There is an attempt by anyone to interfere with its safe operation;

(b) A natural event such as an earthquake, flood, tsunami or tornado, or a human-caused event such as a fire or explosion

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affects or threatens to affect the public health and safety or the environment;

(c) There is any fatal injury at the facility.

(2) Nuclear Power Plants:

(a) In the event of incidents or accidents requiring notification of the Nuclear Regulatory Commission by telephone, the department shall also be provided such notification on the same time schedule;

(b) The department shall also be notified of all incidents in accordance with the Trojan Emergency Response Plan, Security Plan, and other agreements as established.

Stat. Auth.: ORS Ch. 183 & 469

Stats. Implemented: ORS

Hist.: NTEC 9, f. 2-13-75, ef. 3-11-75; EFSC 1-1985, f. & ef. 1-7-85; EFSC 5-1994, f. & cert. ef. 11-30-94

345-026-0180 [Renumbered to 345-027-0020]

345-026-0200

Exemption

The Council may, either upon written application or on its own motion, waive or delay compliance with any of these rules as applied to a specific site, if after opportunity for a public hearing, it concludes that such action will not result in significant adverse impact to the public health and safety or the environment.

Stat. Auth.: ORS Ch. 469

Stats. Implemented: ORS

Hist.: NTEC 9, f. 2-13-75, ef. 3-11-75; EFSC 5-1994, f. & cert. ef. 11-30-94

345-026-0300

Regulations Applicable to Nuclear Installations

(1) The requirements of OAR 345-026-0300 through 345-026-0400 apply exclusively to nuclear installations in Oregon as defined in ORS 469.300.

(2) OAR 345-026-0300 through 345-026-0400 do not apply to research reactors as described in OAR 345-030-0005.

Stat. Auth.: ORS Ch. 469

Stats. Implemented: ORS

Hist.: EFSC 3-1994, f. & cert. ef. 6-28-94; EFSC 5-1994, f. & cert. ef. 11-30-94

345-026-0310

Nuclear Fuel Prohibited in Trojan Reactor Vessel

Placement of nuclear fuel in the Trojan reactor vessel is prohibited.

Stat. Auth.: ORS Ch. 469

Stats. Implemented: ORS

Hist.: EFSC 3-1994, f. & cert. ef. 6-28-94; EFSC 5-1994, f. & cert. ef. 11-30-94

345-026-0320

Environmental and Effluent Monitoring for Nuclear Installations

All environmental and effluent programs established pursuant to Oregon Department of Environmental Quality Rules or in consultation with the Department of Fish and Wildlife shall be provided to the department. The department, with concurrence of the appropriate state agency, may approve or modify these programs. Any modifications to programs delegated to the state by the federal government may not be in conflict with federal requirements.

Stat. Auth.: ORS Ch. 469

Stats. Implemented: ORS

Hist.: EFSC 3-1994, f. & cert. ef. 6-28-94; EFSC 5-1994, f. & cert. ef. 11-30-94

345-026-0330

Radiological Environmental and Effluent Monitoring

(1) A radiological environmental and effluent monitoring program shall be established by the Site Certificate holder.

(2) The Site Certificate holder shall describe the quality assurance measures applicable to the radioactive environmental and effluent monitoring programs in the program plan.

(3) Changes to the radiological environmental monitoring program that involve one of the following require department approval prior to implementation:

(a) A reduction in the number and type of environmental samples analyzed; or

(b) A change in the verification of the accuracy of the effluent monitoring program and modeling of exposure pathways.

(4) Modifications to the radiological environmental monitoring program that do not require a change meeting the criteria listed in (3) above do not require prior department approval. These changes shall be submitted to the department within 60 days of implementation of the change. The Council shall be notified of any such changes at its next scheduled meeting.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.410, 469.507

Hist.: EFSC 3-1994, f. & cert. ef. 6-28-94; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95

345-026-0340

Security Plans for Nuclear Installations

(1) The operator of a nuclear installation shall establish and maintain a security plan with capabilities for protection of special nuclear material.

(2) Upon assurance satisfactory to the Council and the Site Certificate holder that confidentiality can be maintained, a security plan for nuclear installations shall be made available to authorized Council representatives in accordance with U.S. Nuclear Regulatory Commission regulation 10 CFR §73.21(c)(iii).

(3) Proposed modifications to the security plan that involve a reduction in the ability to detect or prevent unauthorized entry, or a reduction in the ability to detect or prevent the introduction of unauthorized material into the Protected Area or otherwise lessen the effectiveness of the physical security plan require written department concurrence prior to implementation.

(4) Modifications to the plan which do not lessen the effectiveness of the plan may be implemented without prior department concurrence. Copies of the revised plan shall be submitted to the department within 60 days of the implementation date. The Council shall be informed of these changes at its next scheduled meeting.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Energy Facility Siting Council.]

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.410, 469.530

Hist.: EFSC 3-1994, f. & cert. ef. 6-28-94; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95

345-026-0350

Emergency Planning for Nuclear Installations

(1) The operator of a nuclear installation shall prepare, comply with, and maintain in readiness an emergency response plan. The plan must ensure adequate measures will be taken in the event of a radiological emergency.

(2) Proposed modifications to the emergency plan that involve one of the following require Council approval prior to implementation.

(a) A change (other than editorial) in the Emergency Action Levels; or

(b) A decrease in the planned staff augmentation capabilities; or

(c) A reduction in the plan requirements for notification of off-site agencies.

(3) Modifications to the plan which do not meet one of the criteria listed in (2) above may be implemented without prior Council approval. Copies of the revised plan shall be submitted to the department within 30 days of the implementation date. The Council shall be notified at its next scheduled meeting of such changes.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.410, 469.533, 469.535

Hist.: EFSC 3-1994, f. & cert. ef. 6-28-94; EFSC 5-1994, f. & cert. ef. 11-30-

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94; EFSC 3-1995, f. & cert. ef. 11-16-95

345-026-0360
Fire Protection

(1) Any holder of a Site Certificate for a nuclear installation shall implement a fire protection program consistent with applicable codes and standards of the National Fire Protection Association. Exceptions to the codes and standards shall be documented and justified in the fire protection plan.

(2) Proposed plan revisions involving changes to the exceptions to the codes and standards may not be made without prior department concurrence.

(3) Plan revisions which do not involve changes to the exceptions to the codes and standards may be implemented without prior department concurrence. Such plan revisions shall be transmitted to the department within 60 days of implementation. The Council shall be notified of any such changes at its next regularly scheduled meeting.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.501, 469.410

Hist.: EFSC 3-1994, f. & cert. ef. 6-28-94; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95

345-026-0370
Standards for Council Approval of the Decommissioning Plan

(1) The operator of a nuclear installation shall submit 15 copies of a plan for decommissioning a facility to the department for Council approval. The plan shall be submitted to the Council on a schedule consistent with that required by the **U.S. Nuclear Regulatory Commission**. When the department receives a decommissioning plan, the department shall:

(a) Issue notice to the Council's mailing list that the decommissioning plan has been submitted. The notice shall include:

(A) The time and place of at least one informational hearing,

(B) The locations where copies of the proposed plan may be reviewed by the public, and

(C) A contact name for further information.

(b) Perform a technical review, and produce a staff report containing the department's technical conclusions, recommendations on specific issues raised in the proposed plan,

(c) To the extent practicable, coordinate its technical review with that of the **U.S. Nuclear Regulatory Commission**,

(d) Issue notice of availability of the department's staff report to the Council mailing list. The notice shall include:

(A) A summary of the department's recommendations;

(B) Time and place of a hearing on the staff report;

(C) Places where the department's staff report may be reviewed by the public;

(D) A contact for additional information and copies of the staff report;

(E) The date by which a petition for contested case review of the department's recommendation must be received by the department;

(F) A statement that, except as provided in OAR 345-015-0083(2), failure to raise an issue in a petition for contested case on the department's recommendation constitutes a waiver of that issue; and

(G) A statement that a petition for contested case hearing will be considered by the Council according to the criteria in parts (e)(A), (e)(B) and (e)(C) of this rule.

(e) Within 30 days of the notice required in (d) of this rule, any person may petition for contested case review of the department's recommendations. The petitioner must raise issues with sufficient specificity to afford the Council or hearing officer and the parties an adequate opportunity to respond to each issue. The Council may reject the petition or grant the contested case hearing on all or some of the issues raised in petition. The contested case hearing, if granted, shall be conducted in accordance with applicable requirements of division 15 of this Chapter. In considering the petition for a contested case hearing, the Council shall consider whether there exists:

(A) A significant safety issue that requires the procedural

controls of a contested case hearing to determine the appropriate action;

(B) A question about compliance with a Council standard or a rule in this chapter, which requires a contested case to determine the answer; or

(C) An alternative opportunity for a contested case hearing in a different proceeding.

(2) The Council shall review the proposed decommissioning plan to verify that the proposed activities will not adversely affect the health and safety of the public or the environment. The Council will ensure the following when evaluating acceptability of a proposed decommissioning plan:

(a) The plan contains criteria for the free release of materials and the area as specified in Table 1 below:

(TABLE 1)

ACCEPTABLE SURFACE CONTAMINATION LEVELS

<u>NUCLIDE</u>	<u>AVERAGE</u>	<u>MAXIMUM</u>	<u>REMOVABLE</u>
Natural Uranium, U-235, U-238, and associated decay products	5000 dpm alpha	15000 dpm alpha	1000 dpm alpha
Transuranics, Ra-226, Ra-228, Th-230, Th-228, Pa-231, Ac-227, I-125, I-129	100 dpm	300 dpm	20 dpm
Natural Thorium, Th-232, Sr-90, Ra-223, Ra-224, U-232, I-126, I-131, I-133	1000 dpm	3000 dpm	200 dpm
Beta-gamma emitters with decay modes other than alpha emission or spontaneous fission except Sr-90 and others noted above	5000 dpm beta/ gamma	15000 dpm beta/ gamma	1000 dpm beta/ gamma

NOTES:

a. Where surface contamination by both alpha and beta-gamma emitting nuclides exists, the limit established for alpha and beta-gamma apply independently.

h. As used in this table, dpm (disintegrations per minute) means the rate of emission by radioactive material as determined by correcting the counts per minute observed by appropriate detector for background radiation, efficiency, and geometric factors associated with the instrumentation.

c. Measurements of average contaminant should not be averaged over more than 1 square meter. For objects of less surface area, the average should be derived for each such object.

d. The maximum contamination level applies to an area of not more than 100 square centimeters.

e. The amount of removable radioactive material per 100 square centimeters of surface area should be determined by wiping that area with dry filter or soft absorbent paper, applying moderate pressure, and assessing the amount of radioactive material on the wipe with an appropriate instrument of known efficiency. When removable contamination of objects of less surface area is determined, the pertinent levels should be reduced proportionally and the entire surface should be wiped.

f. This table was excerpted from U.S. Atomic Energy Commission Reg Guide 1.86, "Termination of Operating Licenses for Nuclear Reactors".

(b) After decommissioning, the exposure rate at one meter from all surfaces in the facility buildings and outdoor areas shall be 5 uR/hr or less above the background radiation level. Background radiation is as defined in OAR 345-001-0010.

(c) The plan must contain provisions that require removal from the site of all radioactive waste as defined in ORS 469.300 on a schedule acceptable to the Council. Spent nuclear fuel and other radioactive materials that must be disposed of in a federally approved facility may be stored on the site until such a federally approved facility will take the fuel and these radioactive materials.

(d) The plan must contain an acceptable program for monitoring and controlling effluents to ensure compliance with applicable state and federal limits. This program may be

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incorporated by reference, if it has previously been approved by the department.

(e) The plan must contain a program for radiological monitoring to ensure the environment is not being adversely affected. This program may be incorporated by reference if it has previously been approved by the department.

(f) The plan must contain provisions for removal or control of hazardous waste that are consistent with applicable federal and state regulations.

(g) An analysis of decommissioning alternatives shall be provided with the plan, satisfactory to the Council. This analysis will describe the bases for the decommissioning alternative selected, and shall include a comparison of SAFSTOR and DECON as those terms are defined by the **U.S. Nuclear Regulatory Commission**. The analysis must demonstrate that impacts to public health and safety for the option chosen are bounded by the alternatives analyzed above. The analysis must demonstrate that the alternative chosen protects the environment and the health and safety of the public consistent with state and federal statutes, rules and regulations.

(3) The plan must include an estimate of funding necessary for implementation. The Council shall determine if provisions for funding are adequate to implement the plan.

(4) Significant revisions to the decommissioning plan must be reviewed and approved by the Council prior to implementation by the Site Certificate holder. A revision shall be deemed significant if it involves one of the following items:

(a) The potential to prevent the release of the site for unrestricted use;

(b) A change in the criteria for free release of materials;

(c) A departure in the methodology for determining background radiation levels to a method not generally accepted by the industry;

(d) A change in the provisions made for hazardous or radioactive waste material removal;

(e) A significant change in the types or significant increase in the amounts of any effluents that may be released offsite; or,

(f) A significant increase in radiological or hazardous material exposure to site workers or to members of the public, including exposure due to transport of radioactive or hazardous material.

(5) If a proposed change in the decommissioning plan other than the estimate of funding necessary for implementation involves an increase or decrease in costs greater than 10 percent of the previous estimation, the Council shall be notified prior to implementation. Revisions and changes to the estimate of funding shall be provided to the department within 30 days. The council shall be notified of such revisions at its next regularly scheduled meeting. The Council will retain the right to determine the acceptability of the change prior to implementation.

(6) Revisions to the decommissioning plan shall be evaluated by the criteria listed in section (4) of this rule. Records of all changes and associated evaluations shall be maintained for audit by the department. Revisions to the plan which are not significant shall be provided to the department within 30 days. The Council shall be notified of such revisions at its next regularly scheduled meeting.

(7) Changes to the decommissioning plan which are mandated by the federal government may be implemented without prior Council approval.

(8) Major Component Removal Prior to Approval of the Decommissioning Plan:

(a) No component removal which would entail opening of containment building or spent fuel building walls (referred to in this rule as a "major component removal") may be performed without prior Council approval of a detailed plan.

(b) On receipt of a plan for major component removal, the Council shall initiate rulemaking to determine if the plan is acceptable. Major component removal may not be performed prior to Council adoption of rules approving the plan.

(c) The Site Certificate holder's plan for major component removal must meet the following criteria:

(A) The proposed component removal will not result in a

predicted offsite radiation release in excess of the Environmental Protection Agency Protective Action Guidelines (October, 1991) for offsite protective actions;

(B) In the absence of any accident analyzed in the Site Certificate holder's safety evaluation, activities related to component removal will not result in radioactive effluents which cause the predicted dose to any member of the public in an unrestricted area to exceed 5 millirem Total Effective Dose Equivalent (as defined in **10 CFR §20.1003** in effect on March 1, 1994);

(C) The proposed component removal will not adversely impact the potential for unrestricted use of the site after decommissioning;

(D) The proposed component removal will not adversely affect the Site Certificate holder's ability to comply with any of the standards for the decommissioning plan in part (2) of this rule;

(E) The proposed component removal will not result in a net increase in the estimated net present value of the total decommissioning cost; and

(F) Projected individual radiation doses to workers will be as low as reasonably achievable for the proposed removal.

(9) The four Steam Generators and the Pressurizer may be removed from the Trojan containment building and shipped offsite for permanent disposal at an approved low level radioactive waste disposal facility prior to Council approval of the Decommissioning Plan, provided that:

(a) The removal is performed in accordance with the "Large Component Removal Plan" submitted by Portland General Electric on July 7, 1994.

(b) Components removed through the Containment Building as described in the plan are limited to those described in the "Large Component Removal Plan"

(c) Portland General Electric shall verify prior to removal of each component from the industrial area that the disposal facility is available to receive the component and that the river is available for transportation.

(d) Prior to shipment of the components planning shall be provided by Portland General Electric to provide management and coordination with the Oregon Department of Energy, the U.S. Coast Guard, Columbia County Emergency Services, the Oregon Health Division, and the Oregon Division of Emergency Management has been completed and approved by the Oregon Department of Energy.

(e) Activities related to handling, packaging, and preparation for transportation of radioactive components are performed in accordance with Portland General Electric's **10 CFR 50 Appendix B** (effective as of November 17, 1994) Quality Assurance Plan (PGE 8010).

(f) The Energy Facility Siting Council has reviewed and approved Portland General Electric measures to ensure security of the Spent Fuel during the component removal process.

(g) The Oregon Department of Energy has reviewed and approved the Radiological Environmental and Effluent Monitoring Plan submitted in accord with OAR 345-026-0330.

(h) Portland General Electric shall verify that the Containment Opening Door is closed and that the Containment Purge System is operated as assumed in the accident analysis submitted in support of the Large Component Removal Plan throughout any large component lift inside containment.

(i) Portland General Electric shall obtain **U.S. Nuclear Regulatory Commission** approval of the proposed component packaging in accord with **Title 10 Part 71** of the **Code of Federal Regulations**. Portland General Electric shall provide evidence to the Department that the **U.S. Nuclear Regulatory Commission** has approved the Portland General Electric plans for packaging the components prior to transporting the first component out of the containment.

(j) Prior to commencement of dredging, Portland General Electric shall obtain a dredging permit from the Oregon Division of State Lands and **U.S. Army Corps of Engineers**.

(k) The perimeter of the industrial area near the component preparation area shall be periodically monitored to ensure that members of the public are not within these owner controlled areas

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while components described in the Large Component Removal Plan are stored in the industrial area.

(l) Portland General Electric may make changes to the Large Component Removal Plan or to procedures described in the plan without prior Council or Department approval unless the proposed change:

(A) may increase the probability or consequences of an accident previously evaluated in support of the Large Component Plan;

(B) may create the possibility of an accident different from any previously evaluated in support of the Large Component Removal Plan;

(C) may render invalid prior Council findings of compliance with any of the acceptance criteria in OAR 345-026-0370(8)(c); or

(D) would reduce the commitments in the Plan previously accepted by the Council.

(m) Changes to the Large Component Removal Plan which meet any of the criteria of OAR 345-026-0370(9)(i) through (iii) shall be submitted to the Council for approval prior to implementation. Changes to the Large Component Removal Plan which meet the criterion of OAR 345-026-0370(9)(i)(iv) shall be submitted to the department for approval prior to implementation. This notwithstanding, Portland General Electric may make without prior Council approval changes to the Large Component Removal Plan required for compliance with the regulations of the **U.S. Nuclear Regulatory Commission**.

(n) Portland General Electric shall maintain records of changes made to the Large Component Removal Plan or procedures and equipment described in the Plan without prior Council approval pursuant to this rule. These records shall include a written evaluation which provides the basis for the determination that the change does or does not meet the criteria in OAR 345-026-0370(9)(i) above.

(o) Portland General Electric shall notify the department of any changes made pursuant to this rule within 30 days.

(p) The department or its designee shall inspect each shipment before it leaves the site, to ensure compliance with standards for transportation and disposal.

(q) Portland General Electric shall obtain all applicable permits from the U.S. Department of Transportation and Washington State prior to component shipments.

(r) Portland General Electric shall submit to the department a comprehensive transportation safety plan with prior coordination between State and Federal agencies with emergency responsibilities prior to component shipments.

(s) The department shall report any changes in the Large Component Removal Plan to the Council at its next meeting.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Energy Facility Siting Council.]

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.410, 469.501, 469.507, 469.530, 469.533

Hist.: EFSC 3-1994, f. & cert. ef. 6-28-94; EFSC 4-1994, f. & cert. ef. 11-22-94; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95

345-026-0380

Annual Decommissioning Report

(1) General Reporting Obligation:

(a) Annual reports covering the previous calendar year's activities shall be submitted to the department within 120 days of the end of the calendar year. The report shall include the items listed in this rule;

(b) To the extent that information required by this rule is contained in reports to other state, federal or local agencies, excerpts from such other reports may be submitted to satisfy this rule. The Council may request full copies of such excerpted reports.

(2) Contents of Annual Report:

(a) The report shall include summaries, interpretations, and analyses of trends of the results of the Environmental Monitoring Program and the Radiological Environmental Monitoring Program required by OAR 345-026-0320 and 345-026-0330. It shall also contain the results of analyses of all radiological environmental samples and of all environmental radiation measurements taken

during the reporting period;

(b) The report shall include a financial report which demonstrates the financial qualifications of the owners to perform retirement and decommissioning activities. Changes in the financial plan or status of the financial plan shall be included;

(c) The report shall include a summary report on site conditions and the status of decommissioning activities.

Stat. Auth.: ORS Ch. 469

Stats. Implemented: ORS

Hist.: EFSC 3-1994, f. & cert. ef. 6-28-94; EFSC 5-1994, f. & cert. ef. 11-30-94

345-026-0390

Spent Nuclear Fuel Storage

(1) Purpose:

(a) Storage of spent nuclear fuel and related radioactive material and waste at a nuclear power plant is an interim measure; otherwise utilities and residents of Oregon would face the financial burden of maintaining, operating, and safeguarding the on-site storage facilities indefinitely;

(b) The purpose of this rule is to cooperate with the federal government in accordance with Oregon's siting policy in ORS 469.310 to ensure the safety of interim on-site storage and to ensure spent nuclear fuel and related radioactive materials and waste will not be an undue financial burden to utilities or people of Oregon.

(2) Capacity and Safety Standards: Storage of spent nuclear fuel shall be limited to a maximum of 791 complete and partial fuel assemblies; and storage of containers with nuclear fuel materials. Storage of spent nuclear fuel and related radioactive material and waste not eligible for disposal as low-level radioactive waste at a land disposal site (as defined in **10 CFR 61** in effect on June 15, 1995, herein after referred to as "Greater than Class C waste") at the site of a nuclear power plant by a Site Certificate holder which has executed a contract with the United States of America pursuant to the **Nuclear Waste Policy Act**, shall be deemed a permitted use of the site pending transfer of spent nuclear fuel to the U.S. Department of Energy provided that:

(a) Storage facilities are designed to maintain discharges within the limits specified in applicable licenses authorized under the **Atomic Energy Act** of 1954, as amended, and permits under the National Pollutant Discharge Elimination System;

(b) Storage facilities are designed such that in case of accidents off-site radiation exposures will not exceed the Environmental Protection Agency Protective Action Guidelines (October, 1991) for off-site protective actions; and

(c) The facility may not be used to store any spent nuclear fuel or radioactive materials and wastes other than that generated or used in the operation of the facility.

(3) Approval of Alternative Spent Nuclear Fuel Storage: Spent Nuclear Fuel shall be stored only in the Trojan Spent Fuel Pool (SFP) or in an interim storage facility approved by the Council. Storage of spent nuclear fuel in any facility other than the Trojan Spent Fuel Pool shall require the prior adoption of rules by the Council allowing the specific type of proposed facility.

(4) The Council may approve by rule a plan by the owner for storage of spent nuclear fuel or other related radioactive materials and wastes in an interim storage facility other than the SFP, and in doing so the Council may impose criteria in addition to those set forth in this rule. After approval of any such proposal the nuclear installation operator may proceed with movement of spent nuclear fuel and related materials and waste from the Trojan Spent Fuel Pool to the approved interim storage facility. Any such plan must address the design and operation of storage casks and meet the criteria in section (2) of this rule and the criteria below:

(a) A proposal for an interim spent fuel storage installation (ISFSI) facility, including casks used for holding spent fuel and other radioactive materials and wastes, other than the Trojan Spent Fuel Pool shall include a safety analysis and report identifying the specific accidents considered in the design of the facility and demonstrating compliance with the criteria in section (2), subsections (a), (b) and (c) of this rule;

(b) The accident analysis shall include a Seismic Margin

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Event based on the "Seismic Margin Earthquake Study for the Trojan Site," submitted by PGE to the U.S. Nuclear Regulatory Commission and the Oregon Department of Energy on May 27, 1993. The facility shall be designed such that in the event of the Seismic Margin Earthquake, anticipated damage to spent nuclear fuel or containers will not preclude acceptance of spent nuclear fuel and related radioactive material at a Federally licensed disposal or storage facility, or release spent nuclear fuel, particulate matter or Greater Than Class C waste into the environment;

(c) The facility shall be designed such that in the event of the Seismic Margin Earthquake or any accident considered in the safety analysis required by subsection (a) of this section, projected radiation exposure rates due to effluents and direct radiation shall not exceed the Environmental Protection Agency Protective Action Guidelines (October 1991) for off-site protective actions outside the interim storage facility controlled area as defined in **10 CFR 72.106** (June 15, 1995). The plan for the interim spent fuel storage facility shall demonstrate the capability to restore post-accident radiation exposure rates outside the interim storage facility controlled area to the levels permitted during normal facility operations;

(d) The site of the interim spent fuel storage facility shall be selected such that the expected ground motion in a seismic margin event is bounded by the accident analysis required by subsection (b) of this section. The safety analysis report shall include a review of the seismic margin analysis referenced in subsection (b) of this section and shall demonstrate whether the Seismic Margin Event defined in subsection (h) of this section remains the appropriate design basis event for the proposed interim storage facility;

(e) Radiation and effluent monitoring programs, security plans, and emergency plans for an interim spent fuel storage facility shall be maintained in accordance with OAR 345-026-0330, OAR 345-026-0340, and OAR 345-026-0350;

(f) In the absence of any accident considered in the safety analysis required by subsection (a) of this rule, activities related to transfer of spent fuel or other reactor components from the Spent Fuel Pool to an interim storage facility and subsequent storage and fuel handling activities will not result in anticipated annual radiation dose due to effluents to any member of the public in an unrestricted area to exceed 5 millirem Total Effective Dose Equivalent (TEDE) as defined in **10 CFR 20.1003** as of March 1, 1994. The plan shall provide an estimate of the quantity of the radionuclides expected to be released annually to the environment in liquid and gaseous effluents during normal operation of the ISFSI;

(g) Transfer of spent fuel or other reactor components to a temporary storage facility shall not adversely affect the owner's financial ability to decommission the Trojan site, including the interim storage facility site after the Federal government has accepted high level waste at a Federally licensed disposal facility;

(h) Activities related to transfer, storage and handling of fuel and other radioactive waste shall be performed in accordance with a radiation protection program which complies with **10 CFR 20** (effective March 1, 1994), including a program to maintain personnel radiation exposure As Low As Reasonably Achievable (ALARA) as that term is defined in **10 CFR 20**;

(i) Any temporary storage facility shall not adversely impact the potential for unrestricted use of the site, including the storage facility site, after decommissioning, or the ability of the site certificate holder to comply with the standards of OAR 345-026-0370(2)(a) through (f), nor shall it excuse the site certificate holder from any rules of the Council in OAR Chapter 345;

(j) A spent fuel storage facility other than the Spent Fuel Pool shall have a minimum design life of 40 years. The plan for an interim spent fuel storage facility shall demonstrate that the interim storage facility will perform as designed for the required 40 year life and shall describe all testing of storage equipment and materials during design and fabrication. The plan shall discuss the options available if the expected lifetime is reached and no Federally licensed permanent disposal or storage facility is available;

(k) To the extent feasible, an interim spent fuel storage facility shall be designed to minimize spent nuclear fuel handling. The plan for an interim spent fuel storage facility shall include the ability to transfer spent nuclear fuel from the interim spent fuel storage facility to a shipping container. Except as required for accident mitigation as described in the Safety Analysis Report, transfer of spent fuel from an interim spent fuel storage installation to new casks or shipping containers must be approved by the council prior to their removal.

(5) Reporting Requirements: The operator of an interim spent fuel storage facility shall submit every ten years and, no later than 5 years before the expiration of the facility's design lifetime, a report containing the actual or expected date when the Federal government will accept the High Level Waste, and an analysis of the facility's continued acceptability for use if a Federally licensed High level Waste site remains unavailable. This report need not be submitted if the Council or its successor determines that a Federally licensed high level waste site is available and that spent nuclear fuel from the facility will be accepted within the design life of the facility as stated in subsection (4)(h) of this rule.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the office of the Energy Facility Siting Council.]

Stat. Auth.: ORS 469.410 & 469.470

Stats. Implemented: ORS 469.310, 469.410, 469.501, 469.507 & 469.594

Hist.: EFSC 3-1994, f. & cert. ef. 6-28-94; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 2-1995, f. & cert. ef. 11-3-95

DIVISION 27

SITE CERTIFICATE CONDITIONS, AMENDMENT, TRANSFER AND TERMINATION

345-027-0000

Certificate Expiration

A Site Certificate shall expire either on:

(1) The date established by the Council by which construction of the facility shall be completed unless:

(a) Construction has been completed; or

(b) The deadline for completion of construction has been extended in accordance with OAR 345-027-0030; or

(2) The date the facility has been retired pursuant to OAR 345-027-0020(10), OAR 345-027-0110 and condition(s) of the Site Certificate.

Stat. Auth.: ORS Ch. 469

Stats. Implemented: ORS

Hist.: EFSC 1-1993, f. & cert. ef. 1-15-93; EFSC 5-1994, f. & cert. f. 11-30-94

345-027-0011

Scope

The rules in this division apply to all facilities for which a Site Certificate is executed on or after November 30, 1994. These rules do not apply to facilities for which a Site Certificate was executed before November 30, 1994, unless the Site Certificate is amended to include the applicability of the rules in this division. These rules do not apply to facilities covered by ORS 469.410, including the Trojan energy facility.

Stat. Auth.: ORS Ch. 469

Stats. Implemented: ORS

Hist.: EFSC 1-1995, f. & cert. f. 5-15-95

345-027-0020

Mandatory Conditions In Site Certificates

The Council shall impose conditions in the Site Certificate, which shall include at least the requirements in this rule. Additional conditions may be imposed as appropriate. The Site Certificate shall provide that the conditions of the Site Certificate may not be changed during the term of the certificate except as provided for in this division.

(1) The Site Certificate holder shall submit to the department a legal description of the site to be appended to the Site Certificate prior to construction.

(2) The facility shall be designed, constructed, operated and

retired:

(a) Substantially as described in the Site Certificate;
(b) In compliance with the requirements of ORS Chapter 469, applicable Council rules, and applicable state and local laws, rules and ordinances in effect at the time the Site Certificate is issued; and

(c) In compliance with all applicable permit requirements of other state agencies.

(3) Construction of the facility must begin and be completed by dates specified in the Site Certificate.

(4) No construction, including clearing of a right of way, except for the initial survey, may commence on any part of the facility until the certificate holder has adequate control, or has the statutory authority to gain control, of the lands on which clearing or construction will occur.

(5) Prior to construction, the certificate holder shall submit to the State of Oregon, through the Council, a bond or comparable security, satisfactory to the Council, in an amount specified in the certificate adequate to restore the site to a useful condition if the certificate holder:

(a) Begins but does not complete construction of the facility;
or

(b) Permanently closes the facility before establishing a financial mechanism or instrument, satisfactory to the Council, that will assure funds will be available to adequately retire the facility and restore the site.

(6) Except for the portion of capacity to be used by the applicant:

(a) For facilities that generate electricity and are not exempt from the determination of need under OAR 345-023-0010, the Council shall condition the Site Certificate to require, before construction, sales contracts with an energy supplier or combination of energy suppliers whose needs formed the basis of the Council's finding under OAR 345-023-0020(2) and 345-023-0050 for at least 50 percent of the capacity from the facility.

(b) For thermal facilities the Council shall condition the Site Certificate to require, before construction, sales contracts for 80 percent of the capacity or energy of the facility.

(c) For facilities exempt from demonstrating need under OAR 345-023-0010(3), facilities for which all of the net electric output is contracted to the Bonneville Power Administration, the Council shall condition the Site Certificate to require, before construction:

(A) A long-term power sales contract with the Bonneville Power Administration for all the net electric output of the facility; and

(B) A final, non-appealable determination by the Pacific Northwest Electric Power and Conservation Planning Council, under the criteria identified in OAR 345-023-0010(3), that the Bonneville Power Administrator's decision to acquire output from the proposed facility is consistent with the **1991 Northwest Conservation and Electric Power Plan** and is in accordance with the criteria identified in OAR 345-023-0010(3)(a), (b) and (c). If such a determination is not provided, the certificate holder shall not begin construction unless it demonstrates need in a process in conformance with OAR 345-027-0070, except that the Council shall hold a contested case if requested by any person as provided in 345-027-0070(3). The hearing shall be limited to consideration of whether the facility complies with division 23 of these rules.

(7) For a surface facility related to an underground gas storage reservoir exempt from showing need under OAR 345-023-0010(1)(g), the Council shall condition the Site Certificate to require, before construction of surface facilities, including related or supporting pipelines, sales contracts, letters of intent or other sales agreements for at least 80% of the facility's design daily throughput. If such agreements have not been made, the certificate holder must demonstrate to the Council a reasonable likelihood that such agreements will be executed.

(8) If mitigation is required after an affirmative finding by the Council under any standards of division 22 or division 24 of this chapter, the certificate holder, in consultation with affected state agencies and local governments designated by the Council,

shall develop specific mitigation plans consistent with Council findings under the relevant standards. Such plans must be approved by the department prior to the beginning of construction or, as appropriate, operation.

(9) The certificate holder shall prevent any condition over which the certificate holder has control from developing on the site that would preclude restoration of the site to a useful condition.

(10) Conditions related to facility retirement and site restoration:

(a) The certificate holder shall establish a financial mechanism or instrument, satisfactory to the Council, that will assure funds will be available to adequately retire the facility and restore the site;

(b) At least five years prior to planned retirement of the facility, the certificate holder shall submit a retirement plan to the Council for approval. The plan shall describe how the site will be restored adequately to a useful condition, including options for post-retirement land use, information on how impacts to fish, wildlife and the environment will be minimized during the retirement process and measures to protect the public against risk or danger resulting from post-retirement site conditions; and

(c) The facility shall be retired after its useful life in accordance with the approved final retirement plan, pursuant to OAR 345-027-0110.

(11) The Site Certificate shall include as conditions all representations from the Application for Site Certificate and supporting record deemed by the Council to be binding commitments on the part of the applicant. Sections of the Application and supporting record may be incorporated directly or by reference.

(12) The certificate holder shall restore vegetation to the extent practicable and shall landscape portions of the site disturbed by construction in a manner compatible with its surroundings and/or proposed future use. Upon completion of construction, the certificate holder shall dispose of all temporary structures not required for future use and all timber, brush, refuse and flammable or combustible material resulting from the clearing of land or from construction of the facility.

(13) The facility shall be designed, engineered and constructed to avoid potential dangers to human safety presented by seismic hazards affecting the site as defined in ORS 455.447(1)(d), and including amplification, that are expected to result from the reasonably probable seismic event.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Energy Facility Siting Council.]

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.310, 469.401

Hist.: NTEC 9, f. 2-13-75, ef. 3-11-75; EFSC 6-1980, f. & ef. 8-26-80; EFSC 1-1985, f. & ef. 1-7-85; EFSC 4-1986, f. & ef. 9-5-86; EFSC 1-1993, f. & cert. ef. 1-15-93; Renumbered from 345-26-035, 345-26-040, 345-26-130, 345-26-180; 345-79-011, 345-100-011, 345-111-010, 345-115-040, 345-125-060 & 345-125-065; EFSC 5-1994, f. & cert. f. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95

345-027-0023

Site Specific Conditions

The Council shall include the following conditions, as appropriate, in the Site Certificate:

(1) The certificate holder shall notify the department, the State Building Codes Division and the Department of Geology and Mineral Industries promptly if site investigations or trenching reveal that conditions in the foundation rocks differ significantly from those described in the Application for Site Certificate. The Council may, at such time, require the certificate holder to propose additional mitigating actions in consultation with the Department of Geology and Mineral Industries and the Building Codes Division.

(2) The certificate holder shall notify the department, the State Building Codes Division and the Department of Geology and Mineral Industries promptly if shear zones, artesian aquifers, deformations or clastic dikes are found at or in the vicinity of the site.

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(3) If the facility uses coal, the certificate holder shall take all necessary steps to ensure that surface and groundwater are not contaminated by run-off or seepage associated with coal or ash storage, transport, or disposal. Coal and ash shall be handled in such a way as to minimize the likelihood of coal dust and ash being windblown and causing an environmental or public health problem. When ash is permanently disposed of on site, it shall be covered by a layer of topsoil which shall be revegetated.

(4) If the facility is a natural gas pipeline, the certificate holder shall submit to the department copies of all incident reports involving the certified pipeline required under 49 CFR §192.709.

(5) If the facility is a transmission line, the certificate holder shall restore the reception of radio and television at residences and commercial establishments in the primary reception area to the level present prior to operations of the transmission line, at no cost to residents experiencing interference resulting from the proposed transmission line.

(6) If the facility is a surface facility related to an underground gas storage reservoir, the Site Certificate shall specify the site boundary and total permitted daily throughput of the facility.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Energy Facility Siting Council.]

Stat. Auth.: ORS Ch. 469

Stats. Implemented: ORS

Hist.: EFSC 5-1994, f. & cert. f. 11-30-94

345-027-0028

Monitoring Conditions

(1) The certificate holder shall establish, in consultation with affected state agencies and local governments, monitoring programs as required by the Site Certificate for impact on resources protected by the standards of division 22 and 24 of this chapter, and to ensure compliance with the Site Certificate. The programs shall be subject to the review and approval of the Council.

(2) The certificate holder shall establish monitoring programs as required by permitting agencies and local governments, as required by the Site Certificate.

(3) For each monitoring program that it establishes, the certificate holder shall have quality assurance measures that are reviewed and approved by the department prior to commencement of construction or commencement of commercial operation, as specified in the Site Certificate.

(4) If the certificate holder becomes aware of a significant environmental change or impact attributable to the facility, the certificate holder shall submit to the department as soon as possible a written report identifying the issue and assessing the impact on the facility and any affected Site Certificate conditions.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.310, 469.401, 469.507

Hist.: EFSC 5-1994, f. & cert. f. 11-30-94; EFSC 3-1995, f. & cert. cf. 11-16-95

345-027-0030

Extension of Construction Commencement and Completion Deadlines

(1) If a certificate holder cannot commence or complete construction by the deadlines established in the Site Certificate, the certificate holder may request an amendment to extend the deadline. A request shall conform to the requirements of OAR 345-027-0050 and 345-027-0060. The certificate holder shall submit the request no later than six months prior to the date of the applicable deadline, or, in the case of circumstances beyond the control of the certificate holder and described in the request, no later than the applicable deadline specified in the Site Certificate.

(2) If a certificate holder submits a timely request for an extension pursuant to section (1) of this rule, the provisions of the current Site Certificate shall remain in force until the Council renders a decision on the request.

(3) The Council shall evaluate the request for an amendment to extend the construction commencement or completion deadline pursuant to the applicable provisions of OAR 345-027-0050 through 345-027-0080.

(4) If the Council grants the amendment request, the Council shall specify a new deadline for commencement or completion of construction, which shall be no more than two years from the original specified date.

Stat. Auth.: ORS Ch. 469

Stats. Implemented: ORS

Hist.: EFSC 1-1993, f. & cert. cf. 1-15-93; EFSC 5-1994, f. & cert. cf. 11-30-94

345-027-0050

Request By Certificate Holder To Amend Certificate

(1) A certificate holder must submit to the department a request to amend its Site Certificate if the certificate holder proposes to change the site boundary or otherwise to design, construct, operate or retire the facility in a manner different from the description in the Site Certificate, if the modification may:

(a) Invalidate the basis for any finding required by divisions 22, 23 or 24 of this chapter that was made by the Council in its final order granting a Site Certificate;

(b) Result in a significant adverse impact, that was not evaluated by the Council in its final order granting a Site Certificate, to any resource protected by applicable standards in divisions 22 and 24 of this chapter;

(c) Result in a significant adverse impact, that was not evaluated by the Council in its final order granting a Site Certificate, to geographic areas or human, animal or plant populations;

(d) Impair the certificate holder's ability to comply with a Site Certificate condition; or

(e) Change a condition in the Site Certificate.

(2) No Site Certificate amendment is required for:

(a) A change to an electrical generation facility that results only in an increase in the electrical generating capacity without increasing the number of electric generators at the site, changing fuel type, increasing fuel consumption by more than 10%, or enlarging the facility site, and that does not violate any other conditions specified in the Site Certificate;

(b) A change in a the number or location of pipelines for a surface facility related to an underground gas storage reservoir that does not result in the facility exceeding permitted daily throughput and does not enlarge the facility site;

(c) A change in the number, size or location of pipelines for a geothermal energy facility that does not enlarge the site boundary;

(d) A change to a related or supporting facility which is a pipeline or transmission line, by which the pipeline or transmission line is extended or modified, or the right-of-way is expanded, to serve customers other than the energy facility;

(e) Subject to the conditions in subsections (1)(a) through (1)(d) of this rule, any change to an aspect or feature of the facility, operating procedures, or management structures not specifically addressed in the Site Certificate, provided such change would not violate applicable statutes, rules or Site Certificate terms or conditions.

(3) The certificate holder shall perform an equivalent level of site investigation as was done in the initial Site Certificate proceedings before making any change to the facility which the certificate holder determines not to require Site Certificate amendment according to subsection (2) of this rule. A written evaluation describing these site investigations shall be kept by the certificate holder and may be inspected by the department at any time.

(4) In the Annual Report required by OAR 345-026-0080, the certificate holder shall describe all changes made to the design, construction, operation or retirement of the facility without amendment of the Site Certificate. The certificate holder shall keep a written record of the basis for the determination that an amendment of the Site Certificate was not required, based on the consideration of section (1) of this rule. Such changes, and the basis for the determination that an amendment of the Site Certificate was not required, may be inspected by the department at any time.

(5) A certificate holder may seek a determination from the department that a proposed change does not require a Site

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Certificate amendment by submitting a written description of the proposed change, the certificate holder's basis for that determination, and a request for a departmental review. The department shall respond in writing as promptly as possible. At the request of the certificate holder or a Council member, the department shall refer the determination to the Council for concurrence, modification, or rejection. Notwithstanding section (4) of this rule, a change that the department has determined not to require an amendment need not be described in the Annual Report required under OAR 345-026-0080.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.320

Hist.: EFSC 1-1993, f. & cert. ef. 1-15-93; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95

345-027-0060

Contents of Request To Amend Certificate

- (1) A request to amend a Site Certificate shall contain:
 - (a) The name and mailing address of the certificate holder;
 - (b) A description of the facility including its location and any other relevant information;
 - (c) A detailed description of the proposed modification and the expected impacts of the modification as described in OAR 345-027-0050(1);
 - (d) The specific language of the Site Certificate proposed to be changed, added or deleted;
 - (e) The applicable standard(s) affected by the change.
- (2) The request to amend a Site Certificate described in section (1) of this rule shall provide information at a level of detail equivalent to that required in the Application for Site Certificate to describe any proposed change to a site, a facility or the Site Certificate. Material pertaining to a proposed amendment to a Site Certificate that was previously submitted to the department in an Application for Site Certificate or other part of the administrative record on the facility may be incorporated by reference.

Stat. Auth.: ORS Ch. 469

Stats. Implemented: ORS

Hist.: EFSC 1-1993, f. & cert. ef. 1-15-93; EFSC 5-1994, f. & cert. ef. 11-30-94

345-027-0070

Review of Request By Certificate Holder For Amendment, Opportunity For Hearing

- (1) Within 15 days of receipt of a request to amend a Site Certificate, the department shall circulate the request to affected state agencies and local governments, as provided in OAR 345-020-0040, asking that comments be made on the request within not more than 30 days. In addition, the department shall notify all persons on the Council's mailing list of the amendment request and specify a date by which comments on the request are due.
- (2) Within 60 days of receipt of a request to amend a Site Certificate, the department shall issue a proposed order, recommending approval, modification or disapproval of the requested amendment. The department shall send notice of the proposed order to the persons on the Council's mailing list and any special list established for the amendment.
- (3) Any person may, by written request submitted to the department within 30 days of the issuance of the proposed order, ask that the Council hold a contested case hearing on the proposed order. A person requesting a contested case hearing shall provide a description of the issues to be contested, a statement of the facts believed to be at issue, and the person's mailing address.
- (4) The Council shall determine whether any issue identified in a request for contested case hearing is significant as defined in OAR 345-001-0010 or otherwise justifies a hearing.
 - (a) If the Council finds any issue identified in the request to be significant or to justify a hearing, the Council shall conduct a contested case hearing governed by the applicable provisions of OAR 345-015-0002 to 345-015-0085. The scope of the contested case hearing shall be limited to the issues that the Council found significant or sufficient to justify the hearing;
 - (b) If the Council does not find any issue identified in the request to be significant or to justify a hearing, the Council shall

deny the request for contested case hearing. This denial shall be in writing and shall state the basis for the denial. The Council may then adopt, modify or reject the proposed order.

(5) If no contested case hearing is requested, the Council shall decide, at its next meeting following expiration of the 30 day period following issuance of the department's proposed order, whether to adopt, modify or reject the proposed order.

(6) In evaluating a request for an amendment under this rule, the Council shall limit its consideration to the effects which may be produced by the proposed change or addition to the site or facility described in the request for amendment. In considering those effects, the Council shall apply state statutes, administrative rules, and local government ordinances in effect on the date the amended Site Certificate is executed.

Stat. Auth.: ORS Ch. 469

Stats. Implemented: ORS

Hist.: EFSC 1-1993, f. & cert. ef. 1-15-93; EFSC 5-1994, f. & cert. ef. 11-30-94

345-027-0080

Review of Request By Certificate Holder For Expedited Amendment, Opportunity For Hearing After Amendment is Granted

- (1) A certificate holder may request the Council Chair to grant expedited review of an amendment request. A request for expedited amendment shall include:
 - (a) Reasons why the certificate holder needs expedited review of its request;
 - (b) An analysis of the requested amendment with respect to the factors in OAR 345-027-0050(1); and
 - (c) An explanation why the need for expedited process arose and could not have reasonably been foreseen by the certificate holder.
- (2) The Council Chair may grant a request for expedited review if a delay would unduly harm the certificate holder and if the requested amendment would not likely result in a significant adverse impact to any Council standard. If the Council Chair decides that the request may not be reviewed on an expedited basis, the request shall be treated as an amendment request pursuant to OAR 345-027-0070. The Council Chair shall issue a written decision as soon as is reasonably practicable. If the request is denied, the Council Chair shall give an explanation of the reasons for the denial.
 - (3) Requests for expedited amendment which are granted by the Council Chair shall be processed as follows:
 - (a) Within seven (7) days of a decision by the Council Chair that expedited review is warranted, the department shall circulate the amendment request to affected state and local agencies, as provided in OAR 345-020-0040, asking that comments be made on the request within not more than 15 days. In addition, the department shall notify all persons on the Council's mailing list of the expedited review. This notice shall specify a date, not more than 15 days after the date of the notice, by which comments must be received.
 - (b) Within 30 days of receipt of a request for expedited review of a Site Certificate amendment, the department shall issue a proposed order, recommending approval, modification or disapproval of the requested amendment. If approval is recommended, the proposed order shall include any new or modified conditions recommended, and explain why expedited Council action was warranted. The department shall send notice of the proposed order to the persons on the Council's mailing list and any special list established for the amendment. This notice shall include information on the availability of the proposed order, the date of the Council meeting when the temporary amendment pursuant to subsection (3)(c) of this rule will be considered, and the deadline for any person to request a contested case review of the Council's order;
 - (c) After considering the proposed order, the Council may issue an order temporarily amending the Site Certificate prior to any opportunity for a contested case hearing;
 - (d) In evaluating a request for an amendment under this rule, the Council shall limit its consideration to the effects which may

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be produced by the proposed change or addition to the site or facility described in the request for amendment. In considering those effects, the Council shall apply state statutes, administrative rules, and local government ordinances in effect on the date the amended Site Certificate is executed.

(4) Any person may, by written request submitted to the department within 15 days of the date of the Council's order issued pursuant to subsection (3)(c) of this rule, ask that the Council hold a contested case hearing on the Council's order. A person requesting contested case review shall provide a description of the issues to be contested, a statement of the facts believed to be at issue, and the person's mailing address.

(5) The Council shall determine whether any issue identified in a request for contested case hearing is significant as defined in OAR 345-001-0010 or otherwise justifies a hearing.

(a) If the Council finds any issue identified in the request to be significant or to justify a hearing, the Council shall conduct a contested case hearing governed by the applicable provisions of OAR 345-015-0002 to 345-015-0085. The scope of the contested case hearing shall be limited to the issues that the Council found significant or sufficient to justify a hearing.

(b) If the Council does not find any issue identified in a request for contested case hearing to be significant or to otherwise justify a hearing, the Council shall deny the request for contested case hearing. This denial shall be in writing and shall state the basis for the denial. The Council may then adopt, modify or reject the proposed order.

(6) If no contested case hearing is requested, the Council shall decide, at its next meeting following expiration of the 15 day period following the date of the Council's order, whether to modify its temporary order or to allow it to stand as previously issued.

(7) The certificate holder shall not abuse this rule by failing to make timely application for an amendment, thus creating the need for expedited review.

Stat. Auth.: ORS Ch. 469

Stats. Implemented: ORS

Hist.: EFSC 1-1993, f. & cert. ef. 1-15-93; EFSC 5-1994, f. & cert. ef. 11-30-94

345-027-0090

Petition by Any Person to Apply Subsequent Laws or Rules

(1) Any person, other than the certificate holder, may petition the Council to amend a Site Certificate to make applicable to a facility for which a Site Certificate has been issued, a local government ordinance, statute or Council rule adopted after the date the Site Certificate was executed.

(2) A petition filed pursuant to this rule shall contain the following:

(a) The name and address of the petitioner;

(b) The name and address of the certificate holder;

(c) The facility for which the Site Certificate in question was granted and its location;

(d) Identification of the local government ordinance, statute or Council rule that petitioner seeks to have applied to the facility;

(e) The particular facts that demonstrate that failure to apply the ordinance, statute or rule identified in subsection (d) presents a significant threat to the public health or safety or to the environment; and

(f) The sections of the Site Certificate, including any terms or conditions, which the petitioner proposes should be changed, deleted or added.

(3) Upon receipt of a petition to amend pursuant to this rule, the department shall send a copy of the petition to the certificate holder along with a notice stating the date by which the certificate holder must file a response to the petition. The department also shall notify the persons on the Council's mailing list and affected state agencies and local governments.

(4) Within 60 days after receipt of the petition, the department shall issue a proposed order recommending approval, disapproval or modification of the petition. The proposed order shall include any new or modified conditions in the Site Certificate necessary if compliance with a later-adopted or

amended statute, rule or local government ordinance is required. The department shall send notice of the proposed order to the persons on the Council's mailing list and any special list established for the amendment.

(5) Any person may, by written request submitted to the department within 30 days of the issuance of the proposed order, ask that the Council hold a contested case hearing on the issues raised in the proposed order. A person requesting a contested case hearing shall provide a description of the issues to be contested, a statement of facts believed to be at issue, and the person's mailing address.

(a) If the Council finds that any issue raised in the request for contested case hearing is significant, as defined in OAR 345-001-0010, or otherwise justifies a hearing, then the Council shall conduct a contested case hearing pursuant to applicable provisions OAR 345-015-0002 to 345-015-0085;

(b) If the Council determines that the request does not raise a significant issue or otherwise justify a hearing, the Council shall deny the request for contested case hearing and give the basis for its denial in writing and adopt, modify or reject the proposed order;

(c) Notwithstanding subsection (5)(b) of this rule, if the department's proposed order recommends approval of the petition to amend the Site Certificate based on a clear showing of a significant threat to the public health, safety or the environment, the Council shall grant a contested case hearing to the certificate holder upon request.

(6) If no contested case hearing is requested, the Council shall decide, at its next regular meeting following expiration of the deadline for requesting a contested case hearing, whether to adopt as presented, modify, or reject the proposed order.

(7) The Council may adopt a proposed order issued pursuant to section (4) of this rule, which imposes new requirements in the Site Certificate, only if the certificate holder agrees to the proposed order, or if the proposed order makes a clear showing of a significant threat to public health, safety or the environment that will be alleviated by the adoption of the proposed order.

Stat. Auth.: ORS Ch. 469

Stats. Implemented: ORS

Hist.: EFSC 1-1993, f. & cert. ef. 1-15-93; EFSC 5-1994, f. & cert. ef. 11-30-94

345-027-0095

Petition by Site Certificate Holder to Apply Subsequent Laws or Rules

The holder of a Site Certificate may petition the Council to make applicable to the facility, through an amendment to the Site Certificate, any statute, local government ordinance or Council rule adopted after the date the Site Certificate was executed.

(1) A petition filed pursuant to this section shall contain the following:

(a) The name and address of the certificate holder;

(b) The name and location of the site and the facility;

(c) Identification of the statute, local government ordinance or Council rule that the certificate holder desires to have applied to the facility, and any resulting amendments proposed to the terms and conditions of the Site Certificate;

(d) A description of the purpose of and reasons for having the statute, local government ordinance or Council rule apply to the facility; and

(e) The impact of applying the new statute, ordinance or Council rule on public health and safety, on the environment, and on the findings which form the basis for the Site Certificate.

(2) Upon receipt of a petition pursuant to this rule, the department shall send a summary of the petition to the persons on the Council's mailing list for the facility in question and to affected state agencies and local governments, along with a notice stating the date by which any person must file a response to the petition.

(3) Within 60 days after receipt of the petition, the department shall issue a proposed order recommending approval, disapproval or modification of the petition, including any new or modified conditions in the Site Certificate necessary if application

of a new statute, rule or local government ordinance is granted by the Council. The department shall send notice of the proposed order to the persons on the Council's mailing list and any special list established for the amendment.

(4) Any person may, by written request submitted to the department within 30 days of the issuance of the proposed order, ask that the Council hold a contested case hearing on the issues raised in the proposed order. A person requesting a contested case hearing shall provide a description of the issues to be contested, a statement of facts believed to be at issue, and the person's mailing address.

(a) If the Council finds that any issue raised in the request for contested case hearing is significant, as defined in OAR 345-001-0010, or otherwise justifies a hearing, then the Council shall conduct a contested case hearing pursuant to applicable provisions of OAR 345-015-0002 to 345-015-0085;

(b) If the Council determines that the request does not raise a significant issue or otherwise justify a hearing, the Council shall deny the request for contested case hearing and give the basis for its denial in writing and adopt, modify or reject the proposed order.

(5) If no contested case hearing is requested, the Council shall decide, at its next regular meeting following expiration of the deadline for requesting a contested case hearing, whether to adopt as presented, modify, or reject the proposed order.

Stat. Auth.: ORS Ch. 469

Stats. Implemented: ORS

Hist.: EFSC 5-1994, f. & cert. ef. 11-30-94

345-027-0100 Transfer of Certificate

(1) No Site Certificate or any part of a facility included in a Site Certificate issued under this chapter shall be transferred or assigned to any person, or in any manner disposed of, directly or indirectly, unless the Council gives its consent in writing.

(2) Involuntary transfer of ownership of a site or facility for which a Site Certificate has been issued, shall not include the right to construct or operate the facility. The right to construct or operate the facility may be transferred only under the provisions of this rule.

(3) The potential transferee shall submit an application for transfer of a Site Certificate to the department. The application shall include the same information as required by OAR 345-021-0010(1)(a), (d) and (k), unless otherwise allowed by the Council.

(4) The Council may require any person who submits an application for transfer of a Site Certificate under the provisions of this rule to submit a written consent from the current Certificate holder, or a certified copy of an order or judgment of a court of competent jurisdiction, attesting to the person's right, subject to the provisions of ORS Chapter 469 and the rules of this chapter, to possession of the facility involved.

(5) The department shall mail notice of receipt of the application for transfer to all persons on the Council's general mailing list, including the current certificate holder. The Council shall hold an informational hearing at its next regular meeting following the mailing of the notice. The informational hearing is not a contested case hearing. Following the hearing the Council shall approve an application for transfer of a Site Certificate if the Council determines that:

(a) The applicant satisfies the provisions of OAR 345-022-0010 and 345-022-0050; and

(b) The applicant is lawfully entitled to possession or control of the facility described in the Site Certificate at issue; and

(c) The applicant agrees to abide by all the terms and conditions of the Site Certificate to be transferred as determined by the Council; and

(d) The facility complies with any other statutes and rules, adopted after the Site Certificate was issued to the transferor, that the Council determines should be made applicable to the transferred facility.

Stat. Auth.: ORS Ch. 469

Stats. Implemented: ORS

Hist.: EFSC 1-1993, f. & cert. ef. 1-15-93; EFSC 5-1994, f. & cert. ef. 11-30-

345-027-0110

Application for Termination of Site Certificate

(1) Any Site Certificate holder may apply to the Council for permission to retire a facility and surrender a Site Certificate voluntarily. An application to terminate a Site Certificate shall be made within two years following permanent cessation of operations. An application for termination of a Site Certificate shall be accompanied, or preceded, by a proposed final retirement plan for the facility and site.

(2) The proposed final retirement plan shall include:

(a) A plan for retirement with a description of activities involved. A plan is acceptable if it provides for completion of retirement without significant delay, consistent with protection of the public health, safety and the environment;

(b) A description of actions to be taken to protect occupational and public health and safety and the environment; and

(c) An updated detailed cost estimate, comparison of that estimate with present funds set aside for retirement, and a plan for assuring the availability of adequate funds for completion of retirement.

(3) The department shall mail notice of the receipt of an application for termination of a Site Certificate to all persons on the Council's general mailing list and any special mailing list set up for the Site Certificate. In addition, the department shall notify and ask for comments from those tribes, officers and agencies listed in OAR 345-020-0040.

(4) The Council shall review the proposed final retirement plan, considering any comments received from the public, tribes, officers and agencies referred to in section (3) of this rule. If the Council determines that the proposed final retirement plan demonstrates that the retirement will be performed in accordance with the rules of this chapter and applicable conditions in the Site Certificate and will not endanger the health and safety of the public or the environment, the Council may approve the final retirement plan, subject to such conditions and limitations as it deems appropriate and necessary, and may issue an order authorizing retirement. The Council's order may be appealed pursuant to ORS 183.480.

(5) The Council may terminate, by order, the Site Certificate for which an application for termination has been submitted under section (1) of this rule if it determines that the retirement has been performed in accordance with the approved final retirement plan and the Council's order authorizing retirement issued pursuant to section (4) of this rule.

Stat. Auth.: ORS Ch. 469

Stats. Implemented: ORS

Hist.: EFSC 1-1993, f. & cert. ef. 1-15-93; EFSC 5-1994, f. & cert. ef. 11-30-94

DIVISION 29

NOTICE OF VIOLATION, CIVIL PENALTIES, REVOCATION OR SUSPENSION

345-029-0000

Policy

(1) The purpose of the Council enforcement program is to protect the health and safety of the public and the environment by ensuring compliance with the terms of a Site Certificate, a Radioactive Material Transport Permit and applicable statutes, rules and orders of the Council and by obtaining prompt correction of violations. The department or the Council may impose a sanction for:

(a) A violation of any term or condition of a Site Certificate or Radioactive Material Transport Permit;

(b) A violation of any applicable provision of ORS Chapter 469, any rule promulgated or administered by the Council, or any order of the Council; or

(c) A history of non-compliance by the certificate holder with applicable rules or license requirements of more than one other

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state agency having enforcement jurisdiction.

(2) The Council Secretary has discretion to issue a Notice of Violation, except that the Council may instruct the Secretary to issue a Notice of Violation. Factors considered in deciding whether conditions or circumstances warrant issuing a Notice of Violation are:

(a) Did the responsible party report the conditions or circumstances?

(b) Are the conditions or circumstances limited to the possible violation of a reporting requirement?

(c) Are the conditions or circumstances the result of ambiguous language in the requirement in question?

(d) Are the conditions or circumstances the result of a change to the design, construction, operation or retirement of the facility which the certificate holder deemed, after reasonable analysis, not to require an amendment of the Site Certificate, as provided in OAR 345-027-0050(2)?

(e) Has the violation in question been cited by any other state agency having jurisdiction?

(f) Are the conditions or circumstances within the control of the responsible party?

Stat. Auth.: ORS Ch. 469

Stats. Implemented: ORS

Hist.: EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 1-1995, f. & cert. ef. 5-15-95

345-029-0005

Definitions

As used in this division the following definitions apply:

(1) "Responsible Party" means:

(a) A certificate holder;

(b) A radioactive material transport permit holder; or

(c) Any person otherwise subject to the requirements of this Chapter.

(2) "Council Secretary" means the Administrator of the Facility Regulation Division, Oregon Department of Energy.

(3) "Compliance Audit" means a program established by the responsible party to evaluate and ensure compliance with applicable rules, statutes, Site Certificate conditions or Radioactive Material Transport Permit requirements.

Stat. Auth.: ORS Ch. 469

Stats. Implemented: ORS

Hist.: EFSC 1-1995, f. & cert. ef. 5-15-95

345-029-0010

Report by a Responsible Party

The responsible party shall make reports as specified in these rules and in the Site Certificate or Radioactive Material Transport Permit. Whenever a responsible party becomes aware of conditions or circumstances that may violate the terms of a Site Certificate, the requirements of OAR 345 Division 50, or a Radioactive Material Transport Permit, the responsible party shall:

(1) As soon as reasonably possible, notify the department of the conditions or circumstances that may constitute a violation, giving all pertinent facts including an estimate of how long the conditions or circumstances have existed, how long they are expected to continue before they can be corrected, and whether the conditions or circumstances were discovered as a result of a regularly scheduled compliance audit.

(2) As soon as reasonably possible, initiate and complete appropriate action to correct the conditions or circumstances and to minimize the possibility of recurrence.

(3) Submit to the department a written report within 30 days of discovery. The report shall contain:

(a) An assessment of the impact on the resources considered under the standards of Divisions 22 and 24 of this chapter as a result of the reported conditions or circumstances;

(b) A discussion of the cause of the reported conditions or circumstances;

(c) The date of discovery of the conditions or circumstances by the responsible party.

(d) A description of immediate actions taken to correct the reported conditions or circumstances; and

(e) A description of actions taken or planned to minimize the possibility of recurrence.

Stat. Auth.: ORS Ch. 469

Stats. Implemented: ORS

Hist.: EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 1-1995, f. & cert. ef. 5-15-95

345-029-0020

Notice of Violation

(1) If the department determines, either upon inspection as provided for in OAR 345-026-0050, 345-060-0007 or by other means or upon receipt of a report from the responsible party under OAR 345-029-0010, that there has been a violation for which sanctions may be imposed pursuant to OAR 345-029-0000, the department may serve a Notice of Violation upon the responsible party. Service of the Notice of Violation shall be by personal service or by first class, certified or registered mail.

(2) A Notice of Violation shall include:

(a) A reference to the statute, administrative rule, Council order, or term or condition of a Site Certificate, or Radioactive Material Transport Permit violated as determined by the department;

(b) A statement of the facts upon which the department based its determination that a violation occurred, including the date of discovery;

(c) A requirement for the responsible party to provide a written response to the Notice of Violation within 30 days or other specified time;

(d) A statement of the responsible party right to a hearing as provided for in OAR 345-029-0070 if a notice of civil penalty is later issued pursuant to OAR 345-029-0060; and

(e) The department's classification of the violation, including a statement of the consideration given to the following factors:

(A) The performance of the responsible party in taking necessary or appropriate action to correct or prevent the violation;

(B) Any similar or related violations by the responsible party in the previous 36 months; and

(C) Any adverse impact of the violation on public health and safety or on resources protected by Council standards.

Stat. Auth.: ORS Ch. 469

Stats. Implemented: ORS

Hist.: EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 1-1995, f. & cert. ef. 5-15-95

345-029-0030

Classification of Violations

The department shall determine the classification of a violation based upon severity and considering the guidelines in this rule. The department may issue a Notice of Violation for Class I or Class II violations. The department may, if special circumstances warrant, determine a classification at variance from the guidelines listed below:

(1) In general, the following violations are classified as Class I violations:

(a) Violation of a term or condition of a Site Certificate or Radioactive Material Transport Permit.

(b) Violation of an order of the Council.

(c) Violation of any applicable rule in divisions 22 through 60 of this chapter.

(d) Violation of any applicable provision of ORS Chapter 469.

(2) In general, any Class I violation may be escalated to a Class II violation. Factors the department may consider in escalating a Class I violation to Class II include whether the responsible party reported the conditions or circumstances of the violation, the duration of the violation, whether prompt and effective corrective actions were implemented, the impact on public health and safety or on resources protected by Council standards, and the past performance of the responsible party. To be escalated to Class II, the violation must meet one of the following criteria:

(a) It is a repeated violation. In deciding on escalation of the severity level based on repetitiveness, the Council and department will consider whether the successive violation could reasonably

have been prevented by the responsible party by taking appropriate corrective actions for a prior violation;

(b) It resulted from the same underlying cause or problem as a prior violation;

(c) It is a willful violation; or

(d) The violation results in a significant adverse impact on the health and safety of the public or on the environment.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.603, 469.992

Hist.: EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 1-1995, f. & cert. ef. 5-15-95; EFSC 3-1995, f. & cert. ef. 11-16-95

345-029-0040

Response to Notice of Violation

The written response required by OAR 345-029-0020(2)(c) shall include, as a minimum:

(1) Admission or denial of the violation; and

(2) If the violation is admitted:

(a) The corrective action taken, and results achieved;

(b) Corrective action which will be taken to minimize the possibility of recurrence;

(c) The date when full compliance will be achieved; and

(d) If suitable corrective actions cannot be determined within the 30-day or other time period specified in the Notice of Violation, then the responsible party shall provide a preliminary response, which will provide a date by which a final response will be forthcoming.

Stat. Auth.: ORS Ch. 469

Stats. Implemented: ORS

Hist.: EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 1-1995, f. & cert. ef. 5-15-95

345-029-0050

Enforcement Conference

(1) When, pursuant to OAR 345-029-0030(2), the department determines a Notice of Violation involving a Class II violation may be warranted, the department shall provide the responsible party an opportunity for an enforcement conference to discuss the cause and consequences of the violation and to describe the corrective actions taken. The department may use information discussed at the conference in determining the appropriate enforcement action.

(2) Following any enforcement conference, the department will confirm or amend the classification of the violation.

Stat. Auth.: ORS Ch. 469

Stats. Implemented: ORS

Hist.: EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 1-1995, f. & cert. ef. 5-15-95

345-029-0060

Civil Penalties

(1) Following the responsible party's response to the Notice of Violation under OAR 345-029-0040 and any enforcement conference, a civil penalty may be assessed for any Class II violation. The amount of the civil penalty, if any, shall be determined as follows:

(a) Base amount:

(A) \$1000 per day from the date of discovery for a violation of a Site Certificate condition, or \$2000 per day from the date of discovery for such violation if the department determines that substantially the same violation occurred within the preceding 36 months; or

(B) \$100 per day from the date of discovery of a violation of a condition of a Radioactive Material Transport Permit or of the rules of Divisions 50 and 60 of this Chapter; or

(C) \$2000 per day from the date of discovery for a violation of an enforcement order of the Council, or \$5000 per day from the date of discovery for such violation if the department determines that substantially the same violation occurred within the preceding 36 months.

(b) The base amount may be multiplied by a factor of:

(A) 3.0 if the department determines the violation was intentional or reckless; or

(B) 5.0 if the department determines the violation was intentional or reckless and the violation involved a requirement relating to public health, safety or the environment.

(c) The base amount may be multiplied by either or both of the following factors:

(A) 0.75 if the violation was corrected within the time required to respond to the Notice of Violation and if the certificate holder has produced a plan adequate to minimize the possibility of recurrence; and

(B) 0.8 if the certificate holder reported the conditions or circumstances of the violation as a result of a routine audit conducted as part of an ongoing comprehensive compliance audit program.

(d) The base amount shall not be reduced under subsection (c) of this section if the department determines an increase in the base amount is warranted under subsection (b) of this section.

(2) A notice of assessment of civil penalty shall include:

(a) The department's analysis of the violation(s) in light of the criteria above;

(b) The amount of the assessment;

(c) A proposed order assessing the civil penalty; and

(d) A statement of the responsible party's right to a hearing as provided for in OAR 345-029-0070.

(3) Service of a notice of assessment of civil penalty shall be by personal service or by certified or registered mail.

Stat. Auth.: ORS Ch. 469

Stats. Implemented: ORS

Hist.: EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 1-1995, f. & cert. ef. 5-15-95

345-029-0070

Hearing

(1) Within 20 days from the date of mailing of a notice of assessment of civil penalty, a responsible party may submit to the department a written request for a hearing. The request for hearing shall be considered made on the date that the request is postmarked.

(2) If a hearing is requested within the time prescribed in section (1) of this rule, the hearing shall be conducted under the provisions of OAR 345-015-0002 to 345-015-0085 applicable to contested cases.

(3) If the responsible party does not request a hearing within the time prescribed in section (1) of this rule, the department's proposed order assessing a civil penalty issued under OAR 345-029-0060(2), shall become final.

(4) If a responsible party requests a hearing but fails to appear, the department's proposed order assessing a civil penalty issued under OAR 345-029-0060(2) shall become final upon a prima facie case made on the record of the department.

Stat. Auth.: ORS Ch. 469

Stats. Implemented: ORS

Hist.: EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 1-1995, f. & cert. ef. 5-15-95

345-029-0080

Payment of Penalty

A civil penalty imposed under this division becomes due and payable 10 days after the order imposing the civil penalty becomes final by operation of law or on appeal. If the amount of the penalty is not paid within 10 days after the order becomes final, the order may be recorded with the county clerk in any county of this state. The clerk shall thereupon record the name of the person incurring the penalty and the amount of the penalty in the County Clerk Lien Record.

Stat. Auth.: ORS Ch. 469

Stats. Implemented: ORS

Hist.: EFSC 5-1994, f. & cert. ef. 11-30-94

345-029-0090

Council Consideration of Mitigating Factors

Notwithstanding OAR 345-029-0080, the Council in its order upon a hearing pursuant to OAR 345-029-0070 may rescind or reduce a civil penalty imposed under this division upon a showing

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by the responsible party incurring the penalty that imposition of the penalty would be an unreasonable economic and financial hardship, that the responsible party has taken prompt and effective action to correct the violation and ensure that it will not be repeated, or that the certificate holder reported the conditions or circumstances of the violation as a result of a routine audit conducted as part of an ongoing comprehensive compliance audit program.

Stat. Auth.: ORS Ch. 469

Stats. Implemented: ORS

Hist.: EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 1-1995, f. & cert. ef. 5-15-95

345-029-0100

Revocation or Suspension of Certificate

Any Site Certificate granted by the Council pursuant to this chapter may be revoked or suspended. Revocation or suspension of a Site Certificate requires a contested case hearing pursuant to OAR 345-015-0012 through 085. The initiation of a contested case hearing to suspend or revoke a Site Certificate requires a majority vote of the Council or a request from the department and shall be based on any one of the following grounds:

(1) Any material false statement in an application for a Site Certificate or in the supplemental or additional statements of fact or studies required of an applicant when a true answer would have warranted the Council's refusal to certify in the first instance;

(2) Any failure to comply with the terms or conditions of the Site Certificate; or

(3) Any violation of any of the provisions of ORS 469.300 to 469.570, 469.590 to 469.621, 469.930 and 469.992, any administrative rules adopted pursuant to the foregoing provisions including but not limited to OAR Chapter 345, or any order of the Council.

(4) If the Site Certificate is subject to ORS 469.410, having been executed prior to July 2, 1995, for violations of the provisions of ORS 469.300 to 469.520 or for the failure to comply with applicable health or safety standards.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.440

Hist.: EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95

DIVISION 30

RESEARCH REACTORS

Reporting of Operating Information from Research and Other Reactors Which Produce Less Than 200,000 Thermal Kilowatts

345-030-0005

General

This rule applies to each research or other reactor in the State of Oregon which is designed to produce less than 200,000 thermal kilowatts. The intent of the rule is to assure that the Energy Facility Siting Council is continually advised, by means of the reports required below, of the operation of such reactors.

For some occurrences, telephone notification of the Council is required. A call list for such notification will be provided by the Council.

Stat. Auth.: ORS Ch.

Stats. Implemented: ORS

Hist.: NTEC 4, f. 10-4-72, ef. 10-15-72; NTEC 5, f. 1-19-73, ef. 2-1-73

345-030-0010

Reports Required

(1) Annual Reports of Environmental Effects. By August 1 of each calendar year, a report shall be provided to the Council which contains the following information relative to reactor operation during the previous calendar year:

(a) The total amounts (measured or calculated) of radioactivity released to the environment in gaseous, liquid, or solid

effluents;

(b) The radionuclides present in these effluents, and the quantities of principal radionuclides;

(c) The location and magnitude of the maximum measured or calculated direct radiation level in unrestricted areas from:

(A) Direct radiation from the facility;

(B) Direct radiation from facility effluents.

(d) A description of the general methods and the results of environmental monitoring.

(2) Notification of Incidents:

(a) The Council shall be promptly notified by telephone of any incident or condition relating to the operation of the reactor which could have prevented a nuclear system from performing its safety function as described in the Technical Specifications or in the safety analysis report. A report shall be submitted in writing within ten days of the occurrence;

(b) The Council shall be notified in writing within 30 days of its occurrence of any substantial variance from performance specification contained in the safety analysis report or in the Technical Specifications.

(3) Reports of Overexposures (from the reactor and its effluents) and Excessive Levels or Concentrations:

(a) The Council shall be promptly notified by telephone in the event of the following:

(A) Exposure (from the reactor or its effluents) of the whole body of any individual to 25 rems or more of radiation; exposure of the skin of the whole body of any individual of 150 rems or more; or exposure of the feet, ankles, hands, or forearms of any individual to 375 rems or more of radiation; or

(B) The release of radioactive material in concentrations which, if averaged over a period of 24 hours, would exceed 5,000 times the applicable limits specified for such material in appropriate sections of U.S. Nuclear Regulatory Commission regulations.

(b) The Council shall be notified by telephone within 24 hours in the event of the following:

(A) Exposure (from the reactor or its effluents) of the whole body of any individual to 5 rems or more of radiation; exposure of the skin of the whole body of any individual to 30 rems or more of radiation; or exposure of the feet, ankles, hand, or forearms to 75 rems or more of radiation; or

(B) The release of radioactive material in concentrations which, if averaged over a period of 24 hours, would exceed 500 times the applicable limits specified for such materials in appropriate sections of U.S. Nuclear Regulatory Commission regulations.

(c) The Council shall be notified in writing within 30 days of each:

(A) Exposure (from the reactor or its effluents) of an individual to radiation or concentrations of radioactive material in excess of any applicable limits specified in U.S. Nuclear Regulatory Commission regulations or in the operating license for the reactor;

(B) Levels of radiation or concentrations of radioactive material (not involving excessive exposure of any individual) in an unrestricted area in excess of ten times any applicable limit specified in U.S. Nuclear Regulatory Commission regulations or in the operating license for the reactor;

(C) Each report required by paragraphs (A) and (B) of this subsection shall describe the extent of exposure of persons to radiation or to radioactive material, including estimates of each individual's exposure; levels of radiation and concentrations of radioactive material involved; the cause of the exposure, levels or concentrations; and corrective steps taken or planned to assure against a recurrence.

(4) Correspondence with Other State or Federal Agencies. A copy shall be provided to the Council of each report related to reactor operations which is submitted to a state or federal agency, except for material withheld from public disclosure under **10 CFR, Part 2, Section 790**.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Energy Facility Siting Council.]

