



May 10, 2010

**Brief Summary of ONDA Petition and EFSC Request for Comments**

On April 2, 2010, the Energy Facility Siting Council (EFSC) received a petition for rulemaking from the Oregon Natural Desert Association (ONDA). The Audubon Society of Portland and the Defenders of Wildlife joined ONDA in submitting the petition. ONDA's petition requested that EFSC amend the current definition of "Protected Areas" in OAR 345-022-0040(1) to include the Steens Mountain Cooperative Management Area (CMPA) designated by Congress with the Steens Act of 2000, 6 U.S.C. 460nnn. The Energy Facility Siting Council has to decide whether to undertake rulemaking for this petition.

**Background**

At EFSC's public meeting on April 30<sup>th</sup> in The Dalles Oregon, the Oregon Natural Desert Association presented the petition to the Council. The petitioner is requesting that the Council conduct rulemaking to amend the existing rule (OAR-345-022-0040(1)). The existing rule provides a list of Protected Areas. In general, OAR 345-022-0040(1) provides that the Council shall not issue a site certificate for a proposed facility located in the areas listed.

Council directed staff to open a public comment period on the petition and to provide a summary of comments at the next Council meeting, tentatively scheduled for June 11, 2010.

Related to the Council's review of this petition, several county representatives including Harney County, Union County and the Association of Oregon Counties requested the Council hold the meeting in Burns, Oregon. Council members indicated that a tour of the area prior to the meeting would be informative and requested that council staff work to set up a tour.

**EFSC Review of the Petition**

ONDA submitted the petition under ORS 183.390. Under that statute, EFSC must either deny the petition or initiate rulemaking within 90 days of receiving it. For this petition, EFSC must make its decision by June 30, 2010 on whether or not to go forward with rulemaking.

In considering the petition, EFSC must consider six criteria set forth at ORS 183.390(3). These are:

- (a) The continued need for the rule;
- (b) The nature of complaints or comments received concerning the rule from the public;

- (c) The complexity of the rule;
- (d) The extent to which the rule overlaps, duplicates or conflicts with other state rules or federal regulations and, to the extent feasible, with local government regulations;
- (e) The degree to which technology, economic conditions or other factors have changed in the subject area affected by the rule; and
- (f) The statutory citation and legal basis for the rule.

#### EFSC Request for Public Comments

EFSC invites public comment on ONDA's petition for rulemaking and proposed rule on the six criteria listed above. In addition, EFSC seeks comment on whether options exist for achieving the rule's substantive goals in a way that reduces the negative economic impact on business. ORS 183.390(2).

EFSC must **receive** your comment by 5:00 pm on May 28, to prepare a summary for the June 11<sup>th</sup> Council meeting. Comments can be submitted by U.S. mail to the Oregon Department of Energy, 625 Marion St. NE, Salem, OR, 97301, and Attn: Energy Siting. E-mail should be addressed to EFSC at [energy.siting@state.or.us](mailto:energy.siting@state.or.us) Staff will provide a comment summary to the Council, along with comments received prior to the June 11<sup>th</sup> meeting. The Council will receive oral comments at the June 11, 2010 meeting.

#### To see a copy of ONDA's Petition

EFSC will post the ONDA petition on the Oregon Department of Energy website.

#### EFSC Decision on this petition

EFSC may make a decision on this petition for rulemaking at its next regularly scheduled meeting, June 11, 2010. The meeting is open to the public.