

A-Engrossed
House Bill 3538

Ordered by the House April 28
Including House Amendments dated April 28

Sponsored by Representative HARKER; Representatives BAILEY, CANNON, FREDERICK, TOMEI, Senator DINGFELDER

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

[Requires certain energy facilities and any related or supporting facilities to meet greenhouse gas emissions standards.]

Requires Energy Facility Siting Council to establish global warming potential of certain greenhouse gases for purposes of determining net carbon dioxide emissions.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to greenhouse gas emissions of facilities; creating new provisions; amending ORS 469.373
3 and 469.503; and declaring an emergency.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 469.373 is amended to read:

6 469.373. (1) Notwithstanding the expedited review process established pursuant to ORS 469.370,
7 an applicant may apply under the provisions of this section for expedited review of an application
8 for a site certificate for an energy facility if the energy facility:

9 (a) Is a combustion turbine energy facility fueled by natural gas or is a reciprocating engine
10 fueled by natural gas, including an energy facility that uses petroleum distillate fuels for backup
11 power generation;

12 (b) Is a permitted or conditional use allowed under an applicable local acknowledged compre-
13 hensive plan, land use regulation or federal land use plan, and is located:

14 (A) At or adjacent to an existing energy facility; or

15 (B)(i) At, adjacent to or in close proximity to an existing industrial use; and

16 (ii) In an area currently zoned or designated for industrial use;

17 (c)(A) Requires no more than three miles of associated transmission lines or three miles of new
18 natural gas pipelines outside of existing rights of way for transmission lines or natural gas pipelines;
19 or

20 (B) Imposes, in the determination of the Energy Facility Siting Council, no significant impact in
21 the locating of associated transmission lines or new natural gas pipelines outside of existing rights
22 of way;

23 (d) Requires no new water right or water right transfer;

24 (e) Provides funds to a qualified organization in an amount determined by the council to be
25 sufficient to produce any required reduction in [*carbon dioxide*] emissions as specified in ORS
26 469.503 (2)(c)(C) and in rules adopted under ORS 469.503 for the total carbon dioxide emissions

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.
New sections are in **boldfaced** type.

1 produced by the energy facility for the life of the energy facility; and

2 (f)(A) Discharges process wastewater to a wastewater treatment facility that has an existing
3 National Pollutant Discharge Elimination System permit, can obtain an industrial pretreatment
4 permit, if needed, within the expedited review process time frame and has written confirmation from
5 the wastewater facility permit holder that the additional wastewater load will be accommodated by
6 the facility without resulting in a significant thermal increase in the facility effluent or without re-
7 quiring any changes to the wastewater facility National Pollutant Discharge Elimination System
8 permit;

9 (B) Plans to discharge process wastewater to a wastewater treatment facility owned by a mu-
10 nicipal corporation that will accommodate the wastewater from the energy facility and supplies ev-
11 idence from the municipal corporation that:

12 (i) The municipal corporation has included, or intends to include, the process wastewater load
13 from the energy facility in an application for a National Pollutant Discharge Elimination System
14 permit; and

15 (ii) All conditions required of the energy facility to allow the discharge of process wastewater
16 from the energy facility will be satisfied; or

17 (C) Obtains a National Pollutant Discharge Elimination System or water pollution control fa-
18 cility permit for process wastewater disposal, supplies evidence to support a finding that the dis-
19 charge can likely be permitted within the expedited review process time frame and that the
20 discharge will not require:

21 (i) A new National Pollutant Discharge Elimination System permit, except for a storm water
22 general permit for construction activities; or

23 (ii) A change in any effluent limit or discharge location under an existing National Pollutant
24 Discharge Elimination System or water pollution control facility permit.

25 (2) An applicant seeking expedited review under this section shall submit documentation to the
26 State Department of Energy, prior to the submission of an application for a site certificate, that
27 demonstrates that the energy facility meets the qualifications set forth in subsection (1) of this
28 section. The department shall determine, within 14 days of receipt of the documentation, on a pre-
29 liminary, nonbinding basis, whether the energy facility qualifies for expedited review.

30 (3) If the department determines that the energy facility preliminarily qualifies for expedited
31 review, the applicant may submit an application for expedited review. Within 30 days after the date
32 that the application for expedited review is submitted, the department shall determine whether the
33 application is complete. If the department determines that the application is complete, the applica-
34 tion shall be deemed filed on the date that the department sends the applicant notice of its deter-
35 mination. If the department determines that the application is not complete, the department shall
36 notify the applicant of the deficiencies in the application and shall deem the application filed on the
37 date that the department determines that the application is complete. The department or the
38 council may request additional information from the applicant at any time.

39 (4) The State Department of Energy shall send a copy of a filed application to the Department
40 of Environmental Quality, the Water Resources Department, the State Department of Fish and
41 Wildlife, the State Department of Geology and Mineral Industries, the State Department of Agri-
42 culture, the Department of Land Conservation and Development, the Public Utility Commission and
43 any other state agency, city, county or political subdivision of the state that has regulatory or ad-
44 visory responsibility with respect to the proposed energy facility. The State Department of Energy
45 shall send with the copy of the filed application a notice specifying that:

1 (a) In the event the council issues a site certificate for the energy facility, the site certificate
2 will bind the state and all counties, cities and political subdivisions in the state as to the approval
3 of the site, the construction of the energy facility and the operation of the energy facility, and that
4 after the issuance of a site certificate, all permits, licenses and certificates addressed in the site
5 certificate must be issued as required by ORS 469.401 (3); and

6 (b) The comments and recommendations of state agencies, counties, cities and political subdivi-
7 sions concerning whether the proposed energy facility complies with any statute, rule or local
8 ordinance that the state agency, county, city or political subdivision would normally administer in
9 determining whether a permit, license or certificate required for the construction or operation of the
10 energy facility should be approved will be considered only if the comments and recommendations
11 are received by the department within a reasonable time after the date the application and notice
12 of the application are sent by the department.

13 (5) Within 90 days after the date that the application was filed, the department shall issue a
14 draft proposed order setting forth:

15 (a) A description of the proposed energy facility;

16 (b) A list of the permits, licenses and certificates that are addressed in the application and that
17 are required for the construction or operation of the proposed energy facility;

18 (c) A list of the statutes, rules and local ordinances that are the standards and criteria for ap-
19 proval of any permit, license or certificate addressed in the application and that are required for the
20 construction or operation of the proposed energy facility; and

21 (d) Proposed findings specifying how the proposed energy facility complies with the applicable
22 standards and criteria for approval of a site certificate.

23 (6) The council shall review the application for site certification in the manner set forth in
24 subsections (7) to (10) of this section and shall issue a site certificate for the facility if the council
25 determines that the facility, with any required conditions to the site certificate, will comply with:

26 (a) The requirements for expedited review as specified in this section;

27 (b) The standards adopted by the council pursuant to ORS 469.501 (1)(a), (c) to (e), (g), (h) and
28 (L) to (o);

29 (c) The requirements of ORS 469.503 (3); and

30 (d) The requirements of ORS 469.504 (1)(b).

31 (7) Following submission of an application for a site certificate, the council shall hold a public
32 informational meeting on the application. Following the issuance of the proposed order, the council
33 shall hold at least one public hearing on the application. The public hearing shall be held in the area
34 affected by the energy facility. The council shall mail notice of the hearing at least 20 days prior
35 to the hearing. The notice shall comply with the notice requirements of ORS 197.763 (2) and shall
36 include, but need not be limited to, the following:

37 (a) A description of the energy facility and the general location of the energy facility;

38 (b) The name of a department representative to contact and the telephone number at which
39 people may obtain additional information;

40 (c) A statement that copies of the application and proposed order are available for inspection
41 at no cost and will be provided at reasonable cost; and

42 (d) A statement that the record for public comment on the application will close at the conclu-
43 sion of the hearing and that failure to raise an issue in person or in writing prior to the close of
44 the record, with sufficient specificity to afford the decision maker an opportunity to respond to the
45 issue, will preclude consideration of the issue, by the council or by a court on judicial review of the

1 council's decision.

2 (8) Prior to the conclusion of the hearing, the applicant may request an opportunity to present
3 additional written evidence, arguments or testimony regarding the application. In the alternative,
4 prior to the conclusion of the hearing, the applicant may request a contested case hearing on the
5 application. If the applicant requests an opportunity to present written evidence, arguments or tes-
6 timony, the council shall leave the record open for that purpose only for a period not to exceed 14
7 days after the date of the hearing. Following the close of the record, the department shall prepare
8 a draft final order for the council. If the applicant requests a contested case hearing, the council
9 may grant the request if the applicant has shown good cause for a contested case hearing. If a re-
10 quest for a contested case hearing is granted, subsections (9) to (11) of this section do not apply,
11 and the application shall be considered under the same contested case procedures used for a non-
12 expedited application for a site certificate.

13 (9) The council shall make its decision based on the record and the draft final order prepared
14 by the department. The council shall, within six months of the date that the application is deemed
15 filed:

- 16 (a) Grant the application;
- 17 (b) Grant the application with conditions;
- 18 (c) Deny the application; or
- 19 (d) Return the application to the site certification process required by ORS 469.320.

20 (10) If the application is granted, the council shall issue a site certificate pursuant to ORS
21 469.401 and 469.402. Notwithstanding subsection (6) of this section, the council may impose condi-
22 tions based on standards adopted under ORS 469.501 (1)(b), (f) and (i) to (k), but may not deny an
23 application based on those standards.

24 (11) Judicial review of the approval or rejection of a site certificate by the council under this
25 section shall be as provided in ORS 469.403.

26 **SECTION 2.** ORS 469.503 is amended to read:

27 469.503. In order to issue a site certificate, the Energy Facility Siting Council shall determine
28 that the preponderance of the evidence on the record supports the following conclusions:

29 (1) The facility complies with the standards adopted by the council pursuant to ORS 469.501 or
30 the overall public benefits of the facility outweigh the damage to the resources protected by the
31 standards the facility does not meet.

32 (2) If the energy facility is a fossil-fueled power plant, the energy facility complies with any
33 applicable carbon dioxide emissions standard adopted by the council or enacted by statute. Base
34 load gas plants shall comply with the standard set forth in subsection (2)(a) of this section. Other
35 fossil-fueled power plants shall comply with any applicable standard adopted by the council by rule
36 pursuant to subsection (2)(b) of this section. Subsections (2)(c) and (d) of this section prescribe the
37 means by which an applicant may comply with the applicable standard.

38 (a) The net carbon dioxide emissions rate of the proposed base load gas plant shall not exceed
39 0.70 pounds of carbon dioxide emissions per kilowatt hour of net electric power output, with carbon
40 dioxide emissions and net electric power output measured on a new and clean basis. Notwithstanding the foregoing, the council may by rule modify the carbon dioxide emissions stand-
41 ard for base load gas plants if the council finds that the most efficient stand-alone combined cycle,
42 combustion turbine, natural gas-fired energy facility that is commercially demonstrated and operat-
43 ing in the United States has a net heat rate of less than 7,200 Btu per kilowatt hour higher heating
44 value adjusted to ISO conditions. In modifying the carbon dioxide emission standard, the council
45

1 shall determine the rate of carbon dioxide emissions per kilowatt hour of net electric output of such
2 energy facility, adjusted to ISO conditions, and reset the carbon dioxide emissions standard at 17
3 percent below this rate.

4 (b) The council shall adopt carbon dioxide emissions standards for other types of fossil-fueled
5 power plants. Such carbon dioxide emissions standards shall be promulgated by rule. In adopting
6 or amending such carbon dioxide emissions standards, the council shall consider and balance at
7 least the following principles, the findings on which shall be contained in the rulemaking record:

8 (A) Promote facility fuel efficiency;

9 (B) Promote efficiency in the resource mix;

10 (C) Reduce net carbon dioxide emissions;

11 (D) Promote cogeneration that reduces net carbon dioxide emissions;

12 (E) Promote innovative technologies and creative approaches to mitigating, reducing or avoiding
13 carbon dioxide emissions;

14 (F) Minimize transaction costs;

15 (G) Include an alternative process that separates decisions on the form and implementation of
16 offsets from the final decision on granting a site certificate;

17 (H) Allow either the applicant or third parties to implement offsets;

18 (I) Be attainable and economically achievable for various types of power plants;

19 (J) Promote public participation in the selection and review of offsets;

20 (K) Promote prompt implementation of offset projects;

21 (L) Provide for monitoring and evaluation of the performance of offsets; and

22 (M) Promote reliability of the regional electric system.

23 (c) The council shall determine whether the applicable carbon dioxide emissions standard is met
24 by first determining the gross carbon dioxide emissions that are reasonably likely to result from the
25 operation of the proposed energy facility. Such determination shall be based on the proposed design
26 of the energy facility. The council shall adopt site certificate conditions to ensure that the predicted
27 carbon dioxide emissions are not exceeded on a new and clean basis. For any remaining emissions
28 reduction necessary to meet the applicable standard, the applicant may elect to use any of subpar-
29 agraphs (A) to (D) of this paragraph, or any combination thereof. The council shall determine the
30 amount of carbon dioxide **or other greenhouse gas** emissions reduction that is reasonably likely
31 to result from the applicant's offsets and whether the resulting net carbon dioxide emissions meet
32 the applicable carbon dioxide emissions standard. **For purposes of determining the net carbon**
33 **dioxide emissions, the council shall by rule establish the global warming potential of each**
34 **greenhouse gas based on a generally accepted scientific method, and convert any greenhouse**
35 **gas emissions to a carbon dioxide equivalent. Unless otherwise provided by the council by**
36 **rule, the global warming potential of methane is 23 times that of carbon dioxide, and the**
37 **global warming potential of nitrous oxide is 296 times that of carbon dioxide.** If the council
38 or a court on judicial review concludes that the applicant has not demonstrated compliance with the
39 applicable carbon dioxide emissions standard under subparagraphs (A), (B) or (D) of this paragraph,
40 or any combination thereof, and the applicant has agreed to meet the requirements of subparagraph
41 (C) of this paragraph for any deficiency, the council or a court shall find compliance based on such
42 agreement.

43 (A) The facility will sequentially produce electrical and thermal energy from the same fuel
44 source, and the thermal energy will be used to displace another source of carbon dioxide emissions
45 that would have otherwise continued to occur, in which case the council shall adopt site certificate

1 conditions ensuring that the carbon dioxide emissions reduction will be achieved.

2 (B) The applicant or a third party will implement particular offsets, in which case the council
3 may adopt site certificate conditions ensuring that the proposed offsets are implemented but shall
4 not require that predicted levels of avoidance, displacement or sequestration of [*carbon dioxide*]
5 **greenhouse gas** emissions be achieved. The council shall determine the quantity of [*carbon*
6 *dioxide*] **greenhouse gas** emissions reduction that is reasonably likely to result from each of the
7 proposed offsets based on the criteria in sub-subparagraphs (i) to (iii) of this subparagraph. In
8 making this determination, the council shall not allow credit for offsets that have already been al-
9 located or awarded credit for [*carbon dioxide*] **greenhouse gas** emissions reduction in another reg-
10 ulatory setting. In addition, the fact that an applicant or other parties involved with an offset may
11 derive benefits from the offset other than the reduction of [*carbon dioxide*] **greenhouse gas** emis-
12 sions is not, by itself, a basis for withholding credit for an offset.

13 (i) The degree of certainty that the predicted quantity of [*carbon dioxide*] **greenhouse gas**
14 emissions reduction will be achieved by the offset;

15 (ii) The ability of the council to determine the actual quantity of [*carbon dioxide*] **greenhouse**
16 **gas** emissions reduction resulting from the offset, taking into consideration any proposed measure-
17 ment, monitoring and evaluation of mitigation measure performance; and

18 (iii) The extent to which the reduction of [*carbon dioxide*] **greenhouse gas** emissions would oc-
19 cur in the absence of the offsets.

20 (C) The applicant or a third party agrees to provide funds in an amount deemed sufficient to
21 produce the reduction in [*carbon dioxide*] **greenhouse gas** emissions necessary to meet the appli-
22 cable carbon dioxide emissions standard, in which case the funds shall be used as specified in par-
23 agraph (d) of this subsection. Unless modified by the council as provided below, the payment of 57
24 cents shall be deemed to result in a reduction of one ton of carbon dioxide emissions. The council
25 shall determine the offset funds using the monetary offset rate and the level of emissions reduction
26 required to meet the applicable standard. If a site certificate is approved based on this subpara-
27 graph, the council may not adjust the amount of such offset funds based on the actual performance
28 of offsets. After three years from June 26, 1997, the council may by rule increase or decrease the
29 monetary offset rate of 57 cents per ton of carbon dioxide emissions. Any change to the monetary
30 offset rate shall be based on empirical evidence of the cost of [*carbon dioxide*] offsets and the
31 council's finding that the standard will be economically achievable with the modified rate for natural
32 gas-fired power plants. Following the initial three-year period, the council may increase or decrease
33 the monetary offset rate no more than 50 percent in any two-year period.

34 (D) Any other means that the council adopts by rule for demonstrating compliance with any
35 applicable carbon dioxide emissions standard.

36 (d) If the applicant elects to meet the applicable carbon dioxide emissions standard in whole or
37 in part under paragraph (c)(C) of this subsection, the applicant shall identify the qualified organ-
38 ization. The applicant may identify an organization that has applied for, but has not received, an
39 exemption from federal income taxation, but the council may not find that the organization is a
40 qualified organization unless the organization is exempt from federal taxation under section 501(c)(3)
41 of the Internal Revenue Code as amended and in effect on December 31, 1996. The site certificate
42 holder shall provide a bond or comparable security in a form reasonably acceptable to the council
43 to ensure the payment of the offset funds and the amount required under subparagraph (A)(ii) of this
44 paragraph. Such security shall be provided by the date specified in the site certificate, which shall
45 be no later than the commencement of construction of the facility. The site certificate shall require

1 that the offset funds be disbursed as specified in subparagraph (A) of this paragraph, unless the
2 council finds that no qualified organization exists, in which case the site certificate shall require
3 that the offset funds be disbursed as specified in subparagraph (B) of this paragraph.

4 (A) The site certificate holder shall disburse the offset funds and any other funds required by
5 sub-subparagraph (ii) of this subparagraph to the qualified organization as follows:

6 (i) When the site certificate holder receives written notice from the qualified organization cer-
7 tifying that the qualified organization is contractually obligated to pay any funds to implement off-
8 sets using the offset funds, the site certificate holder shall make the requested amount available to
9 the qualified organization unless the total of the amount requested and any amounts previously re-
10 quested exceeds the offset funds, in which case only the remaining amount of the offset funds shall
11 be made available. The qualified organization shall use at least 80 percent of the offset funds for
12 contracts to implement offsets. **The qualified organization shall assess offsets for their poten-**
13 **tial to qualify in, generate credits in or reduce obligations in other regulatory settings.** The
14 qualified organization may use up to 20 percent of the offset funds for monitoring, evaluation, ad-
15 ministration and enforcement of contracts to implement offsets.

16 (ii) At the request of the qualified organization and in addition to the offset funds, the site cer-
17 tificate holder shall pay the qualified organization an amount equal to 10 percent of the first
18 \$500,000 of the offset funds and 4.286 percent of any offset funds in excess of \$500,000. This amount
19 shall not be less than \$50,000 unless a lesser amount is specified in the site certificate. This amount
20 compensates the qualified organization for its costs of selecting offsets and contracting for the im-
21 plementation of offsets.

22 (iii) Notwithstanding any provision to the contrary, a site certificate holder subject to this sub-
23 paragraph shall have no obligation with regard to offsets, the offset funds or the funds required by
24 sub-subparagraph (ii) of this subparagraph other than to make available to the qualified organization
25 the total amount required under paragraph (c) of this subsection and sub-subparagraph (ii) of this
26 subparagraph, nor shall any nonperformance, negligence or misconduct on the part of the qualified
27 organization be a basis for revocation of the site certificate or any other enforcement action by the
28 council with respect to the site certificate holder.

29 (B) If the council finds there is no qualified organization, the site certificate holder shall select
30 one or more offsets to be implemented pursuant to criteria established by the council. The site cer-
31 tificate holder shall give written notice of its selections to the council and to any person requesting
32 notice. On petition by the State Department of Energy, or by any person adversely affected or
33 aggrieved by the site certificate holder's selection of offsets, or on the council's own motion, the
34 council may review such selection. The petition must be received by the council within 30 days of
35 the date the notice of selection is placed in the United States mail, with first-class postage prepaid.
36 The council shall approve the site certificate holder's selection unless it finds that the selection is
37 not consistent with criteria established by the council. The site certificate holder shall contract to
38 implement the selected offsets within 18 months after commencing construction of the facility unless
39 good cause is shown requiring additional time. The contracts shall obligate the expenditure of at
40 least 85 percent of the offset funds for the implementation of offsets. No more than 15 percent of the
41 offset funds may be spent on monitoring, evaluation and enforcement of the contract to implement
42 the selected offsets. The council's criteria for selection of offsets shall be based on the criteria set
43 forth in paragraphs (b)(C) and (c)(B) of this subsection and may also consider the costs of particular
44 types of offsets in relation to the expected benefits of such offsets. The council's criteria shall not
45 require the site certificate holder to select particular offsets, and shall allow the site certificate

1 holder a reasonable range of choices in selecting offsets. In addition, notwithstanding any other
 2 provision of this section, the site certificate holder's financial liability for implementation, monitor-
 3 ing, evaluation and enforcement of offsets pursuant to this subsection shall be limited to the amount
 4 of any offset funds not already contractually obligated. Nonperformance, negligence or misconduct
 5 by the entity or entities implementing, monitoring or evaluating the selected offset shall not be a
 6 basis for revocation of the site certificate or any other enforcement action by the council with re-
 7 spect to the site certificate holder.

8 (C) Every qualified organization that has received funds under this paragraph shall, at five-year
 9 intervals beginning on the date of receipt of such funds, provide the council with the information
 10 the council requests about the qualified organization's performance. The council shall evaluate the
 11 information requested and, based on such information, shall make any recommendations to the
 12 Legislative Assembly that the council deems appropriate.

13 (e) As used in this subsection:

14 (A) "Adjusted to ISO conditions" means carbon dioxide emissions and net electric power output
 15 as determined at 59 degrees Fahrenheit, 14.7 pounds per square inch atmospheric pressure and 60
 16 percent humidity.

17 (B) "Base load gas plant" means a generating facility that is fueled by natural gas, except for
 18 periods during which an alternative fuel may be used and when such alternative fuel use shall not
 19 exceed 10 percent of expected fuel use in Btu, higher heating value, on an average annual basis, and
 20 where the applicant requests and the council adopts no condition in the site certificate for the
 21 generating facility that would limit hours of operation other than restrictions on the use of alter-
 22 native fuel. The council shall assume a 100 percent capacity factor for such plants and a 30-year
 23 life for the plants for purposes of determining gross carbon dioxide emissions.

24 (C) **"Carbon dioxide equivalent" means the global warming potential of a greenhouse gas**
 25 **reflected in units of carbon dioxide.**

26 [(C)] (D) "Fossil-fueled power plant" means a generating facility that produces electric power
 27 from natural gas, petroleum, coal or any form of solid, liquid or gaseous fuel derived from such
 28 material.

29 [(D)] (E) "Generating facility" means those energy facilities that are defined in ORS 469.300
 30 (11)(a)(A), (B) and (D).

31 (F) **"Global warming potential" means the determination of the atmospheric warming**
 32 **resulting from the release of a unit mass of a particular greenhouse gas in relation to the**
 33 **warming resulting from the release of the equivalent mass of carbon dioxide.**

34 (G) **"Greenhouse gas" means carbon dioxide, methane and nitrous oxide.**

35 [(E)] (H) "Gross carbon dioxide emissions" means the predicted carbon dioxide emissions of the
 36 proposed energy facility measured on a new and clean basis.

37 [(F)] (I) "Net carbon dioxide emissions" means gross carbon dioxide emissions of the proposed
 38 energy facility, less carbon dioxide **or other greenhouse gas** emissions avoided, displaced or
 39 sequestered by any combination of cogeneration or offsets.

40 [(G)] (J) "New and clean basis" means the average carbon dioxide emissions rate per hour and
 41 net electric power output of the energy facility, without degradation, as determined by a 100-hour
 42 test at full power completed during the first 12 months of commercial operation of the energy fa-
 43 cility, with the results adjusted for the average annual site condition for temperature, barometric
 44 pressure and relative humidity and use of alternative fuels, and using a rate of 117 pounds of carbon
 45 dioxide per million Btu of natural gas fuel and a rate of 161 pounds of carbon dioxide per million

1 Btu of distillate fuel, if such fuel use is proposed by the applicant. The council may by rule adjust
 2 the rate of pounds of carbon dioxide per million Btu for natural gas or distillate fuel. The council
 3 may by rule set carbon dioxide emissions rates for other fuels.

4 [(H)] (K) “Nongenerating facility” means those energy facilities that are defined in ORS 469.300
 5 (11)(a)(C) and (E) to (I).

6 [(I)] (L) “Offset” means an action that will be implemented by the applicant, a third party or
 7 through the qualified organization to avoid, sequester or displace emissions [*of carbon dioxide*].

8 [(J)] (M) “Offset funds” means the amount of funds determined by the council to satisfy the ap-
 9 plicable carbon dioxide emissions standard pursuant to paragraph (c)(C) of this subsection.

10 [(K)] (N) “Qualified organization” means an entity that:

11 (i) Is exempt from federal taxation under section 501(c)(3) of the Internal Revenue Code as
 12 amended and in effect on December 31, 1996;

13 (ii) Either is incorporated in the State of Oregon or is a foreign corporation authorized to do
 14 business in the State of Oregon;

15 (iii) Has in effect articles of incorporation that require that offset funds received pursuant to
 16 this section are used for offsets [*that will result in the direct reduction, elimination, sequestration or*
 17 *avoidance of carbon dioxide emissions,*] that require that decisions on the use of [*such*] **the offset**
 18 funds are made by a **decision-making** body composed of seven voting members of which three are
 19 appointed by the council, three are Oregon residents appointed by the Bullitt Foundation or an al-
 20 ternative environmental nonprofit organization named by the body, and one is appointed by the ap-
 21 plicants for site certificates that are subject to paragraph (d) of this subsection and the holders of
 22 such site certificates, and that require nonvoting membership on the [*decision-making*] body for
 23 holders of site certificates that have provided funds not yet disbursed under paragraph (d)(A) of this
 24 subsection;

25 (iv) Has made available on an annual basis, beginning after the first year of operation, a signed
 26 opinion of an independent certified public accountant stating that the qualified organization’s use
 27 of funds pursuant to this statute conforms with generally accepted accounting procedures except
 28 that the qualified organization shall have one year to conform with generally accepted accounting
 29 principles in the event of a nonconforming audit;

30 (v) Has to the extent applicable, except for good cause, entered into contracts obligating at least
 31 60 percent of the offset funds to implement offsets within two years after the commencement of
 32 construction of the facility; and

33 (vi) Has to the extent applicable, except for good cause, complied with paragraph (d)(A)(i) of this
 34 subsection.

35 (3) Except as provided in ORS 469.504 for land use compliance and except for those statutes and
 36 rules for which the decision on compliance has been delegated by the federal government to a state
 37 agency other than the council, the facility complies with all other Oregon statutes and administra-
 38 tive rules identified in the project order, as amended, as applicable to the issuance of a site certif-
 39 icate for the proposed facility. If compliance with applicable Oregon statutes and administrative
 40 rules, other than those involving federally delegated programs, would result in conflicting conditions
 41 in the site certificate, the council may resolve the conflict consistent with the public interest. A
 42 resolution may not result in the waiver of any applicable state statute.

43 (4) The facility complies with the statewide planning goals adopted by the Land Conservation
 44 and Development Commission.

45 **SECTION 3. (1) Except as provided in subsection (2) of this section, the amendments to**

1 **ORS 469.373 and 469.503 by sections 1 and 2 of this 2011 Act become operative on October 1,**
2 **2011.**

3 **(2) Before the operative date specified in subsection (1) of this section, the Energy Fa-**
4 **ility Siting Council may adopt rules or take any other action that is necessary to implement,**
5 **on or after the operative date specified in subsection (1) of this section, the amendments to**
6 **ORS 469.373 and 469.503 by sections 1 and 2 of this 2011 Act.**

7 **SECTION 4. The amendments to ORS 469.373 and 469.503 by sections 1 and 2 of this 2011**
8 **Act apply to:**

9 **(1) All site certificates or amended site certificates approved by the Energy Facility Sit-**
10 **ing Council on or after the operative date specified in section 3 of this 2011 Act; and**

11 **(2) All offset funds held by or paid to a qualified organization on or after the operative**
12 **date specified in section 3 of this 2011 Act.**

13 **SECTION 5. This 2011 Act being necessary for the immediate preservation of the public**
14 **peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect**
15 **on its passage.**

16