CHAPTER 134

AN ACT SB 843

Relating to energy; creating new provisions; amending ORS 469.300, 469.320, 469.370, 469.501, 469.502, 469.504, 469.594, 757.600 and 757.612; and declaring an emergency.

Whereas Oregon’s demand for electricity has grown due to population growth and energy intensive industries, yet the state has built few power generation facilities over the past decade; and

Whereas Oregon has developed a framework for encouraging energy development and increasing supply; and

Whereas this year’s historically low rainfall has, combined with high demand for electricity, strained western power supplies, exacerbated by the instant purchase system developed by the State of California; and

Whereas the strained supply of electricity has had the effect of dramatically increasing electricity prices; and

Whereas the Legislative Assembly believes that residential customers should have a safeguard from what is currently an uncertain and unreliable electricity market, and has delayed any effects on residential customers until at least 2003 and only after further extensive review by the Public Utility Commission and the Legislative Assembly; and

Whereas the Legislative Assembly believes that the State of Oregon must take steps now to encourage building adequate electricity supply for the future; and

Whereas the Legislative Assembly believes that our future energy supply must be broad and varied, and include conservation opportunities, renewable energy sources and traditional energy facilities that should be built in the shortest time frame possible while protecting the environment; and

Whereas Oregon’s electricity restructuring program; now, therefore,

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

SECTION 1. Section 1a of this 2001 Act is added to and made a part of ORS 757.600 to 757.687.

SECTION 1a. (1) In adopting market valuation methodologies under ORS 757.659 (4), the Public Utility Commission may provide for use of arbitration to resolve disputes relating to valuation of electric company investments.

(2) The commission shall adopt rules for the following purposes:

(a) Establishing the process for selecting an arbitrator under this section.

(b) Establishing the type, scope and subject matter of arbitrations under this section, and the procedure for conducting those arbitrations.

(c) Establishing standards for the decision of an arbitrator under this section.

(d) Governing who may be a party to an arbitration under this section.

(3)(a) An arbitrator selected under rules adopted pursuant to subsection (2) of this section must be experienced in valuing generating resources and may not have any material conflict of interest in the result of the arbitration.

(b) Any party to the arbitration may challenge the selection of an arbitrator by direct petition to the commission. The commission’s review of the selection shall be limited to allegations of bias and lack of qualifications.

The commission shall hold a hearing within 10 days after the filing of a petition, and the commission shall issue a final decision within 10 days after the hearing. The commission may require selection of a different arbitrator.

(4) The arbitrator shall control the time, manner and place of the arbitration, subject to any limitations established by commission rule.

(5) An arbitrator acts on behalf of the commission in performing duties and powers under this section and under rules adopted by the commission pursuant to this section. Nothing in this section shall be construed to grant any rights or privileges to an arbitrator that are otherwise afforded to persons employed by the state.

(6) The commission shall enforce an arbitration decision made pursuant to this section, unless any party to the arbitration files written exceptions with the commission for any of the following causes:

(a) The decision was procured by corruption, fraud or undue means;

(b) There was evident partiality or corruption on the part of the arbitrator;

(c) The arbitrator exceeded his or her powers, or so imperfectly executed them that the rights of the party were substantially prejudiced;

(d) There was an evident material miscalculation of figures or an evident material mistake in the description of any thing or property referred to in the decision; or

(e) The decision was based on an erroneous interpretation of a statute, rule or other law.

(7) If, after a hearing on the exceptions filed as provided in subsection (6) of this section, it appears to the commission that the decision should be vacated or modified, the commission may by order refer the decision back to the arbitrator with proper instructions for correction or rehearing.

(8)(a) Notwithstanding ORS 756.580, any appeal of a commission decision under subsection (3)(b) of this section shall be to the Court of Appeals under ORS 183.482. The court shall re-
view the commission’s decision in the manner provided by ORS 183.482 (8).

(b) Notwithstanding ORS 756.580, any appeal of a commission order incorporating an arbitration decision shall be to the Court of Appeals under ORS 183.482. Notwithstanding ORS 183.482 (8), review of a commission order incorporating an arbitration decision is limited to the grounds set forth under subsection (6) of this section.

(c) A commission order or decision may not be appealed under the provisions of this subsection if the decision issues a final order adopting the arbitration decision.

SECTION 2. ORS 469.300 is amended to read:

469.300. As used in ORS 469.300 to 469.563, 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 469.563, 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 469.563, 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) “Average electric generating capacity” means the peak generating capacity of the facility divided by one of the following factors:

(a) For wind or solar energy facilities, 3.00;

(b) For geothermal energy facilities, 1.11; or

(c) For all other energy facilities, 1.00.

6) “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.

7) “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.

8) Council” means the Energy Facility Siting Council established under ORS 469.450.

9) “Electric utility” means persons, 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, supplying, transmitting or distributing electric energy. “Electric utility” includes any person or public agency generating electric energy from an energy facility for its own consumption.

10) “Energy facility” means any of the following:

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

(i) Thermal power; or

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

(iii) (i) 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 or oil to a gas, liquid or solid product intended to be used as a fuel and capable of being burned to produce the equivalent of two billion BTu of heat a day.

(G) A plant which converts biomass to a gas, liquid or solid product, or combination of such products, intended to be used as a fuel and if any one of such products is capable of being burned to produce the equivalent of six billion BTu of heat a day.
(H) A storage facility for liquified natural gas constructed after September 29, 1991, that is designed to hold at least 70,000 gallons.

(i) 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 horsepowre 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.

(j) An electric power generating plant with an average electric generating capacity of 35 megawatts or more if the power is produced from geothermal, solar or wind energy at a single energy facility or within a single energy generation area.

(b) “Energy facility” does not include a hydropower facility.

(10) (11) “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] 35 megawatts average electric generating capacity 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) (12) “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) (13) “Facility” means an energy facility together with any related or supporting facilities.

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

(14) (15) “Local government” means a city or county.

(15) (16) “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.


(20) (21) “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) (22) “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) (24) “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) A person, 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.

SECTION 3. ORS 469.320 is amended to read:

469.320. (1) Except as provided in subsections (2) and (5) 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 469.563, 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 469.563, 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.

(e) An energy facility as defined in ORS 469.300 [(9)(a)(G)] (10)(a)(G), if the plant also produces a secondary fuel used on site for the production of heat or electricity, if the output of the primary fuel is less than six billion Btu of heat a day.

(f) An energy facility as defined in ORS 469.300 [(9)(a)(G)] (10)(a)(G), if the facility:

(A) Uses biomass exclusively from grain, whey or potatoes as the source of material for conversion to a liquid fuel;

(B) Has received local land use approval under the applicable acknowledged comprehensive plan and land use regulations of the affected local government and the facility complies with any statewide planning goals or rules of the Land Conservation and
applicable carbon dioxide emissions standards, specified in ORS 469.501. To support the council’s finding that the facility complies with all applicable carbon dioxide emissions standards, the applicant shall provide proof acceptable to the council that shows the contracted nominal electric generating capacity of the facility and the contracted heat rate in higher heating value. The applicant shall pay the funds to the qualified organization before commencing construction on the temporary facility. The amount of the carbon dioxide offset funds for a temporary facility shall be subject to adjustment as provided in subsection (7)(c) of this section.

(h) A standby generation facility, if the facility complies with all of the following:

(A) The facility has received local land use approval under the applicable acknowledged comprehensive plan and land use regulations of the affected local government and the facility complies with all statewide planning goals and applicable rules of the Land Conservation and Development Commission;

(B) The standby generators have been approved by the Department of Environmental Quality as having complied with all applicable air and water quality requirements. For an applicant that proposes to provide the physical facilities for the installation of standby generators, the requirement of this subparagraph may be met by agreeing to require such a term in the lease contract for the facility; and

(C) The standby generators are electrically incapable of being interconnected to the transmission grid. For an applicant that proposes to provide the physical facilities for the installation of standby generators, the requirement of this subparagraph may be met by agreeing to require such a term in the lease contract for the facility.

(3) The Energy Facility Siting 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), (c), (f) or (h) 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 facilities are addressed in and are subject to a site certificate for another energy facility;

(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; or

(c) Expansion, either within the site or outside the site, of an existing council certified surface facility related to an underground gas storage reservoir, if the existing site certificate is 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 469.563.

(7)(a) Any person who proposes to construct or enlarge a temporary energy generating facility and who claims an exemption under subsection (2)(g) 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 30 days of receiving all of the information necessary to support the determination. Such exemption shall provide that the applicant may not begin construction of the temporary energy generating facility until the facility has received the required local land use approval under the applicable acknowledged comprehensive plan and land use regulations of
ORS 469.320, as amended by sections (2) and (5) 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 469.563, 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 469.563, 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.
(e) An energy facility as defined in ORS 469.300 (10)(a)(G), if the plant also produces a secondary fuel and
(f) An energy facility as defined in ORS 469.300 (10)(a)(G), if the facility:
(A) Uses biomass exclusively from grain, whey or potatoes as the source of material for conversion to a liquid fuel;
(B) Has received local land use approval under the applicable acknowledged comprehensive plan and land use regulations of the affected local government and the facility complies with any statewide planning goals or rules of the Land Conservation and Development Commission that are directly applicable to the facility;
(C) Requires no new electric transmission lines or gas or petroleum product pipelines that would require a site certificate under subsection (1) of this section; and
(D) Produces synthetic fuel, at least 90 percent of which is used in an industrial or refueling facility

SECTION 4. ORS 469.320, as amended by section 3 of this 2001 Act, is amended to read:
469.320. (1) Except as provided in subsections (2) and (5) 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 469.563, 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 469.563, 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.
(e) An energy facility as defined in ORS 469.300 (10)(a)(G), if the plant also produces a secondary fuel and
(f) An energy facility as defined in ORS 469.300 (10)(a)(G), if the facility:
(A) Uses biomass exclusively from grain, whey or potatoes as the source of material for conversion to a liquid fuel;
(B) Has received local land use approval under the applicable acknowledged comprehensive plan and land use regulations of the affected local government and the facility complies with any statewide planning goals or rules of the Land Conservation and Development Commission that are directly applicable to the facility;
(C) Requires no new electric transmission lines or gas or petroleum product pipelines that would require a site certificate under subsection (1) of this section; and
(D) Produces synthetic fuel, at least 90 percent of which is used in an industrial or refueling facility.
located within one mile of the facility or is trans-
ported from the facility by rail or barge.

[(g) A temporary energy generating facility, if the facility complies with all applicable carbon dioxide emissions standards adopted by the Energy Facility Siting Council or enacted by statute and the applicant agrees to provide funds to a qualified organization in an amount determined by the council to be sufficient to produce any required reductions in carbon dioxide as specified in ORS 469.501. To support the council’s finding that the facility complies with all applicable carbon dioxide emissions standards, the applicant shall provide proof acceptable to the council that shows the contracted nominal electric generating capacity of the facility and the contracted heat rate in higher heating value. The applicant shall pay the funds to the qualified organization before commencing construction on the temporary facility. The amount of the carbon dioxide offset funds for a temporary facility shall be subject to adjustment as provided in subsection (7)(c) of this section.]

[(h) (g) A standby generation facility, if the fac-
ility complies with all of the following:

(A) The facility has received local land use ap-
proval under the applicable acknowledged compre-
hensive plan and land use regulations of the affected
local government and the facility complies with all
statewide planning goals and applicable rules of the
Land Conservation and Development Commission;

(B) The standby generators have been approved
by the Department of Environmental Quality as
having complied with all applicable air and water
quality requirements. For an applicant that proposes to provide the physical facilities for the installation of standby generators, the requirement of this sub-
paragraph may be met by agreeing to require such
a term in the lease contract for the facility; and

(C) The standby generators are electrically inca-
pable of being interconnected to the transmission
grid. For an applicant that proposes to provide the
physical facilities for the installation of standby
generators, the requirement of this sub-
paragraph may be met by agreeing to require such a term in the
lease contract for the facility.

(3) The Energy Facility Siting Council may re-
view, 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 sub-
section (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 en-
large an energy facility and who claims an ex-
emption under subsection (2)(a), (c), (f) or [(h) (g)]
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 pro-
ceeding on the exemption.

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

(a) Transmission lines, storage facilities, pipe-
lines or similar related or supporting facilities, if
such related or supporting facilities are addressed in
and are subject to a site certificate for another en-
ergy facility;

(b) Expansion within the site or within the en-
ergy generation area of a facility for which a site
certificate has been issued, if the existing site cer-
tificate has been amended to authorize expansion; or

(c) Expansion, either within the site or outside the
site, of an existing council certified surface fa-
cility related to an underground gas storage reser-
voir, if the existing site certificate is 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 ex-
emption 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 469.563.

[(7)(a) Any person who proposes to construct or
enlarge a temporary energy generating facility and
who claims an exemption under subsection (2)(g) of
this section from the requirement to obtain a site cer-
tificate 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 30 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 amendments to ORS 469.320

Within 30 days of ceasing operation of a temporary energy generating facility, the applicant shall report the total actual fuel used during commercial operation of the temporary energy generating facility. Based on the total actual fuel used during commercial operation, the council shall determine whether additional offset funds, as defined in ORS 469.503, and contracting and selection funds are owed to the qualified organization. If the council determines that additional offset funds are owed to the qualified organization, the applicant shall pay such amounts within 60 days of the council’s order determining the amount of additional funds.

As used in this section:

(a) “Standby generation facility” means an electric power generating facility, including standby generators and the physical structures necessary to install and connect standby generators, that provides temporary electric power in the event of a power outage and that is electrically incapable of being interconnected with the transmission grid.

(b) “Temporary energy generating facility” means an electric power generating facility, including a thermal power plant and a combustion turbine power plant, but not including a hydropower plant, with a nominal electric generating capacity of no more than 100 megawatts that is operated for no more than 24 months from the date of initial commercial operation.

(c) “Total energy output” means the sum of useful thermal energy output and useful electrical energy output.

(d) “Useful thermal energy” means the verifiable thermal energy used in any viable industrial or commercial process, heating or cooling application.

SECTION 5. The amendments to ORS 469.320 by section 4 of this 2001 Act become operative January 2, 2006.

SECTION 6. ORS 469.370 is amended to read:

ORS 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 ap-
plicable 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.

(b) 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] an average electric 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.

(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 7. 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 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 proposed nongenerating 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.

(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 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.

(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 standard the facility does not meet.

(4) Notwithstanding subsection (1) of this section, the council may not impose any standard developed under subsection (1)(b), (f), (j) or (k) of this section to approve or deny an application for an energy facility producing power from wind, solar or geothermal energy. However, the council may, to the extent it determines appropriate, apply any standards adopted under subsection (1)(b), (f), (j) or (k) of this section to impose conditions on any site certificate issued for any energy facility.

SECTION 8. ORS 757.600 is amended to read:

757.600. As used in ORS 757.600 to 757.687, unless the context requires otherwise:

1. “Aggregate” means combining retail electricity consumers into a buying group for the purchase of electricity and related services.

2. “Ancillary services” means services necessary or incidental to the transmission and delivery of electricity from generating facilities to retail electricity consumers, including but not limited to scheduling, load shaping, reactive power, voltage control and energy balancing services.


4. “Consumer-owned utility” means a municipal electric utility, a people’s utility district or an electric cooperative.

5. “Default supplier” means an electricity service supplier or electric company that has a legal obligation to provide electricity services to a consumer, as determined by the commission.

6. “Direct access” means the ability of a retail electricity consumer to purchase electricity and certain ancillary services, as determined by the commission for an electric company or the governing body of a consumer-owned utility, directly from an entity other than the distribution utility.

7. “Direct service industrial consumer” means an end user of electricity that obtains electricity directly from the transmission grid and not through a distribution utility.

8. “Distribution” means the delivery of electricity to retail electricity consumers through a distribution system consisting of local area power poles, transformers, conductors, meters, substations and other equipment.

9. “Distribution utility” means an electric utility that owns and operates a distribution system connecting the transmission grid to the retail electricity consumer.

10. “Economic utility investment” means all electric company investments [made prior to the date the electric company offers direct access under ORS 757.600 to 757.667], including plants and equipment and contractual or other legal obligations, properly dedicated to generation or conservation, that were prudent at the time the obligations were assumed but the full benefits of which are no longer available to consumers as a direct result of ORS 757.600 to 757.667, absent transition credits. “Economic utility investment” does not include costs or expenses disallowed by the commission in a prudence review or other proceeding, to the extent of such disallowance, and does not include fines or penalties authorized and imposed under state or federal law.

11. “Electric company” means an entity engaged in the business of distributing electricity to retail electricity consumers in this state, but does not include a consumer-owned utility.

12. “Electric cooperative” means an electric cooperative corporation organized under ORS chapter 62 or under the laws of another state if the service territory of the electric cooperative includes a portion of this state.

13. “Electric utility” means an electric company or consumer-owned utility that is engaged in the business of distributing electricity to retail electricity consumers in this state.

14. “Electricity” means electric energy, measured in kilowatt-hours, or electric capacity, measured in kilowatts, or both.

15. “Electricity services” means electricity distribution, transmission, generation or generation-related services.

16. “Electricity service supplier” means a person or entity that offers to sell electricity services available pursuant to direct access to more than one
renewable basis. “Electricity service supplier” does not include an electric utility selling electricity to retail electricity consumers in its own service territory.

(17) “Governing body” means the board of directors or the commissioners of an electric cooperative or people's utility district, or the council or board of a city with respect to a municipal electric utility.

(18) “Load” means the amount of electricity delivered to or required by a retail electricity consumer at a specific point of delivery.

(19) “Low-income weatherization” means repairs, weatherization and installation of energy efficient appliances and fixtures for low-income residences for the purpose of enhancing energy efficiency.

(20) “Municipal electric utility” means an electric distribution utility owned and operated by or on behalf of a city.

(21) “New renewable energy resource” means a renewable energy resource project, or a new addition to an existing renewable energy resource project, or the electricity produced by the project, that is not in operation on July 23, 1999. “New renewable energy resource” does not include any portion of a renewable energy resource project under contract to the Bonneville Power Administration on or before July 23, 1999.

(22) “Office of Energy” means the Office of Energy created under ORS 469.030.

(23) “One average megawatt” means 8,760,000 kilowatt-hours of electricity per year.

(24) “People's utility district” has the meaning given that term in ORS 261.010.

(25) “Portfolio access” means the ability of a retail electricity consumer to choose from a set of product and pricing options for electricity determined by the governing board of a consumer-owned utility and may include product and pricing options offered by the utility or by an electricity service supplier.

(26) “Power generation company” means a company engaged in the production and sale of electricity to wholesale customers, including but not limited to independent power producers, affiliated generation companies, municipal and state authorities, provided the company is not regulated by the commission.

(27) “Qualifying expenditures” means those expenditures for energy conservation measures that have a simple payback period of not less than one year and not more than 10 years, and expenditures for the above-market costs of new renewable energy resources, provided that the Office of Energy by rule may establish a limit on the maximum above-market cost for renewable energy that is allowed as a credit.

(28) “Renewable energy resources” means:

- (a) Electricity generation facilities fueled by wind, waste, solar or geothermal power or by low-emission nontoxic biomass based on solid organic fuels from wood, forest and field residues.
- (b) Dedicated energy crops available on a renewable basis.
- (c) Landfill gas and digester gas.

(d) Hydroelectric facilities located outside protected areas as defined by federal law in effect on July 23, 1999.

(29) “Residential electricity consumer” means an electricity consumer who resides at a dwelling primarily used for residential purposes. “Residential electricity consumer” does not include retail electricity consumers in a dwelling typically used for residency periods of less than 30 days, including hotels, motels, camps, lodges and clubs. As used in this subsection, “dwelling” includes but is not limited to single family dwellings, separately metered apartments, adult foster homes, manufactured dwellings, recreational vehicles and floating homes.

(30) “Retail electricity consumer” means the end user of electricity for specific purposes such as heating, lighting or operating equipment, and includes all end users of electricity served through the distribution system of an electric utility on or after July 23, 1999, whether or not each end user purchases the electricity from the electric utility.

(31) “Site” means a single contiguous area of land containing buildings or other structures that are separated by not more than 1,000 feet, or buildings and related structures that are interconnected by facilities owned by a single retail electricity consumer and that are served through a single electric meter.

(32) “Transition charge” means a charge or fee that recovers all or a portion of an uneconomic utility investment.

(33) “Transition credit” means a credit that returns to consumers all or a portion of the benefits from an economic utility investment.

(34) “Transmission facility” means the plant and equipment used to transmit electricity in interstate commerce.

(35) “Undue market power” means the unfair or improper exercise of influence to increase or decrease the availability or price of a service or product in a manner inconsistent with competitive markets.

(36) “Uneconomic utility investment” means all electric company investments [made by an electric company prior to the date the electric company offers direct access under ORS 757.600 to 757.667], including plants and equipment and contractual or other legal obligations, properly dedicated to generation, conservation and workforce commitments, that were prudent at the time the obligations were assumed but the full costs of which are no longer recoverable as a direct result of ORS 757.600 to 757.667, absent transition charges. “Uneconomic utility investment” does not include costs or expenses disallowed by the commission in a prudence review or other proceeding, to the extent of such disallowance, and does not include fines or penalties as authorized by state or federal law.

SECTION 9. ORS 757.612 is amended to read:

ORS 757.612. (1) There is established an annual public purpose expenditure standard for electric companies to fund new cost-effective local energy conservation,
new market transformation efforts, the above-market costs of new renewable energy resources, and new low-income weatherization. The public purpose expenditure standard shall be funded by the public purpose charge described in subsection (2) of this section.

(2)(a) Beginning on the date an electric company offers direct access to its retail electricity consumers, except residential electricity consumers, the electric company shall collect a public purpose charge from all of the retail electricity consumers located within its service area for a period of 10 years. Except as provided in paragraph (b) of this subsection, the public purpose charge shall be equal to three percent of the total revenues collected by the electric company or electricity service supplier from its retail electricity consumers for electricity services, distribution, ancillary services, metering and billing, transition charges and other types of costs included in electric rates on July 23, 1999.

(b) For an aluminum plant that averages more than 100 average megawatts of electricity use per year, beginning on October 1, 2001, the electric company whose territory abuts the greatest percentage of the site of the aluminum plant shall collect from the aluminum company a public purpose charge equal to one percent of the total revenue from the sale of electricity services to the aluminum plant from any source.

(3)(a) The Public Utility Commission shall establish rules implementing the provisions of this section relating to electric companies.

(b) Subject to paragraph (e) of this subsection, funds collected by an electric company through public purpose charges shall be allocated as follows:

(A) Sixty-three percent for new cost-effective conservation and new market transformation.

(B) Nineteen percent for the above-market costs of new renewable energy resources.

(C) Thirteen percent for new low-income weatherization.

(D) Five percent shall be transferred to the Housing and Community Services Department Revolving Account created under ORS 456.574 and used for the purpose of providing grants as described in ORS 458.625 (2). Moneys deposited in the account under this subparagraph are continuously appropriated to the Housing and Community Services Department for the purposes of ORS 458.625 (2). Interest on moneys deposited in the account under this subparagraph shall accrue to the account.

(e)(A) The first 10 percent of the funds collected annually by an electric company under subsection (2) of this section shall be distributed to education service districts, as described in ORS 334.010, that are located in the service territory of the electric company. The funds shall be distributed to individual education service districts according to the weighted average daily membership (ADMw) of the component school districts of the education service district for the fiscal year as calculated under ORS 327.013. The commission shall establish by rule a methodology for distributing a proportionate share of funds under this paragraph to education service districts that are only partially located in the service territory of the electric company.

(B) An education service district that receives funds under this paragraph shall use the funds first to pay for energy audits for school districts located within the education service district. An education service district shall not expend additional funds received under this paragraph on a school district facility until an energy audit has been completed for that school district. To the extent practicable, an education service district shall coordinate with the Office of Energy and incorporate federal funding in complying with this paragraph. Following completion of an energy audit for an individual school district, the education service district may expend funds received under this paragraph to implement the energy audit. Once an energy audit has been conducted and completely implemented for each school district within the education service district, the education service district may expend funds received under this paragraph for any of the following purposes:

(i) Conducting energy audits. A school district shall conduct an energy audit prior to expending funds on any other purpose authorized under this paragraph unless the school district has performed an energy audit within the three years immediately prior to receiving the funds.

(ii) Weatherization and upgrading the energy efficiency of school district facilities.

(iii) Energy conservation education programs.

(iv) Purchasing electricity from environmentally focused sources and investing in renewable energy resources.
(f) The commission may establish a different public purpose charge than the public purpose charge otherwise described in subsection (2) of this section for an individual retail electricity consumer or any class of retail electricity consumers located within the service area of an electric company, provided that a retail electricity consumer with a load greater than one average megawatt shall not be required to pay a public purpose charge in excess of three percent of its total cost of electricity services.

(g) The commission shall remove from the rates of each electric company any costs for public purposes described in subsection (1) of this section that are included in rates. A rate adjustment under this paragraph shall be effective on the date that the electric company begins collecting public purpose charges.

(4) An electric company that satisfies its obligations under this section shall have no further obligation to invest in conservation, new market transformation, new renewable energy resources or new low-income weatherization or to provide a commercial energy conservation services program and is not subject to ORS 469.631 to 469.645, 469.650 to 469.900, 475.600 to 475.675, 758.505 to 758.555.

(5)(a) A retail electricity consumer that uses more than one average megawatt of electricity at any site in the prior year shall receive a credit against public purpose charges billed by an electric company for that site. The amount of the credit shall be equal to the total amount of qualifying expenditures for new energy conservation, not to exceed 68 percent of the annual public purpose charges, and the above-market costs of purchases of new renewable energy resources incurred by the retail electricity consumer, not to exceed 19 percent of the annual public purpose charges, and less administration costs incurred under this subsection. The credit shall not exceed, on an annual basis, the lesser of:

(A) The amount of the retail electricity consumer’s qualifying expenditures; or

(B) The portion of the public purpose charge billed to the retail electricity consumer that is dedicated to new energy conservation, new market transformation or the above-market costs of new renewable energy resources.

(b) To obtain a credit under this subsection, a retail electricity consumer shall file with the Office of Energy a description of the proposed conservation project or new renewable energy resource and a declaration that the retail electricity consumer plans to incur the qualifying expenditure. The Office of Energy shall issue a notice of precertification within 30 days of receipt of the filing, if such filing is consistent with this subsection. The credit may be taken after a retail electricity consumer provides a letter from a certified public accountant to the Office of Energy verifying that the precertified qualifying expenditure has been made.

(c) Credits earned by a retail electricity consumer as a result of qualifying expenditures that are not used in one year may be carried forward for use in subsequent years.

(d)(A) A retail electricity consumer that uses more than one average megawatt of electricity at any site in the prior year may request that the Office of Energy hire an independent auditor to assess the potential for conservation investments at the site. If the independent auditor determines there is no available conservation measure at the site that would have a simple payback of one to 10 years, the retail electricity consumer shall be relieved of 54 percent of its payment obligation for public purpose charges related to the site. If the independent auditor determines that there are potential conservation measures available at the site, the retail electricity consumer shall be entitled to a credit against public purpose charges related to the site equal to 54 percent of the public purpose charges less the estimated cost of available conservation measures.

(B) A retail electricity consumer shall be entitled each year to the credit described in this subsection unless a subsequent independent audit determines that new conservation investment opportunities are available. The Office of Energy may require that a new independent audit be performed on the site to determine whether new conservation measures are available, provided that the independent audits shall occur no more than once every two years.

(C) The retail electricity consumer shall pay the cost of the independent audits described in this subsection.

(e) Electric utilities and retail electricity consumers shall receive a fair and reasonable credit for the public purpose expenditures of their energy suppliers. The Office of Energy shall adopt rules to determine eligible expenditures and the methodology by which such credits are accounted for and used. The rules also shall adopt methods to account for eligible public purpose expenditures made through consortia or collaborative projects.

(f) In addition to the public purpose charge provided under subsection (2) of this section, beginning on the date direct access is offered under section 2 (1), chapter 865, Oregon Laws 1999, an electric company shall collect funds for low-income electric bill payment assistance in an amount determined under paragraph (b) of this subsection.

(b) The total amount collected for low-income electric bill payment assistance under this section shall be $10 million per year. The commission shall determine the amount to be collected from a retail electricity consumer, except that a retail electricity consumer shall not be required to pay more than $500 per month per site for low-income electric bill payment assistance.

(c) Funds collected by the low-income electric bill payment assistance charge shall be paid into the Housing and Community Services Department Revolving Account created under ORS 456.574. Monies deposited in the account under this paragraph are continuously appropriated to the Housing and Community Services Department for the purpose of...
funding low-income electric bill payment assistance. Interest earned on moneys deposited in the account under this paragraph shall accrue to the account. The department’s cost of administering this subsection shall be paid out of funds collected by the low-income electric bill payment assistance charge. Moneys deposited in the account under this paragraph shall be expended solely for low-income electric bill payment assistance. Funds collected from an electric company shall be expended in the service area of the electric company from which the funds are collected.

(d) The Housing and Community Services Department, in consultation with the federal Advisory Committee on Energy, shall determine the manner in which funds collected under this subsection will be allocated by the department to energy assistance program providers for the purpose of providing low-income bill payment and crisis assistance, including programs that effectively reduce service disconnections and related costs to retail electricity consumers and electric utilities. Priority assistance shall be directed to low-income electricity consumers who are in danger of having their electricity service disconnected.

(e) Notwithstanding ORS 293.140, interest on moneys deposited in the Housing and Community Services Department Revolving Account under this subsection shall accrue to the account and may be used to provide heating bill payment and crisis assistance to electricity consumers whose primary source of heat is not electricity.

(f) Notwithstanding ORS 757.310, the commission may allow an electric company to provide reduced rates or other payment or crisis assistance or low-income program assistance to a low-income household eligible for assistance under the federal Low Income Home Energy Assistance Act of 1981, as amended, and in effect on July 23, 1999.

(8) In addition to all other charges provided in this section, for the period from January 1, 2000, to the date direct access is offered under section 2 (1), chapter 865, Oregon Laws 1999, an electric company shall collect from its retail electricity consumers an electric bill payment assistance charge. A retail electricity consumer shall not be required to pay more than $500 per month per site for low-income electric bill payment assistance. A retail electricity consumer shall not be required to pay more than $500 per month per site for low-income electric bill payment assistance under this subsection. The statewide total amount collected under this subsection shall equal $5 million per year, prorated for any fraction of a year. The commission shall determine each electric company’s proportionate share of the statewide total amount. Moneys collected under this subsection shall be deposited in the Housing and Community Services Department Revolving Account created under ORS 456.574 and expended for low-income electric bill payment assistance in the manner provided in subsection (7)(d) of this section.

(9) For purposes of this section, “retail electricity consumers” includes any direct service industrial consumer that purchases electricity without purchasing distribution services from the electric utility.

**SECTION 10.** ORS 469.503 is amended to read:

469.503. 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:

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 all 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, 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 sub-paragraph, the council may not adjust the amount of such offset funds based on the actual performance of offsets. After three years from June 26, 1997, 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, or has not been exempt 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)(iii) 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. This amount compensates the qualified organization for its costs of selecting offsets and contracting for the implementation of offsets.

(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 may also consider the costs of particular types of offsets and contracting for the implementation of offsets. The council or any other enforcement action by the council 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.

(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 generation 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 na-
tural 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)] (10)(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 (I)] (10)(a)(C) and (E) to (I).

(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.

(3) Except as provided in ORS 469.504 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.

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

SECTION 11. ORS 469.504 is amended to read:

469.504. (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

(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:

(1) Reasonable and justifiable reasons exist why the state policy embodied in the applicable goal should not apply;

(2) 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

(3) The proposed facility is compatible with other adjacent uses or will be made compatible through measures designed to reduce adverse impacts.

If compliance with applicable substantive local criteria and applicable statutes and state administrative rules would result in conflicting conditions in the site certificate or amended 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.

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) (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 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 or amended site certificate.

(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 12.** ORS 469.594 is amended to read:

> 469.594. (1) Notwithstanding the definition of a “waste disposal facility” under 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.

**SECTION 13.** Notwithstanding ORS 469.300 (10) or any Energy Facility Siting Council rule, a wind, solar or geothermal energy facility or a small generating plant in commercial operation as of December 31, 2001, may not be considered by the council when evaluating cumulative effects within an energy generation area or when determining whether a proposed wind, solar or geothermal energy facility is part of a larger energy facility that requires a site certificate.

**SECTION 14.** Section 13 of this 2001 Act is repealed January 2, 2002.

**SECTION 15.** This 2001 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2001 Act takes effect on its passage.