



ENERGY FACILITY SITING COUNCIL

Marcia Grail ■ Kent Howe ■ Jordan Truitt ■ Cynthia Condon ■ Perry Chocktoot ■ Ann Beier ■ Richard Devlin

Energy Facility Siting Council Meeting Minutes Friday, June 23, 2023, 8:30 a.m.

- A. Consent Calendar (Action Item & Information Item)¹
- B. Application Process Review - Phase 1 Rulemaking (Action Item)
- C. Public Comment (Information Item)²
- D. Goal 3 Exceptions Overview (Information Item)³
- E. Summit Ridge Wind Farm Financial Institution List Request (Action Item)⁴
- F. Muddy Creek Energy Project Appointment of Special Advisory Groups (Action Item)⁵

The meeting materials presented to Council are available online at:

<https://www.oregon.gov/energy/facilities-safety/facilities/Pages/Council-Meetings.aspx>

Call to Order: Chair Grail called the meeting to order on Friday, June 23, 2023, at 8:30 a.m.

Roll Call: Chair Marcy Grail, Vice-Chair Kent Howe, Council Members, Jordan Truitt, Cynthia Condon, Perry Chocktoot, Ann Beier, and Richard Devlin were present.

Oregon Department of Energy representatives present were Assistant Director for Siting/Council Secretary Todd Cornett; Senior Policy Advisor Sarah Esterson; Senior Siting Analyst Christopher Clark; Operations and Policy Analyst Wally Adams and Administrative Assistant Nancy Hatch. Oregon Department of Justice Senior Assistant Attorney General Patrick Rowe counsel to EFSC was also present.

Agenda Modification: The approval of the June 1, 2023 EFSC meeting minutes was be moved to the July 19, 2023 EFSC meeting agenda.

¹ Audio/Video for Agenda Item A = 00:02:22 - 2023-6-23-EFSC-Meeting-Audio/Video

² Audio/Video for Agenda Item B = 00:14:02- 2023-6-23-EFSC-Meeting-Audio/Video

³ Audio/Video for Agenda Item C = 00:47:26 - 2023-6-23-EFSC-Meeting-Audio/Video

⁴ Audio/Video for Agenda Item D = 01:16:17- 2023-6-23-EFSC-Meeting-Audio/Video

⁵ Audio/Video for Agenda Item E = 01:50:14 - 2023-6-23-EFSC-Meeting-Audio/Video

A. Consent Calendar (Action Item & Information Item)⁶ – Council Secretary Report; and other routine Council business.

Council Secretary Report

Secretary Cornett offered the following comments during his report to the Council.

Project Updates

- Lone Pine to Whetstone Transmission Line Project
On June 7th, the Department held a public information meeting on the Notice of Intent in Medford Oregon. The meeting materials and recording are available on the project webpage. Comments on the NOI are being accepted through July 7th. All public comments received will be publicly available through the Department comment portal. Council Member Beier attended the meeting virtually.

Council Member Beier commented there was good discussion with the public raising issues that were of concern to them. Pacific Power tried to respond to the concerns.

- Boardman to Hemingway Transmission Line Project Request for Amendment 1
The requested Amendment 1 includes site boundary additions in each of the 5 affected counties. The total adjustments would include approximately 1,000 acres. On June 14th, the Department issued the draft proposed order including a public notice of the comment period. The public comment period extends through July 18, 2023. The Council will hold public hearings in Baker City on July 17th and Pendleton on July 18th. All the materials for the project are available on the project webpage.

Compliance and Inspections Updates

Council was briefed on incidents and inspections reported at the following facilities:

- Biglow Canyon Wind Farm - Broken blade bearing bolt (6/14/2023)
- Shepherds Flat North, South and Central - Annual Inspection (6/7/2023)
- Columbia Ethanol Project - Virtual Compliance Audit (6/15/2023)

Secretary Cornett noted if Council Members are interested in joining Staff in any of the inspections or site visits, the Department can arrange visits.

Legislative Updates

As of last week, the state legislature has had the quorums needed to conduct their full duties. While things are moving quickly, the Department does not know the status of the bills ODOE is tracking. We will provide an update at the July EFSC meeting as more information will be available.

⁶ Audio/Video for Agenda Item A = 00:02:22 - 2023-6-23-EFSC-Meeting-Audio/Video

Future Meetings

The July 17th B2H Amendment 1 Public Hearing will be held in Baker City at the Best Western Sunridge Conference Room beginning at 5:30 p.m.

The July 18th B2H Amendment 1 Public Hearing will be held in Pendleton at the Oxford Inn Suites Conference Room beginning at 5:30 p.m. with the July EFSC Meeting Day 1 beginning at 4:00 p.m.

The July 19th EFSC Meeting Day 2 will be held in Pendleton at the Oxford Inn Suites Conference Room beginning at 8:30 a.m.

Council Member Condon inquired for the best way to notify staff if a Council Member wishes to join a site visit.

Secretary Cornett answered an email to Duane Kilsdonk and to Secretary Cornett, providing a date range you are available. Most site visits would require overnight stay in the area of the facility and early site visits.

B. Application Process Review - Phase 1 Rulemaking (Action Item)⁷ – Christopher Clark, Senior Siting Analyst. The Council considered staff’s recommendation to initiate phase 1 proposed revisions to the Council’s rules to improve the consistency of rules and the application process.

During the presentation, the following discussion occurred:

Chair Grail asked for clarification of her understanding that the Rulemaking Review is to clarify rules not make overall changes, noting Mr. Kreider’s suggested changes.

Mr. Clark agreed, stating the changes in the draft rules is mostly non-substantive. The purpose of the review is to clean up the language and improve the wording. There are two changes that could be considered substantive, but they are intended to simplify the process and don’t establish new requirements for the applicants. The first is a change to the process for appointing special advisory groups. The second involves the distribution of the notice of intent and the preliminary application.

Secretary Cornett added this is phase 1 of 3 phases of rulemaking updates. This phase is a cleanup of the divisions, which sets up the phase 2 and phase 3 rulemakings. Phases 2 and

⁷ Audio/Video for Agenda Item B = 00:14:02- 2023-6-23-EFSC-Meeting-Audio/Video

3 are an effort to get the application requirements and the standard better connected. While the Department may agree with Mr. Kreider's comments, they are not in the scope of this particular rulemaking.

Vice Chair Howe stated, in a prior meeting he had made a statement regarding the Goal 3 Exception language needing to be "buttoned up". His statement was directed to the applicants work to provide evidence required for the exception. He asked if Phase 1 was the correct place to address what the applicant must provide compared with Staff's work to show they are meeting the requirements of the rule.

Secretary Cornett explained that would occur in phase 3. Phase 3 will be a set of rulemakings looking at specific standards and specific application requirements. Staff will examine if additional direction and/or clarity in language is needed in the application requirements. The question regarding Goal 3 Exceptions would be evaluated in Phase 3 in the land use standards.

Council Member Beier expressed her appreciation of the effort to clearly outline the responsibilities of the applicant and the Department. It creates a cleaner process for the applicant, provides some ease to the Department and helps the public better understand the process.

Mr. Clark suggested Council reflect on the types of required evidence they would like to see in an application for phase 3. The rules can be amended to reflect findings of adequacy for evidence and findings that set the standard for the applicant's burden of proof as well as the standards for what needs to be happening during the design, construction, and operation of facilities.

Secretary Cornett explained the reasons for a change in the rulemaking hearing procedure for the Phase 1 of rulemaking. While most rulemaking public hearings are held before Council during an EFSC meeting, Staff is requesting the hearing for this rulemaking be held separately on July 26th. This will allow Staff flexibility to process the information from the hearing more quickly. Council Members are invited to join the virtual public hearing or review the recording.

Council Member Beier stated her approval for the hearing. She noted that the public needs to know that this is an exception to our general practice. She asked if Staff were to receive multiple comments on the rulemaking, is there an opportunity to change the hearing.

Mr. Clark stated in the Administrative Procedures Act, Council may extend the deadline for public comments and can schedule a new hearing or add additional hearings. The Department would be required to send a new notice.

Chair Grail agreed with Council Member Beier's comments.

Vice Chair Howe motioned the Council authorize the initiation of the Application Process Review Phase 1 Rulemaking as presented and recommended by staff.

Council Member Devlin seconded the motion.

The motion carried unanimously.

- C. Public Comment Period (Information Item)⁸** – This time was reserved for the public to address the Council regarding any item within Council jurisdiction that is not otherwise closed for comment. Applications for Site Certificates which are closed for comment include the Nolin Hills Wind Power Project.

During the Public Comment Period, the following comments were received:

Mr. Jim Kreider

Mr. Kreider stated he is a member of the Rulemaking Advisory Committee (RAC) for the Phase 1 Rulemaking described above and was surprised by the rulemaking process. During the RAC, there was training and an opportunity to comment. There was no discussion after the comments. The only information he has seen from the RAC is in the Staff Recommendation for the Phase 1 proposed in this meeting. He expressed his frustration as there was no dialogue with staff regarding what they wrote, what it meant and how it fit into the overall process. The purpose is to ensure that rules are internally consistent and flow. Mr. Kreider stated he looked over the rules, sections or chapters and rearranged them in an order that made more sense. There was no opportunity for discussion. He stated the process is about the applicant and the staff, with no mention of the public understanding the rules and how they can be involved. He noted there are parts in the process, (request for additional information and Special Advisory Group comments) where the public can gain knowledge and information regarding the “thinking” of Staff and how they are interpreting rules. The public should have a way to interject into this process. He stated, “sitting around your table” are the applicants, the industry, and the regulators. The public doesn’t have the opportunity to be at the table when the work is being done. How can we have a fair process where the public is involved when they don’t have a seat at the table, and one is not being created in the review of the rules. He asked that Council look at his reorganization. He stated informal rulemaking has more discussion amongst the participants than the RAC. He encouraged Council to look at the public participation process and how it is structured. Why would he want to participate if he is not given a chance to explain what he wrote, why he wrote it and how it fits into the bigger picture. He noted he is a member of the Environmental Justice Council. Part of their work is to ensure that environmental justice considerations are embedded in agency’s decision making processes. He does not feel this is happening as it is currently set up. He stated through his work with Stop B2H he learned a

⁸ Video for Agenda Item C = 00:47:26 - 2023-6-23-EFSC-Meeting-Audio/Video

lot about how the public responds and reacts to the rules in EFSC process. He would like to make it better for everyone.

Ms. Irene Gilbert

Ms. Gilbert confirmed her agreement with Mr. Kreider's comments adding anytime Council actions are removed from the public process, it fails to provide the transparency the public has requested. She noted her background as an OSHA trainer, training how to have effective programs in multiple areas. She stated an effective program must have requirements that don't lend themselves to interpretation, that is shows what has to be done when, how it has to be communicated, and how it will be documented to ensure that procedures are followed. She stated that EFSC monitoring and mitigation plans are the only place where it is shown that the developer is complying with the requirements of the site certificate. The only thing that can be determined without the mitigation plans is EFSC decision that the developer is able to meet the standards, not that they will meet the standards. An effective program should not include comments or statements such as "if practical, as permitted, as approved by". She spoke of Pacific Power Corp being found liable for fires. She noted her belief that is part of the consequences of Pacific Power Corp not having an effective program that was specific about expectations, was not communicated and people were not required to follow it. Ms. Gilbert expressed her concern for ODOE responsibilities for the final mitigation plans, which she believes is the most important part of a site certificate. She has reviewed the draft weed management plan proposed by Idaho Power (Ms. Gilbert did not reference a specific project). After reading from the management plan, she expressed her concern that the only area on a site in which Idaho Power is responsible for weed control is the area where the land has been disturbed, and there is no requirement to assure that noxious weeds do not create and disperse seeds. The plan and EFSC state that Idaho Power is responsible for ensuring weeds are identified and controlled as stated in federal, state, county, and other local regulations. She stated the mitigation plan is only meeting "EFSC requirements" and allows for exceptions including ODOE stating the weeds are controlled in an area and certificate holder no longer needs to monitor or control weeds for the life of the project. She stated citizens would have to get an order for the courts to require Idaho Power to manage the weeds that EFSC's plan doesn't require. After reviewing the "Monitoring Mitigation of Weeds for Morrow County", Ms. Gilbert surmised if Idaho Power is not managing and controlling the weeds on their site as required by the state statute, the counties will be responsible for it. She stated as Idaho Power's transmission lines are being built through areas, weeds are being brought into that area. EFSC rules say weeds brought into the area must be a result of their actions that disturb the habitat. The action of putting in a new transmission line provides opportunities for weeds to come in, for which Idaho Power can deny responsibility. The responsibility falls back to the county to take care of the weeds and meet the state requirements. She expressed her concern that the monitoring and mitigation plans don't include critical pieces. The Council allows ODOE to approve the plans without the oversight of the Council and without the opportunity for public comment. She asked for EFSC to request ODOE bring the plans before the Council for review to show the requirements of the state are being met by the certificate holder and

allow the public to comment. She expressed her concern for ODOE overseeing whether Idaho Power is doing an adequate job and are being held accountable for addressing the consequences of building and operating transmission lines.

Mr. Alex Joe

Mr. Joe introduced himself as a California resident and a landowner in Christmas Valley, Oregon. He expressed his interest in the EFSC process, adding it will help make determinations regarding his plan for his property and its available solar aspects. He noted his appreciation for Mr. Kreider and Ms. Gilberts comments. He stated the EFSC meetings he has previously attended have been well organized and contained a substantial amount of public comment to inform and raise the appropriate questions for issues at hand.

Secretary Cornett provided information regarding the upcoming public meeting and the August EFSC meeting likely to be held in Christmas Valley on August 24, 2023.

The Public Comment Period was closed at 9:44 a.m.

- D. Goal 3 Exceptions Overview (Information Item)**⁹– Patrick Rowe, Oregon Department of Justice Senior Assistant Attorney General and Counsel to EFSC provided an overview of the laws governing the granting of exceptions to statewide planning goals and two court decisions that addressed granting exceptions to Statewide Planning Goal 3.

During the presentation the following discussion occurred:

Council Member Devlin asked how the changes effect lands that have been granted exemption from the Agriculture and Forestry goals under previous conditions.

Mr. Rowe stated without seeing the language that granted the exemption he speculated that it would include a “grandfather clause” stating that any legislation rules subsequently passed does not affect the exemption.

Council Member Condon asked if access to water for irrigation enter into the designation of land for exclusive farm use and if so, how often are the designations made.

Mr. Rowe answered the LCDC rule prohibits a solar facility from using more than 12 acres unless an exception is granted. Among the criteria for an exception are considerations relevant to water and access to water.

Secretary Cornett explained high value farmland has statutory definition which is partly based upon types of soils and access to irrigation. Designation of soil classification can be

⁹ Audio/Video for Agenda Item D = 01:16:17- 2023-6-23-EFSC-Meeting-Audio/Video

changed by a change in access to water as the farmland has a different value with or without water. EFSC facilities are typically proposed in areas without water rights or irrigation.

Council Member Condon asked if there is a requirement for applicants to show that they are unable to grow dry land crops economically if they don't have access to water that may preclude an exception.

Secretary Cornett answered it depends upon the circumstances of each property and location. The Goal 3 exceptions are for exceptional circumstances which must justify reasons for an exception. There are variety of circumstances to consider beyond the ground, including potential implications on surrounding farm fields and larger agricultural production in the region. There is a lot of complexity in evaluating any plot of land for a goal exception.

Council Member Beier agreed with Secretary Cornett adding the farmland designations are primarily driven by soil type. Based on her prior work at the County level, she stated if there are no water rights and no irrigation currently, it is highly unlikely that will change. While LCDC rules refer to arable lands, there is also agricultural use to be considered. EFSC needs to consider the indirect impacts in the area also such as impacts to agriculture in the area. There needs to be mitigation to the economic impacts in the area. Each of these cases are going to be site specific and Council will need to make findings relative to that particular site.

Chair Grail expressed her appreciation for Mr. Rowe's presentations as he has been providing continued education and discussion for the Council.

E. Summit Ridge Wind Farm Financial Institution List Request (Action Item)¹⁰ – Todd Cornett, Assistant Director for Siting/Council Secretary. The Council considered a request from the Summit Ridge Wind Facility site certificate holder to add Banco Santander and Key Bank to the list of financial institutions approved to act as issuers of financial instruments related to the Council's Retirement and Financial Assurance Standard.

During the presentation the following discussion occurred:

Chair Grail expressed her appreciation for Council Member Condon's comments and questions regarding Financial Assurance in the past meetings.

Mr. David Skidmore, the internal auditor for the Oregon Department of Energy, provided some of his background to the Council. He noted the rating agencies used in the evaluation of the financial institutions are the "gold standard" for reviewing whether an entity or company is

¹⁰ Audio/Video for Agenda Item E = 01:50:14 - 2023-6-23-EFSC-Meeting-Audio/Video

healthy financially for investment purposes. The ratings are divided into 2 sections, current and future outlook.

Council Member Devlin stated he has done his own independent research into Banco Santander and agreed with Staff recommendation.

Council Member Devlin motioned Council approve adding Banco Santander to the Approved Financial Institution List as recommended by Staff.

Vice Chair Howe seconded the motion.

Council Member Condon asked if previously approved institutions are checked on their current ratings and if there are any with similar ratings to Key Bank.

Secretary Cornett stated we did not review the current pre-approved institutions. If there was a notification of an approved institution having similar ratings to Key Bank, Staff would take the opportunity to review the other institution. He added with the current volatility in the banking industry, there is an opportunity for the Department to reevaluate our protocols for doing the evaluations.

The motion was carried unanimously.

F. Muddy Creek Energy Project Appointment of Special Advisory Groups (Action Item) –

Todd Cornett, Assistant Director for Siting/Council Secretary. Council will appoint the Linn County Board of Commissioners as a special advisory group under ORS 469.480(1) for EFSC proceedings related to the proposed facility.

During the presentation, the following discussion occurred:

Council Member Devlin observed that most of the proposed area for the proposed facility is in active cultivation.

Secretary Cornett confirmed his understanding that is correct. The Department has received the notice of intent which is a generalized overview of the project. Staff does not have the details of the project at this stage in the process.

Council Member Condon questioned if the lines represented in the outline map of the site boundaries are specific tax lots.

Secretary Cornett could not confirm as some project boundaries follow tax lots others follow farm fields. The Department will have the information as the project moves forward.

Vice Chair Howe motioned the Council appoint the Linn County Board of Commissioners as a special advisory group for Council proceedings related to the proposed Muddy Creek Energy Project.

Council Member Condon seconded the motion.

The motion was passed unanimously.

Adjournment

Chair Grail adjourned the June 23, 2023 meeting at 11:25 a.m.

F E M N A L