

Approved Minutes
Energy Facility Siting Council Meeting
Oregon Department of Energy
Boardman, Oregon
May 10, 2007

Energy Facility Siting Council

David Ripma, Chair
Martha Dibblee, Vice Chair
Lori Brogoitti
Jacob Polvi
David Tegart
Bryan Wolfe

Oregon Department of Energy:

Tom Stoops, Council Secretary
Adam Bless, Project Officer
John White, Project Officer
Jill Hendrickson, Administrative Assistant

Oregon Department of Justice:

Jan Prewitt, Assistant Attorney General

Others:

Tom Koehler, Pacific Ethanol
Rick Tetzloff, Portland General Electric
Bob Hall, Consultant for Portland General Electric

Chair David Ripma called the meeting to order at 1:00 p.m.

I. Consent Calendar:

A. Announcements and Introductions

Tom Stoops announced Martha Dibblee will be stepping down in her role at The Climate Trust. Mr. Stoops stated Lori Brogoitti volunteered to be involved in taking Martha's position so that the siting council will continue to be represented.

Martha Dibblee officially nominated Lori Brogoitti to represent the Siting Council at The Climate Trust. David Tegart seconded the nomination and the Council unanimously approved:

Lori Brogoitti	Yes	David Tegart	Yes
Martha Dibblee	Yes	Bryan Wolfe	Yes
David Ripma	Yes		

Mr. Stoops also introduced Jill Hendrickson as the new Administrative Assistant. Ms. Hendrickson took roll of Council members:

Lori Brogoitti	Yes	David Tegart	Yes
Martha Dibblee	Yes	Bryan Wolfe	Yes
David Ripma	Yes		

Martha Dibblee made a statement that she is a member of a class action lawsuit. Upon advice of the Department of Justice this should be made a part of the record.

B. Approval of the January 5, 2007 Energy Facility Siting Council Minutes

Martha Dibblee moved to approve the January 5, 2007 minutes with correction to one scrivener error; Bryan Wolfe seconded the motion and Council unanimously approved:

Lori Brogoitti	Yes	David Tegart	Yes
Martha Dibblee	Yes	Bryan Wolfe	Yes
Jacob Polvi	Yes		
David Ripma	Yes		

C. Approval of the February 2, 2007 Energy Facility Siting Council Minutes

Bryan Wolfe moved to approve the February 2, 2007 minutes; Lori Brogoitti seconded the motion and Council approve unanimously:

Lori Brogoitti	Yes	David Tegart	Yes
Martha Dibblee	Yes	Bryan Wolfe	Yes
Jacob Polvi	Yes		
David Ripma	Yes		

D. Approval of the April 10, 2007 Energy Facility Siting Council Minutes

Jacob Polvi moved to approve the April 10, 2007 minutes; Bryan Wolfe seconded the motion and Council approved unanimously:

Lori Brogoitti	Yes	David Tegart	Yes
Martha Dibblee	Yes	Bryan Wolfe	Yes
Jacob Polvi	Yes		
David Ripma	Yes		

II. Action Items:

A. Biglow Canyon Wind Farm: Request for Amendment #2

John White, Project Officer for Oregon Department of Energy, reviewed the procedural history of the amendment request. Mr. White mentioned letters received were from David Welch, representing the Oregon-California Trails Association and Keith May, representing the Oregon Historic Trails Advisory Council. The issue brought up was the effect of the amendment on the Oregon Trail. Mr. White stated he responded to the letters and enclosed a letter from PGE regarding the issue. Assurance was given that adequate ground survey work was done in the area, and Mr. Welch corresponded again, appreciating the work being done.

Mr. White referred to pages 2 and 3 of the draft Final Order, which he summarized by discussing items 1 through 4, additions to the site boundaries. Items 5 and 6 address components that have been removed from the project, a substation location and a transmission line. Item 7 is a recalculation of the area of temporary and permanent disturbance in terms of acres; items 8 and 10 require additional ground surveys for rare plants and cultural resources in the areas affected by these changes outside the previous site boundary. Item 9 discusses an intermittent stream channel and avoidance of construction in that area. Items 11 and 12 address post-construction mitigation. Item 13 involves removal of a property from a noise sensitive property list. Item 14 eliminates the option to build in a single phase. Item 15 revises the cost estimate of site restoration. Item 16 allows the limited use of PGE's logo to identify the project.

Mr. White said there are no changes to the maximum number of turbines or maximum generating capacity, which are 225 turbines and 450 megawatts of peak generating

capacity. Phase 1 is already under construction and consists of 76 turbines and about 125 megawatts of capacity.

Mr. White continued to review Amendment #2 by discussing the retirement costs. As a result of concerns expressed by Council members regarding the adequacy of financial assurance, the Department conducted an internal review of the risks involved in allowing a deduction for scrap or salvage value in calculating the financial assurance amount. In recent site certificate proceedings, the Department based its recommendations on the understanding that the State would have an enforceable claim to the scrap value unencumbered by the claims of creditors or other third parties.

Mr. White stated the original estimated site restoration cost for the financial assurance was \$6.2 million. The revised amount is \$12.2 million, details of which are shown in Table 2 on page 21 of the Final Order. Staff has recommended changing the language in Condition 9 so that this amount can be reduced by approving the adjustment without an amendment of the site certificate, if the Council decides later to revise the policy on scrap value or otherwise changes the calculation of the financial assurance amount.

Lori Brogoitti asked about substituting the word “adjusted” instead of “reduced.” There was discussion about the language.

Chair Ripma asked about the relationship of scrap value to the size of the site. He asked for an explanation. Mr. White explained that the geographical extent of wind projects increase the cost of site restoration. It would not just be taking turbines down it would include the cost of removing all of the access roads. The roads actually turn out to be a much larger acreage footprint than the typical 40-50 acres for a gas-fired plant. There was more discussion also about reducing the financial assurance costs.

Tom Stoops, Council Secretary, stated Staff’s intention for the language is to make it possible to change the amount as appropriate, rather than go through the process of an amendment. In a partial build out there would be a partial amount of the financial assurance. Jan Prewitt, Oregon Department of Justice, stated the key is the amendment process, which is a procedural matter.

Bryan Wolfe asked if having the word “reduced” would set a precedent. Mr. White said each site certificate is unique, and the Council might add similar language to future site certificates, but it would not be a binding precedent. Ms. Prewitt said it would not change any existing site certificate unless it is added to that project.

Adam Bless commented on the condition being presented and comparing it to the amendment process, which gives the opportunity for public comment and a contested case. Ms. Prewitt stated that if it came down to applying this condition, procedures would have to be reviewed.

Martha Dibblee asked what prompted the change to reduce the amount of the financial assurance. Mr. White stated the calculation of the effect of eliminating the scrap value is significant, not just for Biglow, but for some of the other projects that are larger than

Biglow. State policy is promotion of renewable energy, and Mr. White said this language allows more flexibility to reduce the burden of financial assurance on wind projects if the Council chooses later to change how financial assurance is calculated.

Next, Mr. White reviewed Land Use and a Goal 3 exception. The facility would exceed the acreage limitations of OAR 660-033-0130(17) and OAR 660-033-0130(22). The Council must find, therefore, that an exception to Goal 3 would be justified. The changes in the facility that would be authorized under the requested amendment would alter design and construction details but would not change the proposed land use. The facility access roads would occupy about 3 additional acres of agricultural land, but this incremental acreage would be contiguous with acreage used by the facility as previously approved.

On page 31 of the draft Final Order, Mr. White referred to Rule 15 in Division 24, which states: *To issue a site certificate for a proposed wind energy facility, the Council must find that the applicant:*

(1) Can design and construct the facility to reduce visual impact by methods including, but not limited to:

(a) Not using the facility for placement of advertising, except that advertising does not include the manufacturer's label or signs required by law;

(b) Using the minimum lighting necessary for safety and security purposes and using techniques to prevent casting glare from the site, except as otherwise required by the Federal Aviation Administration or the Oregon Department of Transportation, Transportation Development Branch, Aeronautics Section; and

(c) Using only those signs necessary for facility operation and safety and signs required by law;

Mr. White stated PGE asked to put their logo on 20% of the turbines. Under the current standard, Mr. White stated he didn't feel the logo could be allowed. Staff is proposing and recommending the Council allow the use by changing the language of Rule 15.

Next, Mr. White discussed the Wildlife Monitoring, Mitigation and the Habitat Standard. Some sections discussed and recommended were:

1. Adding a condition requiring the certificate holder to perform a spring rare plant survey in an area crossed by a proposed new collector line segment.
2. Requiring the certificate holder to provide resource survey information (cultural resources, rare plants and wetlands) for an alternative turbine corridor near Klondike Road in the southern portion of the project site.

3. Increasing the area of temporary and permanent impacts to Category 6 habitat by approximately 33 acres and increase the area of temporary and permanent impacts to higher-value habitat by approximately 1.4 acres.
4. Allowing the certificate holder the option to use its own qualified biologists to monitor nest sites for sensitive species during construction, to perform some of the wildlife and habitat monitoring and mitigation activities required under the site certificate, to conduct revegetation monitoring and to conduct monitoring of habitat enhancement in the habitat mitigation area.
5. Revising the boundaries of the habitat mitigation site.
6. Eliminating one property from the previously-identified list of noise sensitive properties, due to a lack of residence on this site.
7. Granting a Department of Environmental Quality (DEQ) exception for new residences that come into existence after turbines are erected. There was discussion about a property owner that has considered building in the area.
8. Adding Condition 127 requiring the certificate holder to avoid construction impact to a stream channel and a wetland.

Mr. White said Staff is recommending approval of Amendment #2.

Chair Ripma asked if PGE would like to comment.

Rick Tetzloff, PGE, thanked the Staff for their help working with PGE.

Lori Brogoitti stated she was in favor of accepting the language the Staff presented in the recommendation regarding the financial assurance. Mr. White discussed this further and stated that Council is not giving up any authority in changing this language.

Ms. Brogoitti stated she did have a problem with the issue of the scrap metal. Chair Ripma agreed and felt more should be discussed before a decision is made on the scrap metal.

Ms. Prewitt suggested making a motion regarding the language in Condition 9.

Martha Dibblee made a motion to approve Amendment 2 with revisions recommended except for those portions that were highlighted on pages 18, 59 and 60 that shall be struck. Lori Brogoitti seconded the motion and Council was polled:

Lori Brogoitti	Yes	David Tegart	Yes
Martha Dibblee	Yes	Bryan Wolfe	Yes
Jake Polvi	Yes		
David Ripma	Yes		

B. COB Energy Facility: Termination of Site Certificate

Adam Bless stated on February 18, 2005, the Council issued a site certificate to COB Energy Facility LLC (COB) authorizing construction and operation of the COB Energy Facility. The site certificate included a condition requiring Summit to begin construction by February 18, 2007. On September 18, 2006 COB submitted a request to extend the deadline for construction by one year. The Oregon Department of Energy reviewed the extension request and sent Request for Additional Information (RAI) No. 1 on November 1, 2006. On December 22, 2006 the Department issued its second RAI. Finally, on January 23, 2007, the Department issued a letter to COB, requiring responses to all RAI's by a date certain.

On February 2, 2007, the Department received a letter signed by COB LLC and People's Energy Resources (PERC), which is the parent company of COB LLC. The letter stated that COB would no longer pursue construction of the facility and was withdrawing its extension request. The letter affirmed that no construction has taken place on the site. In a site visit on November 8, 2006, staff also observed that no construction had taken place.

Bryan Wolfe made a motion to terminate the site certificate for the COB Energy Facility. Martha Dibblee seconded the motion and Council was polled:

Lori Brogoitti	Yes	David Tegart	Yes
Martha Dibblee	Yes	Bryan Wolfe	Yes
Jake Polvi	Yes		
David Ripma	Yes		

III. Information Items:

A. Pacific Ethanol Facility – Council's First Reading of Draft Proposed Order.

Adam Bless explained the process for the draft Proposed Order for the benefit of new Council members. He stated the public hearing was held the previous evening for the public and up until last night there had been no public comment on the draft Proposed Order. OAR 345-015-0230 states that the Council does not take public comment on the draft proposed order during this meeting.

Chair Ripma asked for clarification on who is the applicant. Mr. Bless stated Pacific Ethanol is the applicant and the name of the project is Columbia Ethanol Project, who is represented at the meeting today by Tom Koehler.

Jan Prewitt, Oregon Department of Justice, discussed ex parte, which is contact between a decision maker and any member of the public, without giving notice to all the parties. There was discussion among Council members and Counsel. She stated if Council members have any questions she is available for clarification.

Adam Bless also discussed that the Pacific Ethanol application is now in a contested case, which is mandatory for all applications for site certificate. If there were parties in the contested case, then the next opportunity for the Council to discuss this application would be after the hearing officer's Recommended Order instead.

Mr. Bless stated Pacific Ethanol has already begun construction because of a previous Council exemption in May of 2006, since they could meet the requirement to ship at least 90% of their product by barge or rail.

Bryan Wolfe stated he is an Officer of the Board and Electric Director of Umatilla Electric Cooperative which supplies electricity to the facility. Ms. Prewitt stated 469.450(3) would not apply in this case, so there is no conflict.

Mr. Bless reviewed some of the standards. The general standard involves other agencies. There are no wetlands so there will be no wetlands permit necessary. There will be some DEQ requirements; however Pacific Ethanol is not doing its own wastewater discharge. The amount of reliance on the Port of Morrow limits involvement with other agencies.

Organizational Expertise

Pacific Ethanol Columbia, LLC (PEC) is a subsidiary of Pacific Ethanol, Inc. ("PEI"). PEI is the developer of two existing ethanol production plants: a 35-MMgy ethanol plant in Madera, California, and the 40-MMgy Front Range Energy ethanol project in Windsor, Colorado. PEI would provide the organizational experience and expertise to construct and operate the energy facility. Mr. Bless stated the plant in Boardman will be similar to Madera.

Project participants from PEI have over 10 years of experience in construction, operations and marketing, largely associated with ethanol plants.

The barge facility is being built by Tidewater, a third party not under EFSC jurisdiction. The barge facility will require U.S. Army Corp permit, which Tidewater is in the process of obtaining.

Retirement and Financial Assurance

The final amount agreed upon is \$800,000, and West LVB will provide a bond or letter of credit.

Land Use

The applicant already had the land use done. They chose Path A which involves going through the county. Staff has received documentation from the county and a letter of support from the county Planning Director.

Seismic

This standard has been met. There were some follow up questions from the Department of Geology and information was provided.

Fish & Wildlife

There is a mitigation plan which was jointly written by Pacific Ethanol's biological consultant, David Edwards and Associates and the District Biologist for Oregon Fish & Wildlife.

Mitigation

The mitigation plan consists largely of revegetating a mitigation area elsewhere. That plan is considered Attachment A of the Draft Proposed Order.

Historic, Cultural and Archaeological Resources

There was a lot of discussion on archaeological resources. Staff has recommended conditions for on-site monitoring and limitations on construction, which were determined after long consultations with the state historic preservations officer.

Carbon Dioxide Standards

ODOE recommends that the Council find that there is no applicable carbon dioxide standard for ethanol facilities.

Noise Standards

The Council applies the above ODEQ noise regulation to evaluate the noise that radiates from the facility. The ethanol production facility site lies within the Port of Morrow's Boardman Industrial Park and it is zoned for industrial uses but the site itself has never been used by an industrial or commercial noise source during the 20 years prior to the proposed date of operation. Therefore, under the ODEQ noise regulation, the site is considered a "previously unused industrial or commercial site."

Mr. Bless asked if there were any questions. Hearing none, he proceeded to discuss the Public Hearing held the previous night.

Mr. Bless stated at the Public Hearing the comments received were given by members of the U.S. Steel Workers Union. Mr. Rogers and Mr. Prescott testified at the hearing on behalf of the Steel Workers Union. They said an email should have been received from Patrick Young, also of the Steel Workers Union. Mr. Rogers had read into the record a letter dated May 9th, 2007 from United Steel Workers. At that public hearing Mr. Rogers also stated that if the safety allegations hold true for this facility in his opinion it raises questions as to whether the trucks on the road are safe. Mr. Bless said it is the trucking company's responsibility to make sure the trucks are safe.

Mr. Bless stated that due to these comments received at the Public Hearing regarding safety; this is the only issue that can be brought up in a contested case. People who commented are notified of the contested case with the hearing officer, which they may participate in since they spoke at the Public Hearing.

Bryan Wolfe asked when the facility will be producing. Tom Koehler, Columbia Ethanol, stated they hoped by the end of June.

Ms. Prewitt discussed more information from OAR regarding the public record of communication between staff and Council on any contested case. She reviewed the duties of the hearing officer at OAR 345-015-0023 (6) and also 345-001-0005 which states "Notwithstanding the provisions of OAR 137-003-0055(1), following the issuance of notice of a contested case, the Department of Energy shall enter into the record the substance of any significant contact between a Council member and any Department staff from that point forward, concerning facts in the record."

There was more review of procedures for the contested case by Council members and Staff.

Chair Ripma asked for other comments; there were none. Plans were made to continue the meeting by touring the Columbia Ethanol facility in Boardman.