

Approved Minutes
Energy Facility Siting Council Meeting
Oregon Department of Energy
Boardman, Oregon
May 11, 2007

Energy Facility Siting Council

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

Oregon Department of Energy:

Ken Niles, Assistant Director
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:

Bob Hall

Chair David Ripma called the meeting to order at 8:42 a.m.

I. Consent Calendar:

A. Welcome and Introductions

Roll Call was taken:

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

John White commented on the site maps on the wall of the meeting room regarding the following turbine sites: Klondike III, Biglow Canyon, Leaning Juniper II, and Shepherd's Flat.

There was discussion among Council members and Staff regarding these projects and also existing facilities.

II. Action Items:

A. Rulemaking

Ken Niles, Assistant Director, Oregon Department of Energy, began the discussion about the rulemaking. This rulemaking was primarily a housekeeping and cleanup effort as well as to define and incorporate a few changes and modifications to the rules based on what has been learned in the last few years with wind projects.

The rulemaking began at the direction of the Council in August of 2006. Draft proposed rules were posted to the website in January, followed by two workshops in February and a public meeting on March 27th. Comments were received and Staff engaged with interested parties who had attended the public hearing to discuss several issues.

Some areas of disagreements were related to the proposed deletion of the word "significant" in four areas of the rules. Mr. Niles discussed concerns from industries about the deletion. He advised leaving the word "significant" in the rules.

Some of the rule changes were simply to try to clarify to the applicants the need to discuss projects with other agencies and to get seismic and geo-technical information before submitting their application. Another issue involved information required for permits issued by other agencies.

Two areas Mr. Niles also highlighted were cumulative impacts, and visual impacts. The proposed rule changes for cumulative impacts are discussed on pages 14 and 15 of the

Hearing Officer's Report. After discussions with industries, most of the issues and changes have been worked out.

Lori Brogoitti asked why there is no jurisdiction over small energy facilities and the rationale behind limiting the transportation for the biofuel facility exemption.

John White, Oregon Department of Energy, stated that these requirements are in the statutes. The first wind project that came through the Siting Council was the Stateline facility. At that time the jurisdictional threshold for wind was 25 megawatts. During that legislative session while Stateline was under review for a site certificate, the Legislature passed a bill that raised the threshold to 105 megawatts.

Mr. White explained that the statutes allow an exemption for bio-fuel plants that meet certain criteria, one being no more than 10% of the ethanol can be shipped by truck. The concern was the use of Oregon roads by large numbers of trucks filled with ethanol.

Ms. Brogoitti's concern was that potentially someone could come in and put in a bio-fuel and ethanol plant on the same site and run a rail line to the river and get an exemption, and be a very large plant that EFSC would not have any jurisdiction over, which allows the State of Oregon to not be protected.

Jake Polvi asked if the State of Oregon can choose to have jurisdiction. Mr. White explained that once the legislature allows for an exemption, the developer has to come to the Council and request that exemption, but there is not a lot of discretion for the Council. There are criteria that are specified in the statute and if a developer can show that their proposed facility meets those criteria, the Council must grant the exemption.

Jan Prewitt, Oregon Department of Justice, stated these statutes were adopted in the 2001 legislative session, which was the energy crisis session so legislation was passed to encourage renewable energy. Another item enacted was a provision allowing an applicant who desires a site certificate for a project that is under 35 megawatts of average generating capacity to choose to get a Council site certificate, a one-stop permit, as opposed to permitting in various other agencies. Ms. Prewitt pointed out that if a project is not jurisdictional to the Council, that doesn't mean they get a free ride. Those projects have to meet local permitting ordinances.

Mr. Polvi asked if the Council should be concerned about this. Ms. Prewitt stated that Michael Grainey, Director of the Oregon Department of Energy, is the one that gathers information for legislative proposals. She noted that in Washington the jurisdictional threshold is higher. Tom Stoops stated that there is a 350 megawatt threshold for Washington's siting council but they are looking to change it to match Oregon's 105 megawatts.

Lori Brogoitti asked who is protecting the state. Adam Bless, Oregon Department of Energy, stated that each county land use department has resources to enforce ordinances, which vary from county to county.

Tom Stoops read a letter into the record which was emailed to Dave Ripma, Chair of the Energy Facility Siting Council, on May 7th, 2007 from Tim McMahan, attorney with Stoel Rives, for their client, Northwest Natural, regarding the proposed changes to OAR 345. Their appreciation was expressed and they recommend that the Siting Council approve the proposed rule changes.

Bob Hall, representing Portland General Electric, PacifiCorp, Northwest Natural, and Renewable Northwest, spoke about PGE's support of the hearing officer's report on the proposed rule changes. For PacifiCorp, Mr. Hall read an email from PacifiCorp into the record, showing their support also. Mr. Hall read a statement from Renewable Northwest, requesting adoption of the rule changes. Margaret Kirkpatrick also conveyed her support through Bob Hall.

Lori Brogoitti asked if there was any response from Oregon Department of Fish & Wildlife regarding the proposed rule changes. Mr. Stoops said they have not received any comment from ODFW.

John White, Oregon Department of Energy, explained how the rulemaking review would be done. Highlighted sections (in versions of the proposed rules that were projected at the meeting) are changes that were discussed by the hearing officer's report.

Division 1: General Provisions

There was discussion about definition wording.

Division 11: Council Meetings and Communications

Mr. White discussed notification of meetings. Jan Prewitt brought up the communication issue relating to Council members taking a position of behalf of the Council (345-011-0055). She stated there is a caution here to avoid giving the opinion of the Council.

Division 15: Procedures Governing Council and Department of Energy Proceedings, Including Site Certificate Hearings

Mr. White stated this Division is regularly referred to by staff when reviewing site certificate applications. He discussed changes proposed in 345-015-0190, Determination of Completeness, to make the rule flow better. He discussed adoption of the term "preliminary application" for what was referred to in the past as "the application as submitted" as opposed to "the complete application." Ms. Prewitt stated the "complete application" is when the timing starts on the application process. Mr. White discussed further what determines completeness.

Division 20: Notice of Intent

Mr. White discussed the changes in what is to be discussed at the informational meeting on the Notice of Intent. This was changed to be more in tune with the information people want to hear at the meeting.

Mr. White referred to both 345-020-0011, Contents of a Notice of Intent, and in Division 21, 345-021-0010, Contents of an Application, and stated they should work together. If an applicant needs a notice of intent, the information is organized in the same way as an application. Therefore, changes in Division 20 to correspond to changes in Division 21.

Jacob Polvi asked about Section F, Exhibit G and the reference to potential waters of the state. Mr. White explained what waters of the state means. Also Mr. Polvi asked about Exhibit L “anticipated water use” and whether it should be “anticipated consumptive use.” Mr. White referenced consumption and disposition of wastewater in another section of the rules. Ms. Prewitt also stated this is referencing that water permitting issues would have to be dealt with in the future.

Mr. White noted the use of the newly defined term “reviewing agency” to streamline language in 345-020-0040.

Division 21: Application for Site Certificate

Mr. White described changes involving wording, reorganization and issues relevant to the carbon dioxide standard. Information regarding the CO2 emissions standard has been moved from Exhibit B to Exhibit Y.

Division 22: General Standards for Siting Facilities

Mr. White stated Division 22 has “core standards,” where Council standards are articulated. After consultation with the Department of Geology and Mineral Industries (DOGAMI), the staff proposed changes to 345-022-0020, the Structural Standard, to bring it more up to date.

Division 23: Need Standard For Nongenerating Facilities

Adam Bless referred back to February when the need standard was discussed. The U.S. Department of Energy has been charged by Congress with declaring national interest transmission corridors. These are corridors within which the U.S. Department of Energy, after a federal study, determines there is great need for additional transmission and the need is so urgent that the state process would be pre-empted by the Federal Energy Regulatory Commission.

Mr. Bless stated that one of the toughest standards for a transmission line to meet is need. Not wanting to risk preemption by having the Oregon Department of Energy process get bogged down in the need argument, Staff is asking the Council to find that if the U.S. Department of Energy creates one of these corridors in Oregon they have found need at the federal level. So a presumption of need has been added to the rules if this should occur.

Ms. Prewitt said this is consistent with what the Council has done in the past where the Integrated Resource Plan (IRP) provides evidence of need for certain facilities.

Division 24: Specific Standards for Siting Facilities

Mr. White stated unlike Division 22 which lists general standards for all facilities, Division 24 lists standards for specific types of technology in certain facilities - Wind Facilities, Surface Facilities Related to Underground Gas Storage Reservoirs, Transmission Lines and Energy Facilities that Emit Carbon Dioxide.

In 345-024-0010, Mr. White stated the definition of a wind facility was taken out, which was archaic in defining a wind facility.

In 345-024-0015, more substantive changes were made. The new language focuses the rule on cumulative impacts. Cumulative impacts have always been in the rules, primarily in Section 3 of 345-024-0015. The issue about visual features that could be construed as adverse impacts was taken out of what was Section 1 and added as a new Section 5.

Chair Ripma expressed his concern about dropping the requirement that they don't have advertising on the towers. He stated the new Section 5 is not as clear about the advertising, and he further expressed he didn't feel it should be allowed.

Ms. Brogoitti said she could understand why a company would want to put a logo on their towers. Mr. White said the Staff wanted the language fairly open so they could judge it on a case by case basis. He stated the current rule creates a double standard, allowing logos of the turbine manufacturer but not the certificate holder.

Chair Ripma said he thought the manufacturer's label or signs are required by law. Mr. White said if language is added that restricts advertising, some see it as identification of who owns the property, others see it as advertising. Mr. Bless suggested that Council members drive out to Klondike, stand next to the substation and look up at the nacelles. He said they are very high and not as obnoxious as he expected.

Jake Polvi asked about the manufacturer's labels and if there have been any problems with what already exists on the turbines. Mr. White said there has not been any objection, but so far the locations are fairly remote. The Staff wants to protect renewable energy development, but there needs to be a balance so it doesn't become objectionable; therefore the needs for a case by case review.

Ms. Prewitt stated that a site certificate is a contract entered into and having the language open allows for discussions on a case by case basis.

Chair Ripma also asked about the minimum lighting necessary for safety. There was discussion about lighting. Mr. White stated the one visual objection they have heard about a wind facility is the lighting at night, which is required by the FAA. There was

discussion about whether the lighting is being used to highlight the logo or advertising (it is not).

Martha Dibblee asked about making a definition for adverse visual features. There was discussion about adding to the proposed rules. If Council wants something new added, it will have to be pursued at another time.

Bryan Wolfe stated he felt the Council should request the ODOE, ODFW, any other agencies (including Washington) and Bonneville Power Administration (BPA) to have a legislative agenda to go to the legislature and request a study regarding the cumulative impacts.

Mr. White responded that the issue has been addressed. Recently the National Academy of Science issued a report on cumulative impacts. The California Energy Commission has issued a staff report on addressing cumulative impacts. West Environmental (a consulting firm) works a lot on avian impacts and is addressing the issue.

Mr. Wolfe stated that the Governor has stated his legacy is that this be done in Oregon to lead the way. He further stated the Columbia River corridor is a unique situation that should be dealt with proactively, foreseeing the questions that will be asked in the future.

Chair Ripma agreed and asked if this could be considered. Mr. Stoops stated that Adam Bless and Lori Brogoitti attended a meeting in Pendleton that spoke about this. The Renewables Group at the Oregon Department of Energy has been contacted to figure how to pull information together.

Mr. Wolfe stated his intention is that he wants this brought more to the forefront. Mr. Bless stated there has been a lot of discussion and concern about this, and it will continue.

Chair Ripma and Council decided to move forward with discussion about the remaining rulemaking.

Mr. White next discussed OAR 345-024-0580, the Monetary Offset Rate. The Council can raise the rate if it finds the cost of offsetting a ton of carbon dioxide is economically feasible for the facility to pay. Staff suggested findings to support the increase in the rate. Staff's recommendation was based on the letter from Oregon's Climate Trust which has the details of the evidence and feasibility.

Mr. Bless stated the Department has received Notices of Intent for a coal-fired power plant and a couple of site certificates for natural gas-fired power plants not yet built. Klamath Generation is talking about coming in for renewal of their site certificate and Klamath Co-Generation will have to provide additional carbon dioxide offsets because the original offsets provided in their site certificate did not pan out. The new rates being recommended would apply to these three facilities and nobody has objected yet for this increase.

Staff recommends using the maximum rate allowed by the statute. The proposed monetary offset rate is \$1.27 per ton of carbon dioxide emissions, which is a 50 percent increase.

Mr. White stated procedurally when the discussion about rulemaking is done, there should be two motions – one to address the monetary offset findings specifically and another to act on the rules themselves.

Division 26: Construction and Operation Rules For Facilities

Mr. White stated this division concerns operational rules, inspections and annual reporting.

Chair Ripma asked about inspections and notices to be given. Ms. Prewitt discussed this.

Division 27: Site Certificate Conditions, Amendment, Transfer and Termination and Department of Energy Approval of Gas Storage Testing Pipelines

Mr. White discussed 345-027-0050, and noted changes in paragraph 2 to increase the flexibility of a certificate holder to make a change to a facility without coming back for a site certificate amendment. Certain changes can be done by staff review rather than going through the whole process of amendment.

Bob Shiprack asked about issues of completeness of the projects. Mr. White said the changes in certificate expiration were made to be more understandable. Definitions of expiration and termination were clarified.

Division 29: Notice of Violation, Civil Penalties, Revocation or Suspension

Mr. White stated the only change is changing the wording from “office” to “department.”

Division 30: Research Reactors

No major changes, minor housekeeping

Division 50: Radioactive Waste Materials Mr. White stated there is a statute that prohibits the disposal of radioactive waste except at an approved site. Mr. Stoops referred to a case of 750 lbs of pipe that has sequestered low levels of uranium, which is appropriate for landfill disposal.

Martha Dibblee stated it has more to do with an internal problem than external; risks are faced in a water pathway if it gets contaminated. OAR 345-050-0038 is the proposed new Water Pathway Exemption Interpretive Rule. Ms. Dibblee discussed radioactive materials further.

Division 60: Transportation of Radioactive Materials

Mr. White stated the Council shares jurisdiction over the transportation of radioactive materials with the Oregon Department of Transportation. A few housekeeping changes have been made.

Division 70: Confidential Treatment of Security Program Information

Mr. White said there were housekeeping changes here also.

Division 75 and 76: Specific Standards for the Siting of Nuclear Power Facilities in Oregon

These standards have not been revised for two decades or more. Mr. White stated that these divisions date back to a time when different types of facilities used to have different divisions of rules that applied to each type. The Department of Energy has moved to a more comprehensive approach where all general standards are put in Division 22 and specific standards are in Division 24. Staff recommends retaining Division 76 to make nuclear facilities go through the same process as other energy facilities and also apply the same Division 22 standards, thereby eliminating the need for Division 75.

Discussing Division 76 further, Mr. White said Staff does not anticipate anyone proposing or building a nuclear power plant in the State of Oregon in the near future. It is important to retain Division 76 for the following reasons: 1) To put it in the structure of the current rules; 2) To make clear that if someone were to propose building a nuclear facility, the Council would engage in rulemaking to address the appropriate standards; 3) To be consistent with the statutes that limit the Council's approval of a nuclear power plant only if there is a viable nuclear waste depository and only if there has been approval by a vote of the people to allow a site certificate.

III. Working Lunch:

A. Continued discussion on Rulemaking

Division 92 and 95: Standards for the Siting of Uranium Mills in Oregon and Construction, and Decommissioning Rules for Uranium Mills.

Mr. White stated Division 92 and 95 are a couplet, the same way 75 and 76 are. Staff is recommending retaining Division 92 and 95 with changes to conform to the current structure of the rules.

Mr. White also highlighted Division 92, Rule 14, because of scrivener corrections that need to be made. The cross references need to be corrected. Mr. White read into the record the following proposed change:

“In addition to any other site certificate conditions that the Council may impose, the Council shall impose a site certificate condition that requires the certificate

holder to design, build, operate and retire a uranium mill in accordance with the design standards contained in OAR 345-092-0031(1), (5) and (6), 345-092-0040(1), (2) and (3)(c) and 345-092-0050 and in accordance with any representations made in satisfaction of OAR 345-092-0031(6) and (7) and 345-092-0040(3)(a) and (d).”

Bob Shiprack asked about the company WAVE Energy off the coast, and the largest solar panel company that is moving into Oregon, and whether the current rules are sufficient for solar energy.

Tom Stoops stated that WAVE Energy is being viewed as hydroelectric power, permitted through Water Resources and the appropriate federal agencies and would not be an EFSC jurisdictional process. However, negotiations are being made for participating with Water Resources if the facility emulates the EFSC process of doing WAVE Energy.

Mr. Stoops stated EFSC would not have involvement in a company moving into Oregon. Mr. White stated the jurisdiction for solar is the same as wind: 35 megawatts of average electric generating capacity, equivalent to 105 megawatts peak capacity.

Mr. Bless stated that for years there has been a question of whether the rules should be detailed or broadly written. He stated you can't foresee everything, so to have flexible rules, allowing it to be dealt with when it comes up.

Chair Ripma asked for further questions. There were none.

IV. Action Item:

A. Continued discussion on Rulemaking and Council decision

Martha Dibblee moved that the Council find the cost of CO2 offsets currently exceeds \$4.00 a ton based on empirical evidence in the record of current rulemaking procedures. She moved that the Council further find that increasing the monetary offset rate as provided in ORS 469.503(2)(C)(c) from the current rate of 85 cents a ton to the rate of \$1.27 a ton is economically achievable for natural gas-fired plants based on the analysis provided in the Department of Energy's testimony in support of proposed amendments to rules of the Energy Facility Siting Council submitted at the public hearing on the rulemaking on March 27, 2007.

Lori Brogoitti seconded the motion and Council was polled:

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

Chair Ripma said he would like to have a vote about the minimum lighting being put back in the rules and which procedure to use. Jacob Polvi commented on the language on the rule. Council members and Staff discussed the issue. Ms. Prewitt stated one benefit to have the language in the rules regarding minimum lighting is that the applicant would know that lighting is an issue.

Martha Dibblee moved that the Council adopt the amendments to OAR Chapter 345 as proposed by the Department of Energy Staff at the public hearing on March 27, 2007 with the changes recommended in the hearing officers report of April 25, 2007 and the further conforming changes to OAR 345-020-0011 presented by staff at the Council meeting on May 11, 2007, and with the addition the new Section 6 of OAR 345-024-0015 which text includes the content in (1)(B) of the former rule.

Bob Shiprack seconded the motion and Council was polled:

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

Tom Stoops talked with Staff and Council members about future meeting dates.

Mr. Bless talked about Pacific Ethanol and a decision possibly at the end of June, depending on the applicants.

Mr. White stated in mid-July the Leaning Juniper site certificate application would be ready for the first reading and Klondike II would be ready for decision.

Mr. White referred back to Bryan Wolfe's comments regarding cumulative impacts. There has been a lot of staff work done that is unseen. In order to do this it does need to be on the agenda to have time to discuss it.

Mr. Stoops also mentioned having a driving tour of Cascade Winds.

Chair Ripma asked for any public comments.

Bob Hall thanked the Council and Staff for their hard work.

Chair Ripma asked for other comments; there were none.

Chair Ripma adjourned the meeting at 11:37 am.