

**Minutes  
Energy Facility Siting Council Meeting  
The Dalles, Oregon  
June 30, 2006**

*Approved by Energy Facility Siting Council  
February 2, 2007*

**Energy Facility Siting Council**

Hans Neukomm, Chair  
Lori Brogoitti  
Karen Green  
David Ripma  
Robert Shiprack

**Oregon Department of Energy:**

Michael Grainey, Director  
Tom Stoops, Council Secretary  
Adam Bless, Project Officer  
Catherine Van Horn, Project Officer  
John White, Project Officer

**Oregon Department of Justice:**

Jan Prewitt, (By phone)  
Jesse Ratcliffe

**Others:**

Jesse Groner, Project Manager for PPM Energy  
Dave Filippi  
Carlos Pineda, Orion  
John Larson, Pacific Energy Systems

Chair Hans Neukomm called the meeting to order.

**I. Consent Calendar:**

**A. Announcements.**

Chair Neukomm had all Council members and Staff introduce themselves. He also stated this would be his last meeting due his term being finished.

Tom Stoops, Energy Facility Siting Council Secretary, announced there would be a change in the agenda due to a lack of quorum to make a decision.

Michael Grainey, Director of the Oregon Department of Energy, stated he had an update on the federal regulations (FERC) regarding the financials on the gas facilities and what the state is doing in the way of participation. He mentioned there is a deadline the next week for filing for formal intervention for party status. The Governor's direction is that the two agencies that have federally delegated authority, the Department of Environmental Quality (DEQ) for air and water quality and the Department of Land Conservation and Development (LCDC) for the coastal zone management act, will intervene. The Oregon Department of Energy (ODOE) will file a petition also on behalf of all other state agencies to represent the state in a coordinating role. The position of the ODOE is that state standards should be applied by FERC, even though as a matter of federal law they don't have to, but for a matter of policy the ODOE feels they should. Mr. Grainey also mentioned that this deadline is for the Bradwood facility, the Northern Star. There will also be a deadline coming soon on the Jordan Cove facility in Coos Bay, which the ODOE will also use this basic procedure on, as well as other facilities in the future.

Chair Neukomm asked if the federal requirements are typically more stringent than the state requirements in terms of environmental and safety issues. Mr. Grainey said it is similar, but the ODOE felt there were some areas not addressed by the federal process.

Karen Green asked if the intervention is a right or is it a discretionary decision on the part of FERC. Jan Prewitt, Oregon Department of Justice (ODOJ), said it is a discretionary decision with FERC. Opposition can be filed within fifteen days to the intervention, and she expressed there should not be any problem with ODOE intervening.

Chair Neukomm asked about the local authorities' involvement where the facilities are located. Mr. Grainey said they make that decision individually. Cathy Van Horn said that Clatsop County has filed to intervene, neither as pro nor con but to preserve their right to participate in the process. The City of Warrington has also and Astoria will be deciding soon. The Department of Ecology in Washington State has also decided to intervene also. Ms. Prewitt added that the Nez Perce tribe has also intervened.

Chair Neukomm asked Mr. Grainey if the interests of Oregon are understood and protected. Mr. Grainey said the State's involvement is to protect Oregonian's interest.

Chair Neukomm asked if there were any other comments; there were none.

Jan Prewitt, ODOJ, reviewed the Council's process on the decisions to be made on issuing site certificates. She stated that each facility is stand alone, even though they are next to each other, and the decision is to be made on each individual facility. The core of the Council's decision making authority is in ORS 469.503 which Ms. Prewitt reviewed. She also referred to the Teledyne Wah Chang decision, and also limits to the Council's ability to set policy in reviewing an application.

Tom Stoops reviewed the history for the Klondike and Biglow applications. Council met on May 19<sup>th</sup> the Klondike III Draft Project Order was discussed. On June 6<sup>th</sup> the first reading was done on the Draft Project Order of the Orion Biglow Project, which had different approaches on how to meet Council standards. There was discussion about how the two projects are different, but if the Council could bring them closer together it would be preferred. He also stated that procedural steps have been taken to ensure that the mitigation plans for the two projects are consistent.

For the record, David Ripma joined the meeting which fulfilled the quorum requirements for decisions.

There was further discussion among Staff and Council regarding procedural steps.

Bob Shiprack asked what changes if any were made to the applications since the last meeting. John White said there are two additional provisions that could be inserted in the Klondike Plan. Because of the timing, those two provisions already appeared in the Draft Proposed Order that Cathy Van Horn prepared for Orion. In order to insert those two provisions a supplement was prepared to be a part of the Proposed Order. The two provisions are: 1) In addition to the raptor nest monitoring already in the plan there will be a survey of raptor nests in the vicinity at five year intervals for the life of the project; 2) Rather than doing displacement studies at either of these projects the applicants of both projects are willing to mitigate up front a certain amount of acres. The amount of acreage is based largely on information collected at the Stateline Project. There will be two years of monitoring soon from Stateline and if it changes the assumptions on the mitigation necessary for Klondike and Orion the Proposed Orders allow for the change in mitigation.

Cathy Van Horn explained how they arrived at the two provisions. Bob Shiprack asked how many miles away from Stateline are the two projects. It was stated approximately 100 miles.

Chair Neukomm asked Jan Prewitt about the legal implications on the difference in the conditions of the two projects. Ms. Prewitt said it would not; each site certificate

applicant has to demonstrate that they meet the standards, which have been procedurally written.

## **II. Action Items:**

### **A. Council consideration of the Final Order and Site Certificate for the Klondike III Wind Project**

John White, Oregon Department of Energy Project Officer, introduced Jesse Gronner, PPM Energy Project Manager for Klondike Wind Power III, LLC. Mr. Gronner also introduced Sara McMahon, Andy Leniham and legal representative from Stoel Rives, David Filippi.

Mr. White said the hearing officer John Burgess has provided an order dated June 28<sup>th</sup>, stating that due notice was given for both the Proposed Order and the Supplement. Both of those notices provided deadlines for people to request party status; no requests were received, therefore the Order has been issued for a Final Order. Mr. White also referred to the Draft Final Order which was sent to each Council member. He stated he would respond to comments and questions from Council members before final action is taken.

Mr. White continued by reading text to explain the two provisions. The monitoring was explained and a statistical analysis was done comparing the use before and after construction. The objective of the displacement study was to see if there was a significant reduction in use by grassland bird species within 300 feet of the turbines. The preliminary results from the Stateline study based on one year shows significantly reduced use by grasshopper sparrows and meadowlarks. Wally Erickson, who did the study, believes the reduction is due to temporarily disturbed vegetation near the turbines. Areas have been replanted but it will take several years to reach the pre-construction conditions.

Mr. White said the proposed order for the Klondike III facility does not include grassland bird displacement studies. He also read that to conduct a study you must have sufficient suitable habitat to make a valid statistical conclusion. There is insufficient suitable habitat to conduct a displacement study. Instead of conducting the study the applicant has agreed to implement habitat enhancement mitigation as part of the mitigation plan proposed in Attachment C.

Mr. White asked if there were any questions about the study; there were none.

Mr. White referred to a question asked by Karen Green at the May 19<sup>th</sup> meeting. He stated that in reviewing the Stateline Site Certificate Condition 94, the language does not appear in the Klondike III Proposed Order but in Attachment A, it does appear.

Mr. White asked Council members if there were any questions; there were none.

Jesse Gronner, PPM Energy, expressed some discomfort with the way the additional conditions were imposed.

Lori Brogoitti confirmed what pages were to be inserted in the Proposed Order. Ms. Brogoitti made a motion to adopt the Klondike Final Order without the supplemental pages. There was no second; motion failed.

Karen Green made a motion to adopt the Klondike Proposed Final Order and Site Certificate together with the inclusion of the alternate language in Attachment A. Bob Shiprack seconded the motion. Mr. White said that Mr. Gronner would like to respond before a vote is taken.

Jan Prewitt advised that the motion should be withdrawn if someone other than Council members wanted to make a comment. Ms. Green and Mr. Shiprack withdrew the motion and the second.

David Filippi, attorney from Stoel Rives representing the applicant, introduced himself. Mr. Filippi referred to the May 19<sup>th</sup> meeting comments by the legal counsel and the Department of Energy staff that the applicant far exceeded the standards or met the standards. The understanding was that everything was met except for a couple of items that needed clarification. Mr. Filippi then referred to the June 6<sup>th</sup> reading for another applicant in which additional issues arose; therefore providing the supplement. Mr. Filippi said procedurally it is not necessary to reflect what was discussed at the May 19<sup>th</sup> meeting. PPM is in favor of what was originally proposed at the May 19<sup>th</sup> meeting.

Lori Brogoitti comments that she is impressed at the work Klondike put in, especially because it is good for agriculture.

David Ripma asked why the applicant objects to the new conditions. Mr. Filippi said the amount of additional money and burden should not be tacked on this late in the planning of the project since the concerns were not included in the May 19<sup>th</sup> meeting.

Mr. Gronner said at Klondike there is a lack of suitable habitat to do the study for this analysis, and as this comes in after the fact, he hoped the Council would recognize this and not impose further conditions.

Ms. Green stated she would like to hear from the Department Staff and consultants in response to the notion regarding the lack of suitable habitat to do the monitoring. Mr. White clarified his comments regarding grassland bird displacement studies which Mr. Gronner referred to. Mr. White said there was a lack of suitable habitat for that type of study, and felt Mr. Gronner may have been making a wrong point. Cathy Van Horn explained how the new conditions were drafted.

Mr. Gronner said the point he was trying to make was that he felt if a new condition was to be added, is it really a concern in this area?

Chair Neukomm asked for other comments. There were none.

Karen Green renewed the motion to adopt the Klondike Proposed Final Order and Site Certificate together with the inclusion of the alternate language in Attachment A. Bob Shiprack seconded the motion.

Karen Green said there is little downside to the facilities but the Council does need to collect the best data on habitat impact. She felt the Council did not intend to put Klondike in a difficult position procedurally. The timing was such that knowledge became available at the same time the Council was looking at Biglow, but that should not stop the Council from applying information gained.

Bob Shiprack said that the additional conditions don't look like an inordinate burden, and he felt data should be clearer in the future.

David Ripma said he is always in favor of more knowledge and monitoring. Chair Neukomm agreed with Mr. Ripma, more information is always better.

Council was polled; motion passed:

<b>Lori Brogoitti</b>	<b>No</b>	<b>David Ripma</b>	<b>Yes</b>
<b>Karen Green</b>	<b>Yes</b>	<b>Bob Shiprack</b>	<b>Yes</b>
<b>Hans Neukomm</b>	<b>Yes</b>		

Chair Neukomm signed the documents.

**B. Council consideration of the Final Order and Site Certificate for the Biglow Canyon Wind Farm**

Cathy Van Horn, Oregon Department of Energy Project Officer, began the discussion by explaining the documents.

Cathy Van Horn referred to the comment Bob Shiprack made on the Klondike III project regarding monitoring. Ms. Van Horn said that the Oregon Department of Fish & Wildlife (ODFW) would have liked much more monitoring, but Staff felt that since this is a new policy direction for the Council a small step would be better than jumping in with a lot that would raise controversy.

Bob Shiprack commented that other state agencies deal with mitigation, and he felt the state agencies could work together to "do more with less."

Ms. Van Horn introduced Jesse Ratcliff, Oregon Department of Justice (ODOJ) to explain how to work out where junctions boxes will sit and land use questions. Mr.

Ratcliff said that initially in the county's land use process, the county's rules did not provide for an ability to avoid the setback requirement. Staff's feeling was to not have the property setbacks by using the state rules would take up less farmland and be more consistent with Goal 3.

Karen Green asked where that appears in the Draft Proposed Order. Ms. Van Horn answered on page 44, condition 20.

Ms. Van Horn said there was no request for party status in the contested case and therefore the contested case was closed. She also referred to a letter and an email from the applicant stated that they are not planning to protest anything but they did have some requests. Staff has reflected these requests in the Final Order.

Ms. Van Horn proceeded to review the requests, along with Carlos Paneda, Orion. She discussed the requests on Condition 24 and Condition 36, which Staff agreed to meet. Ms. Van Horn said Condition 73 is identical to the Klondike Order regarding intact segments on the Oregon Trail, which the applicant felt there were none because of all of the farming. Staff did receive input from the Historical Trails Commission and declined Orion's request to change the language on Condition 73.

Next, Ms. Van Horn discussed Condition 75 on page 118, which clarified technical language. Condition 98 on page 133 discussed the noise levels which had minor changes. She discussed software programs to analyze the noise. Orion requested a change in the language regarding the software, which the Staff did not comply with. John Larson, Pacific Energy Systems, explained the reasoning behind the request to change noise analysis software in the future. Carlos Paneda said they would follow the Council's direction either way, but wanted to clarify the way the proposed order is laid out. The applicant's idea was to use the best technology available.

Ms. Van Horn read an email from the applicant's attorney regarding Condition 40, Page 83. This condition says the certificate holder shall not locate turbine towers within 450 feet of any residence or public road with the idea that one should fall there would be a distance for safety. Orion wanted to be able to prove that some roads are within that distance but are not used. The Staff allowed this for roads but not for residences. There was discussion among Council and Staff.

Ms. Van Horn discussed Orion's formula for the number of acres of bird displacement. The applicant does have a habitat mitigation site of approximately 117 acres.

David Ripma said he is surprised new noise software would not compare apples to apples. He also asked how often noise gets monitored. Mr. Graine talked about the assumption and methodologies for noise measurement. Ms. Van Horn said if turbines are moved the noise would be monitored again.

Chair Neukomm asked about wind farms put on hold in California because of problems with radar. Ms. Van Horn said it isn't an issue with Orion's project. John White, ODOE,

explained that the issue is possible interference with military radar but it's not an issue at Klondike III or Biglow Canyon Wind Farm. He continued by saying that the Federal Aviation Administration (FAA) would step in if there was a problem.

Chair Neukomm asked for a motion. Karen Green moved to approve the Final Order and Site Certificate for the Biglow Canyon Wind Farm as presented; Lori Brogoitti seconded the motion, Council was polled and unanimously approved:

<b>Lori Brogoitti</b>	<b>Yes</b>	<b>David Ripma</b>	<b>Yes</b>
<b>Karen Green</b>	<b>Yes</b>	<b>Bob Shiprack</b>	<b>Yes</b>
<b>Hans Neukomm</b>	<b>Yes</b>		

There was discussion between Council and Staff concerning the work on these projects.

Jan Prewitt made an announcement that the ODOE petition to file for intervener status with FERC has been accepted and confirmed.

Cathy Van Horn stated that a Notice of Intent for Shepard's Flat Wind Facility, which is close to Boardman along Willow Creek.

Tom Stoops asked for public comment. There was none.

### **III. Working Lunch:**

Tom Stoops led the discussion regarding future meeting dates. Cathy Van Horn said the Staff expects to receive amendment requests for the wind projects in early August. Mr. Stoops said Klondike III's amendment will probably be later. Mr. White said the amendment for Biglow consists of changes in the certificate holder. Klondike III's amendment has to do with the configurations for the turbines.

Mike Grainey said at the meeting in August, Karen and Hans will probably still be on the Council.

Tom Stoops said that by the end of summer the first application for a bio-ethanol facility. There have been several ethanol facility exemptions but never a full application for one. The one expected would be at the Port of Morrow, with a possible location and site visit. There was discussion about site visits. Cathy Van Horn discussed doing joint site visits.

Ms. Van Horn mentioned there may be a request coming from COB for an extension of construction start dates. Bob Shiprack asked about the COB Energy Facility being sold. Mr. Stoops said he was contacted by a group that wants to purchase the operating company of COB. He further stated that in discussion with Jan Prewitt it was determined that the bonding would have to be changed, which would come by way of amendment.

**IV. Information Items:**

**A. Leaning Juniper Wind Project Hearing Officer Appointment**

Bob Shiprack moved to approve \_\_\_\_\_ as the Leaning Juniper Hearing Officer; Karen Green seconded the motion and Council was polled:

<b>Lori Brogoitti</b>	<b>Yes</b>	<b>David Ripma</b>	<b>Yes</b>
<b>Karen Green</b>	<b>Yes</b>	<b>Bob Shiprack</b>	<b>Yes</b>
<b>Hans Neukomm</b>	<b>Yes</b>		

**B. Rulemaking Discussion**

John White began discussion saying there will need to be a formal action by the Council to authorize the formal rulemaking to go forward. Informal discussions about Council rules will be done. Council rules are contained in Chapter 345 of the Oregon Administrative Rules (OAR), which is divided into subchapters which are called divisions. Mr. White discussed different divisions that the Energy Facility Siting Council deals with.

The primary focus for this rulemaking is siting provisions. The Council has not revised siting rules since 2003. Some rules need to be brought up to date to meet legislative changes and also Staff has gained experience over the last three years, particularly in wind facilities. Mr. White said any comments should be directed to him and he will review this with the rest of the staff. The same procedure used in the past will be done, which consists of public notice, one or more public workshops, participation by major developers that are familiar with the process, a formal public hearing and then Council action.

Chair Neukomm mentioned the rulemaking meetings he attended in the past. Mr. White discussed more about the steps to rulemaking.

Mr. White asked Council members for comments on needed rule changes. Ms. Brogoitti asked about monitoring rules and standards especially for wind facilities.

Ms. Green commented on the Council's ability to reopen a site certificate for good cause. Mr. White said a site certificate is actually a contract. He said the statute allows the Council to apply later adopted laws if there is a significant danger to public safety or to the environment. Jesse Ratcliffe said the Department of Justice is preparing to advise the Council on its authority to reopen a site certificate.

Tom Stoops asked for public comments; there were none.

There being no further discussion, Chair Neukomm adjourned the meeting.