

**Minutes – Approved 1-23-09**  
**Energy Facility Siting Council Meeting**  
**Oregon Department of Energy**  
**Columbia Gorge Discovery Center**  
**The Dalles, Oregon**  
**October 31, 2008**

**Energy Facility Siting Council**

Bob Shiprack, Chair  
Martha Dibblee, Vice Chair  
Lori Brogoitti  
Michael Haglund  
Jacob Polvi  
W. Bryan Wolfe

**Oregon Department of Energy:**

Michael Grainey, ODOE Director  
Tom Stoops, Council Secretary  
Adam Bless, Project Officer  
John White, Project Officer  
Meiko Kristiansen, Administrative Assistant

**Oregon Department of Justice:**

Jan Prewitt, Assistant Attorney General

**Others:**

Charles Barker, Wasco County  
Jill Barker  
Nick Benjamin  
Don Coats  
Sheila Dooley  
Larry Givens, Umatilla County Commissioner  
Brett Gray  
Bob Hall, Portland General Electric (PGE)  
John Hildebrand, Wasco County  
Georgia Macnab, Sherman County  
Glenn Harrison  
Carla McLane, Morrow County  
Mike McArthur, Association of Oregon Counties (AOC)  
Jeff Poppe  
Phil Swain

Chair Bob Shiprack called the meeting to order at 9:35 a.m.

**I. Consent Calendar:**

**A. Announcements and Introductions**

Roll call was taken by Meiko Kristiansen:

<b>Lori Brogoitti</b>	Present	<b>Jacob Polvi</b>	Present
<b>Martha Dibblee</b>	Present	<b>Bob Shiprack</b>	Present
<b>Michael Haglund</b>	Present	<b>Bryan Wolfe</b>	Present

**II. Action Items:**

**A. Biglow Canyon Wind Farm: Amendment #3**

John White, Oregon Department of Energy Project Officer, began the presentation of Biglow Canyon Wind Farm (BCWF) amendment with visual presentations and handouts with maps. Mr. White stated the amendment request, which was passed out at an earlier meeting, was received from Portland General Electric (PGE) on August 11<sup>th</sup>. Public notice was given, copies were distributed to reviewing agencies, and a Proposed Order was issued on September 24, 2008 recommending approval of the amendment. That action triggered another notice period, which expired on Monday October 27<sup>th</sup> for comments or contested case requests; no comments were received.

Mr. White stated the proposed amendment is considered a “clean-up amendment” for the 2<sup>nd</sup> Phase of construction. There is no increase in generating capacity being requested, no significant increase in the physical size of the facility and no increase in the number of turbines.

Mr. White referred to the Biglow Canyon map, pointing out Phase 1, Phase 2 (the phase they would like to begin), and Phase 3, which will include the full build out at some future date. This amendment shifts the locations of some turbines, includes some temporary disturbance (mostly from crane paths), small changes to the footprint dimensions and the facility restrictions.

Lori Brogoitti asked about grayed areas on the map. Mr. White stated the gray area represents the original approved micro-siting corridors.

Mr. White proceeded to give a brief overview of the revisions in the amendment. There will be a recalculation of habitat impacts and the site restoration cost estimate to address the proposed changes to the facility and the site. There is a reduction in the total numbers of turbines. The facility is approved for not more than 225 turbines and in the revised full build-out they are now anticipating 217.

Mr. White said there are requests for revisions of some of the Conditions: Condition 52 to allow some lighting for nighttime construction; Condition 98, which has to do with fire safety, needs revisions to be in conformance with recommendations of the local fire chief; Condition 59, to address potential habitat impacts if turbines or other components are later built in the proposed northward extension of Corridor 3. Mr. White added that this is a potential alternate location for some of the Phase 3 turbines. They don't currently have a proposal for building in there but if they do they will have to come back and discuss the footprint and what the impact will be before they proceed with construction.

Mr. White said there are two new conditions proposed, one addressing a potential state jurisdictional stream which was found during the survey work for the changes in this amendment. The other new condition would address a new Sherman County ordinance regarding setback distances.

There is a set of language changes for mandatory Conditions to conform to the rule changes that the Council adopted in May of 2007.

Mr. White next proceeded to discuss specific details about the revisions.

### **Oregon Department of Fish & Wildlife Comments**

The comments from ODFW expressed concern about turbines being placed within "buffers" of three miles from the Columbia River and one mile from the Deschutes and John Day Rivers. ODFW stated that these buffers were a "conservative" recommendation but were not based on data. The buffer areas would potentially be used by winter geese, bald eagles and other waterfowl and raptors.

The Oregon Department of Energy asked PGE to provide a map showing where these buffers would be and to determine whether existing or proposed BCWF turbines would lie within the buffer areas. PGE provided a map showing that all existing BCWF turbines are outside the buffers when measured from the centerlines of the rivers. Some of the proposed turbine locations, particularly in the extension of Corridor 3 would encroach in those buffers.

Ms. Brogotti asked if ODFW has requested similar situations for sub-jurisdictions. Mr. White said he didn't know if they have, but also stated they haven't on any previous EFSC projects either. Mr. White said the Department expressed concern about the precedent of establishing buffers for wildlife that are not based on data in the record. Also the Department is concerned about the implication of ODFW's recommendation as applied to other counties along the Columbia River or other wind energy projects that have been approved at the State or county level or that may be proposed along other Oregon rivers. Due to these concerns, the Department is recommending not to adopt a buffer zone.

### **Revisions to Original Site Certificate**

Mr. White said there is a procedure for certificate holders to request some modifications to the site certificate without going through an amendment proceeding. This was used with BCWF in July. At that time PGE came to the Department requesting two more structures to be built in the existing O & M Facility pad area. They would not step outside of the existing site boundary, there would be no new impact but it would increase the amount of square footage. This revision, which actually involves five revisions, is listed at the end of the Draft Final Order.

**Land Use: Goal 3 Exception**

In the original site certificate there was a Goal 3 exception. The county's land use analysis first looked at the county ordinances that are to be applied, and then the Council considered whether the facility complied with the applicable statewide planning goal (Goal 3). The Council found that the facility did not comply with Goal 3 because it would exceed the acreage limitations for a "power generation facility" located on farmland. The wind facility, including roads, exceeds the acreage limitation. This means the underlying goal itself is not satisfied, which means an exception must be made.

Mr. White stated that the Council previously approved a "reasons exception" for the original application, and the Department is recommending that the Council adopt and approve the same exception in this amendment. Mr. White said the acreage limitation is a problem and the Department of Land Conservation and Development Commission (LCDC) is aware of the problem and is looking at a possible rulemaking to change the law.

**Land Use: Sherman County Comprehensive Plan**

In June 2007 Sherman County adopted revisions to the Sherman County Comprehensive Plan (SCCP). Those revisions are applicable to this amendment and are discussed in the Draft Final Order on Pages 15 through 19.

Mr. White said for the most part the changes are not really in substance; in some cases it is just a reorganization of the numbering where various goals or policies fall within their comprehensive plan. Each of the changes applicable is discussed in the Draft Final Order.

The Department recommends that the Council find that the changes proposed in the Request for Amendment #3 are compatible with the applicable goals and policies of the SCCP (as updated in 2007).

**Land use: New Sherman County Ordinance 39-2007**

Mr. White said this is a new Sherman County Ordinance, which is a wind power setback ordinance, discussed at Pages 19 through 21. Briefly, the Ordinance says that in the absence of a negotiated agreement there is a specified setback distance for the location of wind turbines relative to the neighboring property that is not part of the project. This is a distance calculated based on rotor diameter. If the neighboring property already has turbines on it, the ordinance specifies a different distance measured to the nearest turbine.

The distance measured by rotor diameter is greater for properties lying to the east or west than properties north to south (due to the prevailing wind factor).

The ordinance was adopted in November 2007, and therefore was not in place when the original project was approved. The new ordinance would not apply to the already approved corridors, but anything outside of what has been approved must go through an analysis. PGE has noted there are at least four potential turbine locations that would not comply with the distances required by the new ordinance. PGE has acknowledged they would either need to negotiate an agreement or get a variance. A variance in this case would be a Council decision.

PGE is not asking for any variance as part of this proceeding on this Amendment #3. They did propose a new Condition 128, which the Department is recommending and is discussed as part of Revision 20. That condition says that PGE would either get an agreement with the neighbor or seek a variance from the Council before constructing any turbines that would fall within those setback distances.

### **Protected Areas**

Mr. White said that when the Department of Energy Staff analyzed whether the facility would have a significant adverse impact, a number of impacts were looked at – noise, traffic, water and wastewater and visual impacts. With BCWF, the Council previously found there would be no significant adverse impact on any protected area. That finding was based on the visual impact analysis that in turn was based on turbine locations at that time. The analysis was based on turbines that had a hub height of 85 meters and a blade tip height of 125 meters. In this amendment request PGE has proposed to shift locations of some of the turbines and to use a different turbine, which has a lower hub height but the blade tip height is 1½ feet higher.

Mr. White discussed the three protected areas associated with the John Day River, which are the only protected areas within five miles of the site. The John Day Wildlife Refuge is protected because it provides wildlife habitat. The visibility of parts of the BCWF from locations within the wildlife refuge would have no significant impact on the protected area.

Mr. White explained the location of the protected areas and referred to visual maps on display. Based on computer modeling provided by the applicant, although some BCWF turbines would be partially visible from some locations within the John Day Federal Wild and Scenic River and the John Day State Scenic Waterway, the visible parts of the facility would not result in a significant adverse impact. Revision 9 on page 49 outlines the language of the revision.

### **Siting Standards for Wind Energy Facilities**

Mr. White said part of this standard includes measures to reduce cumulative impacts including “Using the minimum lighting necessary for safety and security purposes and using techniques to prevent casting glare from the site.” Mr. White said in this

amendment PGE requested the use of limited lighting for nighttime construction, and has proposed a change to Condition 52 to allow this. The certificate holder gave two reasons that would justify nighttime construction. First, for structural integrity of the turbine towers, the concrete foundation base and pedestal are each placed as monolithic pours of concrete. If construction occurs in late fall, foundation and pedestal placements start before daylight in order to complete the pour in the available workday. Also, erection of turbines is done in low-wind conditions for safety of construction workers. The local winds often die down late at night, and the revision would allow work during nighttime, using lights. The Department is recommending the Council approve this change. Revision 12 discusses this and includes provisions requiring where the light will be directed, requiring the approval of the owners of property on which the work is conducted and requiring notice to occupants of all residences within ½ mile of the construction site where lights would be used.

### **Fish and Wildlife Habitat**

Mr. White referred to pages 31 through 34 for discussion about the small increases in impact. This increase triggers the need to change the mitigation acres specified in the habitat mitigation plan. There will be less than an acre actual increase in the footprint area but the mitigation design also includes some additional acreage for a presumed displacement impact. The proposal is to increase that by two acres. Revision 14 discusses this and also attached to the Draft Final Order is Attachment C, a revised Habitat Mitigation Plan.

The existing mitigation site for this facility was oversized to begin with. Because the site is already bigger than required, PGE will not have to increase the mitigation area. This is discussed in Revision 13.

Mr. White also spoke about Condition 129, which is Revision 21 and the Department concurs with PGE's request. A certificate holder shall avoid any disturbance within 25 feet of the stream channel in the area identified as "Stream Crossing H" and shall install any collector line through the area by tunneling or drilling beneath the stream channel. The revision addresses protection of potentially State-jurisdictional water.

### **Public Health and Safety**

Mr. White referred to page 42 of the Draft Final Order. In March 2008, Fire Chief Rod Asher of the Northern Sherman County Rural Fire Protection District advised PGE that a "trailed vehicle" should not be used to provide fire suppression water to the site, considering the terrain and the risk of fast-moving fires. Instead of a water trailer, Chief Asher recommended that PGE obtain a fire-suppression vehicle capable of carrying a minimum of 1,000 gallons of water and equipped with "a pump capable of delivering 100 gallons per minute and a minimum of 100 feet of booster line."

Department of Energy Staff recommends that Condition 98 be changed to require compliance with the recommendations of the Fire Chief. This is discussed in Revision 17 of the Draft Proposed Order.

**Housekeeping Updates**

Mr. White said that approximately twenty mandatory conditions of the site certificate, which are verbatim from the Council's rules, are listed in the BCWF site certificate. In May 2007 the Energy Facility Siting Council amended those rules; therefore the Department is proposing changes to those conditions to conform to the rule language. They are all listed in Revision 19.

Chair Shiprack asked if there were any questions from Council members. There were none.

Martha Dibblee moved to approve the Portland General Electric request for Amendment #3 of the Site Certificate for the Biglow Canyon Wind Farm, with revisions recommended by the Department of Energy based on findings in the Draft Final Order presented at the EFSC Council meeting. Jacob Polvi seconded the motion and Council was polled:

<b>Lori Brogoitti</b>	<b>Yes</b>	<b>Jacob Polvi</b>	<b>Yes</b>
<b>Martha Dibblee</b>	<b>Yes</b>	<b>Bob Shiprack</b>	<b>Yes</b>
<b>Michael Haglund</b>	<b>Yes</b>	<b>Bryan Wolfe</b>	<b>Yes</b>

(Short Break)

**B. Request for Contractor for Stateline Wind Project Amendment Request**

John White announced an amendment request from the Stateline Wind Project in Umatilla County. There has been a redesign of the third phase of the project and also a partial transfer of the site certificate. The Department would like to request the Council to approve the use of the Council's contractor in reviewing this.

Bryan Wolfe made a motion to authorize the Department to hire the Contractor for the Stateline Wind Project Amendment. Michael Haglund seconded the motion and Council was polled:

<b>Lori Brogoitti</b>	<b>Yes</b>	<b>Jacob Polvi</b>	<b>Yes</b>
<b>Martha Dibblee</b>	<b>Yes</b>	<b>Bob Shiprack</b>	<b>Yes</b>
<b>Michael Haglund</b>	<b>Yes</b>	<b>Bryan Wolfe</b>	<b>Yes</b>

Mr. White had packets for all Council members regarding the Amendment Request.

**C. Termination of Summit Integrated Coal Gasification Project NOI**

Adam Bless, Oregon Department of Energy Project Officer, stated that in September of 2006 a Notice of intent (NOI) was received from Westward Energy LLC (Summit) to construct a 366 megawatt Integrated Coal Gasification Combined Cycle (IGCC) electric generating plant near Clatskanie, near Port Westward.

The Department issued the Project Order on February 5, 2007, held public information meetings and by Council rule an applicant must submit their application for a site certificate within 18 months of the Project Order. The date of expiration was August 6, 2008. The Department has corresponded with Summit Westward and they have no plans to submit an application. By rule, the Department is recommending the Council approve the Order terminating the project. If they want to reapply, they have to start from the beginning again.

Chair Shiprack asked if there were any questions. There were none.

Martha Dibblee moved to adopt the Order Terminating the Summit Westward LLC, IGCC Project. Bob Shiprack seconded the motion and Council was polled:

<b>Lori Brogoitti</b>	<b>Yes</b>	<b>Jacob Polvi</b>	<b>Yes</b>
<b>Martha Dibblee</b>	<b>Yes</b>	<b>Bob Shiprack</b>	<b>Yes</b>
<b>Michael Haglund</b>	<b>Yes</b>	<b>Bryan Wolfe</b>	<b>Yes</b>

### **III. Information Items:**

#### **A. Golden Hills Wind Farm Project Draft Proposed Order Briefing**

Adam Bless, Oregon Department of Energy Project Officer, stated the Draft Proposed Order for the Golden Hills Wind Farm Project has been issued and the Public Comment Period is in process. The Hearing was held on October 27<sup>th</sup> in Moro, presided over by an independent Hearing Officer, John Burgess, who is present at today's meeting.

Mr. Bless said the application was originally received in August 2007 and at the time had several levels of incompleteness. Some ideas needing more information were the habitat mitigation plan, noise analysis and questions about the tower line route. There was also a change in the footprint of the proposed corridors.

In December of 2007 the Department learned the applicant had also changed their plans for the transmission line that would carry power to the Klondike Substation. Originally Golden Hills was going to build their own transmission line but they made a deal with Iberdrola, so their powerline would be a shared powerline, one pole with two sets of wires. The Department is allowing the applicant to take credit for the Hay Canyon permitting process. The line has been reviewed by Sherman County.

Mr. Bless said the public notice and comment period was extended to capture new property owners. Comments were received and are included in detail in the Draft Proposed Order. The Draft Proposed Order was issued October 6, 2008, notice was given and the comment period will expire November 10.

Mr. Bless continued by discussing some of the issues that make this project different than Klondike and Biglow.

**Powerline Treatment** In prior orders this won't be seen but this is allowed as a third party permit rule in the Organizational Expertise Standard. The Attorney General's Office has confirmed this as a legitimate treatment.

**Habitat Mitigation Monitoring** The monitoring was changed from prior examples. Most plans seen so far have shown a great deal of monitoring in the first two years, mitigation based on that monitoring, and then not much monitoring for bird fatalities after that. The Department received a lot of comment from the Fish and Wildlife Department and from consultants saying monitoring in the first two years has been covered by the existing wind farms. Mr. Bless stated he felt this will be a progression that will be seen in the future. On Golden Hills, if the project is built, this will be the first time what the avian mortality impact is after the plant has already been in existence for five years. This is a change from past site certificates which is one of the more significant changes in this Order.

**Noise Standard** Mr. Bless said this is the most significant difference in the Draft Proposed Order. There has been extensive noise modeling on all of the wind farms. The output of that modeling is usually a set of maps that have contours that show where the wind turbines might be, where all the houses are relative to the turbines, and what the increase in decibel level is above ambient for every one of those houses. If the increase is more than 10 dBA it does not meet the Department of Environmental Quality (DEQ) Noise Standard and the applicant can either buy a waiver from that homeowner or redesign their facility to bring it back down under 10 dBA.

Mr. Bless explained more on the contour maps used for the noise analysis. These probably are not based on the final design configuration because the final alignment is not licensed – it is the corridor that is licensed and the applicant has the flexibility to put their turbines anywhere within the corridor. Any noise analysis has to be based on reasonable assumptions and the applicant is directed to make conservative assumptions (meaning the worst case analysis). The Department has generally required the applicant to redo those noise calculations once a final design is determined.

With Golden Hills Mr. Bless stated he went a step further due to response from public comments. A Condition has been proposed for post-construction noise testing. After the facility is built and at the start of operations, additional noise testing will be required to verify those houses not required to issue waivers but that need to rely on the computer

codes, will have the accuracy checked on the computer codes. This is one major difference in previous Draft Proposed Orders.

Mr. Bless reported there was a large turnout at the Public Meeting held October 27 and some members of the public were expected to come to this meeting today. Once that meeting is reconvened today, the Hearing Officer John Burgess will be following the proper procedures.

Jan Prewitt, Oregon Department of Justice, verified this public hearing will be held at the conclusion of the EFSC meeting. The goal is to maintain the integrity of that public hearing record and have Mr. Burgess be in charge at that point.

### **B. Voluntary Siting Guidelines for non-EFSC Projects**

Tom Stoops, Energy Facility Siting Manager, Oregon Department of Energy gave an update on projects not within Council jurisdiction. He stated nearly two years ago a dialogue was started with developers, legal staff, technical resources and others about impacts on birds and bat species due to the proliferation of wind projects in Eastern Oregon. That led to pulling together a round table group that had regulators from Oregon and Washington State, rate based developers and independent power producer developers, members from various environmental communities, county commissioners and county planners. The purpose of the group was to try to get representatives from those various parties to talk about how to approach the mitigation concern.

Mr. Stoops said there was great participation from all involved and the document is listed on the Department of Energy website, along with the Department of Fish and Wildlife website.

Carla McLane, Morrow County Planning Director, discussed the meetings, the outcome and the future results.

### **C. Association of Oregon Counties Update**

Tom Stoops gave an update on working with the Association of Oregon Counties (AOC) regarding siting facilities. He said the two largest issues are 1) Developers choosing their process, whether going through the county process or EFSC and 2) the notion of the counties being able to recoup their costs. Part of what goes on simultaneously is that some of the Northeast counties had a meeting on October 16<sup>th</sup> because of the issues and concerns and how they can approach them.

The Department is also working with the AOC to draft a Memorandum of Agreement that would set the stage for a county needing expertise on a project they could go to a state agency to acquire that technical expertise and then compensate the state agency.

Mike McArthur, Executive Director, Association of Oregon Counties agreed with Mr. Stoops. He also stated that counties are moving towards recognition that the local processes need to be standardized. There will be an AOC Annual Conference in November and Mr. McArthur expected more on the standardization process at these meetings.

Lori Brogoitti asked if anyone from the Oregon Department of Energy would be involved. Mr. Stoops confirmed that someone would be there.

Bryan Wolfe stated that he has been following the efforts of the counties and the Department of Energy to try to come to a resolution to forge forward.

#### **D. Letters of Credit**

Tom Stoops, Energy Facility Siting Manager, asked Jan Prewitt, Oregon Department of Justice, to join in the next presentation.

Mr. Stoops stated they have been notified by providers of Letters of Credit that some Letters of Credit will not be renewed. The Council accepts a Letter of Credit for performance bond for retirement of a facility. These are renewed annually and adjust the rates, depending on inflation.

Notifications received are from The Bank of Tokyo and from Wachovia as they are going through their buyout by Wells Fargo. Mr. Stoops said this may be something the Council will have to act on in the near future, since the Council always has to approve the form and content of the Letter of Credit.

Ms. Prewitt stated that banks are pulling back on giving credit. The Letters of Credit have a 60 day notice of non-renewal requirement. The first 30 days is for the applicant to go out into the market and provide substitute security, whether a letter of credit or a surety bond, they have the opportunity to comply. The last 30 days are the period of compliance or a draw on the letter of credit will be done. Ms. Prewitt said the Department will make arrangements and there will be no default. Approving the new Letters of Credit could possibly be done by a telephone meeting. There is also the possibility of applicants proposing to provide different kinds of security than what the Council is currently accepting, due to the financial markets turmoil.

Ms. Prewitt said a corporate hearing fee may be proposed and that form is not currently allowed in the rules. The Council may be involved in rulemaking in order to accept this. The Bank of Tokyo expires on December 1, 2008, so action will have to be done in November.

Jake Polvi asked for clarification in the process if there are no options available. Ms. Prewitt said the Council is a beneficiary on the Letter of Credit. Before the Letter of

Credit expires, in order to remain secure, EFSC would draw on the letter of credit, put it in an account and manage it. This in itself would need to be approved by EFSC.

Ms. Prewitt said another Letter of Credit has been renewed in the last month, so some banks are allowing letters of credit.

Chair Shiprack asked if there were any questions. There were none.

Chair Shiprack asked for public comments.

John Hildebrand introduced himself. He lives three miles east of Wasco and is the third generation on the farm. He was one of the first three landowners affected by Klondike I, and has been around the wind turbines since 2002. Mr. Hildebrand said it bothered him to hear people complain about the noise, and said he is glad to see the wind farms. He felt the recent articles in the newspaper were terrible allegations.

Mr. Hildebrand stated he found two dead geese at the base of a turbine, which he assumed had been hit by a turbine blade. He immediately told the Project Manager. Later on he found out they were planted there by an objector.

Bob Hall, Portland General Electric, wanted to thank the Staff and Council for their work on the Biglow Canyon Wind Farm.

Chair Shiprack made a comment in regard to the tour of the Dittmer Center. He referred to facilities being sited and what happens in regard to the power integration into the grids.

Mr. Shiprack also asked Mike Grainey, Director of the Oregon Department of Energy, for an update on the Governor's Advisory Group.

Mike Grainey said there was an Energy Summit last month and the Governor's desire is to have a Council similar to the Council of Economic Advisors on the state level focused on energy that he can rely on and have their input on major policy issues. Mr. Grainey said ODOE does conduct an energy plan every two years that covers a broad variety of issues but the Governor is looking for a public process that would review the kinds of issues included in the ODOE plan.

Mr. Grainey said possibly in the next few weeks there may be an Executive Order issued by the Governor that would outline and appoint the Advisory Group.

There was discussion from Jan Prewitt regarding the public hearing that would be held immediately following the EFSC meeting. Ms. Prewitt cautioned Council members that what would be heard in the public hearing may or may not be presented for the Council's decision on the case if there is a contested case.

There was discussion regarding upcoming meeting dates, and the need for the Letters of Credit decisions.

Charles Barker, a resident of Wasco County, made a comment for the record. He stated that three meetings back he was present and different people were present that stood up and gave testimony on projects and then “put another hat on” as a citizen to talk for the county. Mr. Barker asked how fair that was for the rest of the public who only get to comment at the end.

Mr. Barker also commented that the wind people need to bring in their own subsidies for themselves. He felt residents are going to be stuck paying for their infrastructure.

Chair Shiprack adjourned the meeting at 11:45 a.m.