

Minutes
Energy Facility Siting Council Meeting
Columbia Gorge Discovery Center
The Dalles, Oregon
November 3, 2006

Approved by Energy Facility Siting Council
February 2, 2007

Energy Facility Siting Council

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

Oregon Department of Energy:

Mike Grainey, Director
Tom Stoops, Council Secretary
John White, Project Officer
Shelley Carlson, Administrative Assistant

Oregon Department of Justice:

Jan Prewitt, Assistant Attorney General

Others:

Jerry Cordova, Oregon Department of Fish and Wildlife
Jesse Gronner, PPM Energy
Sara McMahon, PPM Energy
Rick Tetzloff, Portland General Electric
Bob Hall, Consultant for Portland General Electric

Chair David Ripma called the meeting to order at 9:30 a.m.

I. Consent Calendar:

A. Announcements.

Chair David Ripma introduced the two new members, Jacob Polvi and Brian Wolfe. Tom Stoops announced there is a new digital recorder for the meetings, so there is a change with the microphones.

B. Approval of the June 6, 2006 Energy Facility Siting Council meeting minutes.

Martha Dibblee noted a few scrivener errors. Ms. Dibblee moved to approve the June 6, 2006 minutes with errors corrected; David Tegart seconded the motion and Council was polled:

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

C. New Member Briefing

Jan Prewitt, Senior Assistant Attorney General with the Oregon Department of Justice introduced herself, as being the contact attorney for both the Department of Energy and the Energy Facility Siting Council.

Ms. Prewitt said everybody on the Council has received a book that has the Council's rules and the applicable statute, ORS 469. She said she would focus discussion mainly on siting, rather than the nuclear aspect of the Council's authority. In the past 8 years that she has worked with the Council there has been very little nuclear. Ms. Prewitt referred to the APA Manual put out by the Department of Justice each year which has all of the rules and statutes relating to rulemaking and to the conduct of contested cases. The other book for Council members is the Attorney General's Public Records and Meetings Manual, from which Ms. Prewitt highlighted points.

Ms. Prewitt referred to the Governor's Membership Handbook for Boards and Commissions, which has an overview of the expectations for Council members. She stated the handbook is located on the website. There was some discussion about ethics laws and the participation of Council members. For records handling, any records taken by Council members should be turned over to the Department of Energy for archiving when done.

The Council's determination of whether to grant a site certificate is called the standards based process. ORS 469.501 instructs the Council to adopt standards for the siting of energy facilities and leaves to the Council what standards to adopt. The Council standards are found in Division 22 of the Oregon Administrative Rules (OAR) Chapter 345; Application Requirements are in Chapter 21; Procedural Requirements in Chapter 15 and Definitions in Chapter 1. Mr. White noted that Chapter 24 also has some additional specific standards.

Ms. Prewitt stated Council members have authority to direct staff to conduct research relating to all aspects of site selection. In the past the Council determined what sites were suitable; they no longer do this because applicants of energy facilities come with a site that they want to develop. The council has authority over site selection for a nuclear waste site.

Council members have rulemaking authority and the obligation to adopt rules, standards for siting, and also implementing energy policy for the State of Oregon, if it is not done by the Department of Energy. Ms. Prewitt read from ORS 469.501, which addressed land use and statewide planning goals.

The Council also has the authority to balance its own standards against the public benefits of the facility. Even if an applicant doesn't satisfy all standards, the council can grant a site certificate if the overall public benefit of the facility outweigh the damage of the resources protected by the standards that the facility doesn't meet.

Ms. Prewitt pointed out to Council members the limitation of employment by a site certificate holder for 2 years after serving as a Council member.

There are two primary functions of the Energy Facility Siting Council:

1. Adoption of Standards. The Council has the authority to do the policy making for energy facility siting by doing rulemaking. The Council has a long history of developing rules and standards that have been applied through numerous processes. The Department of Energy Staff has great knowledge and always looks for ways that they can be improved, which is what rulemaking does.
2. Siting Role. This is a determination by the Council whether a facility meets all of the standards that the Council has adopted, complies with other applicable rules and statutes, and meets land use requirements.

Ms. Prewitt said in reference to ORS 469.401 is the central information about a site certificate and what it does. It is a contract between the State and the applicant, binding on all State agencies. All state permits are lumped into the site certificate. EFSC does not act for state agencies that are exercising delegated federal authority.

Other things that are related to the site that aren't necessarily EFSC decisions are building permits. If the applicant does not do what they are supposed to under any permitting process it is a violation of the site certificate.

A Notice of Intent (NOI) was explained to Council members. This is an informal process, giving the public a chance to voice an opinion over where someone would like to build a facility. At the end of that process the Department of Energy issues a Project Order. The Order lists all of the applicable statutes and rules that they have to comply with in order to get a site certificate. There are exceptions to the requirement to provide an NOI, which is an expedited review.

John White, Oregon Department of Energy, talked about the two different types of expedited review: 1) expedited review for a special criteria facility and 2) expedited review for a facility based on generating capacity being below a certain capacity. Mr. White said that most wind facilities are of this type of expedited review and NOI is not needed.

Ms. Prewitt also noted that in the NOI process, when the project order comes out, it is not a final document and can be amended. This is a management tool to help get to the site certificate. These documents are sent for comment to all state agencies that may have an interest in the facility. There is a comment period at that time and an informal request for more information. Once the application is complete it is called a filed application, ready for actual review which starts a timeline. The Department of Energy next issues a Draft Proposed Order, which goes through another public process. The participation in the public hearings governs who can be heard in the future regarding the facility. If issues are raised, there would be a contested case. All information is considered and the Department next issues a Proposed Order, with consideration of whether there is a contested case. The Council reviews the Proposed Order, which prohibits Council members from taking any new information that comes in off the record. The Council issues the Final Order which is subject to Supreme Court review.

Martha Dibblee mentioned the flow chart in the front of the rule book and the need to have it updated, which Ms. Prewitt agreed also.

Ms. Prewitt said an appellate review is directed to the Supreme Court. When someone petitions for review at the Supreme Court the Staff has seven days to put the record in and get it to the Court. The Court has basically six months to decide whether the Council acted within its authority and whether there was substantial evidence in the record to support the Council's determination. The applicant pays the cost of the ODOE and the Council's review of the application and participation if there is an appeal.

Mr. Graine discussed more information regarding exemptions. Ms. Prewitt suggested Council members read ORS 469.300 for definitions and ORS 469.320 for more information on site certificate requirements and exemptions.

Next, Ms. Prewitt discussed important cases that have taken place, that are relied on a lot. One in particular is PGE vs. BOLI, which is what the Supreme Court has laid out as the method for interpreting statutes, looking at the text and context.

Ms. Prewitt also reviewed other important EFSC cases, one being the Marbet case, which gives a direction from the Court as to what constitutes a standard. She also said if any Council member wants to read more about these cases she would get all documents to them. A fundamental principle of the job is to minimize the environmental impact. In adopting rules during rulemaking, if there are things to be changed, they specifically take a look as to whether thinking as a legal matter, the fiscal impact statement would cover the rule as it is finally adopted.

ORS 469.504 is the statute that governs the compliance with statewide planning goals. There was review on interpretation of this statute.

Public Records disclosures act was discussed, which is a disclosure act, not a protection act. Certain kinds of information are protected, most notably historic preservation. Agreements are entered into saying “to the extent we can” we will protect this, which means there will be a fight before giving out information. The meaning of public meetings were discussed, which doesn’t necessarily apply to social gatherings, and also to site inspections. Any meeting to work to deliberate or have a work session to work towards a decision is a public meeting, unless it’s an executive session. Executive sessions can be held when there is legal advice to be given that’s not public, for example, related to litigation.

Mr. Grainey also mentioned when security plans are discussed, for example the Trojan Nuclear Plant was not an open public meeting.

Minutes are required to be taken at a public meeting. Individual voice votes are required, which also require five members for a quorum ORS 469.460. There has been concern in the past about deliberation by email. Mr. White asked for the advice of the Department of Justice on emails. Ms. Prewitt said it is preferred not to do it, outside of discussion about meeting dates and places.

EFSC emergency meetings can be held, but there must be good reasons to do so. Ex parte contacts (illegal contacts between members of the public & EFSC Members), which have provisions in both the Administrative Procedures Manual and also the EFSC Rules, are fundamentally contacts between an individual Council member and a person who has an interest in something that is going to come before the Council. Contested cases should not be discussed outside the meeting. She also noted there is a time when Council members cannot talk with the DOE staff either, outside of the public process.

Ms. Prewitt said the Council should not feel any restraint to ask the Department of Justice for legal advice relating to siting or participation on the Council. She also recommended

reading the final orders on SORO and the Northwest Natural Pipeline for extremely detailed orders.

Chair David Ripma referred to the financial interest statement which each member will have to fill out. There was discussion about filling out the form, which Ms. Prewitt referred to the Oregon.gov website, to look up the Government Standards and Practices Commission (GSPC) for more information, or contact her office.

II. Action Items:

John White, Senior Analyst for the Oregon Department of Energy, talked about rulemaking and the continuing progress. They anticipate that public notice on the workshops will appear on the website, possibly to be held in December. He also talked about the website and the information that can be researched from there.

A. Council Decision on Amendment #1 to the Klondike III Site Certificate

John White, Oregon Department of Energy, said on July 31, 2006, Klondike III submitted to the Department a request to amend the site certificate. He referred to the Proposed Order on Amendment #1 which all Council members received.

The Department requested agency comments by August 25th, which received one comment from the U.S. Fish and Wildlife Service. Mr. White said Jerry Cordova from the USFWS is present at the meeting also. Concerns of the USFWS involve cumulative impact effects

Mr. White referred to the Federal Environmental Impact Statement (FEIS) and addressed the cumulative impact which is referred to on page 34 of the Proposed Order.

The deadline for public comment was November 2nd, 2006. There were no comments for a contested case.

The amendment request is summarized on page 2 of the proposed order:

1. Authorize the use of larger turbines.
2. Increase the authorized peak generating capacity of the facility from 272.25 megawatts to approximately 285 megawatts.
3. Allow construction of 34.5-kV collector lines outside of previously-approved areas, allow up to 12 miles of aboveground 34.5-kV collector lines and eliminate the previously-approved 230-kV transmission line along Klondike Lane.
4. Eliminate the previously-approved substation near Webfoot.
5. Allow construction of approximately 3 miles of access road segments outside of previously approved areas.

6. Give the certificate holder the option of locating the Operations and Maintenance (O&M) building on a 3-acre site south of Klondike Lane or on the previously approved 4-acre site.
7. Change the location of all three project meteorological (met) towers.
8. All minor widening of turbine micro-siting corridors.
9. Allow temporary disturbance outside of previously-approved areas.

Jesse Gronner and Sara McMahon were present at the meeting for questions from Council members.

Mr. White continued the presentation showing four maps of the Klondike area, each showing different aspects of the layout, and he also referred to the Proposed Order's Tables that refer to these maps.

Lori Brogoitti asked about the blank area on the Figure C-2A map to the north of Gosson Lane. Jesse Gronner responded that area is where Klondike 1 and 2 are located.

Chair Ripma asked about the micro-siting corridor for lines and if this is new. Mr. White said the statutes written in the past were not written for wind facilities in mind, but now with wind facilities the corridor is spread out and has to be dealt with from a different perspective. Mr. White said once the micro-siting corridor is accepted the infrastructure is driven by the turbine location.

III. Working Lunch

Martha Dibblee asked if the infrastructure is underground. Mr. White said to the extent possible it is underground, but sometimes due to wetlands it is over. The total length of the collector line is 59 miles, of which 12 miles would be permitted to be above ground.

Mr. White referred to the table of content of the Proposed Order. Section IV and V will be areas that will be discussed. Chair Ripma asked why the micro-siting corridors weren't in the original site certificate. There was discussion among Council members Mr. White & Ms. Prewitt regarding what a micro-siting corridor involves.

Chair Ripma asked if the micro-siting corridor shrinks down once the final location is decided and built on site. Mr. White agreed.

Next, Mr. White explained the retirement cost estimates and the differences. He referred to Table 3 of the Proposed Order, explaining how the applicant is required to provide a bond or a letter of credit of financial assurance, should the State have to go in and clean up the site. The cost in the proposed order is \$1.089 million, down from the original site certificate, \$2.2 million.

There are a number of reasons why it is lower: a substation has been eliminated, a 23kv above ground line has been eliminated, and also a reassessment of the cost to restore

areas during site restoration. The Department had overestimated the original cost. The estimate was based on the assumption that 165 turbines would be built, which overestimates the restoration cost because of changes in the size and number of turbines that may actually be built.

Another line item was added in the cost estimate to give a more accurate picture, which had previously been embedded into the General Cost items. Also, the adjustment for scrap value costs can change, taking into consideration each year the change in scrap value.

Mr. White said that even though costs are not known for restoration of sites on wind facilities, to be conservative and protect the state this estimate has been produced. For wind facilities they actually may not be restored anyway, they could just be re-powered.

Chair Ripma asked if the restoration costs are refigured every year. Mr. White agreed. He said there has always been an inflation adjustment. Ms. Prewitt agreed, since the financial assurance is originally determined before construction takes place.

Ms. Brogoitti asked about the pads and cables under the ground. Mr. White said anything less than 3 feet underground is to be removed, which is based on evidence from the Soil Extension Services that concluded for agricultural practices that would be okay.

Mr. White said the impact on crop land has changed by approximately seven acres. The method of analysis was to look at the local land use laws. It was determined the facility could not comply with all of those, which moved it into the statewide planning goals, which is Goal 3. Goal 3 states that a power generation facility must not preclude more than 20 acres of land from use as a commercial agricultural enterprise. This facility would occupy approximately 67 acres, which does not comply with Goal 3. This requires an approval of an exception to Goal 3. The Staff feels that the extra area would not substantially change the analysis. It is still less than 1% of the actively farmed area in the immediate leased area.

For wildlife habitat, none of the extra seven acres is in the higher value habitat area, so there is no need to change the calculation of mitigation but there is a change in the numbers. The reason this is being mentioned is for a consistency in the numbers that the Staff is recommending in the wildlife monitoring and mitigation plan and revegetation plan which are attachments to the Proposed Order.

In general, larger turbines will emit a greater noise level so it was necessary to reanalyze the noise due to a change in turbines. Mr. White referred to the map labeled P1 and the noise receptors shown.

The noise regulation has two parts or tests that the facility must meet:

1. The first is the maximum noise level perceived at the residences, also referred to as Table 8. That standard sets a level of 50 dBA level of noise from the facility that cannot be exceeded under any circumstances.
2. The second part of the standard is called ambient degradation, which says that the noise level at a residence without the facility will not be increased by more than 10 dBA if the facility is built. The ambient degradation rule has an exception which allows a greater degradation of the ambient noise if the landowner approves and signs a legally binding waiver.

Noise waivers have been obtained from all property owners except one; therefore the proposed facility is in compliance with the noise rule. A revision has been crafted to Condition 102 to address the remaining property. Under this revision there are options:

1. The certificate holder can obtain the waiver.
2. The facility can be built so that turbines F-5 through F-8 would not be built, turbine J-1 would not be built, and turbines F-1 through F-4 would be built but cannot be closer to the residence than a specified distance that shows the given set of circumstances that the noise level won't exceed the 10 dBA increase.

Chair Ripma asked if there were any further questions. There were none. Jesse Gronner, PPM Energy, thanked the Staff and Council for their consideration.

Mr. White also stated that the Final Order is similar to the Proposed Order. He discussed the minor word changes. Condition 22 is mandatory language that has to do with reporting standards. In the Proposed Order there was an error in numbering which was corrected in the Final Order also.

Martha Dibblee made a motion to approve the Final Order on Amendment #1 of the Site Certificate for the Klondike III Wind Project. Lori Brogoitti seconded the motion and Council approved unanimously:

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

B. Request to transfer the Biglow Canyon Wind Farm Site Certificate from Orion Sherman County Wind Farm LLC to Portland General Electric Company

John White said Rick Tetzloff, Portland General Electric, and Bob Hall, Consultant for Portland General Electric, were present to answer any questions.

Mr. White stated this Order is issued in accordance with ORS 469.405 and OAR 345-027-0100, to address a request by Portland General Electric (PGE) for a transfer of the site certificate holder for the Biglow Canyon Wind Farm (BCWF).

On June 30th, 2006, the Council issued a site certificate to Orion Sherman County Wind Farm LLC for the BCWF, a wind energy facility with a peak generating capacity of approximately 337.5 megawatts (MW) to be built in Sherman County. The facility is not yet under construction. On August 22nd the request was received for the transfer to PGE.

Public notice was issued on October 4th, 2006, with a deadline of October 25th. There were no public comments received. The informational hearing held today must allow for comments from anyone present.

Chair Ripma asked if there were any public comments. There were none.

Mr. White explained the procedures for how the Council finds that PGE meets the requirements. The Department recommends that the Council make these findings and also that PGE is lawfully entitled to possession of the site. The rule requires the Council to determine if the facility is in compliance with any new regulations or ordinance that has been adopted since the site certificate was originally issued. Mr. White said there are no new regulations.

Martha Dibblee moved to adopt the Final Order on Amendment #1 of the Site Certificate for the Biglow Canyon Wind Farm; David Tegart seconded the motion and Council approved unanimously:

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

Tom Stoops, Council Secretary, gave project updates. One project is the California-Oregon Border Natural Gas Power Plant. During the week of November 8th there will be an informational meeting to request an exemption and also transfer of ownership on the LLC.

Also, Mr. Stoops mentioned in the future the Lower Columbia Clean Energy Complex, an integrated gasification combined cycle facility, will be coming up. It would run on coal, which would be converted to a synthetic gas form to be used to create the heat to power a steam turbine to generate electricity. It's being proposed for the old Summit Westward site. The NOI was received and an informational meeting is to be held November 15th. The week prior, the State of Washington Department of Energy will be holding a public meeting for this same kind of technology, which the Oregon Department of Energy has been invited to participate in.

IV. Information Items:

Tom Stoops, Council Secretary, said both LNG terminals are moving forward.

Also, another request for an exemption has been received from Ultra Ethanol which Adam Bless, Project Officer for the DOE will be researching. It will be at the Port of Morrow.

There have been three different groups with bio-diesel facilities that will be turning in requests for exemptions, possibly at the Port of Morrow and one in the Portland area.

The Department is expecting the application for Seven Mile Hill, the 60 megawatt facility just outside of The Dalles.

Port Westward, the PGE plant, has been constructed and is ready to go operational. They have offered to give the Council a tour.

Also, Mr. Stoops said topics for discussion need to be scheduled in the future, information transmission lines. Ms. Prewitt said there will have to be some lengthy discussions about land use, since the Council members have changed. Richard Whitman, Oregon Department of Justice, has conducted land use training in the past and would be willing to do so again after the first of the year.

Michael Grainey, Director of the Oregon Department of Energy, updated the Council on a few legislative issues. There are five different bills to increase development and use of renewable energy: tax credits for renewable energy, both for individuals and businesses; a bill to use state land and properties for developing renewable energy; establishing a renewable portfolio standard, a requirement that electric facilities would need to acquire a certain percentage of their energy from renewable energy; another to encourage bio-diesel and ethanol production in Eastern Oregon. The only one that has had controversy is the one for electric facilities to establish a renewable portfolio standard.

Mr. Grainey also mentioned that there is one provision to tighten some standards regarding exemption. There are some ethanol and bio-diesel facilities in the Midwest that are using coal, which are not clean facilities. The exemption needs to be clarified so that provision does not cover those kinds of facilities.

Mr. Grainey stated these bills don't have a direct impact on the Siting Council but the results could produce more business coming to the Council.

There was discussion about future meeting dates.

Chair Ripma asked about a proposed pipeline for an LNG facility. Mr. Stoops said the pipeline would be 36" pressure pipeline and run approximately 233 miles from the Jordon Cove LNG terminal in Coos Bay.

Jan Prewitt said the proposed pipeline would be in the jurisdiction of the Federal Energy Regulatory Commission (FERC) because it is an interstate pipeline, even though it is all within the State of Oregon. It does interconnect with the Williams pipeline and used as an import, in other words used for a resale or wholesale facility.

There was discussion about the LNG terminals and the pipeline involved.

Chair Ripma adjourned the meeting at 2:00 p.m.