

Draft Minutes
Energy Facility Siting Council Meeting
Oregon Department of Energy
2400 SW Court Place
Pendleton, Oregon
January 20, 2006

*Approved by Energy Facility Siting Council with revision.
May 19, 2006*

Energy Facility Siting Council:

Hans Neukomm, Chair
David Ripma, Vice-Chair
Lori Brogoitti
Martha Dibblee
Karen Green
Robert Shiprack
David Tegart

Oregon Department of Energy:

Tom Stoops, Council Secretary
Adam Bless, Project Officer
John White, Project Officer
Sisily Fleming, Administrative Assistant

Oregon Department of Justice:

Jan Prewitt, Assistant Attorney General
Carolyn Wade, Assistant Attorney General

Oregon Department of Fish and Wildlife:

Mark Kirsch

Portland General Electric, Boardman Coal Plant:

Loren Mayer, General Manager

Stateline Wind Project:

Rebecca Perree, Asset Manager, FPL Energy
Dave Kelly
Wally Erickson, Environmental Consultant, WEST Inc.
Karen Kronner, Biologist, Northwest Wildlife Consultants
Tom Meehan, Pacific Habitat Services

Blue Mountain Wildlife Rehabilitation Center:

Lynn Tompkins
Eddie the Raptor
Mr. Tompkins

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Greenstock Resources, Oregon Ethanol LLC:
Larry Dawley

Chair Hans Neukomm called the meeting to order at 8:00 a.m.

I. Consent Calendar:

A. Announcements and Introductions.

Chair Neukomm introduced Tom Stoops, Council Secretary, who reviewed the meeting agenda and procedures.

B. Approval of September 27th, 2005 Energy Facility Siting Council meeting minutes.

Martha Dibblee commented on removing the sentence about discussion of a motion. David Ripma made a motion to approve the September 27th minutes, with the correction Ms. Dibblee mentioned & scrivener changes. Karen Green seconded the motion and all Council members approved.

C. Approval of November 7th, 2005 Energy Facility Siting Council teleconference minutes.

Chair Neukomm asked for comments or corrections on the minutes; there were none. David Ripma made a motion to approve the November 7th, 2005 minutes; Martha Dibblee seconded the motion and all Council members approved.

D. Approval of December 16, 2005 Energy Facility Siting Council teleconference minutes.

Chair Neukomm asked for comments or corrections on the minutes; there were none. David Ripma made a motion to approve the December 16, 2005 minutes; Karen Green seconded the motion and all Council members approved.

II. Information Item:

A. Stateline Wind Project – Avian Monitoring Update Presentation

John White, Oregon Department of Energy, introduced Rebecca Perree from FPL Energy. Ms. Perree said she is an asset manager for the wind fleet across the country, focusing on wind development. Chair Neukomm asked about FPL. Ms. Perree said Florida Power & Light Utility created the entity FPL Energy, which owns and operates the facilities around the country.

Next, Dave Kelley, Project Manager for Stateline, introduced himself. He oversees the operation and performance of the project. Mr. White said Anne Walsh was the previous contact with the company and currently Rebecca Perree will be the main point of contact.

Another member of the panel that Mr. White introduced was Wally Erickson, West Incorporated, which is the environmental consulting firm for FPL since the first site certificate. Mr. White introduced Karen Kronner with Northwest Wildlife Consultants and reviewed her involvement in the Columbia Basin. Mark Kirsch with Oregon Department of Fish and Wildlife (ODFW) also has been involved several years with the Stateline Project and has worked extensively with Tom Meehan, former member of staff with the Department of Energy, who was also present at the meeting.

Mr. White reviewed the memo that he sent to all Council members and outlined the discussion that would take place. He presented Wally Erickson, Project Manager and Statistician with West Incorporated, a consulting firm from Wyoming specializing in the design and performance of wildlife studies. Karen Kronner discussed the involvement of Northwest Wildlife Consultants in many wind projects and studies designed for these projects. Ms. Kronner is the Stateline Wind Project's Technical Advisor Coordinator.

Mr. Erickson reviewed the Stateline Wind Project Wildlife Monitoring Final Report, which was conducted from July 2001 through December 2003. He discussed some of the studies and results. A decision made early on was to avoid placing turbines in saddles or baseline areas that birds would cross because of the potential conflict. The studies also showed the need to try to place the turbines up on the ridgeline rather than on the windward side of the ridgeline. Experts confirm that raptors will use updrafts on the windward side of the ridges.

Mr. Erickson referred to another recent study not included in the final report. FPL agreed to fund a research study focused on nighttime migrants possibly flying at lower elevations. He discussed the radar study and the results, which is one of the only night time studies done in the West. The report is in the Northwest Naturalist 2004, and report was done by Alaska Biological Research.

Mr. Erickson next discussed the monitoring component and how it was conducted. He talked about what determines a fatality caused by wind turbine collisions, which is sometimes hard to tell. Some fatalities listed are probably not caused by the wind turbines; actual blade strikes have only been seen on some of the larger bird fatalities. He further detailed different species of birds and bats, and how the carcasses were scavenged in order to know the removal rate. These factors were then figured in with the actual number of fatalities. Accounting for these factors and adjusting the actual fatalities, the rate was approximately two fatalities per turbine per year, which was consistent during the two year period.

Mr. Erickson also mentioned the mortality rate was broken out into individual bird species also. The estimated rate for raptors was approximately 6 fatalities for every 100 turbines per year. He further discussed other species also. These studies were also compared with other sites and the estimates for Stateline were slightly less than other areas. There were also studies done on the raptor nest survey results. Nest surveys were done before the project was built and after. There was some shifting in nests, but that is

common in raptors. American kestrel and red-tailed hawks are the most common fatality of raptors in the United States. There will be additional raptor nest survey work to get a longer range in understanding. The fatality monitoring for Stateline 2 and nest surveys, grassland and songbird displacement work will be completed after the year 2006. There will be additional monitoring if Stateline 3 is built.

Karen Green referred back to the grassland and said it may take awhile to determine what is going on. Looking at the landscaping, Ms. Green said it will take awhile, several years, to re-establish around the turbines. Ms. Kronner, Northwest Wildlife Consultants, said it will vary but to get to a mature cover to support a bird's nest could take from 3 to 6 years. Ms. Kronner also mentioned that there are activities in plowing that local land owners do that could affect studies. Mr. Erickson said initially it was determined to do the studies within the first two years of construction, but that was changed to allow for some of the habitat to recover. Ms. Green expressed her concern about the need to continue the studies further into the future. Ms. Kronner also mentioned they also record the presence of coyote dens that make take out nests and other factors that are considered.

Tom Stoops, Secretary for the Oregon Energy Facility Siting Council, asked about the differences in statistics. Mr. Erickson explained the difference. Mr. Stoops also said at some point it may make more sense to put money into mitigation instead of monitoring.

David Ripma asked about the displacement in the study. Mr. Erickson said the objective of the study is whether there is a reduction in density of birds, not a study of habitat quality, which would involve a greater study. There was further discussion about mortality statistics.

Martha Dibblee said it appears positive that there is little impact on the overall project. She also asked how this project compares with the combination of impacts throughout the nation. Mr. Erickson said this particular site it adds to the cumulative impact, but this particular site would not have much of an impact on the overall decline of birds. Most people feel it is attributed more to habitat loss. He also said that most mitigation is for habitat and not mortality. Martha Dibblee asked if there would be an executive summary. Ms. Kronner said when Stateline 2 is finished it will be done.

Chair Neukomm asked Mr. Erickson if he had an answer that could be given to a critic of wind farms in some type of statement about what the turbines really mean to wildlife concentrations. Mr. Erickson said that the proper siting of wind projects is important, and as far as mortality overall, there are other impacts to birds that are a greater threat.

Mr. White said that the Department of Energy hasn't been put off mitigation until the results of all the monitoring is finished. From the beginning there was an approximately 50-acre area set aside that FPL has worked on to make up for some up the footprint impact. He did note that although the Stateline Wind Project Wildlife Monitoring Final Report conveys the idea of "final," there will be more reports.

Mark Kirsch, ODFW, said there were some triggers set up in the original monitoring plan, part of the reason being to get some answers in a short time on impact.

III. Action Items:

A. Stateline Wind Project – Consideration of additional mitigation

Mr. White discussed the impacts of the wind turbines, referring to the memo he sent to Council members with the data from the studies. There was discussion about the recommendation for grassland species. The recommendation of the ODOE is that no additional mitigation is necessary at this time. There was further discussion among Council members and staff. Mr. White referred to the components of the raptor mitigation program, which include:

- 1) Artificial nest structures for ferruginous hawks.
- 2) Riparian and upland habitat fencing
- 3) Contributions to the Blue Mountain Wildlife Rehabilitation Center

It was decided to take a break and see a live raptor that was brought from Blue Mountain Wildlife Rehabilitation Center.

Lynn Tompkins was introduced by Chair Neukomm. She said that Blue Mountain Wildlife Rehabilitation Center has been involved with FPL since the beginning of Vansickle and they appreciate that FPL has been an environmentally responsible company. Ms. Tompkins further discussed the background of the Blue Mountain Wildlife Rehabilitation Center and showed pictures of birds that they have worked with.

Mr. White said part of the mitigation plan is to contribute \$3,000 this year to the Blue Mountain Wildlife Rehabilitation Center and \$1,500 each year thereafter for a period of four years. In the year 2010 an overall assessment will be done to review the mitigation.

Karen Kronner and Mr. Erickson talked about the artificial nest structures. FPL would provide funding for the construction, monitoring and maintenance of not less than three artificial nest structures (ANS). Suitable locations would be determined by ODFW and the Department and landowner permission would be obtained to construct the ANS within the Columbia Basin, close to the Stateline project and on land that is expected to remain in stable ownership for the life of the Stateline facility. FPL would complete construction of three ANS before December 31, 2006 and monitoring would be done to determine whether the ANS are successful in attracting raptor use.

Ms. Kronner discussed the Riparian Habitat Restoration. FPL proposes to assist the Birch Creek Enhancement Project. The Birch Creek project is a partnership between a private landowner, the Confederated Tribes of the Umatilla Indian Reservation and the

Rocky Mountain Elk Foundation to improve upland and riparian wildlife habitat at a site about 30 miles south of the Stateline facility. Ms. Kronner further discussed details.

Mark Kirsch, Oregon Department of Fish and Wildlife, talked about the Birch Creek project and that it would enclose 5,000 acres of Columbia Basin grassland, riparian and upper Birch Creek conifer/grassland. Approximately 15 miles of high-tensile wildlife-friendly fencing would be built. The goal is to exclude cattle from riparian zones and upland habitats so the areas can recover from past grazing pressure. The fencing would enclose uplands for raptor foraging and deciduous trees and shrubs for potential raptor nesting, perching and roosting. Karen Green asked how the fences are constructed. Mr. Kirsch said the fence is constructed at a 40-inch top height which is a low fence for elk but not cattle. There will also be installed a high use area elk gate which will be open during the winter. The contribution from FPL toward the fencing effort would be \$9,000.

Mr. Ripma asked more questions about the fencing. He also stated he felt more money should go to mitigation rather than monitoring studies. Mr. White said there have been initial conversations about the projects in Sherman County and to assume that some impact would happen; therefore, put the money instead into habitat improvement. He also said he wouldn't recommend doing away with the study in place at Stateline, but he felt there does need to be a balance on the future projects.

Lori Brogoitti questioned whether the habitat is different and whether hunting is allowed. Mr. Kirsch stated hunting is not allowed in these areas. Ms. Kronner talked about the habitat in the areas.

Mr. White discussed the monitoring to be required in the future. Mr. Erickson made an important point that the people doing the surveys in 2002-2003 would be the same ones doing the survey in 2006. Once this data is collected, recalculations will be done to assess the mortality rate. He also said that less data would be done and more mitigation would take place because of the information gained. For example, Stateline 1 had more data than Stateline 2; and Stateline 2 has more mitigation in place because of the knowledge gained from Stateline 1; this will be the case also with Stateline 3 because of the results gained from Stateline 1 and 2.

Karen Green expressed her concern with the vegetation in the grassland and that monitoring should be done further to ensure the fatalities are recorded correctly and the mitigation is sufficient.

Mr. White asked Chair Neukomm for a sense from the Council how they feel about the plan.

Chair Neukomm asked Council members for comments. Martha Dibblee said she would like to keep the discussion open, agreeing with Karen. David Tegart said he felt the information was very informative and felt Mr. White should be able to move on. Bob

Shiprack said he felt targets or thresholds have been established and more science should be put into correcting the results.

Rebecca Perree said that the information gained at Stateline has been a big effort, and that information will be used at other projects across the country. She also felt there also could be some additional mitigation with the grassland birds in the future, after analyzing the studies in 2006.

Chair Neukomm thanked Mr. White for his work, and everyone involved in the studies.

Chair Neukomm asked for public comments. There were none. The discussion will continue after lunch.

IV. Working Lunch – Boardman Coal Plant:

Loren Mayer, General Manager of Portland General Electric's Boardman Coal Plant, gave a history of the plant. Construction was completed and the Coal Plant became commercial in August of 1980. The current output of the plant is 585 megawatts net, which translates to about 615 megawatts at the generator terminals, roughly enough for 400,000 residences. It is currently one of Portland General Electric's lowest cost producers. The variable cost of generation is approximately \$15 to \$18 per megawatt hour. The current price of power at the Mid-Columbia trading point is around \$60 around peak, \$45 off peak. Late last October when the plant experienced its forced outage the price of power reached an average of \$100 per megawatt hour and at one point \$120. The planned outage is costing the owners approximately a half million dollars a day in excess power costs. There is a lot of pressure to get the plant back on line.

Mr. Mayer talked about the operation history of the plant. In the early years it had a low capacity factor, 50% or less, because of the abundance of cheaper hydro-electric power in the Northwest. This kept the plant shut down, but in the early 90's the situation changed. The capacity factor at the plant the last six years has averaged over 81%, which includes an annual average of one month to do plant maintenance. In 2003 the plant had a capacity factor of 91%, which was the 9th highest in the United States for coal-fired power plants. He continued to discuss how the plant receives the coal and the process of the ash disposal. The plant burns about two and a half million tons of coal a year.

In 1998 the control system was upgraded to be a digital control system, and the boiler was also upgraded to improve the efficiency. In 2000, the two low-pressure turbines were upgraded. This design gives approximately 30 additional megawatts with no additional steam flow or fuel.

Mr. Mayer also talked about a problem the plant had with a crack one of the Siemens rotors. A replacement rotor would take two years to build, but it could be repaired in less time. Losing a half million dollars a day because of the plant being shut down prompted the repair work to be done. Tests are being done to find out why the crack occurred.

David Tegart asked whether Siemens would share any information about other problems with this rotor elsewhere. Mr. Mayer said there are no other rotors of this type. Chair Neukomm asked about the financial arrangements. Mr. Mayer said Siemens does have a ten-year warranty on the rotor, so that will be followed through for repair costs. As far as the excess power costs, the plant has filed with the PUC for deferral for the power costs. Chair Neukomm asked about liquidated damages. Mr. Mayer said the company would not accept liquidated damages in the original contract. There was more discussion about the rotors and how they work.

Bob Shiprack asked whether PGE has considered a second generator at the Boardman Plant. Mr. Mayer responded that different options have been considered.

Chair Neukomm asked when the plant is expected to start running again. Mr. Mayer said it looks like February 3rd possibly. He also offered tours to anyone interested in seeing the plant.

B. Port Westward Request for Expedited Fourth Amendment to the Site Certificate for the Port Westward Generating Project

Adam Bless began this presentation asking for a short teleconference meeting within approximately three weeks concerning the Port Westward Generating Project. Mr. Bless showed a map of the Project and explained the site boundaries. He referred back to January of 2005 when Portland General Electric (PGE) requested to amend the Site Certificate to modify the facility and the Site Certificate for temporary expansion of the laydown area, which was the Third Amendment. At this time they are requesting a very expedited basis for expansion of laydown and construction staging areas to allow an additional 6.08 acres.

There are two reasons for requesting this amendment. 1) They didn't have a lot of control over when the major equipment (turbines, etc) would arrive, which are being made abroad. They are arriving sooner than expected and the Project does not have room to store them. Also, some of the laydown area they do have is under water because of the 35 days of constant rain. 2) The other reason is that there are areas of land not included in the laydown area but they are surrounded by PGE land. PGE is continually telling construction workers they cannot use this "peninsula" of land to put construction materials.

Mr. Bless said that Chair Neukomm, Jan Prewitt (Oregon Department of Justice) and ODOE collaborated on a letter approving the expedited process. Mr. Bless reviewed the expedited process and what has taken place so far. There was discussion about when the teleconference could take place. It was decided to conduct the teleconference on Friday, February 10th, at 2:00 p.m.

Mr. Bless returned to the photographs of the Project, showing the laydown area where the transmission line plant is located. He referred to one area where materials are allowed to

be stored, and another area in the middle of the same site that is not a laydown area. The Port of St. Helens is installing a water system in that location so the land is already disturbed. Chair Neukomm asked about the letter approving the expedited process and the procedure for signing.

(Change in Agenda) (Stateline Wind Project Continued)

Tom Meehan gave a brief presentation on three items of concern: 1) What is learned about the impacts on the Stateline Facility based on everything talked about today, 2) What has the Council learned about monitoring itself? 3) Where do we go from here?

Mr. Meehan stressed (which he said this monitoring plan showed clearly), that there is variation in space and time in biological populations. He pointed out the difference in monitoring from one year to the next. Mr. Meehan also said some of the impact was unanticipated. He believes there are more unanticipated impacts.

In regards to monitoring itself, Mr. Meehan said it has to be well thought out and intensive. It is labor intensive, but these turbines will be around for quite awhile. There needs to be good analysis and understanding of the data. The effort was made because it was well worth it.

The next point, looking back ten years ago, the Staff has achieved a great amount of knowledge in wind power. Mr. Meehan said this project has been extremely valuable, and has a good team of consultants. He also said the big issue is cumulative impacts from numerous facilities.

Karen Green asked about the national studies that are being done, and when they would be available. Mr. Erickson discussed the national studies and the website (nationalwind.org) where information is available.

**C. Consideration of Greenstock Resources, Oregon Ethanol, LLC
Request for Exemption**

Adam Bless introduced Larry Dawley of Greenstock Resources. Mr. Bless said with the passage of the Energy Policy Act of 2005 at the Federal Level there were incentives for ethanol production. The Cascade Grain Facility near Port Westward has been granted all of the approvals it needs for an exempt facility. There was also a recent exempt facility granted in Ontario.

The site for Oregon Ethanol is an industrial site already located at the Port of Morrow in Boardman, Oregon. The planned production would be about 30 million gallons of ethanol a year, translated to BTU's is more than 6 billion BTU's per day so it would be an energy facility without the exemption. The criteria for an exemption is: 1) Land Use has to be in an approved land use site (which this facility meets) 2) The feedstock would be from grain, whey or potatoes, and in this case will be corn, 3) There should be no new

electric or gas transmission lines, which they also meet. Umatilla Electric Co-op has confirmed they can meet the load without constructing new transmission lines. Oregon Ethanol will be using wood waste as fuel also. 4) 90% of the ethanol should be shipped out by barge or rail, and they meet the criteria also.

Mr. Bless said that in this case there is not a conditional use permit in hand yet. There is a letter from the County Planning Director affirming this facility is an outright permitted use. The Department of Justice advised that this letter is enough and will be attached to the order.

David Ripma asked what the typical fuel is for these facilities. Mr. Bless said the two facilities mentioned earlier will be using natural gas. Larry Dawley said there are 94 ethanol plants in operation in the United States, with another 26 under construction. One has converted to using wood waste, one will be using manure, four are converting to coal and the rest are using natural gas.

Martha Dibblee asked what the wood waste would be. Mr. Dawley said it would be sawdust, chips, etc. Ms. Dibblee asked what the production costs would be. Wood waste is slightly above coal, but the wood waste will come from closer suppliers.

Lori Brogoitti asked about using canola and mustard. Mr. Dawley said that corn is starch and will convert to sugar, which is what you need for fermentation for alcohol.

Karen Green made a motion to grant the request for exemption from the Energy Facility Site Certificate requirements for the Oregon Ethanol LLC Facility proposed by Greenstock Resources, Inc. David Tegart seconded the motion; Council was polled and unanimously approved:

Lori Brogoitti	Yes	David Ripma	Yes
Martha Dibblee	Yes	Bob Shiprack	Yes
Karen Green	Yes	David Tegart	Yes
Hans Neukomm	Yes		

D. Leaning Juniper Wind Project – Appointment of Gilliam County Court as the Special Advisory Group

Mr. White said that a site certificate application is expected for the Leaning Juniper Wind Project in Gilliam County within the next few weeks.

ORS 469.480 requires the Council to designate as a special advisory group the governing body of any local government within whose jurisdiction a facility is proposed to be located. The Department of Energy is recommending the appointment of the Gilliam County Court as the special advisory group.

Bob Shiprack asked who is behind the Leaning Juniper Wind Project. Mr. White said it is two subsidiary companies of PPM Energy, which is also the parent of the Klondike Project.

Karen Green made a motion to appoint the Gilliam County Court as the Special Advisory Group for the Leaning Juniper Wind Project. David Ripma seconded the motion and Council approved unanimously.

Lori Brogoitti	Yes	David Ripma	Yes
Martha Dibblee	Yes	Bob Shiprack	Yes
Karen Green	Yes	David Tegart	Yes
Hans Neukomm	Yes		

V. Information Items:

A. Wind Expansion Discussion

John White explained the need for the discussion. In September at the Klamath Falls meeting there was discussion about wind facilities obtaining the county conditional use permit and land use application. Being under the county jurisdiction and their conditions, this is considered a sub-jurisdictional wind facility. If a sub-jurisdictional facility wants to expand and get a site certificate, this initial sub-jurisdictional facility already operating is considered "Phase 1," and the developer could have concerns that Phase 1 could be put in jeopardy if they entered into the site certificate process. The Council's sense at that time was that the developer should not be penalized. They should be allowed to operate Phase 1 while the site certificate is in progress. Mr. White referred to a memo sent to Council members concerning situations that could possibly occur. He explained that with the existing rules that are ten years old a lot has changed. Some wind facilities will be going through the siting process and others will go through the county jurisdiction. Mr. White used the Klondike Facility as an example also as to decisions that had to be made. With the Leaning Juniper Wind Project there will be an issue of how to process the site certificate. The Department of Energy has suggested ways to address these issues in the memo.

Karen Green questioned the county permitting process. Mr. White said the Oregon Department of Energy has had a model energy ordinance for counties in one form or another for approximately 20 years. Last year on the website there was an updated model ordinance for a resource for counties. There have been internal discussions about speaking with some of the county planning directors.

Chair Neukomm asked Mr. White if the Energy Facility Siting Council has authority over County authority. Mr. White said EFSC lacks the authority but a meeting with county officials to discuss the issues could be useful. He referred to the document on the

website, and commented the Department would like feedback from the counties to help revise it if necessary.

Mr. White provided advice to Wasco County and they did use the Model Ordinance when they recently sited the K-III Wind Project, also known as the Summit Ridge Project. They were pleased with the assistance given.

Chair Neukomm asked Mr. White what outcome he would like to obtain from the discussion. Mr. White said the change to exempt a Phase 1 from any of the EFSC standards that would be a rulemaking decision. The Department does not anticipate proposing a rulemaking proceeding within the first half of the year, but possibly later in the year, since there are a few other changes that need to be made.

Ms. Green suggested everyone take another look at the memo and continue discussion at a later date when it is time to deal with the issue. There was discussion among Council members about what should be done. Ms. Dibblee said she felt that a classroom style presentation would be helpful. Mr. Ripma said he believes there isn't a reason to penalize Phase 1 sub-jurisdictional projects and is curious whether it is actually a problem. Mr. White said this is more of an opportunity to discuss an issue as a policy matter. Mr. Ripma said he felt until there is a specific case to discuss, this is a hypothetical situation not needing a decision.

Mr. Neukomm said he recognizes the value in the memo presenting the situations to help in the future issues that will come up. Bob Shiprack agreed with Mr. Ripma's comments also, and made further comments about future projects.

B. Post Project Financial Considerations

Carolyn Wade, Senior Assistant Attorney General, introduced herself. Her specialty is in bankruptcy. She has been in private practice 23 years, and just joined the government office.

The filing of bankruptcy by Calpine Corporation, along with 256 of its subsidiaries at the same time, was done on December 20th, 2005 in the Southern District of New York. This court is the same court that has handled other mega cases and is the best to know the procedures in a case this size. Ms. Wade explained Debtor in Position (DIP) financing. In a bankruptcy there has to be someone in charge, rarely a trustee in a business re-organization. The DIP gives loans to the operating debtor to help the process of filing to confirmation of the plan. Calpine may not get the DIP financing in the way they thought they would get it. Ms. Wade continued discussing procedures that may happen.

Ms. Wade discussed the applicants of the site certificate. She felt the Department of Energy would not be involved in any battles about claims. The letter of credit is the only concern that secures the obligation of the retirement standard. The letter of credit is not the property of any bankruptcy estate; that money is owned by the bank and they will pay

the money if it is owed. The letter of credit has to be renewed annually, due to be renewed in November and notice will be given if it is not renewed. The guarantor of the letter is Calpine itself, and it will not be allowed to undertake different obligations. Renewal of the letter of credit will require court approval if that is Calpine's choice, but there will not be a fight. There is nothing to be done at this time; in September there will be a better idea what they will be doing.

Ms. Wade said there is another option. She has been told that it is unlikely they will want to stop operating in Hermiston, which supports the conclusion that they will not back out of the guarantee. If they do back out, and don't renew the letter of credit, the site certificate can be pulled and the Oregon Department of Energy then can file a document with the bank to retire the letter of credit.

David Ripma questioned the renewal. Ms. Wade said the Department would have to act within the last 60 days of the current letter of credit. Mr. Stoops said a certain date will be given when action will be taken and the Department will work with the bank on a 72-hour leeway to make something occur. Mr. Ripma suggested having a something more tangible like a cash account instead of a letter of credit.

David Tegart referred to two other cases where the Oregon Bankruptcy Court did not act favorably for the State of Oregon. Ms. Wade said she would do research on this further.

Chair Neukomm said that EFSC must follow this closely and protect the citizens of the State of Oregon. Lori Brogoitti explained that she is worried about the employees of HPP. Mr. Bless said that if the plant is profitable they will continue to operate it. If it is not profitable Calpine will close it anyway so it would not be EFSC taking the jobs away.

Ms. Green asked about EFSC's authority to turn Calpine away if they come in with a new project. There was discussion among Council members. Ms. Wade asked if Council members could talk to her directly or should they go through the DOE first. Mr. Bless said he needs to be informed of questions asked and the answers.

Chair Neukomm asked about the DIP financing and the restructuring of debts. Ms. Wade said the DIP financing is the first step in restructuring.

C. COB – Supreme Court Ruling

Jan Prewitt, Oregon Department of Justice, began the presentation about the Supreme Court Order in Save Our Rural Oregon (SORO) vs Energy Facility Siting Council (EFSC) on the COB Energy Facility contested case. Ms. Prewitt referred to a memo she drafted for Council members, which she stated the Supreme Court upheld the EFSC order. It found only one error that the Council made and went on to find that notwithstanding the Council's error, the Council had engaged in an appropriate analysis of the land use requirements and that the site certificate had been appropriately granted.

Ms. Prewitt said there was a statement that the Council had relied on, 469.1.B. (a) & (b), which was the error. The Court said you could pick (a) or (b) but not both. The Court broke that long section down into sentences. What this means for the Council is that when the staff drafts and the Council approves an order on the land use side of things, we need to be very careful about how to describe the analysis. In subsequent orders there will be explanations that are consistent with the SORO opinion that are more precise than the COB order was.

Another issue that had been brought up about rulemaking, the Court said that rulemaking was not required. The process the Council engaged in, all which was public, all which contained the arguments that the Council would rely on in making the final decision, gave adequate notice of the Council's approach and gave adequate opportunity for anybody to oppose those interpretations if desired.

Ms. Prewitt said another important point is regarding the sections of land use law describing whether something is a permitted use or conditional use, 215.283. (1) & (2). She further explained how to apply these rules.

Ms. Prewitt also discussed the language of each sentence in those rules. She will be e-mailing the Power Point presentation to Council members to see how to break down the Statute.

Chair Neukomm asked if the Supreme Court had not upheld the Council's decision, what challenges would the Council be facing. Ms. Prewitt discussed the two recent cases that were taken to the Supreme Court, South Mist Pipe Extension (SMPE) and COB, and that these orders are part of the contest for interpreting future orders. This lets the Department of Justice, the Council, and the Department of Energy have more certainty when decisions are made. Facts aren't the same but the method to come up with the decisions is approved by the Court.

Ms. Green stated that in future cases the reputation of the Council and Staff is good. Chair Neukomm stated that credit goes to the Staff for their advice and guidance.

Chair Neukomm proposed an information item at a future meeting to cover transmission issues. He next gave Tom Stoops, Council Secretary, time to discuss information. (There were no public comments on the preceding information.)

Mr. Stoops said part of the Energy Policy Act of 2005 was a direction for the creation of an environmental impact statement to look at transmission corridors on public land. Mr. Stoops talked about seminars and conferences in the future to understand what will happen in the next few years.

Mr. Stoops also said that unfortunately for Calpine there is an energy surplus at this time. He also talked about the wind jurisdiction and felt there would be continuing dialog on this because of the continuing wind energy in the Columbia basin.

Mr. Stoops also talked about Karen Green and Hans Neukomm leaving the Council later this year. He said the future will hold some discussions to learn more energy because of new Council members and as a reminder for existing Council members.

Also, in the future there will be discussions about the coal energy and what might need to be done.

Chair Neukomm adjourned the meeting at 3:42 p.m.