

**Minutes
Energy Facility Siting Council
Telephone Conference
Oregon Department of Energy
Conference Rooms C & D
625 Marion Street NE
Salem, Oregon
December 16, 2004**

*Approved with revision by the Energy Facility Siting Council
January 28, 2005*

Oregon Energy Facility Siting Council

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

Department of Energy:

Michael Grainey, Director
David Stewart-Smith, Council Secretary
Adam Bless, Project Officer
John White, Project Officer
Sisily Fleming, Administrative Assistant

Department of Justice:

Janet Prewitt, Assistant Attorney General

PGE:

Barbara Hally
Doug Nichols

Oregon Electric:

Thad Miller
Carrie Wheeler

Stoel Rives:

Margaret Kirkpatrick

Northwest Natural:

Charlie Stinson

Property Owner:

George Hortnagl

Concerned Citizen:

Anna Whitaker

Chair Karen Green called the meeting to order at 9:12 a.m.

I. Consent Calendar:

A. Consideration of PGE Request for Declaratory Ruling on Transfer of Ownership.

Michael Grainey, Director of the Oregon Department of Energy, summarized the report in the matter of the site certificates of the Portland General Electric (PGE) Company.

Barbara Hally, from PGE, said that they agreed with the report given by Mr. Grainey as written and also said the potential order is consistent with the Northwest Natural acquisition in February of 2002. She also acknowledged PGE's appreciation for the work.

Chair Green asked if there were any comments from Oregon Electric. Mr. Thad Miller from Oregon Electric said they have no comments, and are in agreement.

Martha Dibblee made a motion to adopt the Declaratory Ruling as proposed and to have Chair Green sign. Hans Neukomm seconded the motion. Council was polled and unanimously approved:

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

B. Appointment of the hearing officer for the Klamath Peakers.

Adam Bless, Oregon Department of Energy recommended that John Burgess be appointed as the Hearing Officer for the Klamath Peaker application.

Mr. Neukomm made a motion to appoint Mr. John Burgess as the hearing officer for the Klamath Peaker application. Martha Dibblee seconded the motion. Council was polled and unanimously approved:

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

Before proceeding to Item C. Chair Green discussed with Adam Bless the review of the tapes from the September meeting. Mr. Bless said the minutes correctly reflected the votes but there will be more text added to the minutes to clarify the point so the question doesn't come up again. Chair Green confirmed this would be done at the January meeting.

C: Northwest Natural Pipeline: Property Owner Request to Invoke Provisions of Site Certificate for Resolving Disputes.

Chair Green referred to a memo to Council Members from Adam Bless, Oregon Department of Energy, and Jan Prewitt, Oregon Department of Justice. Ms. Prewitt talked about the process involved and gave her recommendation that the matter is not one that the Council members need to invoke; but it is the responsibility of the parties involved to invoke.

Ms. Prewitt said the question was whether this is a situation that would come under the Northwest Natural Agricultural Impact Mitigation Plan (AIMP). She further stated there are a number of conditions that need to be satisfied for the mitigation plan to be invoked. However, the situation does come within the Mitigation Plan.

Ms. Prewitt said one point not included in the Mitigation Plan is the “burden of proof standard,” or “evidentiary standard.” She said in the memo there are kinds of evidence that the arbitrator should look at. The standard of proof is that there has to be a preponderance of evidence. The kind of evidence that needs to be submitted has to be more than “hearsay.”

Chair Green questioned whether one side could request enforcement. Ms. Prewitt said the site certificate itself imposes the AIMP. Chair Green asked about what the Council’s authority involves. She requested comments from the other Council members also to address their concerns.

David Ripma, Council Member, asked if there are other mechanisms to make compensation for damages caused in cases like this, other than the AIMP, because of its limitations.

Ms. Prewitt agreed with Mr. Ripma and said in the ordinary course this matter would go to the Circuit Court. The reason the AIMP is involved is because 215.275(4) requires restoration of agricultural lands. The Council wanted a non-litigative opportunity for a claimant to have their property restored under the site certificate.

Martha Dibblee, Council Member, asked Ms. Prewitt whether there needed to be a rulemaking or policy decision to clarify the AIMP action. Ms. Prewitt said it is a condition of the Site Certificate. There was discussion about whether there would need to be an amendment to the Site Certificate. Adam Bless, Oregon Department of Energy advised against an amendment. Ms. Prewitt said the Council’s position is more of an advisory role rather than a decision-maker role in this situation. She further stated the AIMP is a mechanism to allow a neutral third-party arbitrator to make the decision in the dispute.

Chair Green made the statement that the Council can encourage parties to use this mechanism but cannot direct them to take that route. David Stewart-Smith, Council Secretary, said this condition in the Site Certificate is permissive, not prescriptive.

Hans Neukomm, Council Member, asked if the parties don't reach agreement, would it immediately go to Court. Chair Green said the parties always have the right to go to Court, but the Council would not enter into the proceedings. Ms. Prewitt discussed more of the procedure outlined in the AIMP.

Lori Brogoitti asked if there is a list as to who qualifies to be "agricultural specialists," mentioned in the AIMP. Mr. Bless discussed why there could not be a list made up ahead of time, because without knowing in advance what issues will arise, there is no way to ensure that the list includes the right kind of specialists

Mr. Neukomm asked Mr. Bless about the well situation, which in this case involves human consumption of water, not the agricultural. Mr. Bless said this wasn't an omission in the AIMP, again because of not knowing each anticipated issue.

Ms. Prewitt said 215.725(4) requires the restoration "as nearly as possible, to its former condition, any agricultural and associated improvements that are damaged or otherwise disturbed."

Chair Green asked for any other comments.

Charlie Stinson, Northwest Natural, said they do want to resolve the issue. He stated that NW Natural has worked with other property owners, resolving their claims, and has been communicating with Mr. Hortnagl to resolve his claim as well.

Chair Green asked for Mr. Hortnagl's opinion, pointing out that the Council can encourage but not require him and Northwest Natural to work out the claim.

Mr. Hortnagl said he should be told how to resolve this. He said he has been in contact with the Department of Environmental Quality to have them review the situation. He has tried to get people involved to do something about the contamination, especially in the wetlands, but is frustrated because he hears "it is not in their jurisdiction." Chair Green asked him if he is willing to sit down with Northwest Natural. He agreed he would talk with his attorney and then decide what to do.

Mr. Bless referred to the wetlands impact, and pointed out that the Department of Energy had Pacific Habitat Services inspect the wetlands. Dale Shank, Pacific Habitat Services, concluded that the wetlands have all come back fine. Mr. Hortnagl asked when the inspector was there; Mr. Bless said it was in August. Chair Green said according to Mr. Bless, Mr. Shank may be willing to come out and look at the wetlands on Mr. Hortnagl's property.

Chair Green asked for Council Members comments. Martha Dibble asked if it is appropriate to make a motion to recommend that Mr. Hortnagl seek the AIMP neutral third party person.

Martha Dibblee moved that the Council agrees the issue falls within the site certificate, and that the Council would like them to follow the procedures listed in the Memo from Adam Bless and Jan Prewitt. Lori Brogoitti seconded the motion.

David Ripma questioned the clarity of the damage to the well and whether this would fall under AIMP.

Mr. Stewart-Smith, Council Secretary, said AIMP anticipates compensation for lost productivity. It is not property damage. Ms. Prewitt said it would be the cost of repairing the well. Mr. Stewart-Smith agreed it would be repairing or replacing the well, and if it involved soil contamination, it would involve restoring the soil to its previous condition.

Chair Green reviewed the motion by Martha Dibblee that the Council agrees the issue falls within what the Council contemplated would be addressed by the AIMP in the site certificate, and that the Council encourages the parties to follow the steps outlined in the Memo from Adam Bless, Oregon Department of Energy, and Jan Prewitt, Oregon Department of Justice. Lori Brogoitti had seconded the motion; Council was polled and unanimously approved.

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

Chair Green asked if there was anything else needing discussion.

Mr. Stewart-Smith said the Department of Energy is working with the Mirant Corporation, which is in bankruptcy, and the Avista Corporation, who is buying them out. The letters of credit are in transition and the existing letters of credit may expire. The Staff is not anxious to call on Mirant's letters of credit, but they may be forced to do so to protect the State of Oregon.

Ms. Prewitt said Avista might step up to the full letter of credit amount before the sale actually closes. If this could be done it would be within the site certificate. There is a possibility this will close before the end of the year, and this action can be taken without a Council Order.

There was discussion of the upcoming January 28th meeting.

Chair Green adjourned the meeting.