

Minutes *Approved 9/26/08*
Energy Facility Siting Council Meeting
Oregon Department of Energy
Troutdale, Oregon
May 15, 2008

Energy Facility Siting Council:	Oregon Department of Energy:
Bob Shiprack, Chairman	Ken Niles, Assistant Director
Martha Dibblee, Vice Chairman	Tom Stoops, Council Secretary
Bryan Wolfe (via phone)	Adam Bless, Siting Officer
Jacob Polvi (via phone)	John White, Siting Officer
Lori Brogoitti (absent)	Jill Hendrickson, Admin
Michael Haglund	
Cheri Davis (via phone)	Oregon Department of Justice:
	Jan Prewitt, Assistant Attorney General

Public:	
Carla McLane, Morrow County Planning Director (via phone)	Suzanne Leta Liu, Renewable Northwest Project Energy Association
Doug Young, US Fish & Wildlife Service	David Filippi, Steel Rives
Sara Parsons, Iberdrola Renewables	Larry Givens, Umatilla County Commissioner
Jesse Gronner, Iberdrola Renewables	Tamra Mabbot, Umatilla Planning Director
Andy Linehan, Iberdrola Renewables	Clinton Reader, Umatilla County Commission
Judge Gary Thompson, Sherman County	Paul Chalmers, Umatilla County
Judge Terry Tallman, Morrow County	Ken Popper, The Nature Conservancy
Paul Woodin, Community Renewable	David Neikirk

Chair Bob Shiprack called the meeting to order at 1:46 p.m.

Roll Call:

Council Name	Vote	Council Name	Vote
W. Bryan Wolfe	Y	Martha Dibblee	Y
Michael Haglund	Y	Lori Brogoitti	-
Cheri Davis	Y	Bob Shiprack	Y
Jacob Polvi	Y		

I. Consent Calendar:

A. Announcements & Introductions.

Tom Stoops stated that when comments are made to the Council, commenter's should come to the front table and state their name and affiliation.

Two letters were received from and distributed by Sherman County providing information on today's topic.

II. Information Items:

A. Legal Background Review

Jan Prewitt, Oregon Department of Justice, stated that in the Council's statutes there is a definition of an Energy Generation Area (EGA) which states, "An Energy Generation Area is that area within which the effects of two or more small generating plants may accumulate, so that the small generating plants have effects with a magnitude similar to a single generating plant of 35 MW average electric generating capacity, or more." Ms. Prewitt said the statutes go on to discuss EGA's for geo-thermal resources, which are less relevant to the Council at this time.

Ms. Prewitt said there is no specific statutory authority to do anything with EGA's that exists. There previously was statutory authority which was repealed. Subsequent to that repeal there was additional legislation that seemed to recognize that the concept still exists. This leaves open the question of what the Council can do and the extent of the Council's authority to deal with an EGA, or small facilities combining geographically. Any specific proposal would have to have a legal analysis as to whether it would pass, but in general it is not a closed issue and the Council can ask the Department of Energy Staff to consider it.

Tom Stoops, Council Secretary stated that 105 MW limit is what defines when the facility would be under the jurisdiction of the Oregon Energy Facility Siting Council.

Martha Dibblee asked about the 105 MW limit and wanted to point out that it is an average; wind facilities output is measured in terms of 'average' MW and that is an important concept.

Ms. Prewitt said for the time being there are certain jurisdictional limitations but there may be solutions that do not impinge on that jurisdictional limitation.

John White, Oregon Department of Energy, said the 105 MW is the peak generating capacity. The statute that defines an energy facility speaks in terms of average generating capacity being 35 MW. The statute defines "average

electric generating capacity” as the peak generating capacity divided by a factor. For wind, the factor is three. That is how we get to 105 MW as the jurisdictional threshold in “peak” terms.

B. Discussion of Issues Surrounding Sub-jurisdictional Renewable Facilities and Energy Generation Areas

Tom Stoops, Council Secretary, stated the concern has come up over that last six months, mostly through the natural resource comments, about the infill and cumulative impacts of the infill.

Mr. Stoops continued saying that as projects come in that are geographically co-located, some being lower than 105 MW, developers have said they believe their facilities are sub-jurisdictional even with the same parent company, or corporation, as the owner of multiple facilities. Staff has developed a series of fifteen questions to help understand the scope of projects and make help make the determination of what makes a separate facility.

Chair Shiprack asked the Council members and developers for input on whether the fifteen questions could/should be used for determining when facilities are separate. Mr. Stoops also referred to the letter from Iberdrola Renewables (formerly PPM) regarding sub-jurisdiction facilities.

Jake Polvi, EFSC, said he felt the fifteen questions are adequate. Bryan Wolfe, EFSC, added he was in support of the fifteen questions, also. Martha Dibblee asked Ms. Prewitt to read the statute for the definition of an EGA. Ms. Prewitt read the reference, ORS 469.300 (12). She also pointed out that the Council has rules 345-001-0200, -0210 and -0220, in place.

Chair Shiprack noted after going over the fifteen questions they seemed adequate, with possible changes in the future after experience to refine the legal aspects. Michael Haglund, EFSC, stated he understood the goal of the fifteen questions was to identify the facts that enable the Oregon Department of Energy Staff (ODOE) and the Council to make the judgment call as to whether a facility is sub-jurisdictional or not, and he felt they met that need. Martha Dibblee said she would like to see the questions compared in a chart giving the existing statutes and regulations involved.

John White, ODOE, said he felt the Council was not getting to what was troubling about this issue. He stated the issue that has given trouble is when the owner is the same. The Department’s approach has been to look at the “totality of the circumstances.” No one of the questions has been a “make or break.” If we were to treat each of the 15 questions as criteria and require that each of them be met in a way that tends to show the projects are separate, then anytime the same corporate parent created different LLC’s to create two 104-MW projects side-by-side, we would have to say they are not separate facilities because the developer

does not pass Question #1, which is ownership. The Department has not taken that approach. The Department has tried to be accommodating as possible with applicants. The original intent of the fifteen questions was not to determine jurisdiction; it was to decide whether a facility applying for a site certificate and putting itself in the Council's jurisdiction would qualify for expedited review. The questions have been used subsequently to determine jurisdiction. To paraphrase the statutes, the Legislature said that the Siting Council shall create standards for "energy facilities." For wind, an "energy facility" is a generating plant that generates more than 105 MW. The Legislature did not tell us what is one "plant." The Legislature was thinking that if you have a single facility that has 105 MW worth of wind turbines then that should have a site certificate. It did not foresee a situation where a single corporation would create two facilities just under that threshold and thereby avoid having a site certificate and meeting the siting standards. Staff needs to know whether the Council wants staff to apply the questions with a light hand or a heavy hand. Is the Council concerned about a single corporation creating side-by-side 104-MW facilities and not meeting the standards?

Martha Dibblee said she felt Question #1 should be met. A corporate "parent" should be required to meet the standards for its "children." Tom Stoops said the Council had previously defined one EGA in Umatilla County; it had to be defined, and was not self-defining.

Andy Linehan, Iberdrola Renewables, introduced himself. He paraphrased his letter of May 13, 2008 to EFSC and also talked about a discussion with Tom Stoops the previous week. Mr. Linehan noted what had become most important is the time required to go through EFSC review for a new project, 12 - 14 months; the county process takes 2 - 3 months.

Mr. Linehan expressed Iberdrola's understanding about the Council's concerns with the County Conditional Use Permit (CUP) process in relation to content and thoroughness, and also the potential for cumulative impacts that may not be adequately addressed. Iberdrola asked to be allowed to respond to this concern by volunteering to provide additional analysis in the County CUP application. He addressed the following issues specifically:

- 1) Analysis of habitat and wildlife impacts, demonstrating compliance with the Fish and Wildlife Habitat mitigation goals and standards contained in OAR 635-415-0025.
- 2) Analysis of visual impacts per OAR 345-021-0010(1)(r) – significant impacts on scenic or aesthetic values identified in applicable federal land management plans or local land use plans.
- 3) Analysis (modeling) to show compliance with Oregon DEQ noise standards for wind projects.
- 4) Documentation of field surveys and analysis to demonstrate no impacts to historic and cultural resources that have been listed or would likely be

eligible for listing on the National Register of Historic Places, substantially as required by OAR 345-021-0010(1)(s).

Mr. Linehan stated Iberdrola was comfortable with the EFSC process but would like to find ways to speed up the Expedited Review process for jurisdictional projects so developers are less reluctant to develop projects of a scale that requires EFSC review. Iberdrola felt that the parallel permit review processes for their Star Point Project via the Sherman County CUP process and the Helix Project via EFSC expedited review could be a good test case of an innovative permit review processes, and could demonstrate how the County CUP review could provide similar substantive review to the EFSC process, while showing a more rapid EFSC expedited review could make EFSC review times competitive with County CUP processes.

Chair Shiprack asked where the Star Point Project is located. Mr. Linehan said it does depend on the decision of the Council. Tom Stoops spoke about the location as a concern and stated that it was one of the reasons this meeting was taking place.

Jesse Gronner, Iberdrola Renewables, stated he could answer specific questions in regard to the fifteen-question test. Chair Shiprack asked Mr. Gronner his opinion of the fifteen-question test. Mr. Gronner stated he felt they are very relevant questions and pointed out he was involved when the questions were first used in deciding whether Klondike III was separate from Klondike I and II. He agreed with Mr. White, saying the original purpose was not for a sub-jurisdictional determination.

Suzanne Leta Liu, Senior Policy Advocate with Renewable Northwest Project, stated Renewable Northwest is a non-profit coalition of public interest organizations. She stated she works with several developers and wanted to point out that the fifteen questions were originally developed when they were going over the rules for the Business Energy Tax Credit (BETC).

From Ms. Leta Liu's perspective she stated the main criteria to recognize whether the facility is different is less in the ownership, and more in the financing ability for the project to move forward. Having the representative fifteen questions is very helpful to allow ODOE the flexibility to decide what is going on with each individual project.

David Filippi, Attorney for Stoel Rives on behalf of Iberdrola, wanted to address the first question of the fifteen and whether it is an absolute. He stated they do not believe it is, and gave two reasons:

- 1) The Star Point Project is not in an EGA in Sherman County so question #1 is not relevant here, even though it would be in Umatilla County.

- 2) From an abstract viewpoint, Iberdrola may own a plant or wind generation facility in Oregon and it may also own one in Maine. That does not mean it should be the same facility for purposes of permitting, because of the same owner it does not mean it is treated differently. The question becomes how close they need to be to be distinguished and separate from one another so they are not treated as the same facilities.

Mr. Filippi stated in their view question #1 is relevant but not determinate. Martha Dibblee asked if all fifteen questions should be met partially. Mr. Filippi referred to Council member Michael Haglund's comment stating the goal of the fifteen questions is to identify the facts that enable ODOE and the Council to make judgment calls whether a facility is sub-jurisdictional or not. He continued saying there are probably different grades that happen with each of the questions; a lot of the questions overlap to some degree. There has to be some discretion by ODOE to help interpret the answers.

Mr. Filippi said at the last Council meeting a point was raised that if there are two projects side by side and there may be some cumulative effect or concern, that concern may be irrelevant to the sub-jurisdictional question; it may be more relevant as to whether or not a rule should be crafted to establish an area for that particular county or area.

Gary Thompson, Judge from Sherman County stated he had worked with Renewable Energy for about five years and was aware of the EFSC process. In regards to the overlay zone he said Sherman County definitely wanted to be the one to do the overlay zone. The Planning Department is knowledgeable on permitting and using conditional use permits (CUP) to permit projects and has followed those guidelines. He also stated the County could help the developer by having the permitting process complete within 3 - 4 months, as opposed to British Petroleum's project which has been going on over 1½ years. The cost for the developers is less, approximately \$100,000 – 150,000 compared to \$300,000 - \$500,000 when going through the EFSC process.

Jan Prewitt, Oregon Department of Justice, said it is fundamental to the EFSC site certificate, which is a contract between the State and the developer, to set down all the parameters and requirements of the facility. A county CUP functions in some ways like that; however, there are other issues not related to land use requirements in the EFSC site certificate. Ms. Prewitt asked what the county's authority is to be able to perform these other requirements and to have the agreements be enforceable. Part of the goal of a site certificate is to make environmental requirements enforceable.

Judge Thompson said he could not answer those questions, but believed land use laws and private ownership had rights. There could be agreement between the landowner and developer.

Terry Tallman, Judge for Morrow County, said Morrow County is siting three projects at the present time. He has reviewed the projects, along with Carla McLane, Morrow County Planning Director. He stated that siting sub-jurisdictional facilities had happened in Morrow County for a long time, and the County was able to perform those activities. He continued that Morrow County was interested in environmental requirements but didn't want them to completely overshadow everything else and have the developers leave.

Paul Woodin, with the Community Renewable Energy Association introduced himself and his organization. Mr. Woodin stated that they are a Chapter 190 non-profit organization made up of a number of Oregon counties and small businesses interested in renewable energy. Mr. Woodin wanted to caution the Council in making decisions regarding overlay zones and the possible unintended consequences.

Mr. Woodin said when he was first involved in wind energy the standard was 25 MW, which had now grown to 105 MW, which his organization was pleased to see. Mr. Woodin said his concern was if the State implemented statewide overlay requirements, it could unintentionally include smaller community projects in the state. By definition of the PUC community projects are 10 MW and smaller - wind, solar, geothermal, small hydro and wave energy. His concern was that small projects couldn't afford the cost, or the time it could take to get through an EFSC process. The Community Renewable Energy Association strongly requested that EFSC consider the desires of all of the communities and leave the siting criteria at 104-105 MW threshold and allow the local communities to deal with the smaller projects.

Chair Shiprack referred to Iberdrola's request to try an "enhanced" permitting process to incorporate some of the EFSC standards in the CUP for Star Point and asked whether counties would have the resources to do that.

Mr. Woodin stated they had willing individuals who were involved in planning commissions and had made great efforts to learn what they could and keep up with the laws and rules.

Carla McLane, Morrow County Planning Director, referred back to the fifteen questions and how they are implemented. For example, if a wind generation facility comes to the county and completes an application and gets approval under the 105 MW limit, when they apply to BPA or PacifiCorp for an interconnect they put a larger MW that would trigger an EFSC review. The interconnect may define it as EFSC but the project itself is under the limit. The plan may be to interconnect a larger facility in the future but for this first one the county would lose the opportunity to have the input.

C. County Development Input

Larry Givens, Umatilla County Commissioner, introduced himself and the Umatilla County Staff members. Mr. Givens said in reviewing questions, whether as a county or as a state, there needed to be a balance with public health, public safety, the environment and also economic development. He said he was on the Planning Commission when the first wind facility in Umatilla County was developed. Umatilla County recognized the interests, advantages and opportunities that they don't want to lose. They also were aware and careful of impacts the facilities would have on the citizens and Umatilla County.

Tamra Mabbot, Umatilla County Planning Director, handed out a table showing EFU zones, the rules and ordinances that applied to each specific type of utility and also a separate Land Use information sheet. Ms. Mabbot said Umatilla County is the one county in the State that has an EGA in the rules. She wanted to point out there was a difference between an EGA and the issues that the fifteen questions led to – which was cumulative effects that may fall under the jurisdiction of EFSC. Umatilla County does have both issues in the county, and there are approximately 200 towers operational, for not quite 200 MW. There are approximately 243 additional towers permitted and based on calls received in the last six months, there is the potential for 1,300 new MW of wind power.

Ms. Mabbot also stated that a large group from Umatilla County was present, because the Oregon Chapter of the American Planning Association is having their annual conference and Dr. Clinton Reeder, a Umatilla County Planning Commissioner, is the recipient of a Lifetime Achievement Award for the citizen planner. She stated that Dr. Reeder was very knowledgeable with resource and land use and had been on the Planning Commission for more than 25 years.

Ms. Mabbot also said Paul Chalmers, Umatilla County Assessor, was available to answer questions regarding the revenue that these facilities generate for the county. She continued speaking about the county process for permitting and noted the concern of the county for transmission lines. The county felt confident with the siting the wind turbine projects, but needed help in the cumulative impact of a large number of smaller transmission lines. It had been suggested to her to allow permitting of transmission lines and if landowners did not agree to allow the lines, condemnation of the land could be done. She stated Umatilla County does not operate that way to gain permits.

Another concern Ms. Mabbot spoke about was the inconsistency between counties. She pointed out some of the different rules that exist between the counties. The definition of an EGA was also discussed and Ms. Mabbot talked about alternatives to having an EGA, one being to have more involvement from the ODOE staff.

Ms. Mabbot also spoke about the Energy Task Force that Bob Shiprack and she worked on several years before. The goal was to address all of the siting standards for the state. As part of that process, they went through everything,

from liability to safety, etc. There was a sub-consultant to that project that advocated for local control, but recommended the State should continue to look at some issues. She summarized six issues recommended that the State should be involved with.

Dr. Clinton Reeder, Umatilla County Planning Commissioner, stated Umatilla County spoke about air quality issues. He stated his concern was with the new transmission facilities and the right-of-ways that needed to be in place. The future potential development thirty years from now needed to be considered.

Dr. Reeder noted that the key was to collaborate to ensure the whole job is done in an effective way. He discussed a conflict within the county between two wind turbine developers. The problem did get taken care of between the developers without the county getting involved setting rules to handle the matter.

Paul Chalmers, Director of Assessment and Taxation for Umatilla County, said there are two key points he would like to make:

1. Expediting for the facilities does not stop with just the local impact for the county; it benefits the state directly from the placement of those open counties primarily in the form of education. Whatever is generated locally helps offset the education costs across the state because of the equalization process.
2. The headlines that create the somewhat hysteria of the economic growth are not completely true. When the first Vansycle project came on board years back there was expectation of 38 towers bringing in \$38 million on the rolls. The truth represented about percent of that cost. Today it is about 1/4th of the amount. From an economic standpoint, the reality versus the perception is important to understand. In Umatilla County, there is almost \$1 billion of tax generated by all facilities currently in Umatilla County (Stateline, Vansycle, and Eurus Combine Hills); of this amount, 51% goes to education. Mr. Chalmers stressed the faster siting of these facilities has a direct impact to the state as regards education.

There was a question asked about the tax revenues and accelerated depreciation mentioned by Tamra Mabbot. Mr. Chalmers said there was a lot of momentum with strategic investing which at a certain point of the project will be paid, but past that threshold they would not pay on until fifteen years. Some of what has been seen shows depreciation may go down to 10 - 15 percent of the original value after fifteen years. There is concern about stabilized revenue screen, what the value of the facility really is. A \$200 million project after fifteen-year abatement comes back on the tax roles under the strategic estimate program. There was more discussion about strategic placements by Mr. Chalmers and he encouraged even at the legislative level, consistent dialog. In eighteen years as County Assessor he had seen eight exemptions for eight

processing equipment, and had disagreements with others that wanted value taken off the roles at the expense of the local jurisdiction.

Doug Young, U.S. Fish and Wildlife Service (USFW), the Oregon Energy Project Support Leader, discussed the perspective of USFW. Whether projects are jurisdictional or sub-jurisdictional USFW provides comment letters. There was tension between jurisdictional and sub-jurisdictional; USFW was concerned and wanted to continue to ensure key habitats on the landscape were conserved. The science of cumulative impacts was leaving some uncertainty at this time. He stated that sub-jurisdictional projects with voluntary guidelines would be completed soon.

David Niekirk, a resident from Wasco County, stated he thought wind energy was a good idea; however it needed to be managed closely. He stated the counties should be doing this. He said he is dealing with companies in his area that want to go through with a project in his backyard and they say he won't even see the turbines, but Mr. Niekirk stated he can see turbines that are approximately sixty miles from his home. He stated that was an example of the pressure he is receiving. Mr. Niekirk felt that regulation was needed for people that move to the country for solitude.

Chair Shiprack asked for any further comments. There were none.

Chair Shiprack commented that some of the testimony received today strayed off of the issue, but that the broad testimony may have helped everyone to understand the problems and challenges of the issue. He also stated that transmission issues will be important considerations.

III. Action Items:

A. Rulemaking Authorization Decision

Martha Dibblee stated she enjoyed hearing from the Umatilla County and also stated it would be good to view the criteria counties use for their review, not from the standpoint of the applicant, but from the county. Ms. Dibblee asked about the counties taking some of the EFSC core values in their application submittals for sub-jurisdictional projects.

Paul Chalmers, Umatilla County Assessor, stated he does not know where the wind overlay in Umatilla County originated. He stated this as a note of caution, which raises a level of concern because certain criteria fall under that.

Jan Prewitt said it was adopted by the Council as an ODOE request in approximately the year 2000.

Ms. Mabbot said she believed the EGA in Umatilla County was placed in OAR 345 without County comment.

Bryan Wolfe suggested ODOE Staff meet with the County to answer questions and bring back information back to the Council information regarding the responsibilities that each group has.

Chair Shiprack asked if there was any overriding question out of the fifteen that someone felt were vitally important. He stated he felt the letters and tests showed that when there is a common owner and a common border, those two projects would indeed be one.

Martha Dibblee asked if the Council could get an overview of the rulemaking on the overlay zone. Adam Bless, ODOE, said the rulemaking had happened almost a decade ago and he knew there was a record. He stated he did not think rulemaking could have happened without having sent notice to the county involved.

Cheri Davis, EFSC, stated that she has always felt that local decision making is the best way to go, but supported the idea of a collaborative process where the State would work with the local jurisdiction.

Chair Shiprack asked Mr. Stoops for ideas, and Mr. Stoops stated that ODOE is looking for input from the Council on what to tell the developers on the Star Point Project. Iberdrola needed to know whether to develop an EFSC application or go through the county.

Michael Haglund asked if the decision could be made at the next meeting two weeks from the current meeting, as he had not known that a decision would be required at this meeting and wished to review the Star Point material. He further discussed jurisdictional versus sub-jurisdictional projects and said he preferred a more informed decision-making process with the opportunity to ask more questions. Chair Shiprack agreed.

John White, ODOE, said the EGA has never had much of an effect, and that the process stated in that section of the rules has never been applied. Mr. White felt there would be problems with that process and if additional areas need to be defined, additional rulemaking would needed to revise the process.

Martha Dibblee moved to direct ODOE staff to review the rulemaking regarding Energy Generating Areas; Jacob Polvi seconded the motion and Council was polled:

Council Name	Vote	Council Name	Vote
W. Bryan Wolfe	Y	Martha Dibblee	Y
Michael Haglund	Y	Lori Brogoitti	-

Cheri Davis	Y	Bob Shiprack	Y
Jacob Polvi	Y		

Chair Shiprack talked to the Council about Energy Efficiency Committee for the Governor and a presentation he had attended, by Tom Edmond of the Northwest Power Planning Council, regarding carbon and energy facilities – wind, coal, hydro and gas that showed the trade-offs to meet certain goals, including costs. Chair Shiprack thought it would be a good presentation for the Council to hear.

Jan Prewitt said she attended the National Energy Conference in Idaho and planned to make a presentation to ODOE regarding what she had learned. Ms. Prewitt said she would be happy to do this for the Council, also.

Larry Givens, Umatilla County, asked if workgroup sessions would be scheduled. Mr. Stoops said he would address that question to the meeting he was planning with the Association of Oregon County Planners.
Chair Shiprack adjourned the meeting at 4:37 p.m.