

Minutes
Energy Facility Siting Council Meeting
Vert Memorial Club Room
Pendleton, Oregon
June 20, 2005

Approved with revision by the Energy Facility Siting Council September 27, 2005

Oregon Energy Facility Siting Council

Karen Green, Chair

Hans Neukomm, Vice Chair

Lori Brogoitti

Martha Dibblee

David Ripma

Robert Shiprack

David Tegart

Department of Energy:

David Stewart-Smith, Assistant Director/Council Secretary

Ken Niles, Assistant Director

Adam Bless, Project Officer

Sam Sadler, Project Officer

Catherine Van Horn, Project Officer

John White, Project Officer

Sisily Fleming, Administrative Assistant

Others:

Steve Munn

Laura Hughes

Anne Walsh

Chair Karen Green called the meeting to order at 9:40 a.m.

I. Consent Calendar:

A. Approval of the April 8, 2005 Energy Facility Siting Council meeting minutes.

Martha Dibblee made a motion to approve the minutes with scrivener errors corrected; David Tegart seconded the motion; all Council members approved.

B. Announcements.

David Stewart-Smith stated there would be a tour of wind area sites in northern Sherman County. One area will be the Klondike III proposed site, and adjacent to that another area proposed to be developed by Orion Sherman County Wind Farm, LLC. Mr. Stewart-Smith further discussed the benefits of these facilities. Klondike I is in operation and Klondike II is under construction, so the tour will give an overall picture in operation and construction of wind facilities. Martha Dibblee said she would take pictures that could be made a part of the record.

Mr. Stewart-Smith also announced that this meeting would be his last Siting Council meeting. He is retiring June 30th after more than 31 years.

An amendment was made on the calendar to include election of officers. Martha Dibblee made a motion to amend the calendar to include election of officers. Bob Shiprack seconded the motion. All Council members approved unanimously.

Martha Dibblee made a motion to elect Hans Neukomm as the Chair for the coming year. Lori Brogotti seconded the motion. All Council members approved unanimously. Martha Dibblee made a motion to nominate Dave Ripma as the Vice-Chair for the coming year. The effective date for the new nominations is July 1, 2005.

II. Information Items:

Information Items:

A. Council Review of the Draft Proposed Order for the Klamath Generation Facility.

John White gave a brief description of the proposed Klamath Generation Facility (KGF). The applicant is Klamath Generation LLC, which is a subsidiary of PPM Energy, which is a subsidiary of PacifiCorp holdings, the parent company at the present time being Scottish Power. The applicant submitted a request for expedited review and a site certificate application in December 2001. Due to market conditions, by April 2002 the applicant withdrew the expedited review request. The application was declared complete in August of 2003 subject to an understanding with the applicant that additional

information was needed by the Council to support a recommendation to apply its balancing authority to approve evaporative cooling.

Mr. White continued by referring to an April 2004 meeting where the balancing analysis was discussed, using the KGF as a framework for the discussion. The threshold question in order to apply the balancing rule involved making a finding that there would be no reasonable way to meet the Council's standards through mitigation or avoidance of damage to the protected resource. During the April 2004 meeting, the Council questioned whether the KGF met that threshold. The Department continued discussions with the applicant, and in December 2004, the applicant presented a water supply mitigation plan. After consultation with the Oregon Department of Fish & Wildlife (ODFW), the Department concluded that the habitat standard could be met, subject to this mitigation plan, avoiding the need to do a balancing analysis. The Draft Proposed Order was issued in April of 2005 and a public hearing was held in Klamath Falls in May.

Mr. White referred to the ODFW letter regarding the Draft Proposed Order and discussed their comments regarding the mitigation plan. Mr. White also referred to pages outlining the requests made by the applicant regarding the Draft Proposed Order. The Staff has accommodated most requests, as shown in the table presented to Council members by Mr. White at the meeting. One exception is the pipeline safety issue, which is unsettled at this time.

Mr. White proceeded to discuss the issue of the cooling tower and the water-cooled option. In order to provide sufficient reclaimed water for cooling, the City of Klamath Falls would need to upgrade and combine their wastewater system with the South Suburban Sanitary District, which is a separate wastewater treatment facility nearby. The applicant would contribute financially up to 25 million dollars; the total cost to combine the facilities is estimated at 50 to 75 million dollars. The City of Klamath Falls will be required to build new facilities in the future to meet new regulations concerning water flow into the river, regardless of the KGF project.

The ODFW was consulted and they raised the issue about the impact on the river. In the Draft Proposed Order (DPO) on Page 84 is a diagram of the river and where the reclaimed water would be used. Mr. White discussed the Keno Reach and the potential significant impact to the fish in that reach. This issue is the primary reason for the time it has taken to bring this application to the DPO stage. The solution is that the applicant has negotiated with the city to supply potable water from the city's wells when the water level at Keno falls below the ODFW in-stream water right level. The effluent that would normally be the reclaimed water to go to KGF to do the cooling would instead be discharged to the river. He also added that it is a rare occurrence for the water level of the river to reach that low level. The ODFW and the City of Klamath Falls are both in agreement with this plan.

Chair Green asked why the potable water would be used for cooling instead of being discharged direct to the river. Mr. White said that while discharging potable water to the river might make sense, that was not the agreement that was reached and ODFW concurs.

There was further discussion about the plan and when the plan would be activated. Mr. White explained that the details of the plan would have to be approved by the Department in consultation with ODFW before construction. At this point, the applicant has not decided whether to use the evaporative cooling option.

Chair Green asked if these details would be worked out prior to issuance of the final order and Mr. White replied that they would not be. There was discussion about the whether there is a feasible process in place that allows for activation before the water level drops below 250 cfs in the Keno Reach and how the Council can determine it will work. Martha Dibblee asked a question about the chart on page 91 and what the outcome of a drop in flow below 250 cfs would be for the fish. Mr. White said that the ODFW flow levels were based on a study that concluded that these levels were the minimal levels required to maintain the fish population. There is no study that has determined the flow level that fish would begin to die.

David Ripma asked about the city's commitment to provide the water. Mr. White said a contract would be required. There was more discussion of evaporative cooling, in comparison with being air-cooled.

Ms. Dibblee asked about whether this is a zero-discharge facility. Mr. White replied that it was not a zero-discharge plant and that wastewater and blowdown water would be returned to the city system and subject to a water discharge permit.

Mr. White discussed the financial assurance amount and restoration costs in comparison with other projects. The amount for the financial assurance would be 6.2 million dollars and would be provided by a letter of credit.

The next issue discussed was the land use, which Mr. White referred to Page 35 of the DPO for reference. The Statewide Planning Goal 11 has to do with extending services outside the urban growth boundary. In 1998 there was an amendment to Goal 11 that specifically prohibited extension of sewer systems outside of an urban growth boundary. This is applicable to the KGF. Mr. White discussed the reasoning for this prohibition, which does not actually apply to this situation. Extending the sewer system to the proposed KGF would not lead to further urban development outside the urban growth boundary. This issue was reviewed by the Department of Justice and the discussion in the DPO reflects that consultation.

Chair Green discussed reasons to allow for a goal exception to Goal 11; Mr. White agreed, referring to Page 38 of the DPO, listing criteria.

Mr. White stated that in regards to the carbon dioxide (CO₂) standards, Sam Sadler did the review and calculations for both a water-cooled and an air-cooled facility. The applicant would use the monetary path for meeting the CO₂ requirements.

Under the noise-control rules, the site qualifies as a previously used industrial or commercial site because it was previously used as a timber mill operation. Mr. White discussed the standards for measuring the noise and KGF would meet those standards.

Mr. White next talked about the pipeline safety. The interconnection would be with the Pacific Gas & Electric Company's Bonanza to Medford lateral (which runs right by the site) and would be considered a related or supporting facility. In the Council's rules, there is a site-specific condition related to pipeline safety, OAR 345-027-0023(3). It is not a mandatory condition, but it has been included for all recent facilities that have related or supporting gas pipelines. The applicant has taken issue with this rule. Mr. White referred to the email documents from Thor Hibbeler, showing the concerns of the applicant. There was more discussion about these concerns and whether the Council members have authority over this condition. Mr. White said that Adam Bless could answer questions about the federal regulation, 49 CFR 192.

Mr. Bless said that in December of 2002 a day-long Council meeting was devoted to pipeline safety. A great deal of detail was reviewed on all specifications of pipeline construction, inspections, and reporting. The federal law has delegated 49 CFR 192 responsibility and enforcement authority to an Oregon state agency, the Oregon Public Utility Commission (PUC). Therefore, the Department of Energy defers to the PUC for application of this rule. Mr. White said the Department of Energy is recommending this condition be left in the Proposed Order, but add some language in the Order that might give the applicant some comfort as to the jurisdictional question. Chair Green asked if the Department of Justice was in agreement with this, and Mr. White said it was.

Bob Shiprack questioned the difference between this and what has been used in other applications. Mr. Bless explained the origin of these codes and how they reference each other. Council members discussed what the reasons would be to want a change from the normal procedure.

Laura Hughes introduced herself. She is a member of the Labors International Union of North America and is on the ASME Mechanical Engineers B31Q standard. She discussed jurisdictional issues regarding pipeline safety.

Hans Neukomm asked about the difference between transmission and transportation pipelines. Mr. White explained that both terms are used when being discussed.

Chair Green asked Council members for questions; there were none. Mr. White explained the next steps and whether a contested case may be presented. If a site certificate is issued in the fall, the applicant could go forward with the facility.

B. Council Review of the Draft Proposed Order for the Klamath Generation Peakers.

Adam Bless began explaining the Draft Proposed Order for the Klamath Generation Peakers Project. He reviewed the background of the project. In 2001 the legislature created a temporary exemption for power plants under 100 megawatts. The plant could be operated up to two years, subject to the condition of paying for CO₂ offsets and mitigation could only be done through the monetary path. After two years, the applicant would have to stop operating the plant or apply for a site certificate and go through the whole process, which would be an expedited review. Klamath Energy was the only company that did this. Mr. Bless continued discussing the operation of a peaker project. They only operate in the peak times for energy.

Mr. Bless reviewed the process of the application for the site certificate and the comments that were made at the hearing. He commented on the similarities of this project and the Klamath Generation Facility discussed previously by Mr. White. The retirement figure of \$527,000 is the estimated cost to retire this facility. There are many shared facilities that are covered by other retirement bonds.

Mr. Bless explained the CO₂ standards. At the present time the facility only operates on natural gas, but the applicant has asked for a site certificate that allows them to modify the plant to burn distillate fuel. There was discussion about distillate fuel, and that natural gas would probably be used more. Mr. Neukomm asked about the Fuel Use Act presented back in the 1970's, and whether it applies to the use of oil products for power generation. There was discussion about existing plants using distillate fuel in conjunction with other fuels. Mr. Bless said that the CO₂ emissions are higher, along with all of the classic air pollutants. There was discussion about the offsets already paid to The Climate Trust, which the applicant paid, estimating they would operate full time during the first two years. The applicant has averaged 200 hours per year, and therefore has already paid a tremendous amount of offsets.

David Ripma questioned the monetary path requirements and the difference between natural gas and distillate.

Chair Green asked for questions; there were none. Mr. Bless said that the Department of Energy would attempt to keep the same schedule as KGF for timelines, since they are located in the same area.

C. Black Hills Generation, Inc. Withdrawal of West Cascade Energy Application for Site Certificate

John White briefly discussed the history of the application for site certificate for the West Cascade Energy Facility, proposed to be located in the Coburg area. There was a lot of controversy in the community, and the applicant made changes to the proposal to address some of the concerns. On May 5th, the Department received a letter from Black Hills

Generation, Inc, withdrawing the application. Mr. White read the letter to Council members.

III. Working Lunch

David Stewart-Smith introduced Ken Niles, the present Assistant Director for Nuclear Safety, and the future Assistant Director for both Nuclear Safety and Energy Facility Siting, with a manager position to be filled with oversight of the Energy Facility Siting Council, serving as Council Secretary.

IV. Action Item:

Chair Green explained the agenda order has changed. Item D will be reviewed first.

D. Request to Approve High-Efficiency Cogeneration Exemption for Heinz/OreIda Cogeneration Facility

Adam Bless introduced Steve Munn, representing Heinz/OreIda. Mr. Bless began discussion of the review requirements. Under Oregon Statute, a facility that meets one of two criteria is exempt from the Energy Facility Siting Council (EFSC) regulations altogether. One of the criteria is a pure fuel efficiency standard, which is 5,500 Btu per kilowatt-hour, which is over 65% efficient. The other is a standard where 1/3 of the energy produced by the plant is not in the form of electricity, but in the form of useful thermal energy. Co-generation is a plant that uses the same fuel source to produce both electricity and useful thermal energy. The classic users of thermal energy are paper mills and food processing facilities.

There was discussion among Council members, Mr. White and Mr. Munn. David Ripma asked about the procedures taken when users of the thermal energy don't use the anticipated energy. Mr. Munn talked about the future contracts and schedule for production of the Heinz/OreIda facility, which produces frozen potato products.

Bob Shiprack made a motion to approve the High-Efficiency Cogeneration Exemption for the Heinz/OreIda Cogeneration Facility. Martha Dibblee seconded the motion. Council was polled and unanimously approved.

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

A. Bradwood Landing LNG Project: Appointment of Clatsop County as the Special Advisory Group

Catherine Van Horn, Oregon Department of Energy, noted that the name of the Northern Star LNG Project had been changed to "Bradwood Landing." The Bradwood Landing facility is proposed for a site in unincorporated Clatsop County, and therefore EFSC must appoint Clatsop County as a Special Advisory Group. Dr. Van Horn noted that the associated proposed pipeline would go through several counties and into Washington state, making it an interstate pipeline and thus not under EFSC's jurisdiction.

Chair Green asked questions about federal jurisdiction. Mr. Stewart-Smith explained Oregon's role in the federal process. Chair Green asked if the applicants are raising issues about jurisdiction. Dr. Van Horn said Bradwood Landing has said it would continue through the state's process as long as the process is available to them.

David Ripma asked Dr. Van Horn to summarize the public comments that have been received. Dr. Van Horn said most comments are safety related.

Council members discussed an invitation from FERC to visit an LNG facility.

Mr. Neukomm asked what kind of safety concerns were considered for an LNG facility. Dr. Van Horn said the fact that there can be accidents with the tanker and also on the site of the facility. She noted that residents located closest to the proposed Bradwood Landing site live in Washington State. Sam Sadler said that, on the Port Westward Project, the closest residents to the project also were in Washington. EFSC's precedent has been to allow Washington residents access to the EFSC process. Council members continued discussing safety issues.

David Tegart asked if other shipping would be stopped on the Columbia River while an LNG tanker unloads. Dr. Van Horn said the applicant says no, but data is still being gathered for the distances at which the Coast Guard would enforce security zones.

A motion was made by Hans Neukomm to appoint Clatsop County as the Special Advisory Group for the Bradwood Landing LNG project. Bob Shiprack seconded the motion and Council approved unanimously.

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

B. Jordan Cove LNG Project: Appointment of Coos County, City of North Bend and City of Coos Bay as Special Advisory Groups

Adam Bless discussed the project and concern of the local folks. He selected three groups to be part of the Special Advisory Group because of the closeness of the two cities, and also the county involvement. Mr. Bless explained what the special advisory group's role would be, which do not have to agree with each other, but represent their constituency before the Council.

David Ripma made a motion to appoint the governing bodies of Coos County, the City of North Bend and the City of Coos Bay as Special Advisory Groups. Martha Dibblee seconded the motion and Council approved unanimously:

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

C. Request to Authorize Rulemaking for LNG specific rule amendments

Adam Bless suggested contacting Jan Prewitt, Department of Justice (DOJ), for advice on the rulemaking.

David Stewart-Smith discussed rulemaking and the language involved. He further explained that there could be intermediate meetings to discuss policy issues. Mr. Bless stated that Council members should express how they feel before he can go further in the process. There was discussion among Council members. Chair Green expressed concern about the way this item was noticed on the Agenda, about the fact that the meeting was not located near the proposed LNG facilities and the fact that members of the public were not present to weigh in on this topic. Chair Green emphasized that the proposed rulemaking should only be discussed in broad policy terms. David Ripma questioned the "Need" standard.

Mr. Bless said a review with the Council needs to be made first before getting into specific standards. Mr. Neukomm asked what the involvement is with the Public Utility Commission (PUC). Mr. Stewart-Smith said they are very interested in the overall picture, even though the question of Need or LNG does not involve direct rate regulation by the PUC. Mr. Neukomm asked if the need for electric utility facilities rests with the PUC. Mr. Stewart-Smith said no. He further explained that the only thing the PUC decides is whether an investor facility may be folded into the rate base. Investors can build and operate as a merchant power plant as long as they don't request the costs to be put into the rate base, thereby not involving the PUC. The investor would be willing to take that risk on behalf of their stockholders, not the ratepayers.

David Tegart asked about the PUC forecasts on energy. Mr. Bless said the PUC has its own forecasting capabilities, and it also gets forecasts from the Oregon Department of Energy and the federal government.

Mr. Neukomm asked who ultimately pays the costs to build an LNG facility. Mr. Bless explained they are almost like independent power producers. He further stated that the companies that are proposing the facilities are huge companies and the smaller companies like Jordan Cove are going to get outside financing. The smaller company would be selling gas to a regulated public utility like Northwest Natural at a market price. Ultimately the ratepayer pays the market price, but it is not a rate of return guarantee, which is what was seen in power plants in the regulated days. The investors in the plant are taking the risk, not the ratepayer.

Ms. Prewitt, DOJ, joined the discussion. Chair Green informed her about the scope of discussion regarding how far the Council should go and the consensus to stick with broad policy principals, rather than more specific detail. Ms. Prewitt agreed. She also stated there will be many opportunities for people to join in. The present meeting is a request to authorize the Rulemaking, which is just getting started.

Mr. Bless said there have been four workshops and several comment periods. He hopes the final rule will be better refined, but so far the public comments have not been specific enough to help refine the proposed rules.

Chair Green discussed the reason for undertaking rulemaking, which is that the existing rules don't answer some of the issues. Mr. Bless agreed. He also mentioned that with the LNG facility there are three rules that were looked at. The current CO₂ standard was written to address power plants, but the language doesn't fit as well for an LNG facility. Mr. Bless said he consulted with Sam Sadler, Oregon Department of Energy, in regards to the CO₂ standard. Some of the current standards do not make sense for an LNG facility. In the workshop the question was brought up whether all of the standards would be ignored, and new standards made. Mr. Bless said all existing standards would still apply, and new standards would also apply specifically for an LNG facility.

Ms. Prewitt added that comments might come in on the question of whether a new rule is constitutional or is pre-empted by FERC. If those comments do come in, the Department would try to craft language that does not conflict with the constitution or FERC's authority.

Mr. Bless continued discussing OAR 345 Division 23. He explained that the current Need rules do include a Need rule for LNG facilities, but that rule was written for a storage facility that is part of an existing regulated public utility system. It does not apply for an importation terminal that is not part of a regulated public utility system. Chair Green asked why a Need standard is being considered for the LNG plants. Mr. Bless stated that 230 people attended the Notice of Intent meeting so the standard is being considered out of fairness; also the main concern from the public comments involved

safety issues. The public has demanded a Need standard because there is no way to guarantee there is no safety risk. Chair Green clarified her question more, asking why the Need standard would not apply to any other energy facility. Mr. Bless said it is the magnitude involved. Mr. Stewart-Smith discussed more on the Need standards that are in existence for LNG storage facilities and for gas pipelines and electric transmission. Electric generation is the only subset for which the Council does not and cannot have a Need standard.

Mr. Tegart asked if there is a Need requirement in the FERC process. Mr. Bless explained the FERC process, which expresses Need in terms of broad project purpose rather than through a detailed forecast of supply and demand. He continued talking about the Need standard; where to draw the line, and whether the market we consider should be local, regional or national.

Mr. Ripma asked if state law requires a Need standard. Mr. Bless said it is authorized, but not required. Mr. Neukomm asked how the applicant determines Need. Mr. Bless said there are two visions of what Need might be. One Need is that rates will go up unreasonably, economy will fall, etc. Another Need is when a company talks about investing, they are wondering if there is a market that they can get a return for their investment. Both forms of Need are valid, depending on your point of view.

Chair Green spoke about importation of LNG and the fact that the facilities have to be along the coastline. She expressed a concern that the opposition to LNG facilities is primarily a local opposition, while the question of the Need for a facility is more of a regional question. Mr. Stewart-Smith clarified more about the national marketplace and how the Northwest fits in. The Pacific Northwest is isolated from the rest of the country; gas cannot be shipped directly through the pipelines in Oregon to Oklahoma. What can be done though is displace gas going from Canada to Chicago with gas coming from the Gulf of Mexico. Therefore, the market for gas is becoming more national than it used to be. He further added that the peak of natural gas production in North America has been reached.

Chair Green questioned the definition of boundary for Need. Mr. Bless said the Portland-Salem area has been considered in the past. He further stated that some arguments in opposition to LNG facilities say this would make the Northwest dependent on foreign sources and delay the time to get serious about conservation and wind. Phil Carver has given out information showing that even if we greatly increase our support for wind generation, a small amount of natural gas is necessary for times when wind is not reliable.

Mr. Neukomm asked why the LNG situation is different from the IPP. Mr. Bless said there is a statute that says EFSC will not consider Need for independent electric power producers. That statute does not say Need can't be considered for independent LNG providers. Mr. Bless further stated that some LNG proponents have suggested that this just hasn't made it to the legislative agenda yet. However, Mr. Bless said that EFSC cannot guess what statutes the legislature might adopt; it can only apply the statutes that

we have, not the ones that we might have had. If the legislature wanted to prohibit Need standards for LNG facilities, it has had an entire session to do so. Mr. Neukomm asked why the Council shouldn't wait to develop the Need standard for a facility, letting the legislative action take place first.

Mr. Stewart-Smith said the legislature has already taken action, by giving the Council authority for such a Need standard. Chair Green referred to the current rule and wondered why the language in the rule would not work better than defining a region. She referred to the language "...it is needed to enable the natural gas supply system, of which it is to be a part..." Mr. Stewart-Smith and Mr. Bless agreed this could work, letting the applicant define the size.

Mr. Bless referred back to the safety risk issue. He said he could not make the same guarantees for an LNG plant that he can for a power plant, because power plant opponents cannot credibly claim that the power plant is likely to endanger their health and safety. If he could say an LNG facility was perfectly safe he would not feel as compelled to respond to the public outcry for a Need standard.

Mr. Neukomm asked how the Council answers the supplier when asked where the legal authority is to make a Need standard. Ms. Prewitt, DOJ, responded by saying Council does have authority, but where FERC comes in is unknown. Mr. Bless said that the FERC does not include a chance for the public to argue that the facility is not needed. Ms. Prewitt agreed that Council decisions are based on contested cases, considering public comment. The FERC process does allow for a public challenge, but it does not give the public opportunities for discovery and cross-examination the way an EFSC contested case does.

Bob Shiprack commented that he feels the issue of safety is an issue on its own and doesn't feel it should be covered under Need. He also referred to the amount of gas available in Canada, and that it is not as clean. Mr. Stewart-Smith referred to the quality of gas in the pipeline, which is a good quality. The domestic wells being drilled in Canada have more sulfur components and therefore more expensive to produce the gas to make it clean. He said that gas supply should be considered a market issue and should not fall under an EFSC Need Standard.

Dave Tegart said he agreed with Mr. Shiprack. Martha Dibblee asked how many facilities there are worldwide and that Staff draw from this information. Mr. Stewart-Smith said a forecast of fifty years is not possible for this type of product because of the complicated nature. He said that forecasts cannot be made any farther than five years into the future. Ms. Dibblee said that the venture capitalists are not the only ones taking a risk. They are taking a financial risk, but the people living in the area are also being asked to take a risk with the facility sited near them. She said that it was important for the Council to have solid parameters to base a decision that it is all right for the venture capitalists to come in and build these facilities.

Mr. Ripma stated his concern that the issue will have two distinct sides that can be argued and the Council will be faced with an impossibility to defend the decision. He feels it is endlessly challengeable. He said he wanted the public to have a real opportunity to try and convince the Council that the facility should not be built. However, he did not think a Need standard was very workable. Mr. Bless agreed that any Need standard would be complicated and that there was no way to make it simple.

Council members discussed more on the standard for Need. Chair Green stated the Need standard would not provide any more to ensure safety of these plants. Mr. Stewart-Smith said he does not think the Council would be faced in court to make a call for Need. He said that any conclusion the Council made based on the evidence would be very unlikely to be overturned in court. It is a more difficult conclusion to come to, but it could be defined.

Ms. Prewitt asked Mr. Stewart-Smith how the Need standard was previously met before the 6(c) process. Mr. Stewart-Smith said the Pebble Springs Facility was the only one turned down on the basis of Need. This was the only time the Need rule was applied, which was in 1973. The Need standard has been applied to pipelines at other times.

Lori Brogoitti agreed with other Council members, noting how complicated the Need standard could become. Mr. Neukomm stated he is hesitant to adopt a Need standard because he is unsure whether it is appropriate. Ms. Dibblee asked on a worldwide basis, how many facilities have had accidents. Mr. Bless said there actually haven't been any accidents in Asia; there was one in Algeria in which there were two dozen fatalities. He further stated that the public has pointed out that countries like China and Japan are not terrorist targets like the United States is because there is not as much hatred towards them. He said that it all stems from September 11th, and terrorism is a very difficult issue for an engineer to solve because it is a wild card.

Mr. Stewart-Smith said in the 1940's there was an accident in Cleveland. This had to do with the tanks being inferior. A lot has been learned since then about storage in tanks. He said that one of the problems with addressing safety in standards is that we don't have data to work with because there have not been significant events so far.

Chair Green summarized Council's comments, and determined the general consensus is not to recommend Staff to pursue the Need standard. She took an informal poll of Council members. Four of the members clearly did not favor a Need standard, Martha Dibblee stated that she was neutral, and David Ripma asked for some sort of compromise where another standard would compensate for the lack of a Need standard.

Mr. Stewart-Smith pointed out that even if the Council did not want a Need standard for LNG import terminal, it would have to amend the existing rule to state that it only applied to LNG storage facilities such as the one in Newport.

Mr. Bless said he felt the meeting in Pendleton takes away from public comments from people in the Coos Bay and Astoria area. He feels it will be difficult for the project

officers for these projects. Chair Green said what has been decided today is whether to authorize staff to proceed into rulemaking and identify three large policy issues. She further stated Council needed to make a broad policy decision.

There was discussion about the workshop meetings and making tapes available to Council members so the public comments can be heard.

Mr. Bless asked if this issue could be raised in Astoria at the meeting that is to be scheduled. Chair Green referred to Dr. Van Horn. Dr. Van Horn said the public could comment, but she didn't know the timeline for the meeting. There was discussion about making the tape of today's meeting available online to the public.

Mr. Bless next explained the economic impact. He discussed possible changes to the area in the economy, and mentioned he could not find an existing standard that would cover this area. He said that people at the workshops were concerned that the security restrictions on the river would make it impossible for other legitimate commerce on the river to continue. Local shipping and fishing could be impaired because their access to the river was so restricted. Chair Green asked how Council could actually define the economic situation to be considered and what area, or boundaries need to be included, much like the Need issue.

Chair Green said that she did not like to base a standard on mitigation, because it is so subjective. She said that rules should have a clear standard, and mitigation could be one way to meet the standard.

Mr. Stewart-Smith pointed out that it is difficult to balance adverse impact on one segment of the economy against favorable impacts in another. Chair Green pointed out that local governments do this sort of thing in the ESEE analysis required when analyzing compliance with Goal 5.

Mr. Shiprack said he felt that the applicant should cover any direct costs of increased security, such as additional capabilities for police or fire departments. Mr. Bless said those costs fall under the Public Services Standard, and in the project order for Jordan Cove the applicant was directed to show that there would not be any economic burden. One way to cover this was through the land use and another through the Public Services Standard. However, indirect costs such as a gillnetters' inability to fish at certain times because of security restrictions are not covered by any standard. The indirect effect on the economy through the use of the Columbia River is another impact that could arise. There was discussion among Council members about how much loss to allow and with what type of mitigation, or whether it should be zero loss. Mr. Stewart-Smith pointed out that the indirect impacts might include large river commerce, such as Toyota shipments to the Port of Portland. Mr. Stewart-Smith said that to have a no-net loss it could be difficult if the boundaries were just in the Astoria area, but if a larger area is considered it might be easy to show no-net loss.

Ms. Prewitt said the language in ORS 469.501 would allow the Council to adopt such a standard. However, a recent order FERC issued, allows the state to impose conditions as long it doesn't cause the facility undue delay or prevent it from going forward. She further stated that at some point proponents of the facility might think it is being delayed, and there was a risk that the standard could be overturned.

Chair Green also asked if that would be true if an economic standard wasn't adopted and a site certificate was issued. Ms. Prewitt said that the impact is going to be driven by federal standards. She stated there could be three places where an EFSC rule could be challenged. One would be rule challenge, another in an application, and yet another in an application to FERC, where FERC could say they have exclusive jurisdiction.

Mr. Tegart pointed out that the negative impacts might be easy enough to quantify, such as the cost of delaying shipments or the cost of limiting someone's fishing capabilities. However, the positive economic impacts of an LNG terminal on the regional economy could be very hard to quantify.

Mr. Shiprack stated he felt discussions should take place with the applicants to understand time schedules for the impacts on the river. Mr. Bless talked about past experiences and opinions from the public that don't live in the immediate area. He felt that talking wasn't enough; what needed to be done was to have assurances turned into conditions that would force both sides to meet each other. Mr. Stewart-Smith also said that with LNG facilities there are two or three potential applicants that are putting applications together; without a rule the applicants could be $\frac{3}{4}$ of the way done and have a rule added that would change everything for them, which is not right.

There was discussion about impacts from accidents. Mr. Stewart-Smith pointed out that it would be impossible to base a No-Economic Impact Standard on accident scenarios. David Ripma asked why staff has focused on the economic impact of security restrictions. Mr. Bless explained that LNG facilities are unique because they are the only type of energy facility whose security restrictions affect everyone in the area, even people who do not work or do business with the facility. Chair Green pointed out that a Zero-Loss Standard would be unrealistic, and that the alternative would be to balance the negative and positive impacts. It was pointed out that the negative and positive impacts depend on the size of the area being considered. Chair Green suggested identifying the impact area. Mr. Bless said it might already happen through the Coastal Zone Management Act (CZMA). Ms. Prewitt said the CZMA is a federal program that looks at state standards. Ms. Prewitt did not feel that CZMA looks at economic issues. Chair Green pointed out that the balancing of negative and positive impacts of LNG facilities was similar to the ESEE analysis that Deschutes County did for aggregate mining facilities. Mr. Stewart-Smith explained the scenario of the LNG market. He pointed out that lowering the market price of natural gas in the metropolitan area could be a positive impact that would swamp any negative impact, depending on the size of the impact area considered. Chair Green said the bottom line is there is no compensation for those that suffer during that time.

Hans Neukomm explained an experience he had in Texas that helped a group to come to a decision on issues. Chair Green pointed out that this type of mediation process is fundamentally different from the regulatory process described by our statutes. Mr. Bless and Mr. Stewart-Smith agreed it would be a good avenue, but the funds to conduct this are unavailable. Mr. Stewart-Smith pointed out that a mediation process of this sort would require general funds, which ODOE does not receive.

Chair Green suggested giving an applicant a choice between compliance paths. One path could be a no-net-loss demonstration, in which the applicant would account for all of its negative impacts and would mitigate them. The other path would be a balancing standard over a larger area. The applicant could choose between these paths, depending on which standard they could actually meet. Mr. Ripma said he doesn't think no-net loss will work because the gain of people is very diffuse, and the losses are very local.

Mr. Stewart-Smith brought out the point that the Coast Guard will not make a determination of the security zone until all the certifications are in and the plant is ready to be built. Mr. Shiprack asked what was wrong with the draft language that staff has already presented. Chair Green answered that the draft language is a mitigation requirement rather than a standard.

Mr. White asked if the Council had decided whether there should be a rule on this topic at all. The Council took a straw poll. All members agreed that the issue should be addressed in rulemaking.

Dr. Van Horn suggested getting more groundwork to expand on what the standard could be. Chair Green agreed and reviewed with Council members the different impacts.

Chair Green summarized that the Council was directing staff not to proceed with a Need Standard, but that staff should modify the existing Need Rule to clarify the fact that it applies to end-of-pipe facilities. The Council also directed staff to continue with a standard that would address the economic impacts of LNG facilities.

Mr. Bless asked if the Council could clarify their decision so that it could be passed on to the public. Chair Green said the decision was based on looking at the LNG plants as similar to IPP's and not similar to regulated public utilities (integrated resource plans). Another point is that this is new territory and understanding FERC's rules need to be addressed.

Bob Shiprack moves to authorize staff to proceed with rulemaking. Lori Brogoitti seconds the motion and Council approved unanimously:

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

E. Request for Approval of Stateline Request for Amendment #3

John White referred to the red line proposed order and how it would be modified. He also mentioned there were no comments received during the comment period. The certificate holder for the Stateline Wind Project is FPL Energy Vansycle LLC, (FPL). The Stateline Wind Project is the only wind project that has a site certificate in Oregon. The other facilities that have been built to date were outside the Council's jurisdiction because of size. This is the largest wind facility operating in Oregon with 123 megawatts plus another 307 megawatts approved for construction. It is being developed in three phases, Stateline 1, Stateline 2, and Stateline 3. The amendments addressed at this meeting are for Stateline 2 and Stateline 3.

Mr. White explained that under the Council's rules a request for extension must be submitted no later than six months before the applicable deadline or no later than the deadline in special cases. Staff is recommending Council accept the FPL request even though it wasn't received six months before the deadline. Mr. White said this rule was made so it would not come as a surprise at the last minute, but in FPL's case, Staff has known this would be coming because of the redesign of the facility.

Mr. White reviewed what the considerations are when there is a request for extension. The Staff must review whether there has been a change of circumstances that would affect Council findings since the certificate was granted and whether any applicable laws have changed.

Mr. White reviewed the issues. There have been two changes in the Umatilla County Development Code, which have been discussed with Umatilla County, and the County has no objection to the amendment request. Mr. White reminded Council members of the balancing rule that was invoked for the Category 1 habitat due to the presence of Washington ground squirrels in the Stateline 3 area. After the Council approved Stateline 3, the Council amended the balancing rule. The new rule would apply to this amendment. Because FPL intends to redesign the facility, there will be a future amendment, at which time the new balancing rule can be addressed. In the meantime, the Department is recommending a condition crafted that gives authorization to build Stateline 3, except in the Category 1 habitat area until the potential impact has been analyzed in a future amendment proceeding. There also is a possibility that the classification of that habitat may change. This decision will be postponed to a future amendment.

The Environmental Quality Commission (EQC) has adopted new noise control regulations that apply to the present amendment. The Council had made a finding that the plant complied with the regulations originally. The new regulations specify a particular modeling protocol for the "Table 8" standard, not identical to what was used in the previous amendment. The standard has not changed though. Mr. White also discussed the ambient degradation standard, and how it is analyzed at a residence. He also pointed out a change in the language, ... "with a legally effective easement or real covenant..." the landowner can waive the limit if he agrees to allow the noise level to be

more than the standards allow. As an alternative to a waiver by the property owner, the facility could comply with the 10 decibels limit, if no turbines are operated within 5,000 feet of the residence.

There are two parts to the amendment. The first is to extend the deadline to begin construction for Stateline 3. Part two of the amendment request would modify a site certificate condition relating to the noise control regulations effecting a residence in the middle of the Stateline 2 development area. Under the current site certificate condition, the residence is subject to a “non-occupancy” agreement. The amendment requests modification of this condition to allow the “non-occupancy” agreement to be dropped, if the property owner signs the waiver that is allowed under the new noise rule.

Ms. Anne Walsh, FPL Energy, introduced herself and thanked the Staff and Council members for their consideration.

Mr. White also pointed out he had a clean version of the final order ready to be signed, with one error in wording needing correction.

Martha Dibblee moved to approve the Stateline request for amendment #3 and for the Chair to sign the order with the correction as noted by Mr. White; Mr. Neukomm seconded the motion and Council was polled:

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

Mr. Stewart-Smith announced that Sam Sadler would become a member of the new Renewable Energy Resource Division and won't be appearing before the Council as often as in the past.

There was discussion about the future meetings. There may be one amendment that may come in before September, which may be a telephone meeting. The next will probably involve final decisions on the two Klamath plants and a rulemaking in September. Mr. Stewart-Smith said the meeting should be in the Klamath Falls area, even though it is not contested. It was tentatively decided for the last week of September.

Chair Green and Council members acknowledged Mr. Stewart-Smith's work for the Department.

Chair Green adjourned the meeting at 5:40 p.m.