

**Minutes  
Energy Facility Siting Council Meeting  
City of Troutdale  
City Conference Building  
233 Buxton Avenue  
Troutdale, Oregon**

**July 23, 2004**

*Approved with revision by the Energy Facility Siting Council  
December 2, 2004*

*Pulled for Reconsideration January 28, 2005*

*Approved without additional revision by the Energy Facility Siting Council  
April 8, 2005*

Oregon Energy Facility Siting Council

Karen Green, Chair

Hans Neukomm, Vice Chair

Russell Dorran

Martha Dibblee

David Ripma

Robert Shiprack

David Tegart

Office of Energy:

David Stewart-Smith, Assistant Director

Adam Bless, Project Officer

Sam Sadler, Project Officer

Catherine Van Horn, Project Officer

John White, Project Officer

Loretta Kohanes, Administrative Assistant

Oregon Department of Justice:

Janet L. Prewitt, Assistant Attorney General

Oregon Department of Environmental Quality:

Peter Brewer, Air Quality Manager Eastern Region

Pacific Energy System:

John Larson, Consultant

The Climate Trust:

Mike Burnett, Executive Director

City of Umatilla:

Larry Clucas, City Manager

Summit Energy LLC

Brett Wilcox, President

Portland General Electric:

Steve Nichols, Manager

Steve Anderson, Environmental Compliance Specialist

Gina Huey, Trojan Final Site Survey Manager  
Jerry Reid, Licensing Manager

Calpine Corporation:  
Rick Tesselhoff

NW Natural:  
Gary Bauer, Manager  
Mike Hayward, Project Person

Stoel Rives LLP:  
Margaret Kirkpatrick, representing Summit Westward LLC/NW Natural  
Peter Mostow, representing Calpine Corporation

Others:  
Dennis Logan, Western Empires  
Lyle Strandberg, Organic Farmer in Boardman  
Larry Clucas, City of Umatilla Manager  
Shane Baker, Concerned Citizen  
Martin Pitney, Aerial Photographer  
Denise Kerwin, Concerned Citizen  
Jerry Mumper, Concerned Citizen  
John Williams

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

**I. Consent Calendar:**

- A. Approval of the April 23, 2004 Energy Facility Siting Council meeting minutes.**

David Stewart-Smith reviewed the meeting minutes with the Council.

Martha Dibblee moved to approve the April 23, 2004 minutes without revision, Bob Shiprack seconded the motion and the Council approved unanimously.

- B. Approval of the June 3, 2004 Energy Siting Council Telephone Conference meeting minutes.**

Russ Dorrان moved to approve the minutes, David Tegart seconded the motion and the Council approved unanimously.

**II. Action Item:**

- A. Decision of the Summit Westward Project's Request for Site Certificate Amendment No. 3.**

Adam Bless explained the details of the Expedited Amendment. He explained that a site certificate (SC) holder must meet certain criteria to be eligible for the expedited amendment: 1) The SC holder must show that there will be no significant adverse environmental impacts from the amendment. 2) Forcing the SC holder to go through the normal process would be a significant harm to them. 3) The SC holder has to show that the need for the amendment isn't just a set of circumstances that should have been known sooner and procrastinated, thereby creating the need for expedited amendment (which is the most important).

Mr. Bless said that Summit submitted the request for Expedited Amendment accompanied by a long document explaining the circumstances and why they needed to start right away. Mr. Bless said that the proposed order under consideration at this meeting would be a temporary order, subject to a 15-day comment period on the order itself. During the 15-day period after the temporary order is issued anyone can request a contested case. This isn't expected though, since no public comment has been received. The only comment received was from the Port of St. Helens, the landlord on the property, and they were supporting the amendment.

To review the amendment, Mr. Bless said the applicant is asking for a splitting of the project into Phase 1 and Phase 2. They are not asking for an extension of the deadline of the project, only a phasing of two important payments, payment of a retirement bond and a payment of the CO<sub>2</sub> offset bond.

In April of 2004 Summit requested an amendment, their third request for amendment, which was for an extension of construction deadlines, not being sure they would be able to start the construction within the required two years. They later came back and said that they expected to meet the two-year construction deadline in the site certificate. At that time the third request was put on hold. If they meet the deadline and start construction by October 2004, the third request will never be processed. Mr. Bless stated that later they submitted another request, their fourth request, which is under consideration at this meeting. This caused the numbering between requests and amendments to fall out of sync.

Mr. Bless explained further that the amendment request would not affect any of the conditions in the site certificate, other than a change to the cost estimate for the retirement standard and changes to the bonds for retirement and CO<sub>2</sub>. Summit has asked to take advantage of the same retirement estimation methodology that has been seen in the COB proposed order, which is in a contested case. There has been much consultation with Dan Jones of Pacific Energy Systems and Summit. ODOE and Summit have arrived at a new set of estimated retirement costs, which are in the proposed order presented at the present time. The new retirement cost estimate is less than half of the cost estimate in the original order. If approved, this would be the first time a retirement cost estimate was approved that was based on this methodology.

Mr. Bless said a second standard that is also affected is noise. The Department has proposed a condition change requesting that Summit perform a second noise test. Since

the facility will be built and operated in two phases there should be noise testing after the first phase and also after the second.

Mr. Bless said a third change in standards (and most complicated) is the phasing in and schedule of payments for the CO<sub>2</sub> offsets, which Sam Sadler, Department of Energy, will explain.

Chair Karen Green asked if the Council approves the numbers for the retirement bond in Summit's request, what effect would this have on COB's contested case, since this methodology is at issue in the contested case. Jan Prewitt, Oregon Department of Justice, said that as far as the impacts to the COB Energy Facility, the request before the Council is not to approve the method, but approval of the specific numbers in the Summit retirement bond.

David Stewart-Smith explained the progression of the re-evaluation of the methodology. Pacific Energy Systems was contracted by the Department of Energy to find what would be reasonable, considering the current conditions. The methodology will be continually evolving because of changing conditions. There was further discussion of the impact to other applicants going through the EFSC process. Mr. David Stewart-Smith said there are variables in site-specific criteria that have to be taken into consideration rather than just using the methodology. Ms. Prewitt said unless the Council adopts the methodology as the standard, it would be used as a set of guidelines, subject to change.

Hans Neukomm asked what made the change in the difference in the figures for Summit's retirement bond. Mr. Bless discussed the aspects of the value of reselling equipment in the future, the value of scrap metal and a new facility using the infrastructure.

Russ Dorrان asked about the decommissioning responsibility. There was discussion about the Port of St. Helens owning the land but the site restoration is the responsibility of the owner of the site certificate.

Dave Ripma asked about the difference between the \$11 million bond and the requested change and how it could drop that much. Mr. Bless said in the original site certificate the \$11 million was proposed by Summit and was not itemized. It was a figure higher than any the Department of Energy had used before and was accepted. Summit has refigured and found out they can place the site in a non-hazardous condition for less. Ms. Prewitt said the new methodology is very detailed and broken down more than it has ever been done. The amount of the retirement costs plus a 20% contingency yields a cost of \$3.9 million.

Bob Shiprack asked if the SC holder had projected when it needs to start the construction of the second phase. Mr. Bless explained the statutory requirement definition of construction is simply having spent \$¼ million. He explained that they must complete construction of both phases by October 3<sup>rd</sup> of 2009. If only one of the phases is constructed by the deadline the SC holder would need to submit an amendment request deferring completion of phase two. If they fail to request an amendment, the authorization to complete phase two would lapse.

Mr. Dorran asked about the retirement bond and escalation costs. Mr. Bless said escalation is taken into consideration and the \$11 million was in 2002 dollars. There is a published index used to make the figures current.

Chair Green asked if there were further questions about the retirement bond; there were none.

Sam Sadler, Oregon Department of Energy, discussed changes to Summit's compliance with the carbon dioxide standard. Besides the change in the two phases and a need for a change in the distribution of funds because of the two phases, there were some editorial changes to the conditions. The definition of power augmentation originally was to measure augmentation at average annual conditions. Summit's design could not operate its power augmentation at average annual conditions, but could during the warm temperatures, so even though it had power augmentation, it wasn't compliant with the CO<sub>2</sub> standard. The site certificate specifically noted that Summit's power augmentation was not compliant with the CO<sub>2</sub> standard. The Council revised its rules so that a SC holder could measure CO<sub>2</sub> emissions at the time of year the certificate holder intends to operate with power augmentation. The revisions incorporate the new definition of how power augmentation emissions are measured and remove the exception for Summit.

Mr. Sadler said another request Summit made involved the language of the financial instrument. Mr. Sadler explained the difference between a letter of credit, which would be used as the money is being drawn down, and a bond, which is used only when a certificate holder does not pay. The language of the site certificate was written for a letter of credit instrument rather than a bond. Therefore, two Memoranda of Understanding need to be added to account for the two forms of security, one for a letter of credit and another for a bond.

He further explained that the offset funds are formulated by the amount of CO<sub>2</sub> emissions. The Climate Trust is allowed to draw down the amount of offset funds plus 5 percent for selection and contracting to find projects. By statute, the Climate Trust is required to have 60 percent of the funds obligated within the first two years after beginning construction. Summit had a unique situation where they were planning to start construction before having all of the funding in place. With other site certificate holders, the selection and contracting funds were allocated to the Climate Trust prior to the beginning of construction. Summit requested that the Climate Trust delay requesting the selection and contracting funds to give them more time to secure funding. ODOE proposed text that would defer to the Climate Trust when it required Summit to provide selection and contracting funds rather than requiring the funds to be provided prior to beginning construction. This allows the Climate Trust to delay its request for payment of selection and contracting funds and gives the certificate holder some flexibility in negotiating that with the Climate Trust.

Mr. Sadler discussed with Council other editorial changes and more clarification on the Climate Trust. He noted that the proposed changes do not constrain the Climate Trust about when it requests funds, but allows it flexibility.

Chair Green asked why Summit requested additional time to pay the Climate Trust. Mr. Sadler said Summit was planning to construct in the foundation, approximately \$1 million, without financing for the entire project. That would place it into the definition of beginning construction. Under current site certificate conditions, Summit had to pay selection and contracting funds prior to beginning construction. Mr. Ripma asked how the Memorandum of Understanding works. Mr. Sadler said when the site certificate conditions were first written there were disagreements which cost the Climate Trust thousands of dollars in legal fees to get the money from the site certificate holders. Since that time, to save the Climate Trust from being in dispute with the certificate holder for implementing the monetary path, the mechanism of the Memorandum of Understanding outlines when funds shall be drawn down, how many days to pay funds, step by step details so that everything is agreed to in advance and is enforceable as a site certificate condition. Mr. Sadler gave the Council a brief description of the difference between a letter of credit and a bond and the flexibility of the site certificate holder to use either one. He referred to the Order on Amendment #3, Page 21, Sections A – D for further explanation.

Eric Gjelde, Summit Power Northwest, developer for the owner of the Summit/Westward Project, thanked the Council for its consideration and staff for the hard work. He explained the difficulties the company has had with getting everything lined up to construct the facility and the drive from the market place.

Mike Burnett, Executive Director of the Climate Trust, expressed the support of the Climate Trust with the Staff's work and effort that was put in the amendment.

Mr. Bless explained the difference between the expedited amendment and a normal amendment, which is mainly the public comment period. He wanted to make sure the Council takes a close look at the reasons a site certificate holder is asking for an expedited review. The Summit request had no opposition or comment. However, had the project received any negative comments he would have recommended a normal amendment review process. Chair Green expressed her appreciation for caution given.

Based on the proposed order David Ripma moved to adopt the Temporary Site Certificate Amendment for the Summit Westward Energy Project, David Tegart seconded the motion and the Council was polled:

<b>Martha Dibblee</b>	<b>Yes</b>	<b>David Ripma</b>	<b>Yes</b>
<b>Russ Dorrان</b>	<b>Yes</b>	<b>Bob Shiprack</b>	<b>Yes</b>
<b>Karen Green</b>	<b>Yes</b>	<b>David Tegart</b>	<b>Yes</b>
<b>Hans Neukomm</b>	<b>Yes</b>		

### **III. Information Item:**

#### **A. General overview of Environmental Monitoring Programs for Energy Facilities.**

David Stewart-Smith discussed the environmental monitoring of power plants siting historical information about how the statutes came about. In 1993 and 1995 a decision

was made in recrafting Council statutes to use the programs and expertise of other agencies for on-going regulatory oversight where possible.

The second point Mr. Stewart-Smith made was that monitoring should be designed to confirm compliance with the standards. In one case of electric and magnetic fields and the human health effects, a panel was put together with a Council member and looked at all the data. It was decided a standard would not be adopted in this area because the data was not good enough to base a standard on.

Mr. Stewart-Smith said that the practices for reviewing applications for energy facilities and recommending monitoring have changed considerably over the last 30 years. The Department of Energy relies on the on-going regulatory programs of the other state agencies along with mitigation, anticipating what those impacts are going to be and mitigating for them up front. The Department then makes sure the mitigation has been done, which is a type of monitoring. For gas plants, the Department of Energy has not recommended to the Council and the Council has not adopted on-going environmental monitoring programs. The Department of Energy relies on the existing state agencies expertise and their own programs.

Mr. Stewart-Smith continued saying that monitoring should take advantage of unique emission “fingerprints” if possible. The chemicals emitted from a nuclear facility are unique and distinct. With a gas or coal-fired plant the chemicals emitted are common to many sources and it is difficult to distinguish which source is the direct cause. Adding to the difficulty is the Columbia River gorge. The gorge acts like a funnel draining air from great distances and sources. The Department of Environmental Quality (DEQ) relies on computer modeling to monitor air quality standards rather than a direct “in the environment” analysis. From the computer modeling they can limit the amount and size of the stacks; computer modeling is the tool of choice.

Another measurement that DEQ relies on is sampling stack-gasses to see the rate and accumulation of the atmospheric release for a specific source. Mr. Stewart-Smith explained the process of some of the DEQ testing.

Mr. Stewart-Smith brought out that with any measurement there is an associated error. The errors surrounding environmental monitoring can be analytical, geographical, atmospheric and also others, some unknown. The specifics of a monitoring program always depend on the amount of data that is obtained, which is directly proportional to dollars spent. In the past there was much uncertainty because of the testing available. The precise data obtained with modern technology today would not have been possible to get without spending hundreds of millions of dollars back in 1972.

Chair Green commended Mr. Stewart-Smith for the precepts. She continued discussing how this applies to three public policy issues that the Council is involved with: 1) Noise- there are constraints with funding and expertise. 2) Cumulative impacts- citizens are always asking the Council to look at the impacts as a whole, and the Council’s inability to do so. 3) Aged plants- under different and grandfathered in standards that apply at the time it was sited and not up to modern standards. Chair Green said these points are frustrating for citizens and Council.

Martha Dibblee said that in her experience, she sees this in a different light. Analysis is only as good as the samples and samples can be compromised. There was further discussion from Council members.

Mr. Neukomm asked how DEQ arrived at which specific chemicals to monitor. Mr. Stewart-Smith said that it is under federal authority, without much that the State can do, except carry out the programs. The Council does not have jurisdiction. There was further discussion about pollution of the air and land. Mr. Stewart-Smith said that private citizens place more nitrates in the soil than any amount emitted by power plants.

David Ripma asked if the Council is required by law to accept the Department of Energy recommendations. Mr. Stewart-Smith discussed recommendations that have been made and how Staff arrives at those recommendations. Ms. Prewitt, Department of Justice, said the function of amendments is to give the Council the ability to shape the amendment process.

Chair Green asked for public comment before the lunch break; there were no comments.

#### **IV. Working Lunch**

##### **A. Discussion and slide show of the South Mist Pipeline Extension Project**

Adam Bless started his presentation by explaining why now was a good time for a presentation on the South Mist Pipeline Extension (SMPE) project. Events have happened in the last few weeks, requiring extensive inspection and a significant amount of work for Northwest Natural. Enforcement action by the U.S. Army Corp of Engineers will probably result in at least one notice of violation (NOV), possibly two violations. They are a federal agency and have their own regulations, but this Council sited the project. If there is enforcement action by a federal agency the Council should hear about it from staff.

Mr. Bless proceeded to discuss the project. In wetlands, this Council works with the Department of State Lands to issue a permit, which is a joint permit with the U.S. Army Corp of Engineers. Mr. Bless showed a number of slides that show an area that Northwest Natural traversed by means of horizontal directional drilling (HDD). HDD was a very popular technique among farmers, county and local governments. The wetland area chosen was not farmable and there was an existing PGE powerline. In the Council rules, if there is an existing utility corridor, it would always be a first choice. Northwest Natural geologists had access for study purposes and the ODOE had aerial photographs, but ODOE had not been on the wetlands because of not having access. The wetlands are long and narrow, thickly grown with blackberries. Chicken Creek runs through the area along the corridor.

Mr. Bless continued to explain the process of HDD, which uses bentonite in the drilling process. Bentonite is a form of clay that acts as a lubricant when mixed with water, and makes a good seal when dry. Drillers use it to lubricate and then seal the hole for the

pipe. They inject it at high pressure and if the earth above is highly fractured, the bentonite can force its way through the fractures and be released at the surface (known as a “frac”). There is a detrimental effect if laid at the bottom of a fish-bearing stream, but there are no endangered species in Chicken Creek. It isn’t a serious environmental issue, but is a clean-up issue and property owner issue. ODOE knew of the possibility this might happen.

Chair Green asked when ODOE knew about this possibility. Mr. Bless said in April-May of this year, long after the permit was issued. Chair Green asked if this was something that could have been known in advance. Mr. Bless said Northwest Natural contracted with URS, one of the largest scientific and consulting firms in the entire West Coast and the results of their studies are in the application. In May of this year, Northwest Natural did HDD at Corral Creek and experienced some “fracs” including some that did get into the creek.

Chair Green asked if there are other creeks that may be at risk based on our experience with Corral Creek and Chicken Creek. Mr. Bless said there was a bore under Dairy Creek that was quite successful, only one small “frac” that could be measured in gallons (a small amount) and entirely on an upland field, which was contained and cleaned up. There was also another “frac” at Dairy Creek that did spill into the creek but the total amount was about 10-15 gallons, and was literally contained within seconds. There is one more bore under the Tualatin River, but NW Natural has already bored under the Tualatin River and did not experience any “fracs.” Any bore has potential, but most bores don’t result in impact.

Chair Green asked if there is any reason that some action should be taken before the Tualatin River bore to be prepared to stop it more quickly. Mr. Bless agreed and said that is what is taking place now.

Mr. Bless continued to show photos and explain what Northwest Natural was doing to contain the bentonite, which also went outside the corridor. Chair Green asked about the mitigation process and who decides what should be done. Mr. Bless said DEQ has a tremendous amount of experience and they have control over this.

Chair Green asked about the U.S. Army Corp of Engineers reaction to these “fracs,” and whether they knew the preventative measures that were taken by Northwest Natural. Mr. Bless said they were not on the site until after the incidents happened, but ODOE was on the site beforehand and knew what had been done. Chair Green asked if in the Corps investigation of what happened, would something useful be brought out for the Council to use in the future in determining to what extent HDD should take place under wetlands. Mr. Bless said the best source of information would come from Dale Schank who has been involved more than the Corps.

Ms. Prewitt asked what the Corps of Engineers’ feelings are towards boring. Mr. Bless discussed the decisions in choosing the wetlands to go through rather than the farmland and the Corp of Engineers allowance of this in other areas. Mr. Bless said this is what can happen in the best of plans. This is unlike what happened at Coos Bay where “fracs” occurred and they continued drilling. They didn’t do the pre-planning or pre-staging.

The U.S. Army Corp of Engineers issued a cease and desist order. Tom Melville of DEQ said this incident at Chicken Creek is nothing like what happened at Coos Bay.

Mr. Bless said Mike Hayward of Northwest Natural went back to the consultant, URS, and asked them to look again at the data. URS said this “frac” should not have happened. Mr. Bless said they had studied this area and knew a lot about the site, but risks can be higher because of what is unknown.

Chair Green asked what the consequences would be in these creeks. Mr. Bless said that restoring the creeks has to be done right, getting the experts in to help. He said the results of the clean-up might not be known for years.

Chair Green said this is a lesson for the Council in not just relying on the use of HDD as a panacea, but on anything presented as the best available technology. Mr. Bless stated that to Northwest Natural’s credit, the record shows there was a great deal of momentum among farmers and local land use officials to use HDD everywhere, but Northwest Natural realized fracs could happen and did not represent the HDD as a panacea.

Gary Bauer, Manager of Government Affairs for Northwest Natural, and Mike Hayward, Project Manager talked with the Council. Mr. Hayward talked about the U.S. Corp of Engineers and said the Notice of Non-Compliance is for un-permitted fill in a stream, the bentonite. It was addressed in their permit; in the application it is in Volume 2, the last third of that Volume is nothing but the Corps Application. Page 14 addresses bentonite, what we do, contain it, clean it up, etc. This was something the Corps did not incorporate in their permit because they cannot permit something that might happen. They can only permit planned activities with a known impact and can measure it, so Northwest Natural is stuck in the middle. This has happened in the past but has never been an issue with the Corps until this year.

Chair Green asked what the long-term consequence would be for the fish habitat. Mr. Hayward said a plan will be written and submitted to the Corps and all other agencies, and their input will be received on how to clean it up.

Mr. Hayward referred to the bores mentioned by Adam Bless earlier, which are different from Chicken Creek. Chicken Creek over lays a sand layer, hard packed. This is something that is looked for to bore through. Brookman Road was fractured bedrock, completely different, which presented a good chance of mud releases, depending on how you operate. Northwest Natural took three months for that bore, slowing as a precaution and it was a long bore. Corral Creek was different; it had good soils on both sides. Normally, test holes are bored near the beginning, the end, and near the center, in this case the stream. Northwest Natural was not allowed to do the center bore because property owners objected. Northwest ended up boring through 1,000 feet of rock in the center right under the stream. The mud found a fracture in the rock and came up almost 250 feet off the centerline through another drainage, which was found right away.

Mr. Hayward did stress the only other alternative to knowing what’s underground is to trench everything, which would leave an 80-foot swath throughout the trees, all the way to the stream.

Mr. Ripma asked if bentonite has to be used. Mr. Hayward said it depends on the substrate, and continued to explain the advantages.

**V. Action Item:**

**A. Request approval to revise Boardman Coal Plant Environmental Monitoring Programs.**

Catherine Van Horn opened the discussion of the Boardman Coal Plant request to modify its environmental monitoring program. She also introduced Peter Brewer from the Department of Environmental Quality.

Dr. Van Horn referred to Final Order #1 titled Approving in Part PGE's Request for Revisions to Environmental Monitoring Programs for the Boardman Coal Plant. Jan Prewitt, Oregon Department of Justice, clarified that the Council, at its June 3, 2004, meeting, approved certain parts of PGE's Request for Revisions at the Boardman Coal Plant, resulting in Final Order #1. The Council also tabled certain parts of PGE's request, resulting in "Draft Final Order #2."

Chair Green asked if there were comments from Council members regarding Final Order #1; there were none.

Martha Dibblee moved to approve Final Order #1. David Tegart seconded the motion. Council was polled:

<b>Martha Dibblee</b>	<b>Yes</b>	<b>David Ripma</b>	<b>No</b>
<b>Russ Dorran</b>	<b>Yes</b>	<b>Bob Shiprack</b>	<b>Yes</b>
<b>Karen Green</b>	<b>Yes</b>	<b>David Tegart</b>	<b>Yes</b>
<b>Hans Neukomm</b>	<b>Yes</b>		

Next, Dr. Van Horn discussed Draft Final Order #2, noting a recent letter from Karyn Jones from GASP, which she distributed to Council members.

Dr. Van Horn explained that the issues remaining for the Council's consideration included the elimination of some parameters for water quality monitoring for Boardman's Carty Reservoir as well as the elimination of aerial photography monitoring. She reviewed the information contained in a staff report that accompanied Draft Final Order #2. She first discussed Boardman's request to eliminate monitoring for the three water quality parameters, leaving 24 parameters under the monitoring program. She noted that the Department of Fish and Wildlife and the Department of Environmental Quality recommended approval of Boardman's request. She also recommended approval.

Council members discussed the elimination of the three parameters. Steve Anderson, an environmental specialist for Boardman, offered further information about the water quality monitoring program. Mr. Ripma asked about the expense to monitor these three parameters. Mr. Anderson replied that expense was not the issue. Mr. Ripma asked if the elimination request was tied to the fact that Boardman's site certificate does not

obligate the plant to manage Carty Reservoir for fish. Mr. Anderson said yes, in part, but that monitoring of the three parameters provided no useful data under the site certificate.

Hans Neukomm asked how the monitoring results were made available, examined or catalogued. Mr. Anderson replied that results were available in an annual report produced primarily to demonstrate compliance with the site certificate and other permits. Mr. Anderson commented that Boardman has never exceeded established water quality chemical limits established in the site certificate. Dr. Van Horn added that DEQ monitors Carty Reservoir under a WPCF permit.

Chair Green asked for public comment. Denise Kerwin asked if migratory waterfowl use of Carty Reservoir raised monitoring issues to the federal level. Jan Prewitt replied that the Boardman site certificate is a state matter. She also noted that Boardman is not required to manage Carty Reservoir for creating and maintaining habitat.

Dr. Van Horn next reviewed Boardman's request to eliminate its aerial photography monitoring program. She noted that the staff report accompanying Draft Order No. 2 reflected staff's efforts to research concerns previously raised by Council members and members of the public about eliminating the program. She reviewed the information contained in the report. She explained that the Boardman site certificate does not require an aerial photography program. Rather, PGE proposed the program years ago.

Council members discussed the request, including posing questions about site certificate requirements, original intent of monitoring requirements, changes in the site certificate over the years, and soil and crop monitoring.

Peter Brewer, air quality manager for the eastern region of the Department of Environmental Quality, provided the Council with a brief background on the history of air quality monitoring at Boardman. He noted that DEQ currently does not monitor for SO<sub>2</sub> at the Boardman Coal Plant because the last 20 years of monitoring data, when the plant has been in operation, showed that the level would not be anywhere near the level needed to exceed federal requirement standards.

Dr. Van Horn and Mr. Brewer discussed the letter from Karyn Jones of GASP. Mr. Brewer explained that the technology requested by GASP for air quality monitoring is used mainly for air toxics quality, for example in downtown Portland, when you're looking for dozens of compounds. He said such technology was less appropriate when you know what you're looking for, such as sulfur dioxide.

Chair Green asked for public comment. Lyle Strandberg, an organic farmer in Boardman, expressed his concern about the elimination of monitoring programs that Oregon Tilth said could be of value. He also noted his concern that elimination of monitoring programs meant Boardman would have less oversight.

Council members asked Mr. Strandberg whether he knew if the aerial photography produced by PGE under its monitoring program was available to the public. Mr. Strandberg did not know, but he said that the meetings held concerning the Boardman Coal Plant were not publicized enough for the public to be involved.

Larry Clucas introduced himself as the city administrator for the City of Umatilla. He referred to letters to be added to the record from Donald Horneck, the Oregon State University Extension Agent, Tom Gilleese, and Chester Prior. The Council had not received the letter from Chester Prior so it was read into the record. Mr. Clucas said he had not noticed any plume from the plant until the last five to seven years, and he said it is remarkably different from any other plumes from local plants. He said Boardman should be monitored closer because it is the only coal plant in Oregon.

Shane Baker, a Boardman resident, referred to a letter for the record from Earl Perkins, who could not attend the meeting due to short notice. He commented on the greenish/yellow fog that he said comes from the plant, and also to an earlier reference about the plant being in operation for 23 years. Mr. Baker said the plant has only been in operation for 13 years, which includes times for shut downs, each of which amounted to at least a year.

Martin Pitney, president of Photography Plus, the contractor performing the aerial photography for Boardman, explained that the photographs are sent for evaluation to Dr. Phil Jackson, at the Oregon State University. Mr. Pitney said that Dr. Jackson provides monthly reports and an annual report to PGE. Mr. Pitney read parts of an academic paper by Dr. Jackson, which he said noted that the aerial photography has been used at other Oregon facilities such as the Trojan Nuclear Facility.

Mr. Pitney expressed concerns about PGE's proposal to participate in a nature conservancy monitoring program, noting that such a program would not replace aerial photography monitoring downwind. He pointed out that PGE requested relief from chemical monitoring two years ago, in part based on the fact that it would continue aerial photography.

Russ Dorran asked about the photography and how local residents access it. Mr. Pitney said the photography isn't publicized.

Denise Kerwin, wife of Martin Pitney, expressed her concern about the health of residents. She also stated she does not think computer modeling is a reliable tool and that people did not know they had access to the aerial photography. Ms. Kerwin discussed many concerns and questioned the integrity of those involved in proposing and reviewing Boardman's request. Chair Green responded to Ms. Kerwin, expressing her concern about the kinds of accusations presented by Ms. Kerwin.

Dr. Van Horn said the bottom line is whether aerial photography provides any data that the Council can use for its regulatory purposes. The answer the Department found is that it does not.

Steve Anderson discussed Boardman's increased monitoring of species and habitat in the immediate vicinity under a new conservation program and said he felt such monitoring would be a valuable tool. He also discussed previous air quality computer modeling and its reliability.

Martha Dibblee moved to approve staff's recommendation as contained in Draft Final Order #2. David Tegart seconded the motion. Bob Shiprack asked about separating the two issues involved for approval. Chair Green said the draft would be considered as a whole under the motion in place. Mr. Shiprack said his vote would be no, since he does not support both proposals.

David Ripma said that, after reviewing and listening to everyone, he feels there has not been any violation of the public trust by staff as Ms. Kerwin alleged. However, he said he would like to see PGE voluntarily take more steps to reduce Boardman's emissions since the Council cannot require such action. Mr. Ripma stated he would vote no.

Hans Neukomm noted his confidence in staff. Mr. Neukomm questioned the fact that the aerial photography has not been public, and he recognized the benefit the photographs could have for local residents. He said he would vote no.

Russ Dorran questioned why the photographs wouldn't be available at the local OSU extension office. He agreed with Mr. Neukomm, and said he would vote no.

Chair Green noted that four negative votes meant the motion to approve Draft Final Order #2 would not pass. Martha Dibblee withdrew the motion and made a new motion to separate the water quality request from the aerial photography request and for the Council to approve staff's recommendation to eliminate three monitoring parameters for the Carty Reservoir. David Tegart seconded the motion, and Council was polled:

<b>Martha Dibblee</b>	<b>Yes</b>	<b>David Ripma</b>	<b>No</b>
<b>Russ Dorran</b>	<b>Yes</b>	<b>Bob Shiprack</b>	<b>Yes</b>
<b>Karen Green</b>	<b>Yes</b>	<b>David Tegart</b>	<b>Yes</b>
<b>Hans Neukomm</b>	<b>Yes</b>		

Chair Green referred to pages 7-8 of the staff report in suggesting to the site certificate holder that perhaps instead of eliminating aerial photography that it request to modify the photography program to run every three years or so. David Ripma said such a proposal would require additional research and information before the Council could consider it.

David Ripma moved to deny the request to eliminate aerial photography. Bob Shiprack seconded the motion. Council was polled:

<b>Martha Dibblee</b>	<b>No</b>	<b>David Ripma</b>	<b>Yes</b>
<b>Russ Dorran</b>	<b>Yes</b>	<b>Bob Shiprack</b>	<b>Yes</b>
<b>Karen Green</b>	<b>No</b>	<b>David Tegart</b>	<b>No</b>
<b>Hans Neukomm</b>	<b>Yes</b>		

After discussion with Council members and Jan Prewitt, Oregon Department of Justice, about correct procedures, Russ Dorran made a motion to delegate to the chair the authority to look at staff's future revision of Draft Final Order #2 to make sure it conforms with the action of the Council, and to sign the subsequent Draft Order #2. Martha Dibblee seconded the motion. There was discussion by Council and Ms. Prewitt. Council was polled:

<b>Martha Dibblee</b>	<b>Yes</b>	<b>David Ripma</b>	<b>Yes</b>
<b>Russ Dorran</b>	<b>Yes</b>	<b>Bob Shiprack</b>	<b>Yes</b>
<b>Karen Green</b>	<b>Yes</b>	<b>David Tegart</b>	<b>Yes</b>
<b>Hans Neukomm</b>	<b>Yes</b>		

**VI. Information Items:**

For the record, Chair Green mentioned that all Council members have a copy of the report by Martha Dibblee on the Climate Trust, and she thanked Martha for her efforts.

Chair Green also mentioned for the record that Council members should e-mail Dr. Van Horn with ideas for the Council's forthcoming issues meeting.

**A. Discussion of the Trojan Nuclear Plant final site survey, and future council action.**

Adam Bless began the discussion by requesting that the next time Trojan is on the schedule they will be considered earlier in the day. Mr. Bless said this fall, September or October, a final report will be handed to the Council and the decision made will be about unrestricted use of the site.

PGE prepared an extensive set of slides for Council members to review and to be added to the record. If there are any questions, they can be answered the next time PGE meets with the Council.

Mr. Bless said the Council's rules do not describe the Council's review and regulatory actions at the end of decommissioning. When the Council adopted rules for decommissioning in 1994, the focus was on the start of decommissioning, not the end.

PGE came to the meeting prepared to share the regulatory actions the federal government, the U.S. Nuclear Regulatory Commission (NRC), will be taking. Mr. Bless continued discussing the process. There are two key documents associated with the decommissioning. One is the Trojan Decommissioning Order, a two-page document, authorizing PGE to implement the decommissioning plan, which the Council approved at the end of a long review, culminating in an opportunity for a contested case, although no member of the public asked for one. This was a very public review, but it was ten years ago. The second key document is the rules at OAR 345, Division 26, Rule 300 and those that follow.

Mr. Bless said that one regulatory process that would provide an appropriate level of review, public opportunity and debate, and signify formally the Council's satisfaction or lack of satisfaction is rulemaking. Rather than go through the rules one by one, Mr. Bless showed the Council a short summary of the rule changes that are suggested. Since some rules don't apply any longer, those rules could be deleted. Chair Green asked if these rules are taken out, are they no longer in the statute so that another nuclear plant would not have to follow them. Mr. Bless agreed, saying that by ballot initiative, now in statute,

there cannot be another nuclear plant until the Council has found that the federal government is operating a federally licensed disposal site for spent fuel. Mr. Bless said that this will be far enough into the future that new rules would need to be fashioned to be useful. There was more discussion on the process and Mr. Bless noted he wants Council feedback as to which route to take.

Chair Green asked if in the past there has been an order terminating a site certificate. Jan Prewitt said for Newberry Crater, but it was a different situation because it had a real site certificate. For Trojan there wasn't an actual certificate, and it also is not in the position to have an amendment. Ms. Prewitt said that through the rules Council should define the remaining facility as the Independent Spent Fuel Storage Installation (ISFSI) and if certain requirements are met the rest of the site is no longer included within the regulated site. The only regulations would be those that cover the ISFSI and Council would need to be explicit about that in the rules. The question is not of termination, but the Council would have continuing responsibility for the public health and safety regulation over the facility.

Chair Green asked what the public involvement would be in the rulemaking. Mr. Bless explained the process would start with publication of notice in the Secretary of State's bulletin and written notice to the Council's mailing list. Anybody requesting to be on the mailing list will receive the Notice of Rulemaking. He continued explaining other steps to be taken.

Jan Prewitt stated that are other things in aid of public involvement and rulemaking in general. One is the use of an advisory committee. The committee is provided for in the rules and usually is a group of people selected for their interest to participate before rules are drafted in the process. If you do not use an advisory committee you have to explain why. The ODOE hasn't used advisory committees in the past because they are very committed to public involvement. Ordinarily, the staff drafts the rules, has workshops and if more are needed they have more workshops; that in a sense provides the back & forth involvement anticipated by the rules. The applicant can also petition for rulemaking rather than using advisory committees.

Mr. Bless said the applicant is ready to petition for rulemaking. The rules are a staff level collaboration. Mr. Bless said rulemaking with workshops and collaboration has worked better than an advisory committee.

Jerry Reid, Licensing Manager at Trojan, introduced himself. He stated the Bankruptcy Court has given permission to Enron to sell PGE to Oregon Electric Company. Next week PGE will be sending out a letter requesting the ODOE's concurrence with that sale. It involves all of the generating facilities. Jan Prewitt said that a request for declaratory ruling is what will be coming, stating that there is no need to change the site certificate owner, which has been done before. There was discussion about advisory committees and the experience of using that process in the past.

Mr. Reid said 95% of the Trojan site has been remediated. It will be finished in the month of August. The final survey should be finished in October of 2004. Additional survey reports will be submitted before then. By December of 2004 all survey reports

should be done. At that time PGE will request NRC approval for license termination, concurrent with the last report. Also, Council action will be requested for unrestricted use at that time. The planning horizon is to have all approval by June of 2005.

Ms. Dibblee asked about the status of when Oak Ridge would be coming. Gina Huey, Trojan Final Survey Site Manager, said they have been on site. All along they have been checking Trojan to make sure it is doing fine. Ms. Dibblee asked what kind of instrumentation procedures they use. Ms. Huey said their procedures are different but the equipment is the same.

Mr. Dorran asked about the restoration of the Trojan site. Steve Nichols, General Manager of Trojan, answered that the decommissioning plan does cover site restoration, and it has been restored to an industrial area. Essentially the criteria are demolition down to minus 3 feet; all surface structures are taken off for future industrial use.

Ms. Dibblee asked about the action level being 25 millirem and whether the site performance is going to be less. Ms. Huey said it would be quite a bit less. Chair Green asked for further discussion; there was none.

**B. Discussion of water mitigation plans for the proposed Turner Energy Center.**

Dr. Van Horn gave the Council a general overview of the status of the proposed Turner Energy Center (TEC), focusing primarily on the applicant's plans for water use and related mitigation. She noted that TEC would ask the Council to approve a water right transfer as well as a new water right to use another company's spent cooling water. She explained TEC's water mitigation plans, which include installing fish screens in irrigation ditches and working with the Santiam Water Control District to flow irrigation water from non-habitat areas into the mitigation area designated by the Oregon Department of Fish and Wildlife.

Jerry Mumper, a resident who lives just west of the facility site, stated his belief that many members of the public are opposed to the proposed TEC plant. He expressed his concern about fish screening being appropriate mitigation and about TEC's affect on wetlands.

Rick Tetzloff of Calpine and Peter Mostow of Stoel Rives introduced themselves. Mr. Tetzloff explained the benefit of the fish screens. He also further explained TEC's proposed water use and related mitigation. He noted that he disagreed with Mr. Mumper's assessment about community opposition to TEC.

Chair Green asked Mr. Tetzloff if he had any concerns about staff's preliminary analysis of Calpine's water use and mitigation or staff's recommended conditions. Mr. Tetzloff said no. Dr. Van Horn noted that the Oregon Department of Fish and Wildlife had signed off on the plan.

Chair Green asked if there were any questions. There were none.

David Stewart-Smith said the next meeting is tentatively scheduled for September 24, 2004.

There being no further discussions, the meeting was adjourned at 6:25 p.m.