

Minutes – Approved 1-23-09
Energy Facility Siting Council Meeting
Oregon Department of Energy
City of Tigard Water District
Richard M. Brown Auditorium
Tigard, OR 97223
September 26, 2008

Energy Facility Siting Council

Bob Shiprack, Chair
Lori Brogoitti
Cheri Davis
Michael Haglund
Jacob Polvi
W. Bryan Wolfe

Oregon Department of Energy:

Tom Stoops, Council Secretary
Adam Bless, Project Officer
John White, Project Officer
Meiko Kristiansen, Administrative Assistant

Oregon Department of Justice:

Jan Prewitt, Assistant Attorney General

Others:

Dave Becker, Oregon Natural Desert Association
Dave Ball, Local 320
Chris Crowley, Columbia Energy Partners
Larry Givens, Umatilla County Commissioner
Tamra Mabbott, Umatilla County Planning Department
Terry Tallman, Morrow County
Carla McLane, Morrow County
Steve McClure, Union County
Ann Hanus, Association of Oregon Counties
Valerie Franklin, Horizon Wind
Elaine Albrich, Stoel Rives
Mike Eliason, Association of Oregon Counties
Art Schlack, Association of Oregon Counties
Emily Ackland, Association of Oregon Counties
Mike Crouse, Portland State University
Chuck Little, Hermiston
Matt Muldoon, Oregon Public Utilities Commission

Chair David Shiprack called the meeting to order at 9:09 a.m.

I. Consent Calendar:

A. Announcements and Introductions

II. Action Items:

A. Approval of May 30, 2008 Energy Facility Siting Council minutes

Bryan Wolfe moved to approve the May 30, 2008 minutes with one name correction made by Jan Prewitt and scrivener corrections made by Martha Dibblee; Lori Brogoitti seconded the motion and Council was polled:

Lori Brogoitti	Yes	Jacob Polvi	Yes
Cheri Davis	Yes	Bob Shiprack	Yes
Michael Haglund	Yes	Bryan Wolfe	Yes

Approval of May 15, 2008 Energy Facility Siting Council minutes

Jacob Polvi moved to approve the May 15, 2008 minutes; Bryan Wolfe seconded the motion and Council was polled:

Lori Brogoitti	Yes	Jacob Polvi	Yes
Cheri Davis	Yes	Bob Shiprack	Yes
Michael Haglund	Yes	Bryan Wolfe	Yes

Approval of July 25, 2008 Energy Facility Siting Council minutes

Bryan Wolfe moved to approve the July 25, 2008 minutes with corrections on scrivener errors noted by Martha Dibblee; Lori Brogoitti seconded the motion and Council was polled:

Lori Brogoitti	Yes	Jacob Polvi	Yes
Cheri Davis	Yes	Bob Shiprack	Yes
Michael Haglund	Yes	Bryan Wolfe	Yes

B. Approval of August 18, 2008 teleconference minutes

Lori Brogoitti moved to approve the August 18, 2008 minutes; Jacob Polvi seconded the motion and Council was polled:

Lori Brogoitti	Yes	Jacob Polvi	Yes
Cheri Davis	Yes	Bob Shiprack	Yes
Michael Haglund	Yes	Bryan Wolfe	Yes

C. Appoint Golden Hills Hearing Officer

Adam Bless, Oregon Department of Energy (ODOE) introduced Chad Darby with Golder Associates and Karen Warner, contractors hired by Oregon Department of Energy as consultants for the Snake River Ethanol Project and the Boardman-Hemingway Line.

Mr. Bless began discussion about the Golden Hills Wind Farm. A preliminary application was received in August of 2007 which was incomplete and had a lot of follow-up questions. Supplemental information was provided and ODOE deemed the application complete on August 4, 2008. The Draft Proposed Order is close to being issued. A hearing will need to be held, a council review of the Draft Proposed Order will need to be done and people who comment on the Draft Proposed Order will be given the opportunity to participate in a contested case. A hearing officer needs to be appointed for those steps. Staff is recommending John Burgess as the hearing officer for Golden Hills.

Chair Shiprack asked Council members if there were questions. There were none.

Jacob Polvi moved to approve John Burgess as the Hearing Officer; Bryan Wolfe seconded the motion and Council was polled:

Lori Brogoitti	Yes	Jacob Polvi	Yes
Cheri Davis	Yes	Bob Shiprack	Yes
Michael Haglund	Yes	Bryan Wolfe	Yes

D. Authorization to proceed with rulemaking on the Co2 standard

Adam Bless, ODOE, referred to a memo sent to Council members requesting authorization to proceed with rulemaking to amend the Council's standards for facilities that emit carbon dioxide (CO2). The rules are found at OAR Chapter 345 Division 24.

Mr. Bless stated there are two changes:

- (1) Update the CO2 standard for electric generating facilities from the current value of 0.675 pounds/kwh to a new value of 0.65 pounds/kwh. Anything above 0.65 would meet the standard, but would have to be offset in some way. That standard was adopted about four-five years ago and, as set forth in the statute, as based on a records plant, was the most efficient in terms of heat rate. Recently ODOE received the 100 hour test required under the Carbon Dioxide standard for the Port Westward Generating Plant, operated by Portland General Electric (PGE). It has been determined to possibly be the most efficient current generation power plant in the country. As technology has improved, it is appropriate that ODOE's standard should be improved. Mr. Bless stated that, even though this appears to be a small change, it would have about a 15% - 20% increase on the offsets required from a current technology central station gas fired power plant.

Mr. Bless continued saying a new rule would not need to be adopted at this time. Rulemaking is a process, requiring notice of a workshop, preparing final language to reflect what happens at the workshop, and then notice would be issued in the Secretary of State's bulletin with the final language. A hearing would be offered and final language presented by the hearing officer to be adopted by the Council. This would be an approximate three or four months, and Staff are requesting the process be started now.

Lori Brogoitti asked about the current plants and how they would be affected. Mr. Bless said they would follow the current standard in effect at the time they received their site certificate. There was more discussion about the actual effective date, which Mr. Bless said would be the date of adoption of the standard.

Jacob Polvi asked how the reduction was calculated. Mr. Bless said it is based on the heat rate in BTU/kwh of the reference plant. The Port Westward plant has an overall heat rate of 6700 BTU/kwh. Mr. Bless explained the engineering conversion from the BTU/kwh to pounds/kwh.

Mr. Polvi asked if the Port Westward plant has operated more efficiently than anticipated. Mr. Bless stated not more than anticipated, but at the time the standard was adopted, the most efficient power plant in the country had a heat rate of about 6800-6900 BTU/kwh. Port Westward represents an improvement in the efficiency. Power plants are constantly getting more efficient.

Chair Shiprack asked about the offsets discussed and whether they are the payments to the Climate Trust. Mr. Bless stated they can be, but under the rules and standards a power plant can offset the carbon dioxide anyway it wants. The Council has to find during the site certificate process if they have done an effective job. One way the applicant can meet the standard is by simply making payments to a qualified organization and the Council has found that the Climate Trust is qualified. So far, every applicant has chosen the monetary path and selected the Climate Trust as the organization to use for payments.

Bryan Wolfe asked if moving the target down would deter any future building. Mr. Bless said absolutely not. He explained that when the standard was first adopted you could buy natural gas for about \$4-5 for a million BTU. Now, if you find it at \$8 or \$10 per million BTU you're doing well. To figure how much gas a 500 megawatts power plant is burning, and the cost, the savings in the fuel efficiency will far outweigh any increase in Climate Trust payments. The Climate Trust payments are approximately \$7-8 million, but when the fuel costs are ten times that amount, it is really the fuel costs that drive the economic decisions rather than the standard.

Mr. Bless discussed the next change request:

- (2) Add a CO2 standard for Ethanol Production Facilities. Mr. Bless stated that the Council has issued a site certificate to one ethanol production facility, the Columbia Ethanol project operated by Pacific Ethanol. At the time, there was no CO2 emissions standard for ethanol production facilities, although the statute does give EFSC the authority to adopt a standard.

Recently an application has been received for a Notice of Intent to apply for an ethanol plant that would use coal as one of its heat sources. Knowing that coal does create more CO2 than other fossil fuels, ODOE believes there should be a CO2 standard for ethanol plants.

Mr. Bless continued discussion in regards to the July meeting where the Council's advice to ODOE Staff was to use a natural gas-fired ethanol plant like Pacific Ethanol as a reference plant and proceed to rulemaking, using methods similar to power plants.

Mr. Bless stated that for efficiency, both items should be considered together as one rulemaking.

Chair Shiprack asked for comments from Council members. There was discussion about whether this would be just for coal-fired ethanol plants. Mr. Bless said the wording would come up in the workshops to be held and he stated the proposed standard would be in the form of "pounds of CO2 per gallon of ethanol produced." That standard would apply to all ethanol facilities.

Michael Haglund moved to approve the authorization for combined rulemaking to update the CO2 standard for gas-powered facilities and ethanol production facilities ; Cheri Davis seconded the motion and Council was polled:

Lori Brogoitti	Yes	Jacob Polvi	Yes
Cheri Davis	Yes	Bob Shiprack	Yes
Michael Haglund	Yes	Bryan Wolfe	Yes

E. Request for Council approval of two new Climate Trust Board members

Mike Burnett, Executive Director of The Climate Trust began his discussion giving updates on carbon regulation. He stated that the Regional Greenhouse Gas Initiative (RGGI) held its first auction of a permit to allow one ton of CO2, with results to be posted September 29th. Also, Western Climate Initiative (WCI) recently came up with their recommendations and Global Carbon Initiative had a release looking at the most recent emission levels and had some very concerning statements to make. The improvement in greenhouse gas efficiency is starting to slow down, and none of these events appear as good news. Mr. Burnett stated in the future there will be more international pressure on the United States to move toward regulation on greenhouse gases.

Mr. Burnett said the Climate Trust has received a \$3.5 million payment from Iberdrola, and the State of Washington has also chosen the Climate Trust to procure offsets for a plant in Washington. The Climate Trust is also operating the Colorado Carbon Fund in the State of Colorado. He explained the operation, where citizens and others can put money into the fund and the Climate Trust buys offsets with the money in Colorado.

Another new item the Climate Trust is working on is Offset Quality Initiative, which is a gathering of six national level non-profits with expertise in carbon trading. There has also been launched a national organization called the National Climate Trust, which is separate but controlled by the Oregon Climate Trust to allow for expansion on a national scale.

Mr. Burnett said that one role of the Energy Facility Siting Council on the carbon standard monetary path is appointing three of the seven board members of the Oregon Climate Trust. One current member is a Council member, Jacob Polvi, and two EFSC appointed board members' terms are ending, Susan Anderson and Diana Bodtker. The Climate Trust is recommending two new Board members, Sean Penrith and Zach Willey. Mr. Burnett discussed their qualifications and experience.

There was discussion among Council members about offsets. Bryan Wolfe asked about monitoring of the offset programs. Mr. Burnett explained the process. Mr. Polvi asked for detail of the size of the funds for Oregon projects and what is in the planning stages.

Lori Brogoitti moved to approve Sean Penrith and Zach Willey to the Oregon Climate Trust; Michael Haglund seconded the motion and Council was polled:

Lori Brogoitti	Yes	Jacob Polvi	Yes
Cheri Davis	Yes	Bob Shiprack	Yes
Michael Haglund	Yes	Bryan Wolfe	Yes

Chair Shiprack asked for public comment. There was none.

(Recess)

III. Information Items:

A. Briefing on Greenhouse Gas Cap and Trade Strategies

Tom Stoops, Energy Facility Siting Council Manager introduced Uri Papish, Air Quality Program Operations Section Manager for the Department of Environmental Quality (DEQ). Mr. Papish gave a PowerPoint presentation.

Mr. Papish talked about fundamentals of the cap and trade program. In the next several years it is expected there will be carbon regulations or cap and trade programs, whether at the state or federal level. He mentioned the next presentation by Bill Drumheller will be an Introduction to the Western Climate Initiative (WCI), which is an initiative that Oregon is involved with along with seven western states and four Canadian provinces.

The WCI is a regional cap and trade program and the recommendations have just come out. The DEQ and the Governor's Office are likely to introduce legislation concerning the cap and trade program based on the WCI recommendations.

Mr. Papish commended EFSC and ODOE and the legislature for leading the way with the CO2 standard in 1997. Since then there have been a lot of initiatives that the Governor has spearheaded. The WCI and DEQ have proposed rules to require rules to report greenhouse gas emissions. Those rules are proposed for adoption on October 23 by the DEQ Commission. This would require industrial facilities and power generators to report their emissions of all the greenhouse gases to the DEQ on an annual basis. It will also require recording from wastewater treatment plants and landfills.

Mr. Papish discussed House Bill 3543. This bill accomplished three things:

- 1) Established an Oregon specific goal for greenhouse gas reductions,
- 2) Established a Global Warming Commission,
- 3) Established Oregon Climate Research Institute.

The goal is to stop the emissions from increasing in the year 2010 and to reduce emissions by 10% below 1990 levels in 2020 and then down to 75% below 1990 levels in

2050. That level is the level thought to prevent any further severe consequences from global warming. That level of CO₂ is still double what was in the atmosphere before the pre-industrial stage.

Mr. Papish stated there are a number of methods to be used to reduce greenhouse gas emissions and can be used together. The cap and trade program seems to be the policy that everyone is going to, along with other complementary measures. He further discussed different aspects of the cap and trade program. Bryan Wolfe asked about the auction and the competition involved.

Chair Shiprack stated that recently on the Governor's Energy Efficiency Task Force there was a presentation that concluded by saying the goals that the legislature adopted are impossible to meet. Mr. Shiprack said his concern is in setting goals that cannot be met.

Cheri Davis commented that the generators in industry would be the ones regulated by this proposed regulation, and asked what proportion of the CO₂ emissions and greenhouse gas emissions come from those sources as opposed to automobiles, home heating and those things not covered by this system?

Mr. Papish responded saying the system would include power generated in state, imported power, transportation fuels, heating fuels and industry. Those would add up to approximately 80% of the emissions in the state. The only emissions missing would be the agricultural and waste sector. Industry alone is only about 25 percent.

B. Western Climate Initiative briefing by Department of Environmental Quality and Oregon Department of Energy

Bill Drumheller, Oregon Department of Energy, began a PowerPoint presentation. He stated he works on Climate Change full time in the Renewable Energy Division.

Mr. Drumheller gave a brief description of what the Western Climate Initiative (WCI) involves. He talked about designing the market-based mechanism and the procedure in designing the cap and trade program.

In discussing the program scope, Mr. Drumheller said the Cap and Trade start date is January 1, 2012. He also reviewed topics on electricity, point sources, residential/commercial heating fuels, transportation fuels and the threshold.

Mr. Drumheller talked about the cap and allowances. Initially 10% of the regional allowance budget will be auctioned, and beyond that each partner has the flexibility to auction or issue its remaining allowances as it sees fit. The minimum auction percentage rises to 25% in 2020. WCI has created Early Reduction Allowances given for reductions by covered entities documented between 2008 and 2012. Mr. Drumheller also stated the compliance periods will be three years long, which gives more flexibility. He gave the

example of hydro power, some years are good and some are bad, depending on the weather.

The WCI decided offsets should be in the program. It was decided to use a “positive list” of approved project types in addition to “bottom-up” project review and to generate WCI offsets from North America.

Mr. Drumheller discussed the reporting process and stated that the essential requirements for all entities and facilities required to report will be established by the start of the mandatory reporting program. The program is to be enforced by each of the participating WCI Partner jurisdictions.

The presentation also included a table showing the Economic Analysis, Summary Results for the Year 2020, with the key result being overall savings from the program estimated at \$22,080. The last slide of the presentation listed websites to obtain more information.

Bryan Wolfe questioned the Economic Analysis, which he felt is not realistic because the costs to achieve the savings are going to be tremendous. He felt an independent analysis should be conducted. The economy today is tight and individuals need to know what this will cost them with the rise in electrical rates and fuel costs.

Mr. Drumheller said the Economic Analysis was done by an independent firm. Those numbers were just for this specific program and do not measure the broader scheme of greenhouse gases. He also stated with the WCI results there is an Oregon specific analysis that will be done.

C. Update on Renewable Energy Siting Concerns: Less than 105 MW facilities located in a Geographic Area

Tom Stoops, Energy Facility Siting Council Manager, referred to the May 15th meeting and the 15 question analysis and the affected counties. Mr. Stoops said there have been meetings with Sherman, Morrow, Gilliam and Umatilla Counties. There were a lot of discussions about the similarities and differences in siting processes.

Tamra Mabbott, Umatilla County Planning Director, gave a presentation on behalf of the committee. She reviewed 12 Consensus Issues:

- 1) Technical Expertise.
 - a) Some counties do not have the technical capacity and/or experience to review wind energy projects.
 - b) Counties need access to EFSC staff for their technical expertise.
 - c) Counties need access to the technical expertise of other state agencies.

- 2) Timeline. The typical timeline for EFSC to process a Site Certificate is longer than the typical timeline to process a county land use permit. Carla McLane, Morrow County, handed out a color document that defines the timeline of a completeness

review. The entire process for counties must take place within 150 days, unless there is an appeal to the Land Use Board of Appeals (LUBA).

- 3) Given the proliferation of wind projects in Oregon, there is concern that cumulative impacts are not adequately addressed in the permitting process. This is true for EFSC and local processes.
- 4) The EFSC process contains elements (standards) that the county land use process does not contain. Ms. Mabbott said the two primary issues are the organizational expertise of the applicant and the financial assurance.
- 5) Counties can contract for technical assistance (and request the developer to cover the cost).
- 6) Certain projects, regardless of size, should be permitted by EFSC. It is important to retain the ability to have the option. For example, in an issue with a small group of local opposition, it might make sense to have EFSC review the permit. It is very important to retain the ability to have the option. Developers who are 50 megawatts, certainly under the 105 megawatts threshold may want the option to go to EFSC.
- 7) The appeal process is different for state certificate and county land use permit. There is a different process from state to county.
- 8) Area included in mitigation acreage calculation is not consistent among counties. Some counties include roads in the calculation; some do not. Projects of 20+ acres require Goal 3 Exception. The Land Conservation Development Commission (LCDC) subcommittee is reviewing this standard.
- 9) County has a different “completeness” review than state EFSC. The state works with the developer until the application is complete. Counties must make “completeness” review in writing within 30 days; process may be repeated.
- 10) Issues not understood by all counties.
 - a) EFSC coordinates very closely with counties during EFSC review process.
 - b) Counties may be reimbursed for their time and expenses to review/participate in EFSC process.
 - c) Counties have ability to negotiate SIP regardless of permitting jurisdiction (EFSC or county).
- 11) Perception of “regulatory creep.”
 - a) Common perception of industry
 - b) Reality is state and county have made changes (regulatory, conditions) based on experience and lessons learned.

12) Summary of Research Assignments (Handouts)

- a) County permitting fees – Carla McLane
- b) Comparison of EFSC and Umatilla County standards – Tamra Mabbott

Ms. Mabbott next discussed the consensus on jurisdiction. She stated the jurisdiction matters if one has the ability to address cumulative impacts; there currently is no authority with the state or county to address cumulative impacts.

Also, there is the question of when should multiple “sub-jurisdictional projects” be cumulative, (e.g. treated as a single project for permit purposes?) Ms. Mabbott continued saying the decision should be based upon the geographic area, proximity (project to project) and the timing of the application.

In concluding, Ms. Mabbott considered recommendations for the legislative concept to consider and the subcommittee’s “to do list.” She also noted the sub-jurisdictional (county) authority agreed upon – geographic area, proximity, timing of application, implications for SIP, BETC and RETC, and the importance of the developer to retain the option to either go through the county or the state.

Bryan Wolfe commended everyone involved in coming to a consensus on jurisdiction matters.

Tom Stoops stated he would like to give another briefing in December after some of these items flow together.

Chair Shiprack asked for public comments.

Art Schlack, Association of Oregon Counties (AOC), stated counties are extremely interested in alternative energy. Many counties view the interest in alternative energy as economic development in their counties because they are strapped. This is an opportunity to provide jobs and certainly would benefit the state as well as the county. Counties have land use responsibilities and this is taken very seriously. Since they are all elected officials if they don’t carry out their responsibilities things change. The conditional use process varies from county to county but it is a process that has worked well for a long time. Coordination and assistance from state agencies and other counties is something that has been used.

Mr. Schlack stated that what has been seen today is a good start. It needs to be thoroughly done with all 36 counties of the state, the county planning directors, the AOC process along with the elected officials. Sometimes the administrative people and the elected officials need to be on the same page.

County Officials present at the meeting introduced themselves – Steve McClure, Union County Commissioner; Terry Thompson, Sherman County Judge; Terry Tallman, Morrow County Judge; and Larry Givens, Umatilla County Commissioner. Chris Crowley, Columbia Energy Partners, introduced himself. Mr. Crowley referred to a letter regarding the Harney County wind power projects.

For the record, Mr. Crowley also gave a letter to Tom Stoops from a financial institution they work closely with. He said that a point that EFSC and the general public could appreciate is why a 100 megawatts project is a genuinely separate project from another 100 megawatts project just as a financial matter. In the financial markets today, the idea of doing a \$500 million project, rather than a \$250 million project is simply wrong. Mr. Crowley stated he appreciated the difficulty in looking at cumulative impacts. David Becker, Staff Attorney for the Oregon Natural Desert Association, and also the Audubon Society of Portland, said they are grateful for the work that the counties and staff have done on the jurisdictional issues.

Mr. Becker discussed three projects going in Harney County. He discussed procedures taking place by the county jurisdiction and felt the projects should go through the state process because the county does not have the resources to review what is involved.

D. Snake River Ethanol update: Applicability of exemption criteria under ORS 469.320(2)(f)

Adam Bless, Oregon Department of Energy, read an email from Peter Mostow, Attorney representing Snake River Ethanol (SRE), dated September 25th 9:00 am:

“Snake River Ethanol appreciates the Department’s recent discussions with SRE regarding the potential exemption request for a biofuel facility utilizing coal as part of the mixed fuel strategy. At this time however, while SRE plans to move forward to seek a site certificate based on this mixed fuel strategy, SRE does not intend to submit an exemption request for the facility as described in my memo to Jan Prewitt of August 22, 2008. On SRE’s behalf I request you inform the Council of this decision and that any potential exemption to our project not be discussed at Friday’s meeting. For the same reason, SRE does not plan to attend or participate in the meeting. We do naturally look forward in due course to a chance to brief the Council on SRE’s innovative project and its strategy.”

There was discussion about future meetings. John White said Bigelow submitted an Amendment Request in August. ODOE issued a proposed order on that request September 24, 2008, which triggers a 30-day comment period, which ends on October 27th. PGE is requesting a meeting as soon as possible, before the end of October, due to their construction schedule. Adam Bless also mentioned the Boardman-Hemingway Line meetings the week of October 27th.

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John White also presented binders for the Helix Wind Project and also a Notice of Intent for the Newberry Geothermal Project.

A handout from Jill Barker on wind farms was presented and also a handout regarding carbon emissions from another audience member for the record.

Chair Shiprack adjourned the meeting at 1:02 p.m.