

**Minutes
Energy Facility Siting Council Meeting
Tigard City Hall
Tigard, Oregon
September 24, 2004**

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

Oregon Energy Facility Siting Council

Karen Green, Chair
Hans Neukomm, Vice Chair
Russell Dorran
Martha Dibblee
David Ripma
Robert Shiprack
David Tegart

Department of Energy (ODOE):

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

Pacific Energy Systems:

John Larson, Consultant for ODOE

The Climate Trust:

Mike Burnett, Executive Director
Alan Zelenka, Board Chair

Summit Power Northwest:

Eric Gjelde, Director
Margaret Kirkpatrick, Stoel Rives, LLP

PGE/Port Westward Generating Project

Arya Behbehani-Divers, PGE
Richard Allan, Ball-Janik, LLP

Chair Karen Green called the meeting to order at 9:23 a.m. Due to a scheduling conflict, the meeting was moved to the Tigard Town Hall.

I. Action Item:

A. Council Workshop: Request approval of letter of invitation from Council Chair to Environmental Quality Commission Chair.

David Stewart-Smith explained the letter of invitation for the Council's benefit. The invitation is for the Council to meet in joint session with the Environmental Quality Commission (EQC) to talk over issues they have in common. Chair Green added that this is to follow up on previous discussions about having a general non-application related meeting talking about issues that have faced the Council and that are likely to come up again.

Hans Neukomm asked about problems or challenges in the past. Mr. Stewart-Smith explained that sometimes members of the public have a lack of understanding as to which state agency does what. For example, the air quality issue brought up in the Boardman plant is not an issue for the Council, it is a Department of Environmental Quality issue, the rules being overseen by the EQC.

Russ Dorran made a motion to approve the letter of invitation and David Ripma seconded the motion. Council was polled:

Martha Dibblee	Yes	David Ripma	Yes
Russ Dorran	Yes	Bob Shiprack	Yes
Karen Green	Yes	David Tegart	Yes
Hans Neukomm	Yes		

Cathy Van Horn also discussed the issue brought up in the past about supplying biographies of Council members to the public. Drafts were presented to all Council members, and photographs were taken. Chair Green said this would be used on the website, as handouts at meetings and for anybody that would have inquiries about the Council members.

There was recognition from Mr. Stewart-Smith and Chair Green that this meeting would be the last meeting for the Council's Administrative Assistant, Loretta Kohanes.

Jan Prewitt, Department of Justice, mentioned she would be sending e-mail regarding the election year and the rules that apply to Council members making public comment on the election as public officials.

B. Summit Westward Project: Request to approve the issuer and form of the retirement bond.

Adam Bless said the Summit site certificate requires surety in the form of a bond or letter of credit for site restoration and for carbon dioxide offsets. Conditions in the certificate make the identity of the issuer of the bond or letter of credit subject to Council approval. Council members received a copy of the Decommissioning/Retirement Payment Bond. At this time, Summit has not made known which issuer of these sureties they will be working with. Mr. Bless gave Council a list of five potential companies, along with a recommendation from the senior loan officer with Oregon Department of Energy's Small Scale Energy Loan Program, Dave Stevens. One note of caution in Mr. Steven's recommendation is that the bond should come from the actual company, rather than a subsidiary of the company, which may not be fully backed by the assets of the parent company.

Eric Gjelde, Director of Summit Power Northwest, the developer agent for Westward Energy, the holder of the site certificate, introduced himself. There was discussion between Mr. Gjelde, Chair Green and Mr. Bless. Ms. Prewitt gave advice on approval of the bond without knowing the issuer.

Margaret Kirkpatrick, Stoel Rives LLP, attorney for Summit Westward, said if the Council approves the list of sureties that have been submitted, Summit could use any company on the list for the bond or letter of credit for the site restoration and for the carbon dioxide offsets. Chair Green clarified that this would create an "either-or" situation where the issuers on the list would be approved for either the retirement or carbon dioxide bond.

With the Chair's clarification that a motion to approve this action item applied to either bond, David Tegart moved to approve the list of five issuers, to be used for one or both bonds, but not including their subsidiaries, for the Summit Westward Project. Hans Neukomm seconded the motion. Ms. Kirkpatrick noted that Mr. Stevens note of caution on the subsidiaries was only if the subsidiary was not fully backed by the assets of the parent company. Mr. Tegart amended the motion to approve the list, including their subsidiaries, only if it is fully backed by the assets of the parent company, as determined by Department of Energy Staff. Hans Neukomm seconded the amended motion.

Martha Dibblee	Yes	David Ripma	Yes
Russ Dorrn	Yes	Bob Shiprack	Yes
Karen Green	Yes	David Tegart	Yes
Hans Neukomm	Yes		

Chair Green asked for a motion to approve the form of payment bond. David Ripma moved to accept the form of payment bond as presented; David Tegart seconded the motion. Council was polled:

Martha Dibblee	Yes	David Ripma	Yes
Russ Dorrn	Yes	Bob Shiprack	Yes
Karen Green	Yes	David Tegart	Yes
Hans Neukomm	Yes		

C. Summit Westward Project: Request to approve the issuer of the monetary path payment bond.

As noted above, the Council's previous motion approving the issuer of the bond included both the retirement and monetary path bonds. Therefore there was no separate vote on this agenda item.

Adam Bless explained that the form of bond or letter of credit for carbon dioxide offsets is already stipulated in attachments A-1 and A-2 of the site certificate. He explained that the form of that bond is part of site certificate amendment #3, which the Council approved on a temporary basis at its July meeting and which is pending final approval at today's meeting. The form of the bond being discussed today, however, would supersede the one in amendment #3. Jan Prewitt said the payment bond has been used before, with two changes: 1) Paragraph 5 – for better clarity delete the words “otherwise to remain in full force and effect.” 2) Paragraph 6 – the same deletion as Paragraph 5.

D. Summit Westward Project: Request approval of Amendment No. 3.

Adam Bless said Amendment No. 3 is to allow phased construction, dividing the project into Phase 1 and Phase 2, and also allow payment of financial security instruments for carbon dioxide offsets and retirement in two phases. Council approved this amendment on a temporary basis on July 23, 2004, under the expedited review process set forth at OAR 345-027-0080. The public had 15 days to comment or request a contested case, which has passed with no comments or requests. Council at this time just needs to finalize that approval.

Martha Dibblee moved to finalize the temporary approval of Amendment No. 3 for Summit Westward including the modification to the form of bond in the attachment that Jan Prewitt explained in the previous agenda item. Russ Dorrn seconded the motion; council was polled:

Martha Dibblee	Yes	David Ripma	Yes
Russ Dorrn	Yes	Bob Shiprack	Yes
Karen Green	Yes	David Tegart	Yes
Hans Neukomm	Yes		

E. Summit Westward Project: Request approval of Amendment No. 4.

Adam Bless said Amendment No. 4 is a request from Westward Energy to extend the construction deadlines by two years. The current site certificate requires they begin construction by October 3, 2004. The proposed amendment would extend that deadline

until October 3, 2006, and therefore, construction would have to be completed by October 3, 2009. They did not request any other changes to the facility and the Department of Energy has not received any comments on the proposed order.

Mr. Bless said when an extension is requested it is treated as a time to look at the facts and regulations of other agencies that may have changed. In this case, there have been two regulation changes: 1) The Division of State Lands has changed its wetlands regulations so Summit was required to verify their wetlands mitigation plans would meet new standards, which has been done. 2) The Columbia County zoning ordinances have changed in regards to wetlands, riparian overlay and site review by the county. There was discussion about the changes in the county zoning ordinances and that Summit demonstrated that the Project would comply with the Columbia County land use changes. Adam Bless called the Council's attention to new language in the land use analysis, which was slightly different from the language in the proposed order and which was mailed to the Council along with the agenda. The new language was advised by Richard Whitman from the Justice Department, based on further review of the County's new land use ordinance for wetlands.

Bob Shiprack asked for the record about the background of the request for extension and why it is necessary. Mr. Eric Gjelde explained the progress of giving the notice to the contractor to proceed and the closeness to the deadline for startup. Also, without this in place the various equity and debt providers for the project are taking longer than anticipated. The actual construction, due to weather conditions, may not actually begin until early spring but mobilization could occur sooner. Siemens Westinghouse out of Orlando, Florida, a subsidiary of Siemens A.G., is the contractor.

David Ripma asked if extensions are always for two years. Mr. Bless said OAR 345-027-0030 limits the extension to two years. Mr. Ripma also asked about the interpretation of no net loss being applied in the final order as the reasoning behind the new language in the analysis of compliance with the county requirements. He asked about the notice given to the public about this. Jan Prewitt, Department of Justice, explained the procedures and the notice given to the public on the Land Use issue. She explained that the proposed order which was noticed out for comment had the same substantive conclusion as the new language being proposed today. The only difference was the reasoning used to reach that conclusion. However, the public received adequate notice because the substantive result was the same. Mr. Bless said the new reasoning would not set a precedent for the County because EFSC decisions are not binding on any county unless it has to do with a power facility. ODOE first gave notice of the extension request, about six months ago and the ordinance was available for anyone to see before that time.

Chair Green commented regarding the request for expedited review for Amendment #3, identifying the circumstances. Mr. Bless discussed this and Summit's construction plans. He also said that if the Council feels uncomfortable and wants to table the decision it would not kill the project; an extension request stays the deadline until the Council makes

a decision. Ms. Prewitt also said that the risk is very small that anybody would say they didn't have notice, because they had notice of the ultimate result.

Bob Shiprack made a motion to adopt amendment #4 of the Summit Westward Project and David Tegart seconded the motion. Council was polled:

Martha Dibblee	Yes	David Ripma	Yes
Russ Dorran	Yes	Bob Shiprack	Yes
Karen Green	Yes	David Tegart	Yes
Hans Neukomm	Yes		

Mr. Gjelde assured the Council that many discussions were held with the County Planning Department and County Commissioners. They intend for this industrial zoned property to be developed, and are happy to abide by DSL regulations for no net loss. It has worked out to actually be a net gain.

F. Port Westward Generating Project: Request approval of Amendment No. 2.

Sam Sadler said Portland General Electric (PGE) is the certificate holder for the Port Westward Project. The deadline for the construction start in the current Site Certificate of the Port Westward Generating Project is November 8th, 2004. PGE does not expect to meet that deadline. An amendment request had to be 6 months before the deadline, and PGE filed in a timely manner. PGE requested a construction beginning date of November 8, 2006, and a construction completion date of May 8, 2009. PGE also requested two other changes, one evolving from Columbia County land use changes and one relating to providing an optional configuration of the energy facility site.

Mr. Sadler reported that PGE had indicated that the ceremonial groundbreaking for the Port Westward Generating Project is scheduled for October 7, but full construction would not begin until January 2005, and completion is scheduled for spring of 2007. Therefore, PGE needs the amendment to build under its current schedule. The recommended final order recommends granting the extension because PGE demonstrated that it meets the requirement of the rule to extend construction deadlines. Furthermore, PGE is clearly prepared to begin construction. The recommended final order reviews all current rules and land use regulations and demonstrates that the facility still complies, with a couple of minor changes to update conditions.

Mr. Sadler said when the notice of the amendment request was sent, only one person from the public commented informally. It was from a neighbor adjacent to the right of way for the section of the transmission line between Port Westward and the Bonneville Power Administration's Allston Substation. This is in the first 10 miles, along an existing right of way (which also includes a natural gas line). The person called to express concern regarding the interaction of electrical currents from the transmission line and the natural gas line and also concern about a tree that she thought might be an endangered species. The issues raised were already ones that the Council has addressed in the site certificate. Mr. Sadler added that the tree was not an endangered species.

None of the agencies that received the amendment request asked for changes or conditions. Mr. Sadler said there were no comments on the proposed order.

He discussed a condition under Fish and Wildlife Habitat, Section D.8(12), of the Site Certificate. Since the Council approved the Site Certificate, Columbia County has modified its zoning ordinances regarding the distances involved between streams and vegetation and the structures, among other changes. PGE had proposed changing the condition to incorporate the new Columbia County ordinance, but it inadvertently dropped a reference to City of Rainier standards, so the final recommendation is to refer to both, as appropriate. Mr. Sadler noted that there were findings in the land use analysis to show that the facility complies with the new Wetland Overlay Zone and other modifications that Columbia County has adopted.

Mr. Sadler said that the Department of State Lands has adopted new wetland rules. The major change is that the old wetland rules had a methodology for classifying wetlands, which has been abandoned. It now relies on professional judgment. He noted that PGE had revised its wetlands classification to meet the new methodology.

PGE also requested an optional configuration of its energy facility site that would allow it to exclude a 180 foot-wide strip from the energy facility site. The strip follows a roadway across the site. The Beaver Drainage District has an easement on the roadway for the levee under the roadway. The amendment would give the certificate holder the option of building Phase 1 on part of the site not affected by the easement. It would reserve the option of excluding the 180-foot strip from the boundary of Phase 2 if the certificate holder was not able to negotiate a resolution to the easement issue. The changes were illustrated in a site plan.

Ms. Arya Behbehani-Divers from PGE introduced herself. Mr. Richard Allan, an attorney with Ball-Janik, LLP, representing PGE, also introduced himself. Sam Sadler asked her for confirmation on the construction plans. Ms. Behbehani-Divers said that PGE expected to begin construction, as defined in the rules, in January 2005.

Bob Shiprack asked about the phasing of the project. Ms. Behbehani-Divers said that PGE requested this phasing because of its integrated resource plan. PGE's need for power peaks in 2007 and that need will be filled with the 400 MW in Phase 1 of the Port Westward Generating Project. PGE would reserve the option of building Phase 2 later, within the deadlines in the Site Certificate.

Bob Shiprack moved to approve the Amendment #2 for the Port Westward Generating Project. Martha Dibblee seconded the motion. Council was polled:

Martha Dibblee	Yes	David Ripma	Yes
Russ Dorrان	Yes	Bob Shiprack	Yes
Karen Green	Yes	David Tegart	Yes
Hans Neukomm	Yes		

G. Request to appoint two members to the board of directors of The Climate Trust.

Sam Sadler noted that the Council has the responsibility of appointing three board positions of The Climate Trust. Two are now up for appointment in the normal rotation of positions.

He said that The Climate Trust has requested that the Council re-appoint Susan Anderson, director of the Portland Office of Sustainable Development. Ms. Anderson has served on the board since the creation of The Climate Trust in 1997 and has twice served as chair of the board. She is the only original member of the board still serving.

Also, Mr. Sadler said the Department of Energy recommends that the Council appoint Diana Bodtker to the board of The Climate Trust. Ms. Bodtker served as a Council member and as member of the board of The Climate Trust previously. She has also served as chair of the board of The Climate Trust. Chair Green also said that Council member Martha Dibblee is in the middle of her term, which is the third position.

Mr. Sadler noted that Margie Gardner, whose term is expiring, contributed a great deal to the Trust in the four years she served as a Council appointee. He thanked her on behalf of the Department.

Russ Dorran made the motion to approve the request to appoint the two members to the Board of Directors of The Climate Trust and David Ripma seconded the motion. Council was polled:

Martha Dibblee	Yes	David Ripma	Yes
Russ Dorran	Yes	Bob Shiprack	Yes
Karen Green	Yes	David Tegart	Yes
Hans Neukomm	Yes		

H. Portland General Electric: Request for Declaratory Ruling regarding the transfer of ownership.

David Stewart-Smith explained the process of a request for Declaratory Ruling regarding the possible transfer of ownership of PGE by Oregon Electric Utility Company, LLC. Chair Green clarified that the issue is whether this acquisition would constitute a transfer of the site certificate based on the facts as presented by PGE.

David Ripma commented on the proposed sale and the similarities of sales in the past.

James Bradshaw, representing Oregon Electric, introduced himself. David Stewart-Smith said that Texas Pacific Group is an investment group that has formed an Oregon corporation. It does not currently own PGE but that is the question at hand.

Rich George, with the PGE legal department, said with the petition, PGE filed the application presented to the PUC, detailing the structure and investment of the transaction.

Martha Dibblee made a motion that the Council enter into a declaratory ruling proceeding on the transfer of ownership of Portland General Electric's assets and site certificates and to authorize staff to appoint a hearings officer to conduct the proceedings. Bob Shiprack seconded the motion. Council was polled.

Martha Dibblee	Yes	David Ripma	Yes
Russ Dorrn	Yes	Bob Shiprack	Yes
Karen Green	Yes	David Tegart	Yes
Hans Neukomm	Yes		

(Information Item III. C was moved ahead of schedule for convenience.)

C. Staff briefing on a petition for rulemaking from Save Our Rural Oregon (SORO).

David Stewart-Smith said the Council does not have a copy of the petition because no action would be taken at this meeting. The Oregon Administrative Procedures Act provides that the Council must within 90 days of receiving a petition for rulemaking, grant the petition and authorize rulemaking or deny the petition in writing.

Jan Prewitt said the difficulty here is that this is an issue the Council will have to act on in the COB contested case as well. Staff is trying to avoid an ex parte contact, because not all of the parties to the contested case are present. Ms. Prewitt asked Council to restrain questions today.

Chair Green asked general questions about petitions for rulemaking. Mr. Stewart-Smith said in the COB proceedings, there is a contested case record and the department has taken a position. Interveners in that case have taken a different position. Ms. Prewitt said the hearing officer has issued a recommended order and given a date to submit exceptions to the order to the Council. There will be two rounds to the exceptions, one due the 29th of September the other due October 6th, and then oral argument and a hearing at the Council's next meeting. There was a first reading on COB in the summer of 2003. Information will be sent to Council members after today's meeting.

In the petition for rulemaking, Ms. Prewitt said there is a stringent set of rules for notice and opportunity to participate. Chair Green asked when the 90-day period would expire. Mr. Stewart-Smith said the decision should be made after the COB issue is resolved, but will need to be done in October or November.

David Ripma asked about issues that come up in rulemaking and contested cases and the procedures for the public to be informed. There was discussion in general about the procedures.

III. Information Items

A. The Climate Trust 5-Year report

Alan Zelenka, the new Chair of The Climate Trust Board, introduced himself. Mr. Zelenka summarized the recent activities of the Trust, first talking about three successful and growing programs, the Oregon Power Plant Offset Program, the Greenhouse Gas Offset Partnership Program and the Offset Policy Initiative. The Climate Trust has met the requirements of the Oregon CO₂ Standard. He discussed some of the benefits of the program, which The Climate Trust figures to be \$9 of benefits for every \$1 that the developers pay into the offset fund. Mr. Zelenka talked about the staff of The Climate Trust and its expertise.

Mike Burnett, Executive Director of The Climate Trust, introduced the Five-Year Report, "Purchasing Quality Offsets in an Emerging Market," which describes their experience. Mr. Burnett discussed the background of The Climate Trust and the unique non-profit role it maintains. All new energy facilities have met the CO₂ standard by using monetary path and providing offset funds to The Climate Trust. He also said that at least 80% of the offset funds are used for direct offset projects and he discussed the amounts received from the different plants and how the funds are being used. Mr. Burnett also discussed the new partnership with The Energy Trust of Oregon for CO₂ offsets from industrial energy efficiency measures.

He reported that there were also a couple of projects that were selected, but were never implemented. However, no offset funds were lost due to the cautious structure of the Trust's contracts. Chair Green asked about lessons learned from the failure of these projects. Mr. Burnett said The Climate Trust would be more conservative in the future, although it had done extensive due diligence on the two projects. He also discussed the selection criteria for the projects that are chosen and the monitoring, which is done using a 3rd party verification.

(II. Working Lunch)

Mr. Burnett next discussed financial performance and the importance of the interest earnings in the Trust's operations. The Trust began using a conservative investment policy for offset funds, but in 2003 it revised its investment policy to invest in low risk bonds. Mr. Burnett also referred to purchasing offsets and the statutory requirements and reporting processes. He made comparisons with other market prices for offsets. He said that outside observers have noted that offsets acquired by the Trust are considered quality indicators.

There was also discussion about the selection and contracting costs and funding. Mr. Burnett noted that the statutory provision of 5% for selection and contracting does not cover the administrative costs the Trust has seen. They have had to use other funds and interest income to cover these higher costs.

Hans Neukomm commended The Climate Trust for the report. He also referred to the United States still not subscribing to the Kyoto protocol, even though much of the rest of the world has. He asked what results the other countries that have committed have achieved and what the measurements have been. Mr. Burnett said the Kyoto period is 2008 – 2012, so it is just getting into place. He also mentioned what is happening in Canada, and other countries.

III. B. Klamath Cogeneration Project 5-Year Report on CO₂

Virinder Singh introduced himself. He is an environmental policy analyst for Scottish Power, representing PacifiCorp Power Marketing (PPM). PPM is managing and operating the Klamath Cogeneration Project (KCP). Mr. Singh made a slide presentation, showing information on KCP's carbon-offset projects. The four offset projects are: Coal bed Methane Capture for Power; Solar Electrification in India and Sri Lanka; Sequestration through the Oregon Forest Resource Trust; and Geothermal heating expansion in Klamath Falls. He reviewed each project. The steam that KCP provides Collins Products also provides an offset.

There was discussion about the Klamath Falls geothermal heating system. Mr. Singh said that out of the \$100,00 allocated only \$7,000 has been spent.

Mr. Singh said he would highly recommend developers that have to comply with Oregon law by siting a plant here to consider the payment path to The Climate Trust.

Mr. Sadler commented that the KCP projects came out of the 500 MW competition in 1996, in which staff and parties had to review proposals for three energy facilities and their offset projects in a 10-week contested case. The rules did not allow developers to change their offset proposals. Under the CO₂ standard rules, review of offset projects would fall within the usual 2-year application review, which also allows for greater refinement of proposals. He noted that the Department had had difficulty overseeing the management of the KCP offsets, especially because the monitoring and verification details were not agreed to ahead of time. There had been difficulties getting information.

Bob Shiprack asked if the Klamath Cogeneration Project could switch over to The Climate Trust. Mr. Sadler said that would take an amendment to the Site Certificate, but that there are no uncommitted funds to transfer to The Climate Trust. Sam Sadler said there is a provision in the site certificate that KCP could reallocate available funds among its portfolio as requested by the Council, but that the funds were all committed under contracts, so there would also have to be agreement by the project implementers if funds were reallocated. Some projects had unspent funds, others didn't. Chair Green and Staff talked about procedures necessary for Council to request this. Mr. Stewart-Smith said the Staff would follow up on possible options.

Other Items

David Stewart-Smith discussed future events and the upcoming meeting at Klamath Falls. There was discussion about having an evening session, due to the full schedule. Jan Prewitt said that when the notice of the meeting is given, the shorter issues should be handled first.

Chair Green adjourned the meeting at 2:35 p.m.