

Minutes
Energy Facility Siting Council Meeting
Oregon Department of Energy
Ross Ragland Cultural Center
Klamath Falls, Oregon
September 27, 2005

*Approved by the Energy Facility Siting Council with revision
January 20, 2006*

Energy Facility Siting Council

Hans Neukomm, Chair
David Ripma, Vice-Chair
Lori Brogoitti
Martha Dibblee
Karen Green
Robert Shiprack

Oregon Department of Energy:

Michael Grainey, Director
Tom Stoops, Council Secretary
Adam Bless, Senior Analyst
Sam Sadler, Senior Analyst
Catherine Van Horn, Senior Analyst
John White, Senior Analyst
Sisily Fleming, Administrative Assistant

Oregon Department of Justice:

Jan Prewitt, Assistant Attorney General

Oregon Department of Forestry:

Lanny Quackenbush
Paul Bell

Portland General Electric:

Richard George

PPM:

Richard Jigarjian

Stoel Rives LLP

Peter Mostow

Klamath Cogeneration Facility:

Ray Martins, Plant Manager

Public:

Trey Sann, Director of Klamath County Economic Association
Anita Ward
Rick Whitlock, City Attorney for Klamath Falls

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Mel Ferguson, Past EFSC Council Chair

Chair Hans Neukomm called the meeting to order at 9:10 a.m.

I. Consent Calendar:

A. Announcements and Introductions.

Chair Neukomm welcomed Michael Grainey, Oregon Department of Energy Director, and also introduced Tom Stoops, the newly appointed Council Secretary. Chair Neukomm explained the changes that the ODOE has made in reorganization.

B. Approval of June 20, 2005 Energy Facility Siting Council Meeting Minutes.

Karen Green requested staff listen to tapes and clarify statements that she had made, but were reflected in a different way in the minutes. Bob Shiprack moved to approve the minutes with Ms. Green's changes; Martha Dibblee seconded the motion, and all Council members approved.

C. Approval of August 19, 2005 Energy Facility Siting Council Meeting Minutes.

David Ripma made a correction in the minutes in regards to the voting by Council members - he was not present for that meeting. Martha Dibblee moved to approve the minutes with the changes; Ms. Green seconded the motion and all Council members approved.

II. Action Items:

A. Update of Klamath Cogeneration Project Carbon Dioxide Offsets

Sam Sadler explained the uniqueness of the Klamath Cogeneration Project (KCP). It is the only one that manages its own offset projects, instead of using The Climate Trust solely. He explained the historical background for the KCP offset projects. While KCP is the only site certificate with offset projects, KCP later expanded its capacity beyond what it proposed in the 500 MW exemption contested case and that expansion fell under the CO₂ standard. KCP met the CO₂ standard for that additional capacity using the monetary path.

In September of 2004, the Energy Facility Siting Council (Council) raised questions about the implementation of KCP's offset projects through the Oregon Department of Forestry's Forest Resource Trust (FRT) and the City of Klamath Falls Geothermal Heating Account Loan Program. The Council was concerned that both projects had unexpended funds because they were not obtaining offsets in an effective manner. Mr. Sadler continued by reviewing each item.

1. Geothermal Heating Account Loan Program. ODOE asked the City of Klamath Falls if it could propose changes to the program to make it more effective. The City proposed four changes: a) to eliminate the current \$20,000 limit per loan; b) to extend the payback on the loan from three to ten years; c) to allow the loan funds to be used by businesses on private wells, which are not part of the City's district heating system; and d) to allow loans for extension of the distribution pipes of the district heating system to nearby businesses. ODOE staff agreed to the first two changes, pursuant to OAR 345-027-0050, but felt the Council would have to approve the latter two requests if Klamath Falls subsequently made a specific proposal. (Klamath Falls is not proposing to proceed with specific off-system projects or to expand the piping at this time.) ODOE staff recommended that the Council concur in the immediate changes—(a) and (b)—through 2006 to see if there is an improvement.

Karen Green asked about the policy issues involved in using funds for projects on private wells. Mr. Sadler said that each private project would have to meet the same scrutiny that a CO₂ offset project proposed under OAR 345-024-0680 would have to meet.

David Ripma asked about Items (a) and (b) and whether the Council has to take action on these. Mr. Sadler said the Council does not need to act on those items, but if the Council feels Staff shouldn't have approved this, action can be taken. There was further discussion concurring with the changes and agreeing that a vote was not needed.

2. Forest Resource Trust. Mr. Sadler next discussed the Forest Resource Trust (FRT). KCP provided the FRT about \$1,500,000 in 1999 to purchase offsets from forest sequestration projects. Currently FRT has about \$1,000,000 in unexpended funds. FRT has enrolled 442 acres in the program since 1999, as noted in the KCP 2005 Annual Report to the Council.

Mr. Sadler introduced Lanny Quackenbush, Oregon Department of Forestry (ODF), to continue the discussion. Mr. Quackenbush gave some background history regarding the Forest Resource Trust, and also referred to the Status Review and Action Plan, which ODF had submitted to the Council for this meeting. He said the goals of the stand establishment program have been revised several times over the years due to reduced participation and the higher than anticipated expense of forestation experienced under the programs. Acreage goals have been revised three times and have moved from 250,000 acres by 2010 for the initial program to a current goal of 1,200 acres under the Klamath Cogeneration Project by 2010.

Mr. Quackenbush referred to page 7 of the Status Review and Action Plan, which details the Immediate Actions, the Short Term Program modifications, and the Long Term Program Modifications.

Martha Dibblee asked if there could be public investors in FRT. Mr. Quackenbush noted that there had been public contributors.

Karen Green expressed her approval of the direction FRT is proposing to take and asked whether community forests would qualify if they were private or private non-profit ownerships. Mr. Quackenbush said he would have to review the laws.

Martha Dibblee questioned how projects are attracted and whether an RFP was sent to investors. Mr. Quackenbush said providing technical assistance was aimed at woodlot owners already involved in ODF programs to inform them of greater opportunities. The FRT also uses private consultants to promote the program.

Bob Shiprack asked who is actually qualified for these programs. Mr. Quackenbush said it is directed towards "non-industrials," someone who lacks their own manufacturing plant and has less than a 5,000-acre ownership. Mr. Shiprack also asked Mr. Sadler whether the KCP offset plan should be revised. Mr. Sadler said he didn't think the Council would have the authority to void the contract between KCP and ODF. Jan Prewitt, Department of Justice, referred to the Site Certificate and asked Mr. Sadler whether Forest Resource Trust is named specifically. Mr. Sadler confirmed that FRT is named; Ms. Prewitt said it would be necessary to have a site certificate amendment if FRT were not to be used.

Chair Neukomm asked about a watershed in Corvallis and whether it would qualify for the program. Mr. Quackenbush said it depends on the background of the watershed. Local authorities own many watersheds.

Mr. Sadler stated that depending on the Council's response, the proposals for Immediate Action in the Action Plan would not require a site certificate amendment. Staff could approve them if the Council didn't object. In regards to the item to establish criteria to qualify additional acres in Central and Eastern Oregon, Mr. Sadler said this would probably require more Council action, perhaps a site certificate amendment. Mr. Sadler noted that other Short-Term and Long-Term Program Modifications identified in the Action Plan might require Council approval or a site certificate amendment, depending on the specifics.

Chair Neukomm asked for Council members opinions. Karen Green said she felt the Council should accept Mr. Sadler's recommendation. All Council members concurred without taking a vote.

3. Cogeneration Offsets. Mr. Sadler stated that, in their Site Certificate, KCP guaranteed 4,464,395 tons of CO₂ offsets from cogeneration over 30 years. That amount of offsets was based on estimates of reduction in fossil fuel use at a steam host that would result from providing on average 200,000 pounds of steam per hour at a certain temperature and pressure for 30 years. The Site Certificate provides for 5-year true ups of the guarantee. Pro-rated for five years, KCP will have to provide up to 744,066 tons for the first 5-year reporting period.

To meet the requirement of providing guaranteed offsets, KCP must transfer title to the offsets to the Council for it to hold in trust, pursuant to the "Irrevocable Trust Agreement for the CO₂ Offsets Benefits Trust from the Klamath Cogeneration Project." KCP is in danger of not being able to provide any of the guaranteed CO₂ offsets from supplying steam to Collins Products. At best, it will only be able to provide about one-third of the offsets guaranteed. If it doesn't meet the offsets within the 5-year true up, which is the end of July 2006, it has one more year to look for another steam host.

Mr. Sadler said KCP has raised the possibility of using the monetary path to meet its guarantee. ODOE staff believes that it would be appropriate for the Council to indicate that it would entertain a proposal by KCP to meet the requirement through the mechanism of the monetary path payment requirement set forth in OAR 345-024-0710, with certain additional provisions, which were noted in the September 12, 2005, ODOE staff memo to the Council. He also noted that The Climate Trust would have to agree to participate, because this is not the usual application of the monetary path mechanism.

Mr. Sadler introduced Richard Jigarjian, PPM Energy, Inc. (PPM). PPM manages KCP on contract to the City of Klamath Falls. Mr. Jigarjian pointed out that even though PPM is not delivering as much steam, Collins has shut down some of the boilers required. The steam is not needed as much, and the boilers that were generating emissions have been shut down.

Mr. Neukomm asked about what the guaranteed offsets were based on and whether the Council is locked in to that offset project, since there have been changes in the operation. Jan Prewitt said there is no fundamental change in the project since the plant is generally operating as proposed, even though there are factual differences. The project is defined in the Site Certificate.

Mr. Jigarjian said the facility was built as proposed, but is operated differently. It is generating less power because the demands of the marketplace have not been what were originally anticipated. The plant is operated in the low 50-60 percent range, unlike the 80 percent range that was anticipated.

David Ripma said this is a good example of why the monetary path is a superior way to go because this is the kind of complexity that will always come up. Mr. Ripma also asked about targeting offset funds locally if the Council allows KCP to use the monetary path to meet its guarantee. Mr. Sadler said The Climate Trust could look for local projects. However, if there aren't any local projects available that are cost effective, then The Climate Trust should have the flexibility to look elsewhere.

Lori Brogoitti said she feels the project affects the community so the funds should go back to the community. Mr. Sadler said this is a worldwide problem. However, The Climate Trust has spent most of its offset funds either in Oregon or the Northwest. But, there has to be a limit on how much it will spend to get local projects. A new site

certificate holder gets credit for 85 cents a ton for offsets, while the actual cost for offsets is about \$5 a ton.

Another way to look at it is that the site certificate holder has the option of finding offsets locally itself at whatever costs it is willing to pay. The Climate Trust is a less expensive option to provide offsets for site certificate holders, but The Climate Trust has an obligation to buy cost-effective offsets, wherever they are.

Ms. Green asked about the history of KCP winning the right to have a site certificate through the 500 MW exemption contested case, and whether there was consideration for room to maneuver. Ms. Prewitt said she would look into the history. Michael Grainey, Director of ODOE, mentioned two other projects that were also involved in the competition. Both were in the Hermiston area. One was built later and one obtained a site certificate, but did not go forward because of market conditions.

Chair Neukomm asked about the options presented and what kind of timeframe is anticipated. Mr. Sadler said it would be about two years before KCP had to provide the guaranteed tons. Mr. Grainey said this was a unique situation for the Klamath Cogeneration Project, so he expressed his recommendation to look at the options KCP presents for the next two years.

Chair Neukomm asked for Council members opinions. All members were in agreement with allowing KCP the option to propose using the monetary path when it had to meet its cogeneration offsets guarantee.

4. Annual Report on KCP Offset Projects. Mr. Richard Jigarjian said the City of Klamath Falls hired a new company to put the report together, TRC Global Management Solutions. In the report the four project activities of the KCP portfolio are summarized: 1) Fossil fuel displacement through coal bed methane utilization for power production; 2) Increased carbon sequestration through expansion of the Oregon Forest Resource Trust; 3) Solar rural electrification with photovoltaics in Asia; and 4) expansion of the City of Klamath Falls' Geothermal Heating System. The report also includes the cogeneration offsets. He referred to Page 3, showing the summary of each project, and then Page 4, comparing the expected offsets to the offsets to date and projected lifetime offsets. He further explained other charts in the Annual Report. The Council asked questions to clarify certain points.

Mr. Neukomm asked for public comments. Ms. Prewitt cautioned that comments may not be made regarding the pending site certificate applications for the KGF or KGP facilities until decisions have been made on the record.

Trey Sann introduced himself as the Director of Klamath County Economic Development Association. He expressed his understanding of the offsets and said he believes it will help the economy.

Anita Ward, Chair of PacifiCorp's Klamath County Community Advisory Committee, introduced herself. She stated that she was not speaking in an official capacity. She is concerned about the shortfalls to the local community and the State.

Rick Whitlock, City Attorney for Klamath Falls, stressed to the Council that the city is very interested in getting some of the CO₂ offset dollars back into the community, not just from the Klamath Cogeneration Project, but also from the COB Project.

The Climate Trust Annual Report

Chair Neukomm thanked the public for their comments and next introduced Martha Dibblee, EFSC Council Member who serves on The Climate Trust's board, to give a summary of The Climate Trust Annual Report.

Martha Dibblee said The Climate Trust is the qualified organization to which offsets are paid from the State of Oregon. Port Westward has provided \$4.3 million, and an RFP has gone out to solicit projects. Another project taking place is the Truck Stop Idle Reduction Project, which involves modules that are placed in trucks that provide air-conditioning, heating, etc. so that trucks at a truck stop don't have to idle their engines. It is estimated that over 90,000 metric tons of CO₂ emissions will be eliminated over the 16-year project life. Ms. Dibblee also stated that Portland's building efficiency is continuing to help with weatherization projects and new buildings, including green roofs; the traffic signal optimization is another project to keep traffic flowing. Other parts of The Climate Trust, the Greenhouse Gas Offset Partnership program for example, are a separate part of The Climate Trust, which doesn't impact the Siting Council program. These are separate contracts and grants that have been solicited by The Climate Trust.

B. Portland General Electric Petition for Declaratory Ruling

Adam Bless gave some procedural history on the Portland General Electric (PGE) petition. On July 21, 2005 PGE petitioned for a declaratory ruling. In considering a petition for declaratory ruling, the Council follows the Attorney General's model rules, as required in statute at ORS 183 and in rule at ORS 137, the Administrative Procedure section. Mr. Bless summarized the procedures taken, and stated that there were no petitions to intervene in the proceeding.

Mr. Bless said that in a petition for declaratory ruling, the Council accepts the facts presented by the petitioner and determines how those facts apply to its rules. In this case the Council rule in question is OAR 345-027-0100, which governs transfer of site certificates. The Council was asked to consider whether PGE's role in the Enron bankruptcy is a transfer of ownership that would require a transfer of site certificates of PGE's energy facilities pursuant to EFSC rule OAR-345-027-0100. Specifically, the Enron bankruptcy plan calls for issuance of new PGE common stock and separation of PGE from Enron. The ODOE Staff report recommends that the Council agree with PGE

and find this does not constitute a transfer of site certificate, which would require going through the site certificate transfer process.

Mr. Bless introduced Richard George, Attorney for PGE, who wrote the petition. Mr. George said he would answer any questions from Council members. David Ripma asked if this has anything to do with the sale of PGE. Mr. Bless said PGE has been up for sale several times, and the fourth time that a declaratory ruling has been petitioned. Mr. George said that at this time there is no sale pending.

Mr. Ripma asked if the Council is allowed to take public interest into consideration. Ms. Prewitt explained that the Council is deciding how its rules would apply to the proposed transfer. She added that there are other regulatory approvals required, such as approval of the Oregon Public Utility Commission (OPUC). Enron is required by the bankruptcy order to have PGE gather the regulatory approvals. Mr. Ripma said if the Council is not permitted to consider public interest, then the Council has to interpret the rule to accept this.

Ms. Prewitt explained the situation further. One point she mentioned is that this former subsidiary is actually going to become publicly owned with shares, just as any corporation. The second point of clarification is that if assets are sold and it results in a change of ownership, they have to come in and get a site certificate amendment. So if there were in the future a change in the ownership of assets it would have to go through the regulatory approvals and a site certificate amendment to show they are capable of operating the assets.

Mr. George added that currently there is one shareholder, which is Enron. PGE will be publicly traded on an exchange. Stock is held in reserve until the new stock is issued, because not all of the bankruptcy claims have been resolved. He further added that none of this would take place until enough of the claims are resolved so that there can be liquidity in terms of trading.

Martha Dibblee asked if there has been a monetary value set for these shares, and if so, why aren't the creditors paid first. Mr. George explained the bankruptcy proceedings and what happens to the assets. Ms. Prewitt added that distribution of the stock is how the creditors will get paid. Ms. Dibblee asked about employees that lost their retirement, whether they will be paid. Mr. Bless said the employees were shareholders in the Enron stock, and they lost value when the Enron stock lost value. Mr. George said there is a class action suit pending for recovery of that, but a slim chance for recovery under that.

Comment [SF1]:

Ms. Green commented that Council members are concerned about the transactions, but felt this was straying from the decision that needs to be made by Council members at this time, whether it requires a transfer of ownership.

Lori Brogoitti asked what happens if the Council does not issue the ruling. Mr. Bless said that theoretically the Council would have to figure out who the site certificate would

be transferred to, and PGE would need to come in for site certificate amendments and have the new owner meet the Council's standards, in particular the Organizational Expertise Standard and the Financial Standard. Mr. George said that stockholders would have no more than 5% ownership, so to determine ownership is difficult.

Ms. Prewitt said that PGE is not in bankruptcy, Enron is, and it must go through these proceedings. Ms. Green said she felt Staff has made a good recommendation. Mr. Ripma said he felt this is different than a sale from PGE to Sierra Pacific or something similar. The PUC is the guardian of this and they have the ultimate decision. Mr. Ripma questioned what would happen with the PUC if the Council declines making this ruling. Mr. Bless explained that the PUC might still ask the Council how this would be handled. Ms. Prewitt also stated that a ruling is made on the set of facts presented. A ruling is effective only as long as those facts are true. If another set of facts comes to pass, they still have the obligation to have the authority to operate it, and may have to transfer ownership at that time.

Mr. Bless noted that after the bankruptcy, the managers that handle PGE's day-to-day operations would still be the same. He also explained that PGE's financial capability ultimately comes from its ability to set rates and collect payment, which will remain under the control of the OPUC. Mr. Bless further explained more background about rate order, and that the PUC is depending on a 1995 rate order for PGE, which is outdated. The procedure the Council is involved in now will not raise rates if that happens.

Chair Neukomm asked Ms. Prewitt for the proper procedure to follow in this ruling. She explained the form of the motion. Martha Dibblee moved to approve the Presiding Officers Report, Bob Shiprack seconded the motion; Council was polled and approved unanimously:

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

Karen Green moved to approve and have Chair Neukomm sign the Declaratory Ruling, Lori Brogoitti seconded the motion; Council was polled and approved unanimously:

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

C. Klamath Generation Peakers: Decision on Application for Site Certificate.

Chair Hans Neukomm asked Jan Prewitt, Department of Justice, to explain the procedures involved with testimony. Ms. Prewitt said the Council's decision is to be based on evidence already presented. Because there was no contested case, it is not proper for the Council to take public comment at this time. Once a decision has been made, the public can comment.

Adam Bless began the presentation, and introduced Peter Mostow, the attorney representing the applicant. Mr. Bless continued reviewing the procedures that have led up to the Draft Final Order. He said the Draft Final Order is identical to the Proposed Order, which Council members reviewed at the June meeting in Pendleton, with typographical errors corrected.

Chair Neukomm asked if there were questions from Council members. There were none. Mr. Mostow thanked Mr. Bless for the time spent on siting the facility. Mr. Bless said the actual review did not take as much time to prepare as the timetable shows, but he deliberately timed the review to be tied to the more complicated facility review of the Klamath Generation Facility. This move was made to be more efficient and cost effective, and was agreed to by the applicant.

Karen Green referred to Attachment A, the Memorandum of Understanding, and asked what the timeframe is for execution of that document. Mr. Bless said the applicant has the option to change from using natural gas to distillate fuel. If they choose not to use that option the Memorandum of Understanding will never be used.

Bob Shiprack moved to approve the Final Order for the Klamath Generation Peakers; Karen Green seconded the motion, Council was polled and unanimously approved:

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

Karen Green moved to direct Chair Neukomm to sign the Site Certificate for the Klamath Generation Peakers; Bob Shiprack seconded the motion, Council was polled and unanimously approved:

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

D. Klamath Generation Facility: Decision on Application for Site Certificate.

John White introduced Peter Mostow, Stoel Rives, representing the Klamath Generation Facility (KGF), a subsidiary of PPM Energy, the applicant for KGF. He also introduced Richard Jigarjian, Director of Asset Management for PPM, and Ray Martins, Plant Manager for the Klamath Cogeneration Plant.

Mr. White explained the procedures that have taken place since Council members saw the Draft Proposed Order in June. It is the recommendation of the staff of the Oregon Department of Energy that the Council issue a Site Certificate, subject to the conditions in the Final Order.

Mr. White said the Draft Final Order includes a finding allowing an exception to Goal 11. The land use standard requires the Council to determine whether the facility complies with any Land Conservation and Development Commission (LCDC) administrative rules and goals and any land use statutes directly applicable to the facility. He referred to Page 36 of the Draft Final Order and the prohibition on the "extension" of "sewer systems" outside of urban growth boundaries. The state policy of Goal 11 in this instance is the avoidance of extending urban services to rural lands. In this case, the site is an industrial use, with no likelihood of further urban development. The staff is recommending a condition that would preclude the applicant from allowing any additional hookups to the discharge lines (Condition 61). Mr. White also referred to other criteria discussed and addressed by the Council's siting standard and stated that this proposed facility is clearly compatible with other adjacent uses, which includes two power plants.

David Ripma asked what the extension is. Mr. White said it is extension of a sewer system, which doesn't involve a lot of pipe, just the interconnection. Mr. Ripma asked if the sewage could not be disposed of with a septic tank system. Mr. White said the Department of Environmental Quality (DEQ) would not allow it because of the river's closeness. There was discussion about the discharge line also, which does not return to the sewage treatment plant, but does connect to the discharge line from the wastewater plant into the river.

Mr. White next explained that there is a potential adverse impact on Category 3 habitat for fish in the Klamath River, which has to do with the quantity of habitat. The affected area is 17 miles downstream from where the cooling water joins the river. He explained that historically there have been periods of low flow in the Keno Reach, which are likely to occur again whether or not the plant is built. Mr. White explained the Oregon Department of Fish & Wildlife (ODFW) concern. The staff has crafted Condition 76, which addresses this concern. At this point the applicant has not decided to use evaporative cooling, which present the greatest impact. If the applicant chooses evaporative cooling, there would have to be an agreement with the City of Klamath Falls and South Suburban Sanitary District to combine their operations, which has not been decided. The mitigation plan is workable, and ODFW approved the proposed condition.

Mr. White said another issue raised at the June meeting was using fresh water for cooling rather than continuing to use the reclaimed water. There is new language in the Final

Order on page 92, line 9 that addresses the issue. He also explained the difference in the two different uses of water.

Karen Green asked about the mass that goes into the river. Lori Brogoitti asked who manages the river. Mr. White said the Bureau of Reclamation controls the system, but it is operated by PacifiCorp. There was discussion about the cubic feet per second (cfs) measurements between wet and dry years, and how the quantity was measured.

David Ripma asked what if the city didn't have sufficient potable water to supply all of their customers and decided not to pump it out to the cooling system, would the plant have to be shut down? Mr. White said the city would have a contract with the facility to provide the water for mitigation when needed. The details in the contract have not been worked out, but the city does have a large water supply in comparison to their current usage. The possibility would be low that they would run out of water, but there will be conditions in the contract to cover this. Mr. White stated that a risk assessment would be involved, and the applicant would have to consider these factors, based on the history of the Klamath River.

Ms. Green said that if flow does not occur from the City of Klamath Falls, Condition 76 should state clearly that the facility certificate holder would have to cease using evaporative cooling. She further stated that if this were put in place prior to construction and six years from now the city of Klamath Falls terminated the contract, the Klamath Generation Facility already would have met the condition. Mr. White said if the Council would like stronger language it could be done. The concept is that there would have to be a written plan that would include those kinds of contingencies. The plan would have to be approved by Department of Energy consistent with the Council's record as to what is wanted. Mr. White further discussed the wording in the Draft Final Order, agreeing to make it clearer if necessary.

Ms. Brogoitti asked about the regulations of the Bureau of Land Reclamation. Mr. White discussed the procedure they use to determine the water year and how they decide water flows. Mr. White said the intent of Condition 76 is to avoid making a bad situation worse.

Jan Prewitt, Department of Justice, said she suspected the discomfort is that the condition is not explicit enough to terminate operation. She also suggested the language could be amended.

Peter Mostow, representing KGF, said this is how they have understood the Condition: if the flow drops the plan must be implemented. Ms. Green stated that if the word "only" was removed from the condition she would feel more comfortable. There was discussion about this and all agreed.

Mr. Ripma asked about the Goal 11 exception, again stating he thought the facility should be annexed into the city, rather than using the Goal 11 exception. Mr. Mostow said this

was something discussed early in the planning stages, and was an extremely hot political situation to deal with. Mr. White said that power plants are allowed outside the urban growth boundary, so this use is acceptable where it is.

Karen Green moved to adopt the Final Order for the Klamath Generation Facility as recommended with the following modification to Condition 76 - the sentence on lines 15 to 17 should read as follows: "The requirement to activate the mitigation plan would apply when the KGF is operating and to the extent that the KGF is using cooling water." Ms. Green further moved that the Council direct the Chair to execute the site certificate with the same modification to Condition 76. Martha Dibblee seconded the motion; Council was polled and unanimously accepted:

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

Mr. White pointed out that the changes in the site certificate would also be made to include striking the word "only" in two places wherever Condition 76 is cited.

Peter Mostow added a comment for the record as to why the process took as long as it did, and that John White gave much attention to detail. Mr. Mostow thanked the Department of Energy staff for the work done.

E. Hermiston Power Plant: Consideration of Amendment #5.

Catherine Van Horn explained that the Hermiston Power Plant (HPP) is requesting permission to use the Department of Energy's guide for decommissioning energy facilities as a basis for reducing its amount of financial assurance it provides to the State of Oregon. Currently HPP has a letter of credit on file for more than \$8 million. The use of the department's guide reduces the cost to about \$4 million. Ms. Van Horn noted that the Council has used the guide for other facilities in the past.

Ms. Van Horn said the Department received only one comment from the public, which has been considered in the draft order before the Council, and nobody requested a contested case. She said the Department recommends the Council approve HPP's request to reduce its letter of credit, which is set to expire soon.

Bob Shiprack asked whether the state is protected in the event of a bankruptcy. Ms. Van Horn deferred to Jan Prewitt, Department of Justice. Ms. Prewitt said yes.

Lori Brogoitti referred to the public comment from Mr. Thompson summarized in the draft order. Mr. Thompson used an example of a bushel crib elevator and the removal costs, which cost more than 100 percent of the original nominal cost. Ms. Brogoitti noted that she received notice recently that a grain elevator has been put on an EPA Superfund site because of the chemicals that have been used. Ms. Prewitt responded by stating that

the Council requires periodic reviews of the site so that if problems develop they can be handled at the time. Chair Neukomm asked who does the review. Ms. Prewitt said the Department of Justice reviews the documents for sufficiency; the Department of Energy does periodic assessments.

David Ripma asked how the cost of cleanup on sites has changed. Ms. Van Horn said it started as an educated guess, along with a consultant's advice. As each new applicant came in, they either met or exceeded the amount, which is why the amount reached the \$10-\$11 million figure. Recently, the Department hired a consultant to conduct a thorough study of retirement costs. That study discovered that retirement costs are not as high as previously anticipated.

Bob Shiprack moved to approve to adopt the Final Order in the Matter of the Site Certificate for the Hermiston Power Project Fifth Request to Amend the Site Certificate, dated September 27, 2005. Martha Dibblee seconded the motion; Council was polled and unanimously approved:

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

III. Working Lunch

IV. Information Items:

A. **Wind Energy Development: Role of Siting Council on Wind Project Expansion.**

John White talked about the jurisdictional threshold in Oregon for wind energy, below which the Council does not have jurisdiction. Those facilities typically go through the county conditional use permit process, and the county decides what conditions to apply to the land use permit. Above the jurisdictional threshold, the Council does have jurisdiction and Council siting standards apply to wind facilities. ORS 469.320 describes when a site certificate is required.

Mr. White said that "energy facility" is not a generic term; it is defined in another statute according to the type of technology. A wind energy electric generating plant that has an average generating capacity of 35 megawatts (MW) or more is an "energy facility," which is where the jurisdictional threshold comes from.

Mr. White noted that ORS 469.320, Paragraph 9, has language that allows a “sub-jurisdictional” facility to obtain a site certificate. He gave an example of a “sub-jurisdictional” facility with a capacity of 34 MW that wants to opt in and get a site certificate. Other language in paragraph 9 says, “...An election to obtain a site certificate shall be final upon submission of application.”

Mr. White said that, under ORS 469.320, the Council must issue a site certificate before an energy facility can be built. The issue is how to apply this law if the operator of a “sub-jurisdictional facility” wants to expand the facility so that it becomes an “energy facility” that must have a site certificate.

For example, if “Phase 1” is the initial sub-jurisdictional part of the facility, how would the Council standards be applied to this already existing Phase 1, which already has county approval through the land use permit? Should the Council start with Phase 2 and not apply its standards to Phase 1? The Department believes that the Council would like to be sure the siting standards are applied to both phases before issuing a site certificate. He also said that the Department believes that the Council would consider impacts in Phase 1 for which the developer had not provided mitigation, and that conditions would be imposed on Phase 1 to mitigate for those impacts. Mr. White said this could be a huge concern to developers if a turbine might have to be moved or eliminated. This might occur, for example, if a turbine were built in Category 1 habitat. Mr. White expressed the opinion that if developers value their “greenness” -- their sustainability as an industry -- and wish to protect their public support, they would not build in Category 1 Habitat or build a turbine in some other area that would require extreme mitigation or removal of a turbine.

Mr. White also discussed other impacts that might develop into issues to deal with.

David Ripma asked questions about the sub-jurisdictional facility that decides to expand and opt in. If a sub-jurisdictional facility does not already have county approval, there is no problem. If, on the other hand, a county has approved “Phase 1,” the plant might meet all the county requirements but not the Council’s standards. Mr. White asked the Council to think about its policy. The Council could decide not to apply the standards to Phase 1 of the project. That policy choice would be consistent with the state policy to promote sustainable energy and might reduce criticism that the Siting Council is making it difficult for wind development.

Mr. Ripma also asked if a developer could build Phase 2 without a permit if it was sub-jurisdictional? Ms. Prewitt said that is one of the problems. If everything is sub-jurisdictional, there is not “one big look” of the facility on the environmental impacts. She further stated that developers are not worried about having the “big look” at their facility; they just don’t want to lose the right to operate Phase 1 that is already permitted by the county.

Mr. White said that the situation described by Mr. Ripma has already happened. The Department has a list of questions that would help determine whether the two plants are connected to each other and should be considered phases of the same facility. In contrast, the concern being discussed now is that of the developer of an expanded facility wanting to apply for a site certificate; they are not trying to get out of the situation, they just don't want to lose what they already have in operation.

Chair Neukomm questioned whether public safety is an issue. Mr. White said public safety is one issue and that discussions are ongoing and all issues are being considered. Martha Dibblee asked if the Council could require counties that do the permitting to use Council standards. Mr. White said that the Council can suggest but does not have authority to require the standards.

Ms. Dibblee brought up the issue of the ground squirrel at the Stateline Project. There was discussion about how the Category 1 Habitat issue was handled. Ms. Dibblee felt there should be flexibility allowed in some instances, such as the Stateline Project. There was also discussion about the 105 MW peak generating capacity as the jurisdictional threshold. Mr. White said the law is written in terms of 35 MW "average generating capacity" rather than the "peak." Mr. White said that anything that is below 35 MW of average generating capacity is considered sub-jurisdictional and does not need a site certificate.

Chair Neukomm asked if the Council feels a resolution is needed and whether a proposal should be given from the Staff. Mr. White said no specific action is necessary at this time, just a sense of how this should be treated. Two developers are considering this, and one would possibly like to get started before the next Council meeting, depending on the Council's view of how this would be handled.

Chair Neukomm asked how many wind farms less than the 35 MW average have been built, using the county permitting process. Mr. White said approximately six have been either built or permitted.

Mr. Ripma expressed his opinion that the applicant applying for a site certificate should not be penalized if they can't qualify. Ms. Prewitt said another consideration is how much analysis should be considered on the already permitted facility. Mr. Shiprack stated his opinion is that developers should be encouraged to use the siting process. Ms. Prewitt said it has been the DOE staff's practice to work with the applicant to get analysis and to make sure there is fair warning if there are problems.

Mr. White reviewed the general discussion to be able to talk to developers that are considering this in the near future. He also stated that Staff feels that subsection 9 applies to a situation where Phase 1 doesn't have any kind of permit. Ms. Prewitt said some people don't want to go through the county land use permits; they want the site certificate from the Council. There was more discussion about whether to have something in

writing; it was decided not to complicate the matter, but to encourage development of wind energy. Mr. White said he could write a review of the discussion in a memo.

B. Summary of 2005 Energy Legislation.

Mike Grainey, Director of the Department of Energy, reviewed some of the Senate Bills passed by the 2005 Legislature. One specific to the council is Senate Bill 736, which will expand the process where the Council could give an exemption for ethanol production facilities and would also include biodiesel facilities.

One bill that did not pass was Senate Bill 527, which also had a House version with it that would have made major changes to the siting council process, which the DOE thought was not workable. A lot of people were opposed to it; most of the utility industries, and some of the environmental groups didn't like it because they felt it could retard renewable energy development.

Mr. Grainey also discussed the reorganization of the Department of Energy and gave reasons for the changes. The Governor's energy priorities are focused on promoting renewable energy development. Also, the Nuclear Safety Division, which has done emergency planning and handled security issues, needed to be reorganized. Since 9-11, security has become a bigger issue for energy facilities.

Chair Neukomm talked with council members about undertaking briefings on topics that they would like to hear about from the DOE. All council members were in agreement this would be appreciated, along with a flowchart showing progress of site applications and also updates on facilities.

Chair Neukomm asked Tom Stoops, Council Secretary, for a review of upcoming events. Mr. Stoops said one item is a request for an exemption for an ethanol plant, which could be managed with a teleconference.

Mr. White said there is an application for Klondike III Wind Farm and a Notice of Intent for the Biglow Canyon Project. Neither is in a state of complete application, so they will be approximately three months away.

Mr. Stoops said there are three ethanol groups that want to request exemptions, but only one that might possibly be ready at the end of November.

Mr. White said there would be an update on the Stateline facility at the next meeting, which will include research and findings and give a recommendation for additional mitigation.

Ms. Prewitt discussed timelines for exemption requests. It does depend on whether the applicant submits a complete application.

Mr. Stoops said contact would be made by e-mail on the dates for the teleconference and the next council meeting.

Ms. Prewitt stated that the Supreme Court ruling on the COB application has a 6-month deadline, which should be complete in October.

Ms. Van Horn asked council if they would entertain an education issue about the siting process. Chair Neukomm asked if this would be high school level or university. Ms. Van Horn said there are grants at the college level and some sense of education on energy at that level. There was discussion among council members that this would be a good idea.

Chair Neukomm asked for further questions or comments; there were none.

Chair Neukomm adjourned the meeting.