



May 16, 1996

John F. Larson, Project Manager
Pacific Energy Systems, Inc.
1600 SW Fourth Avenue, Suite 770
Portland, OR 97201

RE: Energy Facility Siting Task Force Call For Papers

Dear John,

CE Newberry, Inc. is the developer of the Newberry Geothermal Pilot Project located near Lapine, Oregon. The project was issued a Site Certificate this year. I managed the licensing process for CE Newberry and found the process to be thorough and the work of the staff and consultants to be professional and comprehensive. Our objections regarding the state siting process involves the appropriateness of the state authority regarding geothermal projects located on federal lands.

The Newberry project is located entirely on federal lands and is subject to federal environmental and site licensing reviews as required under the Geothermal Steam Act, 30 USC 1001-1025, and the corresponding regulations, 43 CFR 3200. The State of Oregon siting authority is redundant to this federal process. Once the federal agencies approved the Environmental Impact Statement and the Site License for a project located on federal lands, it could be argued that the state process is preempted. Critical state permits such as air and water discharge permits are still required under the federal permitting process. A site license from the state for a project located on federal lands is an expensive redundancy that is unnecessary and provides the state no additional environmental protection particularly when such projects are subject to the rigorous environmental reviews required by 43 CFR 3200, the National Environmental Policy Act, and the reviews required by Oregon Department of Environmental Quality for specific, federally mandated discharge permits under the Clean Air Act. I found that the Site Certificate stipulations for the Newberry project provided no substantive additional environmental mitigations or improvements to the project which not already provided for under the stipulations of the federal Record of Decision for the Project. The state siting process only added time and expense to the Newberry project.

CE EXPLORATION COMPANY

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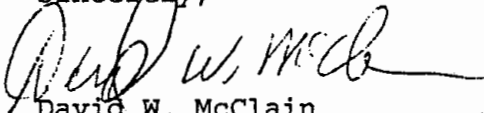
We recommend that the state exempt geothermal energy facilities located on federal lands from the state site certificate requirement. This will require an amendment to the Oregon Energy Facility Siting Act. I have enclosed a copy of suggested amendments which would exempt geothermal facilities that are located on federal lands. The State of Oregon should recognize that the federal environmental and licensing process defined in 43 CFR 3200 is adequate and that the federal agencies are in the best position to judge the appropriateness of facility siting on federal lands.

Oregon Department of Environmental Quality recognizes the federal jurisdiction regarding the land use standard requirements for their permits. Permits will not be issued by ODEQ for a project on federal lands unless the proponent can show that the county and the federal jurisdiction have agreed that the facility is a permitted use. It would seem appropriate that the state siting review should also recognize the federal jurisdiction.

Regarding the need standard, it is our position that need should be defined by the market. Need is best defined by the developer showing that it has a valid contract for the sale of the power. If the developer or utility can not document that it has a market for the power, the facility should not be built.

Thank you for you consideration.

Sincerely,

A handwritten signature in cursive script, appearing to read "David W. McClain".

David W. McClain
Project Manger

A BILL FOR AN ACT

Relating to geothermal facility siting; amending ORS 469.320; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

Section 1. ORS 469.320 is amended to read:
469.320 (1) Except as provided in subsection (2) of this section, no facility shall be constructed or expanded unless a site certificate has been issued for the site thereof in the manner provided in ORS 469.300 to 469.570, 469.590 to 469.619, 469.930 and 469.992. No facility shall be constructed or operated except in conformity with the requirements of ORS 469.300 to 469.570, 469.590 to 469.619, 469.930 and 469.992.

(2) No site certificate shall be required for:

(a) An energy facility for which no site certificate has been issued that, on August 2, 1993, had operable electric generating equipment for a modification that uses the same fuel type and increases electric generating capacity, if:

(A) The site is not enlarged; and

(B) The ability of the energy facility to use fuel for electricity production under peak steady state operating conditions is not more than 2300 million Btu per hour greater than it was on August 2, 1993, or the energy facility expansion is called for in the short-term plan of action of an energy resource plan that has been acknowledged by the Public Utility Commission of Oregon, and the Energy Facility Siting Council determines that the proposed facility expansion meets the need for facility standard set forth in ORS 469.501(1)(L).

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(b) Construction or expansion of any interstate natural gas pipeline or associated underground natural gas storage facility authorized by and subject to the continuing regulation of the Federal Energy Regulatory Commission or successor agency.

(c) Construction or expansion of any geothermal facility, including related and supporting facilities, located on lands owned by the United States and subject to the Geothermal Steam Act, 30 U.S.C. §§ 1001-1025.

(d) An energy facility, except coal and nuclear power plants, if the energy facility:

(A) Sequentially produces electrical energy and useful thermal energy from the same fuel source; and

(B) Under normal operating conditions, has a useful thermal energy output of no less than 33 percent of the total energy output or the fuel chargeable to power heat rate value is not greater than 6,000 Btu per kilowatt hour.

(e) Temporary storage, at the site of a nuclear-fueled thermal power plant for which a site certificate has been issued by the State of Oregon, of radioactive waste from the plant.

(3) No sooner than one year after August 2, 1993, the council may review, and if necessary, revise the fuel chargeable to power heat rate value set forth in subsection (2)(c)(B) of this section. In making its determination, the council shall ensure that the fuel chargeable to power heat rate value for facilities set forth in subsection (2)(c)(B) of this section remains significantly lower than the fuel chargeable to power heat rate value for the best available, commercially viable thermal power plant technology at the time of the revision.

(4) Any person who proposes to construct or enlarge an energy facility and who claims an exemption under subsection (2)(a) or (c) of this section from the requirement to obtain a site certificate shall request the Energy Facility Siting Council to determine whether the proposed facility qualifies for the claimed exemption. The council shall make its determination within 60 days after the request for exemption is filed. An appeal from the council's determination on a request for exemption shall be made under ORS 469.403, except that the scope of review by the Supreme Court shall be the same as a review by a circuit court under ORS 183.484. The record on review by the Supreme Court shall be the record established in the council proceeding on the exemption.

(5) Notwithstanding subsection (1) of this section, a separate site certificate shall not be required for:

(a) Transmission lines, storage facilities, pipelines or similar related or supporting facilities, if such related or supporting facilities are addressed in and are subject to a site certificate for another energy facility; or

(b) Expansion within the site or within the energy generation area of a facility for which a site certificate has been issued, if the existing site certificate has been amended to authorize expansion.

(6) If the substantial loss of the steam host causes a facility exempt under subsection (2)(c) of this section to substantially fail to meet the exemption requirements under subsection (2)(c) of this section, the electric generating facility shall cease to operate one year after the substantial loss of the steam host unless an application for a site certificate [is issued for the electric generating facility alone] has been filed

in accordance with the provisions of ORS 469.300 to 469.570.

(7) As used in this section:

(a) "Total energy output" means the sum of useful thermal energy output and useful electrical energy output.

(b) "Useful thermal energy" means the verifiable thermal energy used in any viable industrial or commercial process, heating or cooling application.

Section 2. This Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this Act takes effect on its passage.