

**Position Paper of Jason J. Zeller - Oregon Energy Facility Siting Task Force
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Siting Thresholds and Jurisdictional Issues

1) It is difficult to precisely define the appropriate scope of state siting of energy facilities. Whatever siting threshold is chosen will affect the nature and types of facilities that are built within the state. As an example, when California established a state siting threshold of 50 megawatts for thermal power plants a large number of 49.5 MW projects were built. Since one of the primary purposes of state siting laws is environmental protection, it may be preferable to focus the threshold determination on the potential of the project to affect the environment rather than a specific engineering calculation of capacity. Projects with the potential to significantly affect Oregon's environment would be sited by the state while project's that have a minimal or positive effect could be sited locally. In practice, this might mean differing thresholds depending upon the type of facility involved, e.g., a lower threshold for conventional coal generation than a gas-fired combustion turbine project; however, the siting process should not establish technology-specific preferences, e.g., waivers for gas-fired generation from a needs test.

Using this approach, a facility would undergo a preliminary screening by the state to determine its likely environmental effects. Those with potentially significant effects would be sited by the state; others would be sited by local governments. In order to ensure that local governments do not use zoning and planning requirements to completely ban emerging technologies, an appellate process to the state could be provided.

Projects that meet a threshold test of low impact to the environment would be eligible for expedited siting. Thus, a small neighborhood-based fuel cell would likely be sited by a local government, possibly using guidelines developed in conjunction with the state whereas a large wind farm would undergo state review. Formal criteria would need to be established to determine whether a given project would be sited locally or by the state. The state could work with local governments to develop model siting standards for the siting of energy facilities that have small or minimal environmental effects.

Once it has been determined that a project qualifies for state siting, state siting decisions should preempt and bind both state agencies and local governments. Absent this provision, the state siting process becomes simply a coordinator of a variety of disparate processes. Developers seek certainty and timeliness in the siting process. A coordinated state-level process, can offer that security to a developer. In California, the state's permit streamlining act forces the state to make a yes or no decision within one year after a project has been proposed and it establishes a presumption that if the agency has not acted within a year after the application was submitted, the project is approved. In order to accommodate local interests, the siting body should include a provision for voting representation of local governments on the siting council.

The state should strive for a siting regime that focuses on the environmental effects of energy facilities and the mitigation of those effects - the state should not be in the business of blessing one form of generation technology over another. Siting statutes should not be devised assuming that generation or other energy facility technology will remain static. The evolution of generation technology over the past quarter century has demonstrated this approach is erroneous; however, existing siting statutes were written with the monolithic, vertically integrated utility of the 1960's in mind. The electric utility industry has been in a state of continuous transition since the passage of the Public Utilities Regulatory Policies Act of 1978. Siting statutes should be updated to reflect the realities in the energy market-place today: wheeling, the growth of independent power producers, merchant plants, the evolution of combustion turbine technology, the decline in natural gas prices and utility mergers.

The Decision-Making Process

2) Decisions on whether new facilities should be permitted should focus on the anticipated environmental effects of the proposed projects. Environmental standards can serve as a useful guide to determining the environmental effects of a proposed project; however, in the case of new sources of electrical generation, understanding the environmental effects of a proposed plant may require consideration of displaced generation, i.e., if project A is licensed and operated, how will affect the operation of the overall Western Systems grid; to what, will pulverized coal plants be displaced? Another important consideration is agreement on the appropriate modeling technique to use to simulate the anticipated effects?

Despite these considerations, the scope of state siting authority is limited to effects of the proposed project within state boundaries. As a result there is a discontinuity between the locus of siting authority (at either the state or local level) and the overall effects of a given electric generation facility. Given this situation, the state should focus on mitigation or avoidance of negative environmental effects of proposed facilities. One possible decision criterion would be to develop a relative scale of impacts and rank proposed facilities in terms of anticipated effects. One could imagine facilities receiving higher rankings if they produce fewer emissions per kilowatt hour generated. Higher rankings would be given to facilities that minimize water consumption, the amount of land required, or fully mitigate greenhouse gas emissions. Council staff would have the responsibility of providing an environmental ranking of a proposed project and the ranking number could serve as a decision guide for the Council.

Need for Energy Facility Siting/Power

3. Oregon is part of an interconnected grid of transmission lines and electric utilities that encompasses the entire western United States (save Alaska and Hawaii), British Columbia, Alberta and parts of northern Mexico. Because of the large and increasing number of bulk power transactions that take place between various utilities on that grid, determinations of need for electricity for a given locale or service territory no longer reflect the reality of

how the grid actually operates. It is difficult to establish that there is even a Northwest power market at this point much less an Oregon-specific market. Need determinations reflect the monolithic, vertically integrated utility model of the 1960's and early 1970's. In the somewhat deregulated utility market of the 1990's and beyond, the market will determine the need for electricity. Establishing an Oregon-specific or service-territory specific need determination as a condition precedent for the siting of a given energy facility may lead to charges of undue burdens on interstate commerce, if, for example, a merchant plant was proposed for Oregon and the Siting Council denied site certification on the grounds the proposed facility was unable to demonstrate a need for the power the plant would produce. .

Again the appropriate focus in energy facility siting is environmental protection, not state control of market forces. If the state wants to provide incentives for the development of renewable technologies, that could be accomplished via the aforementioned ranking system or through the use of tax incentives or favorable land use provisions.

Public Participation in Siting Decisions

4. Oregon should consider developing a true one-stop energy facility siting process in which the siting council would have the authority to issue and administer any and all of the state and local permits that a given energy facility would need to have to be built and operate. The Council should also work closely with local governments to devise model siting standards to ensure that local governments do not use zoning and planning requirements to effectively ban certain types of energy facilities.

The public should have numerous opportunities to participate in the energy facility siting process. The existing Notice of Intent process is a good mechanism for providing an opportunity for public involvement and participation in the siting process. In addition, a publicly-funded advocate should be appointed to represent public concerns about the environment. Various open public hearings should be held about the project and Council members should afford members of the public an opportunity to submit written comments about proposed facilities. Oregon's tradition of citizen representation on the siting council affords an opportunity for citizen input into the siting process as well.

California's permit streamlining act requires local and state government agencies to render a decision within one year of the filing of the application to construct a facility. This forces the state agency and the parties to process applications expeditiously and not unduly delay the decision-making process. Assuming the initial application is of high quality and contains the necessary information, a one-year time frame should afford all parties sufficient time to consider and process applications. As a protection for the state, the siting council should establish an initial process for determining if the application is sufficient to proceed to hearing. The one-year calendar would not commence until an affirmative decision has been reached on application sufficiency. Similarly, the statute should include a provision requiring a sufficiency determination within 90 days of the initial submission of the application.

The siting council should strongly encourage parties to resolve differences and enter stipulations into the record of the contested case; however, it is inappropriate to make the use of alternative dispute resolution techniques mandatory in siting cases. Because siting decisions are - by their very nature - public decisions, they should include some formal adjudicative hearings that may be observed by the public. In addition, contested case hearings afford an opportunity for cross examination and an in-depth examination of contested issues that is likely to be unavailable if decisions are reached entirely via an alternative dispute resolution process. In order to maintain public confidence in the integrity and wisdom of siting decisions, a significant portion of the decision-making process must be a public process - generally alternative dispute resolution does not lend itself readily to extensive public participation - although it can be structured to accommodate public concerns.

Appellate rights should be afforded to all parties that participated in the contested case hearing before the Siting Council. In addition, local governments in the affected jurisdiction(s) should have the opportunity to appeal even if they do not participate in the contested case.