

Comparison of the Energy Facility Siting Requirements of Oregon, Washington, Montana and California

These four western states have implemented consolidated energy facility siting programs. Idaho was not included because the State is only involved in reviewing hydroelectric facilities. A comparison of the requirements of these four states is instructive of the different approaches possible in energy facility siting. These states are appropriate to this review because they are all on the western power grid, and have many energy system attributes in common. These attributes include a large rural component, BPA power, abundant natural resources and ready access to Canadian natural gas. This comparison is based on statutes and rules in effect now. Significant siting process reviews are underway in Oregon, California and Montana, and provisions of these processes may change in the next year or two. Washington recently went through a detailed siting process review.

This is a very brief overview. It is not intended to guide a potential applicant through any of the state processes. Specific questions regarding the siting requirements of Oregon, Washington, Montana or California should be directed to the responsible agencies of those states.

Overview

There are similarities as well as differences between the energy facility siting requirements of western states. All four employ a comprehensive review of a proposed facility. Some common characteristics are:

- ◆ The standards of other state and local agencies are combined in a consolidated review.
- ◆ Some type of preliminary notice in most cases is required before an application is filed.
- ◆ A "contested case" review of the application is required.
- ◆ Energy facilities are defined to include related facilities such as power lines.
- ◆ Need is addressed through planning in three of the four states.
- ◆ Public hearings are provided in addition to adjudicated proceedings.
- ◆ On-going regulation of an approved facility is based on certificate conditions.

All four states' decisions are made by a Board, Council or Commission. In Washington the decision is a recommendation to the Governor. Members of Oregon's Energy Facility Siting Council and Montana's Natural Resources Board are citizen volunteer appointees. The California Energy Commission members are full-time with much broader policy responsibilities than siting, and Washington's Energy Facility Site Evaluation Council are state agency representatives with a public Chair. Local government representatives sit on the Washington Council and have a vote related to siting a facility in their jurisdiction.

California, Montana and Washington require an environmental impact analysis (an EA or EIS) for energy facilities. These analyses are based on State Environmental Policy Act (SEPA) requirements modeled after federal National Environmental Policy Act (NEPA) statutes. This are referred to as a "full disclosure" analysis. In such a process, the facility approval is made based on a detailed level of information supporting more broadly worded criteria such as "acceptable environmental impact".

Oregon also has application information requirements (Division 21 of the Council's rules) not tied to a specific standard. Content rules help assure that a possibly significant impact is not missed because of a limitation in project description. Oregon's data and description requirements are more limited than the other three states. The Oregon review process is "standard based". By this is meant the decision is based on an assessment of evidence against specific standards in the rules. This is consistent with Oregon's choice to embrace specific land use criteria rather than a State Environmental Policy Act (SEPA) in the early 1970's.

What follows are more specific descriptions of the state siting processes of Montana, California, Washington and Oregon.

Montana Siting Process

Montana's siting act goes back to 1973. The certificate issued upon approval is called a "Certificate of Environmental Compatibility and Public Need". Montana's jurisdiction is over:

- ◆ Power plants 50 MW and up,
- ◆ Transmission lines 69 kV and higher,
- ◆ Any in-situ coal gas facility,
- ◆ Energy conversion facilities,
- ◆ Uranium mines and mills,
- ◆ Gas pipelines 17 inches in diameter and 30 miles long or longer, and
- ◆ Any geothermal development in excess of \$750,000.

Notwithstanding the 69 kV jurisdiction level, transmission lines are exempt if the line is 230 kV or less and 10 miles long or less, and exempt if they are 69 to 115 kV and 75% of the land owners owning at least 75% of the land have agreed to grant an easement for the line.

The Board in Montana can craft exemptions from the siting process by rule. Such facilities can qualify for exemption because of size, location, construction methods or length. In addition, those facilities that use coal or non-hydro renewables can be exempted by rule if they would result in greater system efficiencies, foster energy conservation or increase system reliability. To date, no such exemptions have been granted.

A facility under FERC jurisdiction must pay a fee to fund the state's participation as a party in the federal proceedings (interstate gas pipelines). Fees for site certification are figured by a formula based on the capital cost of the facility. A \$300 million facility would be assessed a fee of \$599,000. The Montana Board must make findings as to the need for the facility before granting a Certificate. In addition to the need for long-term planning related to the building of energy facilities, very detailed baseline information must be developed for the Montana application. The Energy Division, Montana Department of Natural Resources and Conservation provides staff services to the Board. If the staff's environmental report has as its preferred alternative, the applicant's proposal, staff does not participate as a party in the evidentiary proceedings. If the staff puts forth an alternate proposal, or opposes the facility, they must support their position as a party.

The Montana rules specify details regarding possible impacts to areas designated "areas of concern", "sensitive areas" and "exclusion areas". These are defined by rule, and each in turn requires greater care in assuring prevention of negative impact. Here are some additional specifics of the Montana siting process:

- ◆ Requires a 10 year plan, updated annually to justify approval of an energy facility.
- ◆ Rules specify up to 24 and 36 month review times for applications.
- ◆ Applicant may request a waiver of requirements, must be justified and supported.
- ◆ Application must have a need, reliability, cost-benefit and alternate site analysis of the facility.
- ◆ An evaluation of the probable need to build additional transmission resources as a result of the new generation facility.
- ◆ Baseline studies required for many species.

California Siting Process

The California siting process was created in 1974 by the Warren-Alquist State Energy Resources Conservation and Development Act. This act created the California Energy Commission (CEC) as well. The siting process is controlled by the "Presiding Member" of the CEC. Fees for site certification are nominal, the main costs of the CEC are covered by utility assessments. Energy facility jurisdiction is limited to thermal power plants 50 MW and greater and related facilities. There is no state jurisdiction for stand-alone power lines or pipelines, or other types of energy facilities.

Evidentiary hearings on the proposed facility cover need for the facility, socio-economic impacts, land use, public health and safety and environmental acceptability. The applicant must prove:

- ◆ That there is a probable need for the facility,
- ◆ That there is a reasonable likelihood that the principle adverse environmental impacts can be mitigated or avoided,
- ◆ That there is a reasonable likelihood that the facility can be constructed and operated safely and reliably,
- ◆ That the site is suitable to accommodate the facility,
- ◆ That the likely financial impacts of constructing or operating the facility is reasonable, and
- ◆ That there is a reasonable likelihood that the construction and operation of the proposed facility will comply with federal, state, regional and local laws, standards, ordinances and land use plans applicable to the proposal.

No facility can be approved unless found to be in conformance with an approved 12 year forecast of electric demand. California employs a "Public Advisor", whose job it is to ensure the review process is open and accessible to the public. California has specific procedural rules applicable to geothermal development. CEC staff participate as a party, and may submit independent environmental assessment documentation in the review proceedings.

Washington Siting Process

The Washington Energy Facility Site Evaluation Council (EFSEC) was created in 1970. It is therefore the earliest consolidated siting process among these four states. Washington jurisdiction covers:

- ◆ Power plants 250 MW and greater,
- ◆ LNG or underground gas storage facilities able to receive or deliver greater than 100,000,000 standard cubic feet of gas per day,
- ◆ Petroleum product pipelines larger than 6 inches in diameter and 15 miles in length,
- ◆ Gas pipelines larger than 14 inches in diameter and 15 miles in length, and
- ◆ Facilities able to receive greater than 50,000 bbl or process greater than 25,000 bbl per day of crude or refined petroleum.

Washington employs a "potential site study" to serve much the same purpose as an NOI in the other states. Fees are similar to Oregon's, i.e. initial fee with full reimbursement and accounting of costs. Washington is the only state to incorporate the federally delegated water and air quality permits into the siting decision.

The statute creating the Council recognizes the "...pressing need for increased energy facilities...". Hence, there is no determination of need made in an energy facility proceeding in Washington. Unlike the other three states, the decision-making body in Washington is made up of agency representatives, with a citizen Chair. In similar fashion to California's practice, Washington provides for a "Counsel for the Environment" appointed by the Washington Attorney General. Council staff are in the Washington Department of Trade and Economic Development as a result of abolishing the State Energy Office. EFSEC staff does not participate as a party in a review proceedings, but separate agencies represented on the Council will depending on the type of project. Other specific provisions are:

- ◆ A land use hearing to determine consistency with local plans and ordinances,
- ◆ Governor makes the final decision, and
- ◆ Local government has a vote on the Council for facilities within their jurisdiction.

Oregon Siting Process

Oregon's siting process was started with the creation of the Nuclear and Thermal Energy Council in 1971. This Council had jurisdiction over only coal and nuclear plants over 200 MW. The Council jurisdiction was expanded in 1975, and the membership changed to citizen appointees from agency representatives. The name was changed to the Energy Facility Siting Council, and the current jurisdiction covers:

- ◆ Non-hydro power plants 25 MW (solar facilities 100 acres) and greater,
- ◆ Electric transmission lines 230 kV and 10 miles or greater,
- ◆ Gas pipelines 16 inches in diameter and 5 miles or greater,
- ◆ LNG facilities capable of storing 70,000 gallons or greater,
- ◆ Structures for underground gas storage facilities of 50 million cubic feet per day or needing 4000 hp,
- ◆ Radioactive waste disposal sites and nuclear installations,
- ◆ Synthetic fuel facilities capable of producing 2 billion BTU equivalent per day, and
- ◆ Petroleum pipelines 6 inches in diameter and 5 miles or greater.

Oregon also has the ability to define by rule, an energy generation area. Such an area was defined to include more than one sub-jurisdictional power plant near other such plants. In such an area, the output as well as the impacts are added together.

Like California and Montana, Oregon's review process does not directly cover federal delegation permits such as air and water quality. The need for these approvals are recognized in the siting review, and coordinated to the extent possible. Non-siting approvals and permits not related to siting decisions (i.e. OSHA, drinking water permits, building codes, etc.) are also not part of the consolidated review process. The process does include all other applicable permits and approvals into EFSC's approval. Local land use plans and ordinances are incorporated into the process, and either the Council or the local jurisdiction make findings, at the choice of the applicant. The Council can settle regulatory disputes arising out of conflicting requirements of other agencies, and it may waive any of its own standards upon a finding of overriding public benefit.

Although Oregon does not have a SEPA, Oregon's Council has broad standard making authority, currently including the authority for a need standard. (EFSC's ability to adopt new standards during the 1995-97 legislative interim is limited by statute) As with the other states, a Council decision binds other agencies of the state. Unlike the siting agencies of the other states, Oregon has given EFSC significant responsibilities in the areas of radioactive waste disposal and radioactive materials transport. EFSC rules define radioactive

waste for the purpose of enforcing Oregon's ban on disposal of such waste. EFSC's transport safety program enforces state and federal requirements on packaging, radiation levels, vehicle safety and shipment documentation.

Oregon formalizes the identification of applicable rules, statutes and ordinances through the issuance of a "project order". All such requirements must be in this order issued by EFSC staff. The basis for intervention must be brought forth at the public hearing on the staff's draft proposed order. If an issue could have reasonably been raised by this time, and it was not, then the issue cannot be part of the contested case or any eventual judicial appeal. Oregon Energy Office staff participate as an "interested agency" in an EFSC proceedings, with the rights of a party.

Conclusions

Fundamental pieces of these administrative processes are similar. The siting decisions are made in all four states by a Board or Commission, not the long-term professional staff. All of the programs began in the early 70's. Public participation is a big part of the review processes. Procedural rights of affected parties are protected through evidentiary hearings. The core facility requirements are environmental, socio-economic or public health and safety related. All siting approvals bind other state and local decisions to one extent or another. All require an early notification of a proposed facility to gauge public concerns and identify needed information. All four states' reviews embody some notion of "protected areas", that should be kept from adverse environmental or scenic impact.

There are also significant differences. There are few agreements on the appropriate jurisdictional levels. There are differences in the degree of environmental analysis not related to specific standards. Oregon and Montana have specific energy facility siting standards, California and Washington can only apply other agency standards, but have broad SEPA authority. Oregon and Washington have specific requirements for decommissioning and site restoration, California and Montana do not. All four decision-making Boards have significant responsibilities that none of the others have. Need for the facility is dealt with in four different ways:

- ◆ In Washington, the need for energy is declared in statute.
- ◆ In California, need is based on a comprehensive state planning process.
- ◆ In Montana, a demonstration of need is based on required long-term utility plans.
- ◆ In Oregon, a need determination is made on a case-by case basis based on utility least-cost plans.

All of these programs either have recently or are currently going through review of the state siting process. Many of the same questions are being asked in all of these reviews. Programs that were created 20 or more years ago are appropriately being asked to reassess their mission. What, if any, is the role of the siting authority in determining the need for a facility? Were the siting programs created solely because of the 70's "energy crisis" and therefore no longer needed? Is there a "value added" to consolidated siting? What is an appropriate role, if any, in the emerging energy markets? What do we see as the "public interest" in energy facility siting? Does the current generation of gas-fired power plants pose any public risk?