



Energy Facility Siting Council Meeting Minutes November 17-18, 2022

- A. Consent Calendar (Action Item & Information Item)¹
- B. West End Solar Project, Public Hearing on Draft Proposed Order on Application for Site Certificate (Hearing)²
- C. Biennial Fee Update (Action Item)³
- D. Appointment of Rules Coordinator (Action Item)⁴
- E. Public Comment Period (Information Item)⁵
- F. Case Law Overview – (Information Item)⁶
- G. 2023 Legislative Session Preview (Information Item)⁷

The meeting materials presented to Council are available online at:
<https://www.oregon.gov/energy/facilities-safety/facilities/Pages/Council-Meetings.aspx>

Call to Order: The meeting was called to order on Thursday November 17, at 5:23 PM by Vice Chair Howe.

Roll Call: Chair Marcy Grail, Vice-Chair Kent Howe, Council Members Hanley Jenkins, Cynthia Condon, Ann Beier were present in person. Perry Chocktoot was present virtually.

Oregon Department of Energy representatives present were Assistant Director for Siting/Council Secretary, Todd Cornett; Operations and Policy Analyst, Wally Adams; Senior Policy Advisor, Sarah Esterson; Senior Siting Analyst, Kellen Tardaewether; Senior Siting Analyst and Rules Coordinator Christopher Clark; Oregon Department of Justice Senior Assistant Attorney General Patrick Rowe, counsel to EFSC and Administrative Specialist Nancy Hatch.

- A. **Consent Calendar (Action Item & Information Item)**⁸ – Approval of the September 27, 2022 minutes with Idaho Power transcript corrections and the October 28, 2022 meeting minutes; Council Secretary Report; and other routine Council business.

¹ Audio/Video for Agenda Item A=04:15-2022-11-17-EFSC-Meeting-Audio

² Audio/Video for Agenda Item B=0:33:29-2022-011-17-EFSC-Meeting-Audio

³ Audio/Video for Agenda Item C=03:03-2022-11-18-EFSC-Meeting-Audio

⁴ Audio/Video for Agenda Item D=10:17-2022-11-18-EFSC-Meeting-Audio

⁵ Audio/Video for Agenda Item E=15:59-2022-11-18-EFSC-Meeting-Audio

⁶ Audio/Video for Agenda Item F=19:36-2022-11-18-EFSC-Meeting-Audio

⁷ Audio/Video for Agenda Item G=54:50-2022-11-18-EFSC-Meeting-Audio

⁸ Audio/Video for Agenda Item A=04:15-2022-11-17-EFSC-Meeting-Audio

Agenda Modification: The approval of the October 28, 2022 meeting minutes will be deferred to the December 15-16, 2022 meeting.

Council Member Jenkins motioned to approve the September 27, 2022 meeting minutes with the Scrivener errors corrections submitted by Idaho Power Corporation.

Council Member Condon seconded the motion.

The motion was carried.

Council Secretary Report – Secretary Cornett offered the following comments during his report to the Council.

Council Updates

- **Council Member Update**

Richard Devlin has been appointed by Governor Brown to replace Council Member Jenkins on the Council. Mr. Devlin previously served on the House of representatives representing the 24th district from 1996 to 2000. He was then elected to the Oregon State Senate representing the 19th district until 2017. He served as the Senate Majority Leader from 2007 to 2010. In October of 2017, Mr. Devlin was appointed by Governor Brown to the Northwest Power and Conservation Council and served on the Council through 2021. Mr. Devlin is one of numerous appointees by Governor Brown for the next round of Senate Rules Committee evaluations which will be during the December legislative days. As of right now he is on the formal list and should he be confirmed by the Senate, he will replace Council Member Jenkins.

- **Project Updates**

Oregon Trail Solar Facility-On August 30th the department received a request for Amendment 1 and included in that request was a request for a type B review. The amendment requested was to extend the beginning construction time frame as well as alter a condition related to cultural resources. On November 10th, the department made the determination that the type B review was not justified. The amendment will be reviewed in the type A process. The determination was based on the complexity of the proposed change, the anticipated level of public interest, and the anticipated level of interest by reviewing agencies. For type B review determinations, only the certificate holder can raise the determination by the staff to the council. The certificate holder can request that staff's determination be brought to the Council for either concurrence, modification, or rejection. We have not heard that they intend to do that though it is their option.

Nolin Hills Wind Project Contested Case- On November 2nd, Administrative Law Judge Kate Triana issued an order on party status. She granted the one requesting party, Umatilla County, status. Umatilla County has status on the contested case and the prehearing conference which is currently being scheduled.

Council Member Jenkins asked, regarding the Oregon Trail Solar Facility, what was the condition related to cultural resources in the requested amendment?

Secretary Cornett stated the condition related to cultural resource onsite monitoring during the construction. They are requesting some alteration to that condition.

- **DLCD Draft Farm and Forest Report**-Under statutes, the department is required to generate a farm and forest report every 2 years prior to the legislative session. The report is sent to LCDC for review and approval. If approved, it is provided to the legislature, prior to the long session. The report evaluates all the Land Use approvals on farm and forest ground during the last 2 years. If LCDC makes any changes, staff will provide Council updated information.

Council Member Beier noted her observation that watching the trends for projects will be interesting, especially as Council looks at projects on farmland. As many sites never get built after the applications are submitted, knowing how many projects actually come to fruition will allow Council a better understanding of where and how Council is siting projects.

Council Member Condon asked if drought circumstances impact this report? Regarding farm use land, Council has had applications for projects where applicants state there is not enough water for irrigation of farmlands. Are there projections for when land is not viable for farming?

Secretary Cornett noted while he did not have an answer to the question, staff could include Hillary Foot, the LCDC farm and forest specialist, to a future meeting agenda to provide additional details and context to the report.

Council Member Condon confirmed her appreciation of adding Ms. Foot to an agenda. She also inquired, does the Infrastructure Bill help move forward projects that have been approved but not built?

Secretary Cornett answered at the federal level, there is a lot of incentive trying to get more renewable projects to construction and operations. Without any specificity, that will probably create more opportunities in the near future to move projects along. He further noted there are a lot of elements that must line up for a project to be a viable project and go into construction.

- **Compliance Update**-At the September meeting, Counsel noted their interest in seeing information related to compliance issues on a regular basis. This presentation is the first iteration of that request. If council has any additional thoughts or idea, Staff would love to hear about it as we can certainly adjust the updates.

Mist Underground Natural Storage: In Amendment 11 there was compensatory mitigation requirements for impacts to habitat. Those have not been successful. Northwest Natural Gas needs to come up with a new strategy and a new location for the mitigation area.

Council Member Beier asked if there was a time frame given for coming up with a new mitigation plan.

Mr. Adams answered they have not given us a time frame. They have said they need time to find an appropriate property and to get an agreement in place. Staff's expectation is if they don't have that resolved by the next audit cycle, the issue would be escalated. Escalation would mean notice of violation.

Klamath Cogeneration Project: Avangrid, the parent company to the certificate holder, has historically included uncertainty measurement in their carbon emissions calculations. Staff is evaluating to determine whether it is allowable or not. If determined that it is not allowable, that will cease to be used and staff will determine the next steps.

The 2nd issue on this project involves an original condition to the site certificate. Avangrid was not the original applicant but in the original application there was a representation by the applicant which then became a condition of approval. The condition involves the use of a heat recovery steam generator blow down as the cooling tower makeup water, meaning they can use the water that is coming out, which would typically be disposed, in a useful manner. The chemical treatment of the water makes it not usable and that has been consistent throughout the project. Staff is working to figure out what to do with that inconsistency associated with that condition.

Mist Underground Natural Storage: A landowner requested an inspection related to this facility. The landowner was concerned that Northwest Natural had been disposing wastewater in one of the injection wells on the facility that had previously been approved through a permit but had expired. Working with several state agencies including DEQ, staff went to the facility for a site inspection and determined there was no evidence of the violation.

Biglow Canyon Wind Farm: On November 8th Portland General Electric staff reported locating 2 hatch doors associated with two different wind turbines on the ground. They did meet the 72-hour notice requirement. The investigation of this incident has just begun, and more details will be available at a future date.

Golden Hills Wind Farm: on November 10th Staff received a notice from Avangrid Renewables that staff had discovered a wind turbine hatch cover on the ground. They did meet the 72-hour noticed requirement. The investigation of this incident has also just begun, and more details will be available at a future date.

Chair Grail expressed her approval of the Compliance update being provided on a regular basis. EFSC should be aware of any compliance issues.

Council Member Condon suggested that a projected completion or follow-up date be included in the compliance update presentations when possible. This will aid Council in seeing the resolution of the compliance issues are done in a timely manner.

Secretary Cornett made note of the suggestion, adding when the information is available, it will be added to the presentation. As some issues can take time to be resolved, there may not be a conclusion date. We can provide information for the next steps to be taken and the timeframe is for those steps.

Council Member Condon added she would like the certificate holders to understand there is a timeframe for compliance issues to be resolved and it is being reported to the Council.

- **Future Council Meeting Dates**

December 16th 2022- The December EFSC meeting will a one-day meeting. It will be held in Salem at the ODOE offices beginning at 8:30 am.

2023 Proposed Meeting Dates- Council was provided the scheduled dates for the 2023 EFSC meeting. The dates are placeholders and can be adjusted as necessary.

B. West End Solar Project, Public Hearing on Draft Proposed Order on Application for Site Certificate (Hearing)⁹- A 50 megawatt (MW) solar photovoltaic and battery storage facility on 324 acres in Umatilla County proposed by EE West End Solar, LLC (applicant), a subsidiary of Eurus Solar Holdings, LLC (parent company).

1. **Proposed Facility Overview:** Kellen Tardaewether, Senior Siting Analyst, provided an overview of the siting process, proposed facility components and location.

During the presentation, the following conversation occurred:

Chair Grail stated it is important for the public to understand the importance of using specificity when participating in the hearing process. Without specificity, staff and Council are unable to respond to comment. She asked for staff to provide information as to where the public can access the information and resources needed.

Secretary Cornett responded when a notice is issued, it articulates the requirements about providing sufficient specificity for public comments and includes a link to information on the EFSC website, including the public guide.

Ms. Tardaewether added during the informational meeting on the application, staff provides additional information to help people connect the standards with the areas of the project they are interested in. Staff could add additional information if needed.

Council Member Condon asked in the expedited review process, when is the public notified?

Ms. Tardaewether answered after the application is complete.

⁹ Audio/Video for Agenda Item B=0:33:29-2022-011-17-EFSC-Meeting-Audio

Council Member asked is this an unusually short period of time for a public response for a DPO?

Ms. Tardaewether responded the minimum is 21 days before the hearing. For some of the recent projects, we have had lengthy comment periods based on the amount of response from the public. For West End Solar project, there has not been much public response.

Council Member Condon asked could the less interest/response be because of the expedited process?

Ms. Tardaewether replied, the answer would be speculative. She noted that the first time the public hears about an expedited review is at the completed application noticing. The process for this project was quicker as prior to deeming the application complete and after the deeming the application complete, Staff was preparing the DPO rather than waiting for the application to be complete.

Secretary Cornett reiterated the timeframe meets the minimum legal requirements, adding sometimes the timeframe is adequate, sometimes not. If there had been a lot of participation at the public information meeting on the completed application, we would have increased the timeframe. The timeframe is not related to the expedited review. It is related to the interest associated with a new project.

2. Public Hearing Overview: Alison Green Webster, Senior Administrative Law Judge at the Oregon Office of Administrative Hearings, explained the legal requirements for providing comments on the record and facilitated the hearing.
3. Public Hearing: Interested individuals had an opportunity to provide oral testimony on the Application for Site Certificate and Draft Proposed Order. Written comments were submitted to the Department through the close of the public hearing.

During the Public Hearing, the following comments were submitted:

Rob Curulla, the development manager for Euro Energy America representing the applicant EE West End Solar, expressed their excitement about this project. Euro energy believes it's a great site for an energy project given the existing energy infrastructure crisscrossing the site and adjacent to it. Euro has been developing, owning, and operating utility scaled wind and solar projects for over

30 years in the US. In Umatilla County, Euro developed, owns, and operates the Combine Hills 1 and 2 projects.

Steven Scott-one of the landowners for the project provided background information for himself and his family. He noted when he purchased the land, his intent for the property was farming. He knew it was dry land without irrigation water but also understood there are dry crops such as wheat that can be grown on dry land. He noted the unsuccessful farming attempts in 2013 and 2015 did not yield enough to pay for expenses. He wants the land to be productive. He expressed his opinion that solar power is one of the best ways to produce energy and is a great option for land that does not have irrigation and cannot be productively farmed. This project would be beneficial for the fast-growing community of Hermiston.

Council Member Jenkins asked if Mr. Scott had done any investigation into irrigation water opportunities to access irrigation water on the property?

Mr. Scott answered when he first bought the property, he reached out to Stanfield Irrigation District as he was convinced he would be able to get water access. The information provided to him was if he didn't currently have water rights, you are not going to get them as people have been trying for years. There is only a certain amount of water. He then worked with Umatilla County program for 2-3 years to gain access to water, but the program failed as there is no excess water available.

Council Member Jenkins asked did you investigate ground water?

Mr. Scott answered the land is in a critical groundwater area and drilling is not allowed.

Council Member Jenkins summarized the Umatilla Water Resources department has said ground water resources are already over appropriated. Is it your understanding is that you would not have an opportunity to drill a well for irrigation purposes on your property?

Mr. Scott confirmed yes that is true.

Council Member Jenkins asked if Mr. Scott farms any other lands?

Mr. Scott answered he did not.

Council Member Condon asked, given the current drought situation, have you recently been denied water or has the situation gotten better?

Mr. Scott answered our situation has not improved.

Council Member Beier noted it would be helpful for the Council to have documentation on the critical groundwater designation for the area. This property can't be viable farmland if it is to be considered.

Council Member Jenkins asked if Mr. Scott has tried to grow other crops, noting the properties adjoining the land are currently being farmed with high value crops such as corn and beets. The adjoining properties have similar soils. He added his assumption that the properties are not irrigated.

Mr. Scott answered the adjoining properties are irrigated. The 2 pieces of land under review are not irrigated even though the properties surrounding the land are irrigated.

Arthur Pryor- one of the landowners for the project, expressed his support for the West End Solar Project. He stated his land has never been farmed to his knowledge. It is outside of all the district boundaries. It has no water rights. It has a large BPA transmission line running through it. It has little or no income capacity. He noted from his perspective this is a great opportunity to create some income and an alternate source of income to help with the effects, and the ups and downs, of being in the farming business. This is a clean energy, close to the grid project. There are no new transmission lines. It shouldn't affect any neighbors or any businesses. Mr. Pryor sees this as an opportunity to do something productive with this land. He has owned the property since 1998 and has never attempted to farm the land due to its location outside of all the district boundaries and the lack of water. While there's a lot of new technology for growing dry crops, it's a futile effort and next to impossible to make a living from this land.

Council Member Jenkins asked if Mr. Pryor farms other land in the area?

Mr. Pryor confirmed he had.

Council Member Jenkins asked have you tried to obtain water rights for the property?

Mr. Pryor stated he owns the land to the East and Northeast of the proposed project area and has just recently developed it. There is not an abundant source or an unrestricted source of water. As a farmer, you're going to utilize the limited water with the closest irrigation system and you're going to put it on the most productive land. The State wants us off from all of our ground water. They are restricting it more all the time because the ground water levels keep going down.

Council Member Jenkins asked if the adjacent property owned by Mr. Pryor is irrigated?

Mr. Pryor confirmed some of it is.

Council Member Jenkins asked if the land that isn't irrigated is cropped?

Mr. Pryor answered no it is not. The part that is not irrigated was in Conservation Reserve Program and that has expired.

Council Member Jenkins confirmed the high value crops that have been mentioned are irrigated crops that are on the parcels that are adjacent to the proposed land.

Mr. Pryor noted they are connected across a road.

Council Member Jenkins stated that proposed application shows the adjacent parcels are currently farming peas, corn, and potatoes which he noted is the same soils as the proposed land. It does not say whether the land is irrigated. In order to approve an exception, taking this land out of an agricultural zone and authorizing it for solar development, the Council needs to know whether it could be used for agricultural purposes. Part of the land being used for agricultural purposes means the farming need to be successful and profitable. In Mr. Scott's comments he stated he didn't make any profit from his production. Pea's, corn, and potatoes are high value crops and if they can be grown on this parcel without irrigation that's very important as to whether the Goal 3 Exception can be met.

Council Member Jenkins asked if the adjacent land is in the district and is it being irrigated? And is part of it under call to patient that is not irrigated?

Mr. Pryor answered no everything that is under cultivation is irrigated.

Council Member Jenkins stated it is very integral to the explanation, the reasons why this land should be taken out of agricultural production and agricultural zoning and to be used for solar farming. It is important for Council to know whether there is a capability to produce agricultural products on the proposed land. Oregon land use doesn't regulate agricultural practices. It provides the opportunity to conduct agricultural practices through its exclusive farm zoning rules. What the council is being asked to do, in this process, is to set aside the rules. There must be clear and valid reasons for Council to allow that to happen. The reasons are not clear in the materials provided. Council needs additional reasons, and we need to keep it on the record as part of the process.

Mr. Pryor noted if there is no irrigation, farming is very futile in the area as there is no rainfall. If you don't have any irrigation system and /or the ability to access water, combined with the restrictions of the irrigation districts, it is really impossible.

Council Member Jenkins confirmed his understanding of the situation but added the record must be clear that this land could not be used for farming without water.

Council Member Beier added Council must explore the cropping patterns in this part of the county to determine what can be grown in this area and what can't without water.

Leslie McClain-representing Tetratex and the applicant, provided a map of the properties to East and Northeast of the proposed site noting it is evidence of which properties are included in irrigation district.

Council Member Condon asked the applicant if their existing wind and solar projects are operated by LLC's?

Mr. Curulla answered yes, explaining every individual project has its own individual LLC. That is the corporate structure used for every project not just by us but by all the other developers and project owners just for simplicity of administration project financing.

Council Member Condon asked should Council consider the parent company is really the operator of the project?

Mr. Curulla stated for purposes of expertise, developing, and operating the project, for financing to be able to construct, for having the personnel, and having the knowledge base to do all those functions, yes, the parent company would be considered the operator of the project.

After the comments, Council Members provided the following statements:

Council Member Jenkins: It's important that this is on the record so that the applicant has an opportunity to respond if they choose to do so. I am having difficulty with the EFSC goal 3 exception that is currently part of the draft proposed order, as to whether it is adequately addressed and satisfies the goal exception requirement. The goal exception requires the applicant explain with reasons why this property is going to no longer be available for agricultural use and why it should be available for the solar project. Council has identified through administrative rules some suggested reasons or areas of reasons that could be addressed as the reasons for the exception requirement. I am struggling the minimum direct impact on agriculture. While the landowners have gone a long way to help us understand why this land shouldn't be available for agriculture, we need additional reasons why this land should be taken out of the opportunity for agricultural production. I am not concerned about the high value designation for the farmland. I am concerned about the arable soils being taken out of production. The LCDC farm and forest report identifies that EFSC prior approvals have identified 7601 acres of arable lands have gone through the exceptions process and have been taken out of the agricultural production. That is a lot of land. Council has been asking applicants for the last several applications to do a better job of giving us reasons why specific land should be taken out of agricultural production and granted the goal 3 exception. While we have some better information now on why this land isn't currently available for farming, I believe the applicant needs to provide a better justification and reasons why this land should no longer be available for crops.

Vice Chair Howe: Council has been trying to get the message out to applicants that when you're requesting an exception, it's a very very big deal. It's a very high standard to meet. We need

adequate factual findings so that we can make conclusions of law that will stand up upon any contest. The information presented is basically a position that the site hasn't been farmed and it is not irrigated to justify the exception. When we get into the record we have before us, it was farmed back in the 1950s and 1970s. It was farmed as recently as 2013 and 2015. Additional information provided today explains more to us about the problems associated with farming. There is surrounding farmland that is irrigated and growing high value crops. There were concerns about the transmission lines and pivot systems not working. We have maps in the record that show the pivots and the irrigation is working. To get my support, the applicant needs to take the time to provide counsel with clarifying information and get these findings accurate. We do not want to set up a precedent where future applicants submit information that's confusing and then kind of "button it up" later.

Council Member Condon: I have difficulty reconciling the organizational structure. The LLC is Delaware Corporation, a limited liability company under the parent company. there are limitations to the liabilities and responsibilities of an LLC. While I appreciate what has been done with respect to the performance guarantee, I am still a little bit hesitant. I am concerned the about the liability to others in the area that may object to the project or something that could go wrong. How does the parent company step in and can we rely on the parent company? I would like to see it better identified. We need to define what is expected of the parent company and have it agreed to by the parent company.

Council Member Jenkins added he would like to outline for the applicant and the landowners the reasons that he feels the goal exception hasn't been satisfied. We have come a long way tonight to understanding why there isn't water available to the property either through the district or through the groundwater limited designation. We now have new information in the record that supports that. I am still not convinced that the property cannot be used for dry land agriculture despite Mr. Scott's comments. I think we need a regional demonstration of why this property isn't available for dry land agricultural production. That would help support the arguments and justification for [granting] a reasons-based exception to [Oregon land use planning] Goal 3. This is the one area that needs to be substantiated. I would encourage the applicants to try and make a better effort.

Applicant response to Council's statements

Sarah Stauffer Curtiss, legal counsel to the applicant, requested the record remain open for 2 weeks to allow the applicant to fully address the comments and concerns presented.

Secretary Cornett clarified that the record would remain open solely for the limited purpose of allowing the applicant to respond to any of the comments from tonight, not merely leaving the public record open.

ALJ Triana stated given the comments and concerns raised by council tonight and the and the specific points raised by Council, it is appropriate to leave the record open for the limited purpose of allowing the applicant to respond to the concerns raised by the council. The requested time frame is 2 weeks which is a reasonable request.

ALJ Triana granted the request to leave the record open for the requested limited purpose.

The hearing was adjourned at 7:40 PM.

The meeting was recessed at 7:43 PM.

Day 2 of the November 2022 EFSC meeting

Call to Order: The meeting was called back to order on Thursday November 18, at 8:30 am by Chair Grail.

Roll Call: Chair Marcy Grail, Vice-Chair Kent Howe, Council Members Hanley Jenkins, Cynthia Condon, Ann Beier were present in person. Perry Chocktoot was present virtually.

Oregon Department of Energy representatives present were Assistant Director for Siting/Council Secretary, Todd Cornett; Operations and Policy Analyst, Wally Adams; Senior Policy Advisor, Sarah Esterson; Senior Siting Analyst, Kellen Tardaewether; Senior Siting Analyst and Rules Coordinator Christopher Clark; Oregon Department of Justice Senior Assistant Attorney General Patrick Rowe, counsel to EFSC and Administrative Specialist Nancy Hatch.

Agenda Modifications:

The record for Western Solar was held open for the requested limited purpose. The final agenda item, which was the Council Review of the DPO, will be held over until the December 17, 2022 EFSC meeting.

C. Biennial Fee Update (Action Item)¹⁰ Sisily Fleming, Siting Fiscal Analyst. The Council will consider staff's recommended fee schedule for 2023-2024.

During the presentation the following discussion occurred:

Council Member Condon asked if the department was refunding NOI projects for the past year based on the figures presented?

Secretary Cornett stated that is the applicant option. If there is excess money for the NOI, they can be refunded or request that is be rolled over into the application fees.

Ms. Fleming added typically the applicants have funds rolled forward to the application review phase. There are only 3 instances where NOI came in below the 42,000-dollar fee assessment.

Vice Chair Howe motioned Council approve the 2023-2024 schedule of fee as presented.

Council Member Jenkins seconded the motion.

¹⁰ Audio/Video for Agenda Item C=03:03-2022-11-18-EFSC-Meeting-Audio

The motion passed unanimously.

- D. Appointment of Rules Coordinator (Action Item)¹¹** – Sarah Esterson, Senior Policy Advisor. The Council will consider appointing Thomas Jackman as Rules Coordinator and Christopher Clark, Senior Siting Analyst and Sarah Esterson, Senior Policy Advisor as back up Rules Coordinators, in accordance with ORS 183.330(2).

Council Member Jenkins questioned why does the Council make this appointment?

Secretary Cornett stated the distinction is that Council has its own set of rules. There are 2 set of rules for the Department of Energy. The agency's director has 100 % authority on the agency rules and appoints the agency's Rules Coordinators. Council has 100% authority on EFSC rules therefore has its own Rules Coordinator.

Vice Chair Howe motioned the Council to appoint Thomas Jackman as the new Rules Coordinator, Christopher Clark, Senior Siting Analyst, and Sarah Esterson, Senior Policy Advisor as backup Rules Coordinators.

Council Member Jenkins seconded the motion.

The motion was approved unanimously.

- E. Public Comment Period (Information Item)¹²** – This time is reserved for the public to address the Council regarding any item within Council jurisdiction that is not otherwise closed for comment. Items closed for comment include the Nolin Hills Wind Power Project, and the Protected Areas, Scenic Resources, and Recreation Resources Standards Rulemaking.

There were no Public Comments.

The Public Comment Period was closed at 8:50 AM.

- F. Case Law Overview – (Information Item)¹³** – Patrick Rowe, Oregon Department of Justice Senior Assistant Attorney General provided an overview of the Oregon Supreme Court case, State v. Gaines, related to statutory interpretation.

¹¹ Audio/Video for Agenda Item D=10:17-2022-11-18-EFSC-Meeting-Audio

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Council Member Condon asked if Council reexamines EFSC cases which are overturned by the Supreme Court?

Mr. Rowe stated the department and Council revisits the cases to be consistent with the rulings when taking future actions, such as rulemakings.

Secretary Cornett noted there are a lot of rules, and a lot of interpretations of statutes made by the staff and Council. How could Council better incorporate consistency with statutes into its decision making daily?

Mr. Rowe stated while Council rightfully focuses on its own rules, it is important to remember there must be a statute backing up the rules. When a question arises as to Council's authority for a given action, Council should always consider the statutes that are related to the rules and actions that EFSC is taking.

Council Member Beier added the Council has its own legislative history and its own rulemaking. When we make decisions that are controversial or subject to interpretation, the record must reflect the statutes or rules the decisions are based on in case the decision is challenged.

Council Member Condon noted that it is possible for Council member to have different interpretations of statutes as they did regarding the participation of limited parties in contested cases. Could that be a basis for an appeal?

Mr. Rowe confirmed that particular issue could still be subject to appeal.

Vice Chair Howe confirmed his understanding of the statutes, noting Council adopts rules to interpret and clarify how the statutes are implemented. If a council decision is overturned by the Supreme Court, is Council able to adopt a new rule to apply the decision based on current knowledge and understanding?

Mr. Rowe confirmed yes, adding Council would want to review the facts for that specific matter, determine what the Supreme Court had said was wrong with the current rules and make sure that the new rule isn't repeating the same error.

Council Member Jenkins stated this presentation highlights the fact that Council needs to be very clear with its reasoning for our decisions and explain reasons for our decisions rather than just making a motion.

Vice Chair Howe noted when making a motion, Council should explain "for these reasons" included in the motion.

Council Member Beier added staff provides the findings and they are on the record. It is important that Council reviews and explicitly agrees with those findings.

Secretary Cornett stated staff spends a lot of time on document management to retain information in a consistent manner so we can retrieve proper documentation when needed to justify our conclusions.

Chair Grail recognized in her tenure with the Council, the Council has gotten stronger in asking questions, debating information, and adding information to the record. Mr. Rowe has given Council additional reasons to continue doing so.

Council Member Jenkins added it is important to have accurate meeting minutes as they constitute the legislative history.

G. 2023 Legislative Session Preview (Information Item)¹⁴ – Christy Splitt, Government Relations Coordinator gave a Legislative Session Update.

Council Member Condon asked if the loss of the Democrats supermajority will have any effect on the Legislature?

Ms. Splitt answered the supermajority is only important with revenue votes. There currently is not a major tax issue being presented to the Legislature.

Secretary Cornett stated Chair Grail has been attending the siting reform meetings which will be beneficial in terms of her translating the information for staff and Council.

Chair Grail added it is fascinating to listen as the meetings move forward and examine how Council may be affected. Our processes are going to be more important than ever to ensure that they stand. Noting a Citizens Utility Board Policy Conference which excluded utility CEOs for the first time, there are more members of the public being engaged in the process. Council should expect a shift as there will be different perspectives that have not been previously involved.

Secretary Cornett noted it is important to provide the updated information regarding projects to the public. The current narrative talks about the need for the future, not about what is currently happening.

¹⁴ Audio/Video for Agenda Item G=54:50-2022-11-18-EFSC-Meeting-Audio

Secretary Cornett commented during the long legislative session, the department evaluates and participates in any direct siting bills that will impact Council decisions. The department also tracks every land use bill as our standards tie back to LCDC land use statutes and rules, or local government adopted comprehensive plans and ordinances.

Council Member Beier asked if the agency has submitted any bills?

Ms. Splitt answered there are 2 pieces of legislation that will be filed by December 21,2022. One is to extend the end of the solar rebate program and make a technical fix to that program. The other, called the Navigator, establishes a program at the agency to help communities apply for federal or state funding for energy projects.

Secretary Cornett expressed his gratitude for Council Member Jenkins work and time he has committed to the Council as this may be his last meeting. His diligence and work make us so much better, and it is greatly appreciated.

The November 2022 EFSC meeting was adjourned at 9:51 AM.