



ENERGY FACILITY SITING COUNCIL

■ Marcy Grail, Chair ■ Kent Howe, Vice-Chair ■ Cindy Condon ■ Jordan Truitt ■ Perry Chocktoot ■ Ann Beier ■ Richard Devlin

Energy Facility Siting Council Meeting Minutes

Friday, September 22, 2023, 8:30 AM

Oregon Department of Energy
550 Capitol St. NE Salem, OR 97301

- A. Consent Calendar (Action Item & Information Item)¹
- B. Boardman to Hemingway Transmission Line, Request for Site Certificate Amendment (Action Item)²
- C. Public Comments Period³
- D. Obsidian Solar Center, Request for Site Certificate Amendment 1, Council Review of Draft Proposed Order (Information Item)⁴
- E. Ms. Irene Gilbert Providing Council Process Concerns (Information Item)⁵
- F. Idaho Power Corporation's Request for Council Review of Financial Institution (Action Item)⁶
- G. Radioactive Material Enforcement Rulemaking (Action 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: Vice Chair Howe called the meeting to order on September 22, 2023, at 8:31 a.m.

Roll Call: Vice-Chair Kent Howe and Council Members Ann Beier, Cynthia Condon, Jordan Truitt were present in person. Council Member Richard Devlin was present virtually.

Oregon Department of Energy representatives present were Assistant Director for Siting/Council Secretary Todd Cornett; Senior Policy Advisor Sarah Esterson; Senior Siting Analyst Kathleen Sloan; Senior Siting Analyst Kellen Tardaewether; Rules Coordinator Tom Jackman; Siting Fiscal Analyst Sisily Fleming; Operations and Policy Analyst Wally Adams and Administrative Assistant Nancy Hatch. Oregon Department of Justice Senior Assistant Attorneys General Jesse Ratcliffe and Patrick Rowe were also present. Mr. Rowe served as counsel to the

¹ Audio/Video for Agenda Item A = 00:02:57 - 2023-9-22-EFSC-Meeting-Audio/Video

² Audio/Video for Agenda Item B = 00:16:51- 2023-9-22-EFSC-Meeting-Audio/Video

³ Audio/Video for Agenda Item C = 01:40:29 – 2023-9-22-EFSC-Meeting-Audio/Video

⁴ Audio/Video for Agenda Item D = 02:02:24- 2023-9-22-EFSC-Meeting-Audio/Video

⁵ Audio/Video for Agenda Item E = 02:36:45- 2023-9-22-EFSC-Meeting-Audio/Video

⁶ Audio/Video for Agenda Item F = 02:53:35- 2023-9-22-EFSC-Meeting-Audio/Video

⁷ Audio/Video for Agenda Item G = 02:59:21- 2023-9-22-EFSC-Meeting-Audio/Video

Oregon Department of Energy staff on Agenda Item A and counsel to EFSC on Agenda Items A & C-G. Mr. Ratcliffe served as counsel to EFSC on Agenda Item B.

Agenda Modification: There were no agenda modifications.

A. Consent Calendar (Action Item & Information Item)⁸ – Approval of July 2023 and August 2023 meeting minutes; Council Secretary Report; and other routine Council business.

Council Member Devlin motioned the Council approve the July 2023 and the August 2023 meeting minutes as presented.

Council Member Condon seconded the motion.

Council approved the motion unanimously.

Council Secretary Report

Secretary Cornett offered the following comments during his report to the Council:

Staff Updates

- Walter Adams will be leaving the Department at the end of September after 3 years with the Department. The Department appreciates all of the hard work and expertise he has provided. Staff will miss him and wish him the best.

Vice Chair Howe and Council Members echoed Secretary Cornett's comment.

Project Updates

- **Yellow Rosebush Energy Center**
Staff received a Notice of Intent on September 1, 2023. The webpage has been updated with the project information. Staff anticipates issuing a public notice in early October and holding a Public Information Meeting in Maupin, later in October.
- **Umatilla Morrow County Connect Project**
Staff received a Notice of Intent on September 13, 2023. The Department is working with the applicant to resolve some property owner information before establishing the webpage for the project.

Compliance and Inspections Updates

Council was briefed on incidents and inspections reported at the following facilities:

Wheatridge REF I -Follow up of issues addressed in Site Inspection (failure to treat/control noxious weeks; failure to maintain locked turbine doors; and inadequate gravel base at one turbine).

⁸ Audio/Video for Agenda Item A = 00:02:57 - 2023-9-22-EFSC-Meeting-Audio/Video

Wheatridge REF II -Weed Monitoring, inadequate gravel base at turbines (failure to treat/control noxious weeds; inadequate gravel base at one turbine; and failure to provide adequate documentation of the blade/tower inspection and monitoring plan).

Additional Updates

ODOE IT Staff will be available after the September EFSC meeting to assist Council Members with accessing their new laptops.

Upcoming Meeting Dates

If Council and Chair Grail approves, there will be a Radioactive Material Enforcement Rulemaking Public Hearing on October 19, 2023 at 1:00 p.m. to be held at the ODOE office in the Meitner Room. If there is a quorum there, it will be a Council meeting.

Council Member Condon, noting Council's first review of the Organizational Expertise Standard, requested Council have a second deeper review of the standard.

Secretary Cornett confirmed that is possible. Staff will work with Council Members on the specifics to be included in the review of the standard or any other standards Council would like to review further.

Council Member Beier suggested combining the appropriate rulemaking items with the additional review of the Organizational Expertise Standard.

Secretary Cornett stated Staff can adjust as necessary as Council requests, though there is a current rulemaking schedule.

B. Boardman to Hemingway Transmission Line, Request for Site Certificate Amendment 1, Council Decision on Any Submitted Requests for Contested Case, and Possible Material Change Hearing and Public Notice of Hearing to Adopt Final Order (ORS 469.370(7)) (Action Item)⁹ – Kellen Tardaewether, Senior Siting Analyst. Council was presented with an overview of the approved 300-mile transmission line, and the changes proposed in Request for Amendment 1. The proposed changes included new site boundary area, inclusive of shifts in transmission line and access road locations; and changes to proposed conditions. Council had two potential review and action items:

1. Council Decision on Requests for Contested Case – Council first considered any requests for contested case on the Department's Proposed Order on Amendment 1 submitted on or before September 8, 2023.

⁹ Audio/Video for Agenda Item B = 00:16:51- 2023-9-22-EFSC-Meeting-Audio/Video

During the presentation on the first set of requests for Contested Case from Ms. Irene Gilbert and Stop B2H Coalition regarding non-compliance with the Forest Practice Act (FPA), the following discussion occurred:

Secretary Cornett offered additional clarification of the process for submitting requests for Contested Case. At the conclusion of the Draft Proposed Order Hearing and possible response from the applicant to issues raised, the record is closed. No new information can be added to the record. Council's determination must be based on information submitted within that timeframe. If Council decides to initiate a contested case, the record reopens with regards to those issues in the contested case.

Ms. Tardaewether added that commenting on the DPO with sufficient specificity provides an adequate opportunity for Council, the Department, and the certificate holder an opportunity to respond to the issue. If additional comments are received after the record closed in the form of the request for contested case, there is no opportunity to respond.

Council Member Beier clarified her understanding that the Council does not assert jurisdiction over the FPA consistent with the DPO on the amendment and the site certificate. In addition, if the FPA applies to any aspect of the B2H project, the Department of Forestry would work with Idaho Power to ensure the requirements are met. Council understands the FPA is important, but it is not in Council's jurisdiction as is the case with certain other state and federal issues.

Council Member Beier motioned Council to deny the requests for a Contested Case on the Forest Practice Act compliance issue for the reasons provided in the Department's September 15, 2023 staff report, the issue requested does not raise a significant issue of fact or law that is reasonably likely to affect the Council's determination whether the facility, with the change proposed by the amendment, meets the applicable laws and Council standards included in chapter 345 divisions 22, 23 and 24.

Council Member Devlin seconded the motion.

Council approved the motion unanimously.

During the presentation of the second set of comments in the request for Contested Case from Ms. Irene Gilbert and Stop B2H coalition regarding the adequacy of the retirement bond to restore the site, the following discussion occurred:

Council Member Beier stated the additive change in the project is not significant. There are several opportunities built into [the Final Order on the original application and carried over to] this Proposed Order for Council to reevaluate the bond over time. She expressed her comfort with the bond and approved review process.

Council Member Condon motioned Council to deny the request for a Contested Case on the adequacy of retirement bond for the reasons provided in the Department's September 15, 2023 staff report, the issue requested does not raise a significant issue of fact or law that is reasonably likely to affect the Council's determination whether the facility, with the change

proposed by the amendment, meets the applicable laws and Council standards included in chapter 345 divisions 22, 23 and 24.

Council Member Truitt seconded the motion.

Council approved the motion unanimously.

During the presentation of Ms. Gilbert's comments in her request for Contested Case regarding the issue of failure to notify the public of the ability to comment on proposed site certificate condition revisions, the following discussion occurred:

Council Member Condon noted the title to the public notice "Request for Comments on the Complete Request for Amendment 1 and Draft Proposed Order" (DPO) speaks to the DPO and the ability to comment on it.

Ms. Tardaewether confirmed that is true as in any Amendment to any DPO. An aspect of the request is that Ms. Gilbert may not have recognized that she could comment on condition revisions, which means she did not comment on how the condition revisions may impact the entire facility's ability to comply with a Standard.

Council Member Beier motioned Council to deny the request for Contested Case on the Procedural Issue - Failure to Notify Public of Ability to Comment on Site Certificate Condition Revisions for the reasons provided in the Department's September 15, 2023 staff report, the issue does not raise a significant issue of fact or law that is reasonably likely to affect the Council's determination whether the facility, with the change proposed by the amendment, meets the applicable laws and Council standards included in chapter 345 divisions 22, 23 and 24.

Council Member Devlin seconded the motion.

Council approved the motion unanimously.

During the presentation of Mr. John Williams comments in his request for Contested Case regarding the availability of cultural resource mapping, the following discussion occurred:

Council Member Condon inquired if Mr. Williams was a land owner and as such able to negotiate with the Certificate Holder which allows landowners the ability to arrange for mapping surveys on their own behalf.

Ms. Tardaewether stated Mr. Williams is an "impacted land owner" meaning the approved facility crosses his land. Negotiations between the landowners and the Certificate Holder are not within Council's jurisdiction.

Council Member Condon noted while Council has standards, the landowners can take further steps to protect themselves, their property, and the resources they have available.

Council Member Condon motioned Council to deny the request for Contested Case on the Cultural Resource Mapping issue for the reasons provided in the Department's September 15, 2023 staff report, the issue requested, the issue does not raise a significant issue of fact or law that is reasonably likely to affect the Council's determination whether the facility, with the change proposed by the amendment, meets the applicable laws and Council standards included in chapter 345 divisions 22, 23 and 24.

Council Member Truitt seconded the motion.

Council approved the motion unanimously.

- 2. Council Decision on Proposed Order** – Unless a contested case proceeding is granted, Council will proceed to review the Proposed Order on Amendment 1 and will either adopt, modify, or reject the Proposed Order as the Final Order. If Council adopts or modifies the Proposed Order as the final order, there will be a hearing on any material changes made from the Proposed Order to Final Order. ORS 469.370(7).

Council Member Beier noted her appreciation for the Staff's work on the Draft Proposed Order and her comfort with the changes made to the conditions in the Proposed Order.

Council Member Condon motioned the Council to adopt the Proposed Order as the Final Order and issue the 1st amended site certificate for the Boardman to Hemingway Transmission Line as presented and recommended by staff.

Council Member Devlin seconded the motion.

Council approved the motion unanimously.

- C. Public Comment Period (Information Item)¹⁰** – This time was 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 Boardman to Hemingway Transmission Line Request for Amendment 1 and Obsidian Solar Center Request for Amendment 1.

Ms. Irene Gilbert

Ms. Gilbert, speaking on behalf of herself and the public interest, commented that the procedures for obtaining a contested case before the Council according to the statute is a quasi-judicial process. The process has moved to a procedure that rivals and exceeds the requirements for appeals to traditional courts. Efforts by previous EFSC members to bring more

¹⁰ Audio/Video for Agenda Item C = 01:40:29 – 2023-9-22-EFSC-Meeting-Audio/Video

of a user-friendly and fair process has been thwarted by the Oregon Department of Energy (ODOE). She provided her example by noting during a meeting she attended several years ago when Council denied requests for contested case on amendments to a site certificate, Council Members had stated they had wanted to allow the contested case, but ODOE told them according to the rules, they were not allowed to provide that opportunity. Following this, the Council directed EFSC to amend the Contested Case rules and identify areas where the public did have the right to a contested case, similar to the original site certificate. After several years, Council approved changes to the amendment rules. Those changes did not provide any instances where the public would be allowed a contested case on their issues. They tightened the reasons for denying contested cases on an amended site certificate condition and completely denied the opportunity for a contested case for multiple other individuals under the Type B process. They gave ODOE the authority to decide whether to allow an amendment request to be processed under the Type A process. The change has continued the process, that means all contested cases on amendments are being denied. Contested cases are being denied for reasons such as lack of specificity, lack of documentation to support the issue being requested, and lack of fully describing the issue during the public comment period. As each of the new and improved reasons for denying access to contest cases have been used, the public has attempted to adhere to the new standards they are being held to. She has resorted to documenting her cases in the document for requesting a contested case so there is a basis for appeal. Oregon Supreme Court will only consider the case file when they do their reviews. Denying the public access to contested cases means there is no information from the public in the file supporting the request. The requests Council is receiving include documents to make them available for an appeal as well as an introduction to the arguments for ODOE and EFSC.

She stated the newest challenge is that ODOE is doing one of two things. First, they are restating the contested case issue so that it fails to approximate the actual request that was made. She added that she has been unable to recognize the requests she has written herself. Secondly, ODOE breaks down an issue into small segments, which are only examples of actions supporting the issue statement, then refers to that as the contested case. When the case is heard, the developer objects to anything that goes beyond the narrow piece of the issue that is stated as the contested case issue. This denies the public the ability to actually present their entire issue. In an example given, Ms. Gilbert stated the issue is not whether or not ODOE should remove the opportunity for input. It is whether or not removing that opportunity for input is appropriate without notifying public that their access to input on plans has been removed. Before trusting ODOE's summation of a contested case request, Ms. Gilbert encouraged Council to read the entire requests that are made versus what they are being told. It is someone else's interpretation of the request being made. Though Council members are not required to read the written comments, it is her opinion that is the only ethical way to perform your function as a Council member. She referred to several issues including the Forest Practices Act and the Threatened and Endangered Species Law as being in direct conflict with conditions in site certificates constituting a waiver. In Ms. Gilbert's opinion, that is an issue that has to be appealed. Can EFSC allow interpretations of what can be done in a forested area that conflicts with other laws? Division 22 says that EFSC lacks the authority to waive state statutes. Even though her request for appeals on the conflict issues with other laws was not allowed as her requests were submitted after close, she stressed that it is important they are heard as they are important for the whole process of providing fair and legal site certificates. Ms. Gilbert expressed her concern whether or not the issue of the retirement bond is consistent with the

plain language of the rules and the law which says Council will require a bond that is consistent with its evaluation of costs involved for restoration of a site. You can't remove or add to the language of a statute. Adding the language "Council's determination of an adequate amount to restore the site" changes the meaning of what Council is asked to do in determining a bond amount. Council does not have the discretion to allow any bond amount. Council must provide a bond amount believed to be adequate to restore the site. Ms. Gilbert reiterated that these issues are going to be coming back for consideration for a contested case. If the language of a rule is clear, there is no interpretation, only when a rule is not clear do agencies have the authority to interpret rules differently.

Council Member Condon stated there is flexibility built into what the Council determines as a bond amount as time goes forward.

Ms. Gilbert questioned the \$1.00 (placeholder) bond amount for restoration of a site while reminding Council to be careful of what advice they are receiving as the role of ODOE is to build developments because that is what their funding and jobs are based on.

Council Member Beier commented that the Department is currently reviewing the rulemaking for the contested case process. The intent is to clarify the contested case process in order to make it clearer for the public how to participate.

Secretary Cornett clarified the rulemaking review related to Contested Cases is limited to new applications. Contested cases related to amendments will occur during the upcoming amendment rulemaking project

Public Comments were closed at 10:32 a.m.

D. Obsidian Solar Center, Request for Site Certificate Amendment 1, Council Review of Draft Proposed Order (Information Item) - Kathleen Sloan, Senior Siting Analyst presented with an overview of the approved 400 megawatt-alternating current (MWac) solar photovoltaic energy generation facility, and the changes proposed in Request for Amendment 1. The proposed changes include new site boundary area, an alternate substation location, and modification of electrical and transmission line capacity and structure type. Council reviewed the Draft Proposed Order on Amendment 1, including issues raised in comments received on the record of the DPO public hearing, and provided comments to staff for consideration in the Proposed Order.

During the presentation the following discussion occurred:

Council Member Condon questioned the reference in the Organizational Expertise Condition 2 regarding the qualifications for the on-site construction manager or qualified designated representative.

Ms. Sloan answered the certificate holder needs to have professionals with the capacity to manage a robust project. In the past, it was required that the construction contractor be

qualified to manage a project. The certificate holder retains site project managers and construction managers who need to have similar qualifications as they oversee the work of the contract.

Council Member Condon noted with respect to the Organizational Expertise Standard, she would like to examine how the Department and Council assesses information provided by the applicant at a future meeting.

Council Member Beier thanked Staff for adding additional conditions regarding project management throughout the life of the project.

Council Member Condon asked if Heffernan Insurance Brokers has provided bonds for EFSC previously.

Secretary Cornett responded they have not but are on the EFSC list of approved financial institutions.

Council Member Condon, noting the recent fires in Hawaii, questioned if there is an opportunity to include a condition in future wildfire mitigation plans for a notification process or procedure for adjacent landowners in event of an ignition.

Council Member Beier stated there is an opportunity in subsection 5 to require notice to adjacent property owners. She noted, in Deschutes County, members of the public can sign up for wildfire alerts. She suggested leaving it to the developer in conjunction with the county emergency managers to determine the best way to identify property owners.

Council Member Beier, in the conclusion of the discussion, asked Staff to include clarifying language regarding the provision for the notice of an ignition to adjacent property in the wildfire mitigation plan.

E. Ms. Irene Gilbert Providing Council Process Concerns (Information Item)¹¹— Ms. Irene Gilbert. Council received information from a member of the public related to concerns about the EFSC process.

During the presentation the following discussion occurred:

Secretary Cornett offered clarification of Ms. Gilbert's claim regarding ODOE's involvement in the decision to remove the statute allowing up to \$50,000 for attorney fees for counties to argue contested cases. ODOE initiated a bill to allow tribal governments that are participating in a Council review to be eligible to get reimbursement. As part of that, the development community, not ODOE or EFSC, proposed to eliminate the opportunity for reviewing agencies to get reimbursement of legal fees during a contested case in order to allow for more potential

¹¹ Audio/Video for Agenda Item E = 02:36:45- 2023-9-22-EFSC-Meeting-Audio/Video

reimbursement to tribal governments. This was an acceptable “trade off” for the Governor’s Office.

Council Member Beier thanked Ms. Gilbert for her participation in the EFSC meetings and process. She stated that in the August 2023 EFSC meeting, Council discussed receiving comments and making decisions the next day. When there are numerous comments received and volumes of information to review, Council needs to take the time to consider the information. When there are no comments received on an issue, logically Council should move forward with its decisions.

F. Idaho Power Corporation’s Request for Council Review of Financial Institution (Action Item)¹²– Sisily Fleming, Fiscal Analyst. The Council considered a request from Idaho Power Corporation, certificate holder for the Boardman to Hemingway Transmission Line Site Certificate, to add CNA Surety to the list of financial institutions approved to act as issuers of financial instruments related to the Council’s Retirement and Financial Assurance standard.

Council Member Beier motioned Council to add CNA Surety to the list of Council-approved financial institutions for use by site certificate holders in obtaining financial instruments, as presented, and recommended by staff. With the caveat that if the subsidiary whom IPC actually wants to use has any different ratings or long term stability, or if Legal Counsel feels it is necessary, the Department will bring the subsidiary to Council for their review.

Council Member Truitt seconded the motion.

Council approved the motion unanimously.

G. Radioactive Material Enforcement Rulemaking (Action Item)¹³ – Tom Jackman, Siting Policy Analyst & Rules Coordinator, Maxwell Woods, Assistant Director for Nuclear Safety and Emergency Preparedness and Tom Sicilia, Hanford Hydrogeologist. The Council considered staff’s recommendation to initiate proposed revisions to the Council’s rules related to the disposal of materials containing naturally occurring radioactive materials and identify potential updates to OAR 345-050.

During the presentation, the following discussion occurred:

Vice Chair Howe asked if the two facilities for radioactive waste in Washington and Idaho are federal facilities.

Mr. Sicilia stated they are on USDOE land but are operated by a civilian company, US Ecology.

¹² Audio/Video for Agenda Item F = 02:53:35- 2023-9-22-EFSC-Meeting-Audio/Video

¹³ Audio/Video for Agenda Item G = 02:59:21- 2023-9-22-EFSC-Meeting-Audio/Video

Vice Chair Howe inquired if there were any issues of interstate transportation of materials that trigger federal laws.

Mr. Sicilia stated Oregon Health Authority Radiation Protected Services issues waivers for DOT shipment requirements, which are typically below activity rates that the Nuclear Regulatory Commission (NRC) would regulate.

Council Member Devlin asked if the three exemptions established by EFSC would be impacted by the changes proposed in the Radioactive Material Enforcement Rulemaking.

Mr. Woods stated the existing rules contain three specific exemptions. Staff proposes to continue those exemptions.

Vice Chair Howe inquired how diapers in landfills contain metabolized medical waste.

Mr. Sicilia explained after receiving medical procedures including radiation, patients are asked to hold waste materials for three weeks before safely disposing. Sometimes the three week safety period is not followed.

Mr. Woods added through the RAC process, Staff has learned a lot about the industry and its needs. This particular issue is a huge burden at some Oregon landfills as it requires specific procedures for locating the reactant in the landfill or truck and retaining it for 90 days which can pose a bigger threat of exposure to workers.

Vice Chair Howe questioned if the way that uranium 238 gets into petroleum is because it is being extracted from the ground through drilling.

Mr. Sicilia confirmed that is correct.

Council Member Beier asked the number of Natural Occurring Radioactive Material licensed facilities in the state.

Mr. Sicilia answered less than two dozen.

Secretary Cornett stated, in reference to the Exempt Quantities chart, the information contained in the chart will not be included in rule language but will be available as a tool for the industry and the public.

Council Member Beier asked if DEQ examines any radioactive materials present in municipal wastewater treatment bio solids that are land applied.

Mr. Sicilia stated that this is one of the issues Staff is continuing to examine. DEQ does not look for radioactive nucleates. The Department is currently working with DEQ to include reference to the rules in all landfill applications.

Council Member Condon questioned the life of the liner used in industrial waste landfills in order to delay the migration to water.

Mr. Sicilia stated a typical liner has a design life of 100 years. The landfills that are accepting industrial waste materials have robust monitoring plans and post closure monitoring plans and are periodically reviewed.

Council Member Condon asked if there are monitoring wells or monitoring required outside of the liners at specific intervals.

Mr. Sicilia answered the DEQ permit and the licensing agreements for disposal facilities include an extensive monitoring well network and periodic monitoring frequency. There is a lot of documentation in the permit process to ensure the safety of the public and the environment.

Council Member Beier questioned the process for the monitoring of trucks as they arrive at disposal facilities.

Mr. Sicilia explained the monitoring process if a truck were to trigger the portal monitoring alarm.

Council discussed the dates for upcoming Radioactive Material Enforcement Rulemaking Public Hearing and the value of Council Members being present.

Council Member Beier motioned the Council authorize the filing of the Notice of Proposed Rulemaking with the Secretary of State for the Radioactive Material Enforcement Rulemaking with the tentative date of October 19, 2023 at 1:00 p.m. in the ODOE conference room pending confirmation from Chair Grail.

Council Member Devlin seconded the motion.

Council approved the motion unanimously.

Vice Chair Howe adjourned the September 2023 EFSC meeting at 1:03 p.m.