

August 30, 2018 EFSC Solar Rulemaking Comments

Name	Agenda Item/Issue	Comment/Question
Carla McLane	Prospective Question 1	Indicated that she had not received comments that local process is insufficient [in relating to effective siting of a solar energy facility].
Irene Gilbert	Prospective Question 1	Indicated that she had previous personal experience, as a landowner, in a local siting process. Indicated satisfaction with the effectiveness of local processes.
Dave Brown	Background	Raised question as to why the “15 Questions” were not adopted. Asked whether there were concerns with accuracy.
Rikki Seguin	Background	<ul style="list-style-type: none"> • Noted that her understanding was that the “15 Questions” are guidance, requested that the Department procure procedural history relating to the 15 questions. • Relating to "single energy facility" – noted that legislature includes a jurisdictional [acreage] threshold. • Requested clarification or further information relating to the results of the ONDA petition for rulemaking;
Dan Morse	Background	Noted that the context of the ONDA petition for rulemaking related to the wind "boom;" petition itself may be contextually relevant to current issues.
Doris Penwell	Background	Relating to ONDA petition for rulemaking; county process has changed since ONDA petition. Counties have own jurisdiction; disputes "point 2" [background information slide] that EFSC “oversees” counties.
Carla McLane	Background	Cites prior county experience; notes importance of shared infrastructure; county endeavors to protect "highly productive" farmland, not just “high value farmland” per se.
John Miller	Background	Relating to shared O&M facilities of prior project, each site was completely independent. Other than shared O&M facilities; some facilities were separated by numerous miles or at least a quarter of a mile. Expressed that shared operation and maintenance is <u>not</u> a relevant question. Expresses concern with how the "15 Questions" would be used [in relation to present rulemaking]. Relating to “point 2”

		of “background information” slide, raised comment that the point would be statutory change.
Irene Gilbert	Background	Raised comment relating to cumulative impacts of wildlife. Commented that EFSC does not evaluate cumulative effects to wildlife; comment that LCDC sets minimum threshold to protect farmlands and that counties can impose additional requirements; concern that EFSC [historically] overrules county decisions; comment that counties have more control and fewer options to avoid land use regulations.
Ann Beier	Background	Relating to prior projects - received instructions to "co-locate" because “breaking up” lands would reduce the value of farmland; notes that facilities should be in proximity with one another. Notes that the “15 Questions” don’t include a "timing" factor; comment that “adding additional layers for the sake of adding layers doesn't make sense;” comment that counties have built a process for members of the public to comment in an effective manner.
Dave Brown	Background	Comment that when ONDA petition was filed, no solar facility in Oregon was greater than 1 megawatt. Indicates that has worked with numerous counties; comment that counties and developers have evolved in terms of local siting processes.
Sarah Reif	Background	ODFW often recommends co-locating facilities and shared facilities because it reduces impacts to wildlife habitat; When facilities aggregate in sensitive wildlife habitats or migration corridors, then co-locating may result in impacts.
Dave Brown	Background	Comment that LCDC rule tract is ambiguous.
Jon Jinings	Background	Tract is defined by LCDC rule (see slide 10); concerns relating to avoidance of goal 3 exception in prior history.
Brian Walsh	Background	Comment relating to tract criteria; eastern Oregon has many large tracts; noted difficulty in siting a facility on more than tract; many tracts owned by same property owner.
Rikki Seguin	Background	Comment relating to tract; clarified that if there are 2 property owners, two facilities owned by same developer; within 1320 feet -> Goal 3 exception. What if the projects are owned by different developers? Then not trigger goal 3.

Brian Walsh	Background	Requested clarification on the LCDC 1320 Goal 3 exception rule: is it from "tract" or the "facility." Jon Jinings volunteered to look into this issue.
John Miller	Background	<p>Raised comment that if facilities are within 0.25 miles of one another, then they are a single project. Clarified that this is an <u>LCDC GOAL 3 Exception issue</u> [as opposed to EFSC jurisdiction]; requested clarification as to relevance to the EFSC current rulemaking. With respect to EFSC jurisdiction, desired clarification as to importance of EFSC rulemaking. Noted that if wildlife habitat is an important issue, why is ownership an important issue? Noted that he was unclear as to relevance.</p> <p>ODOE Response (Todd Cornett): clarified that the slide related to background information; noted that the LCDC rule is merely an example of other agency that defines a solar facility.</p>
Irene Gilbert	Background	Raised comment related to Wheatridge energy facility; noted that there are 30 miles of transmission that connects two separate developments; noted that it is the same developer with different landowners;
Rikki Seguin	Background	Comment that PUC may have language for aggregation for PURPA projects; recommendation to Department to look into whether rule language or policy exists.
Carla McLane	Background	Raised comment relating to Energy Generation Area; Morrow County supported the Umatilla County petition to remove the EGA designation; clarified that EFSC never used the EGA authority while it was in place; recalled that the purpose of the EGA was applied in that location because of numerous wind facilities; commented that the EGA was EFSC overreach; comment that current rulemaking requires a more nuanced approach than the EGA; EGA is/was a "blunt instrument."
Jon Jinings	Question 1	<p>Raised Question: if an additional facility is added that triggers a threshold, would the other facility be evaluated ex post facto?</p> <p>ODOE Response (Max Woods): Unclear; more clear in context of a facility "expansion."</p>

Dave Brown	Question 1	<p>Comment relating to "intent:" what if there are 2 facilities that are completed and First Solar desires to purchase them, then do the projects transform into an EFSC project?</p> <p>ODOE Response (Max Woods): ODOE is looking more towards an "impact based" analysis.</p>
Brian Walsh	Question 1	Noted that facilities may be "repowered" through increasing nameplate capacity, such as through software upgrades or upgrading nacelles.
Rikki Seguin	Question 1	Requested county input on "example B" (4 x 26 acre hypothetical solar facilities). Comment to affirm that counties have a process to review cumulative impacts.
Ann Beier	Question 1	Assuming projects haven't reached LCDC thresholds, counties invite resource management agencies to address cumulative effects; counties permit projects with different parent companies adjacent to one another, which may result in large acreage. Later these may be both acquired by one organization; noted that would be a "business" decision not a "land use" decision.
Carla McLane	Question 1	Raised question/ comment relating to 4 x 26 hypothetical slide: does a shared transmission line trigger EFSC review? Because county wants facilities to share transmission lines. At some point, the county would require them to take a Goal 3 exception because of aggregate effects.
Ann Beier	Question 1	<p>Raised comment that county is concerned with "footprint," not concerned about the electricity output.</p> <p>ODOE Response (Max Woods): clarification that EFSC jurisdiction is land use threshold.</p>
Joe Fennimore	Question 1	Noted that he hasn't seen the "4 x 26" hypothetical present itself.
John Miller	Question 1	Raised comment that he doesn't want more projects subject to EFSC; believes developers don't believe EFSC is cost and time effective. Desires the possibility of a more streamlined solar PV EFSC process. Noted that shared resources are important; facilities are more efficient when shared. Re-iterates that the biggest concern is the cumulative impact / footprint.

Jake Stevens	Question 1	Comment that EFSC process may take 10 x as long, contends that EFSC conducts review under “largely same” rules.
Dan Morse	Question 1	Raised comment relating to wildlife: disputes that it isn't always better to site facilities in proximity with one another; notes that the determination is “wildlife dependent.” Comments that wishes to avoid truisms. ONDA advocated for shared transmission; however, noted that shared transmission may not be the best path forward in all circumstances.
Jim Johnson	Question 1	Raised comment relating to agriculture: The lack of cumulative impact analysis is a large issue; EFSC can go beyond county review and may be able to review cumulative impacts where local governments may not be required to. Noted that it is up to local government to put cumulative impacts analysis within its code.
Irene Gilbert	Question 1	Question as to relation between county and ODFW: do counties conduct more or less as relating to wildlife protection than ODOE?
Sarah Reif	Question 1	Response to Irene Gilbert: EFSC has a regulation in the OAR that relates to ODFW. In county process, ODFW makes recommendations to counties. Counties review against Goal 5, but it depends on the development code as to whether the County imposes further standards upon itself.
Carla McLane	Question 1	<p>Comment that county pre-application conferences always includes ODFW representatives; notes that she encourages applicants to meet with ODFW prior to requesting County review; comments that Counties have become frustrated with the ODFW process; indicates that Goal 5 maps are outdated.</p> <p>Example: big game winter range; County maps are <u>not</u> considered in EFSC process. Advocates that ODFW work with every County to update maps; agrees that Counties may disagree with ODFW relating to map designations</p>
Ann Beier	Question 1	County maintains a code that requires a wildlife mitigation plan; in conjunction with County fish and wildlife representatives. Believes that County has formulated a good solution; County maintains outdated maps; notes that construction of projects during nesting season requires buffers around sites, cannot clear trees during nesting season; County process has worked because the implementation of mitigation plans.

Sarah Reif	Question 1	Relating to Goal 5 inventory: ODFW requires best available science to make a determination; fully supports updating Goal 5 maps; because Goal 5 maps are outdated, it is difficult to fully address wildlife habitat impacts (as suggested by Anne Beier)
Jon Jinings	Question 1	Notes that rules have identified the County as being the final arbiter; made an attempt to fashion a level of cumulative impact; only relating to agricultural impacts.
Brian Walsh	Question 1	<p>Comment relating to County level Wildlife mitigation plans: noted prior experience working with ODFW. Relating to cumulative impacts: In Prineville, developers are all chasing same customers; numerous developers are trying to obtain the same infrastructure; an application doesn't mean that the facility will be built.</p> <p>ODOE Response (Max Woods): for EFSC purposes, must assume that the proposal will be built.</p>
Carla McLane	Question 1	Comment relating to prior history: 8-10 years ago, maintained a spreadsheet of Morrow County projects; noted that cumulative impacts of temporary housing was insufficient if everyone were to build within their proposed timelines. Counties do not have a process; stated that EFSC also doesn't have cumulative impacts procedure. Notes that cumulative impacts discussion should occur.
John Miller	Question 1	Relating to cumulative effects: If projects 1,2,3 are sited and we know that number 4 "breaks" a threshold... Cannot use "anticipated" sites for analysis; echoes Brian's comments that majority of proposed will probably not be built.
Irene Gilbert	Question 1	Raises comment that of frustration that EFSC does not review cumulative impacts; notes that EFSC only reviews individual developments.
Brian Walsh	Question 1	Notes that some aspects of EFSC process (noise) that do assess cumulative impacts.
Merial Darzen	Question 1	Notes that concern relating to cumulative impacts are different between western and eastern Oregon.
Rikki Seguin	Question 1	Comment: raised question whether "Question 1" was answered in the affirmative or negative.

Carla McLane	Question 1	<p>Noted that Counties look to DLCD for input; requests input from ODFW; also must be aware of OPUC rules; raised question relating to clarity: EFSC statute that defines solar facility to be greater than 100 acres of high value farmland. Noted that this determination is still “tied to land use” or soil determination. Notes that third classification is 320 acres on "any land."</p> <p>Morrow county approved a facility as an "outright use," County believes a particular spot is right for development. Comment that County should be able to determine where a solar facility is sited. Question: why are they [County] limited if its an industrial use? Jurisdictional thresholds are ripe for discussion.</p>
Carla McLane	Question 1	<p>Requests answer as to what counties are doing inappropriately.</p> <p>ODOE Response (Max Woods): Rulemaking is not a value judgment. Rulemaking is addressing ODOE’s statutory mandate and compliance with rules assigned to it under the OAR. Todd Cornett: staying away from a value assessment. Statutory mandate relating to thresholds. Repeats question: Is there a potential situation where two local facilities could aggregate to trigger EFSC jurisdiction? Comment that EFSC is not looking to "grab" local jurisdiction projects.</p>
Ann Beier	Question 1	<p>Comment that anyone could create a plausible scenario where numerous facilities could aggregate to 1 facility; struggling with phrasing of questions; re-iterated question as to identify the concern [ODOE has] over the county permitting processes.</p>
Rikki Seguin	Question 1	<p>Comment relating to whether counties are doing enough is relevant. Unclear as to what EFSC would add to County projects.</p> <p>ODOE Response (Todd Cornett): Rulemaking is not evaluating worthiness of county review; current rulemaking is asking whether two facilities function as 1 and whether this triggers statutory mandate; the effectiveness of County or EFSC regulation is not at issue in this rulemaking; ODOE is interested in its statutory mandate and jurisdictional thresholds.</p>

John Miller	Question 1	Relating to whether rulemaking is necessary: notes that discussions are not new; requests specific examples to assess value of conducting rulemaking at this point. Relating to public concern of impacts of over-development; expresses that [ostensibly, regulatory community] is expressing an over-reaction to development realities; expresses doubt that rulemaking is warranted; notes value to engage in discussions with market participants.
Joe Fennimore	Question 1	Concern from County commissioners that high value farmland would be transitioned to solar facilities; discussed restrictions to certain areas; doesn't know how to help farmers whose "land base" is decreasing due to siting of solar facilities.
Irene Gilbert	Question 1	Comment that a disconnect exists between county and state siting; not sure how much solar and wind has been sited on county levels; cites to prior experience with County processes, raised issue with Linn county, developer called and discussed; non-involved landowners are not as involved in EFSC process.
Merial Darzen	Question 1	Relating to John Miller's comment re: (full buildout scenarios) - requests industry to provide information relating to infrastructure; expresses that it is difficult to engage in discussion without have knowledge of both sensitive resources and infrastructure. Relating to speculative projects: members of public doesn't excuse / exempt examination of land use impacts; notes that unless all information is available it must be assumed that all projects would be built [for evaluation purposes].
Dave Brown	Question 1	Question: Do we need rulemaking to expand jurisdiction? ODOE Response (Max Woods): Rulemaking is not expanding EFSC jurisdiction.

Brian Walsh	Question 1	<p>Comment that 2600-3000 MW of wind energy exists; ventures guess that about 50% is sold to out of state customers; the RPS standard won't be driving the construction of facilities. After PGE RFP, local utilities will have met their RPS; looking at QF (PURPA) projects ... contracts have above market rates based on 2015 avoided cost rates; can't finance some of the proposed contracts that are in Willamette valley.</p> <p>Solar requires 6-7 acres per MW. Example: 3000 MW requires 24,000 acres. Don't have a customer need and won't come online fast. Notes that there is a growth factor associated with Industrial consumers; however, notes that demand response programs have improved to level utility demand.</p>
Merial Darzen	Question 1	Relating to limited customer need / leveled growth projections; requesting information on customer need and infrastructure.
Dave Brown	Question 1	Transmission and distribution line is "threshold question." Notes that distribution lines can handle about 2-3 MW. In fort Rock, must connect to a 500 kV transmission line. Notes that there is not much available transmission capacity.
Brian Walsh	Question 1	BPA has had difficulty upgrading its infrastructure; "Available Transmission Capacity" (ATQ) is limited. Notes Issues with transmission grid.
John Miller	Question 1	Comment that infrastructure requires land, an "oftaker," an interconnection agreement, and an electric line. OSEIA supports market wide solar; notes a need for transmission and distribution lines for a project to be possible. Predicts that solar will not exceed 10-20% of total electric generation supply [due ostensibly to infrastructure constraints].
Jon Jinings	Question 1	In response to a question raised by Carla & County processes: acknowledges that Counties have processes in place that are effective; states that the Question 1 [in rulemaking] is unrelated to County value or effectiveness.
Amy Berg Pickett	Question 1	Current regulatory state in Oregon is complex; solar can be innovative and flexible (site specific); may adapt to communities and focus on sustainable development.

Irene Gilbert	Question 1	<p>Comment relating to Idaho Power IRP: notes that it bases need on transmission on the presumption that fossil fuel facilities are being decommissioned... Why are we [EFSC] approving sites if they're not going to be developed? Requests information relating to who is purchasing power.</p> <p>ODOE Response (Max Woods): EFSC does not have a "need standard;" EFSC treats the review process as if they were "live active" projects (for generating assets) [e.g. who is purchasing power is not relevant to EFSC review process].</p>
Ann Beier	Question 1	<p>Clarifies that the rulemaking isn't related to whether the Counties should be doing a better job, it's related to the aggregation of facility size for statutory purposes. County processes applications as received; notes that some comments relate to confusion as to the extent of the proliferation of small scale facility construction and indicates a desire for (RAC wide) dissemination of information.</p>
Rikki Seguin	Question 1	<p>Clarification of language: notes that word "non-EFSC" is incorrect in "Question 1" slide.</p> <p>ODOE Response (Max Wood): Agrees; notes that the slide should use different language that doesn't indicate jurisdiction within the question.</p>
Carla McLane	Question 1	<p>State Agency coordination program: 1990 plan. In relating to the 4 x 26 slide: why isn't state "using coordination" to answer question as opposed to rulemaking? Suggests that inter-agency conversation would be preferable to rulemaking (ODOE / ODFW/ DLCD).</p> <p>ODOE Response (Todd Cornett): Theoretically, if multiple facilities are operating as 1 EFSC jurisdictional facility, then what? Noted prior informal policy framework but there is no structure; states that agency coordination doesn't relate back to jurisdiction issue.</p>
Jon Jinings	Question 1	<p>If "Question 1" is approved "then what?" Natural step is to develop rules if Question 1 is affirmative - correct?</p> <p>ODOE Response: (Max and Todd) confirm, yes.</p>

		<p>Comment that rulemaking is not changing LCDC rules; notes that it is a good thing to share O&M, transmission, substations, etc for wildlife and other impacts; Notes that Gala and Empire facilities, which were 1320 feet away, had to separate projects to for Goal 3 purposes. Requested to combine ODOE and LCDC rulemakings.</p> <p>ODOE Question (Max Woods): the questions that would be posed would be open-ended. (Todd Cornett): LCDC is independent from EFSC; LCDC rulemaking is limited to Exclusive Farm Use zoned lands.</p>
Brian Walsh	Question 1	
Ann Beier	Question 1	Notes that 'Question 1" could always be framed in a manner such that it would be answered in the affirmative. Asks whether it <u>should be</u> considered one facility under EFSC jurisdiction?
Jon Jinings	Question 1	States that yes, multiple "small scale" facilities could be functionally equivalent to an EFSC jurisdictional facility [Question 1].
Sarah Reif	Question 1	From a wildlife impact analysis we need to find the right process address <u>cumulative effects</u> – whether through EFSC or through DLCD process; affirmatively answers question [Question 1].
Barbara Boyer	Question 1	Noted that she can view facilities aggregating as one facility [Question 1].
Joe Fennimore	Question 1	Agrees that is possible [re: Question 1].
Carla McLane	Question 1	States "Yes, maybe" [Question 1] but expresses concerns as to what it means and what to do next.
Dan Morse	Question 1	Yes [Question 1]. In the context of wind, it did happen. Notes that rulemaking must ensure that cumulative impacts are appropriately addressed and that citizens have an appropriate opportunity to comment.
Doris Penwell	Question 1	"Clearly, its possible" [Question 1]; cites concern relating to the difference between EFSC and County regulation that allows developer to "jurisdiction shop."
Irene Gilbert	Question 1	Comment on Senator Olson workgroup that is defining "energy facility." States that doesn't know whether a problem exists; notes that it is unknown whether there are developments that should have gone through EFSC. Doesn't believe rulemaking is warranted; if had information on County action then could make well thought out decision.
Amy Berg	Question 1	No, don't need rulemaking because multiple facilities that are different cannot have

Pickett		the same site certificate.
John Miller	Question 1	Agrees that is possible [Question 1]; unsure as to whether a problem exists.
		Not convinced that there is a need to develop rules; could the situation occur? Sure [Question 1].
Rikki Seguin	Question 1	Disagrees with the concept that rulemaking is warranted based on problems that have not been articulated.
Brian Walsh	Question 1	Answer to question 1 is "no" based on lack of empirical evidence.
Dave Brown	Question 1	Is it possible? Must have same ownership; states that the facilities would need to be developed at approximately the same time;
Merial Darzen	Question 1	Agrees with consensus [ostensibly, relating to "Question 1"]; desires examples.
Damian Hall (Public comment)	Question 1	Notes that it "comes down to jurisdictional question;" if answered in the affirmative then the situation would necessarily require rules; desires reference back to statutory and legislative intent of any proposed rules.
Ann Siqveland (Public comment)	Question 1	Comment that when state modified definition of energy facility and defined wind by energy output and solar definition as a land based definition; evidence of intent of legislature to treat wind and solar differently; cautions review of "15 Questions" as applied to solar facilities; desires to keep previous wind discussions separate from current solar discussions.