



**Energy Facility Siting Council  
Minutes  
May 3, 2013**

Minutes approved at 6/21/13 EFSC  
Meeting

Oxford Suites Hermiston-Walleye Room  
1050 N. First Street  
Hermiston, OR 97838

**Call to Order:** The meeting was called to order at 8:30 a.m. by Chair Wolfe.

**Roll Call:** Chair Bryan Wolfe, Renee Dowlin, Trey Senn, John Mohlis, Paul Sumner, Hanley Jenkins, and Barry Beyeler were present.

Oregon Department of Energy (ODOE) representatives present were Siting Division Administrator Todd Cornett, Ginny Gustafson, Matt Lawyer, Sue Oliver, Duane Kilsdonk, Andrea Goodwin, Cliff Voliva, Shilo Ray, Eric Desmarais and Lee Willeman.

EFSC Counsel Renee France, Department of Justice (DOJ), was also present.

**Agenda Modifications and Announcements:** Mr. Cornett noted one modification to the agenda; agenda item G-Military Airspace Advisory Committee Update will switch places with agenda Item L-Petition for Declaratory Ruling.

Chair Wolfe announced that the public comment periods for the Boardman Coal Plant Amendment #9, Coyote Springs Cogeneration Project Amendment #10, and Klamath Falls Bioenergy application are closed and that Council will not be accepting comments on those three projects.

Chair Wolfe elaborated on the benefits of the Department's GovDelivery service, and noted the availability of sign-up sheets for that service.

**A. Consent Calendar (Action Item):**

**Minutes for 03/15/13:**

**Action:** A motion was made by Councilor Mohlis, and seconded by Councilor Sumner, to approve the minutes of the March 15, 2013 meeting as drafted.

**Vote:** Sumner, yes; Jenkins, yes; Beyeler, yes; Dowlin, yes; Wolfe, yes; Senn, yes; Mohlis, yes; Motion carried.

**Project Updates:** Mr. Cornett acknowledged the 90-day look ahead report provided to the Council and solicited questions. There were none. Mr. Cornett stated that the report was also available to the public and that upon request anyone could be added to the distribution list.

**2012-13 Meeting Dates:** The future meeting dates were discussed; the next meeting date would most likely be held over two days; June 20<sup>th</sup> and June 21<sup>st</sup>, and would possibly be in Troutdale. Clarification was made to the future meeting dates of August 2<sup>nd</sup>, September 27<sup>th</sup> and November 15<sup>th</sup>.

**Council Secretary Report:** Mr. Cornett gave staffing updates. He introduced Matt Lawyer as the new Administrative Specialist in Salem and stated that Lee Willeman as the Rules Coordinator and Shanda Shribbs as the Operations Analyst are now in permanent positions. The Siting Division is now fully staffed. Mr. Cornett noted that he has been participating with the Western Governors Association on a Transmission Siting Group. He explained what the association is working toward and informed the Council regarding some of the meetings he has attended as a participant.

**Compliance Update (Information Item):** Duane Kilsdonk, ODOE Siting Compliance Officer, presented a compliance update. He stated that has received 20 out of the 21 Annual Reports that were required to be turned in by April 30<sup>th</sup>. He has been in contact with the final certificate holder and anticipated receiving the Annual Report shortly. He also said the Bonds and Letters of Credit are all up to date and accurate for the current certificate holders.

**B. Leaning Juniper II Wind Power Project, Transfer Request (Informational Hearing):** Andrea Goodwin, Oregon Department of Energy (ODOE) Energy Facility Siting Analyst, provided background information on Leaning Juniper II and the transfer request and amendment that are currently in process. On December 28, 2012 the Department received a Request for Amendment 2 to the Site Certificate for Leaning Juniper II Wind Power Facility from the site certificate holder, LJWP, and a Request to Transfer a portion of the Site Certificate from the transferee, Portland General Electric. The amendment request seeks to divide the facility into two separate facilities, LJIA and LJIB, with each facility possessing an individual site certificate. The transfer request seeks to transfer the LJIB site certificate from LJWP to PGE, contingent upon the closing of an asset purchase agreement between PGE and LJWP. Ms. Goodwin explained that the ODOE issued a Proposed Order recommending approval of both the transfer and amendment request on April 10, 2013. ODOE will accept comments and requests for a contested case on the amendment request through May 10, 2013. She provided additional information regarding the transfer review process and requested that the Council open an informational hearing to receive testimony on the transfer request. She stated that ODOE is not requesting or recommending that the Council take final action on the transfer request at this time. She explained that ODOE recommends that the Council act on the transfer request in conjunction with the amendment, following the close of the comment period on the requested amendment, and issue one Final Order addressing both the amendment and transfer. The Council asked clarifying and informational questions, including a question regarding leaving this hearing open until the next Council meeting.

Chair Wolfe opened the informational hearing on the Leaning Juniper II Wind Power Project Amendment # 2 transfer. He invited the applicant to testify or provide comments. Amber Chapman from PGE Environmental Services stated she had nothing to add to the written request. Chair Wolfe invited other testimony; there was none. Council discussed leaving the hearing open for further written comment and it was decided to keep the hearing open and close it when the amendment request comment period ends on May 10, 2012.

**C. Montague Wind Power Facility, Transfer Request (Informational Hearing):** Andrea Goodwin, ODOE Energy Facility Siting Analyst, provided background information on Montague Wind Power Facility

and the transfer request and amendment that are currently in process. On December 28, 2012 the Department received a Request for Amendment 1 to the Site Certificate for Montague Wind Power Facility from the site certificate holder, Montague Wind Power Facility, LLC, and a Request to Transfer the Site Certificate from the transferee, Portland General Electric. The amendment request seeks to amend the site certificate to (1) extend the construction start and completion deadlines by two years, and (2) reduce the minimum blade tip clearance in Condition 27 from 41 meters above ground to 20 meters above ground. The transfer request seeks to transfer the site certificate from Montague Wind Power Facility, LLC to PGE, contingent upon the closing of an asset purchase agreement between PGE and Montague. Ms. Goodwin explained that ODOE issued a Proposed Order recommending approval of both the transfer and amendment request on April 10, 2013. ODOE will accept comments and requests for a contested case on the amendment request through May 10, 2013. She explained that ODOE recommends that the Council act on the transfer request in conjunction with the amendment, following the close of the comment period on the requested amendment, and issue one Final Order addressing both the amendment and transfer.

Chair Wolfe opened the informational hearing on the Montague Wind Power Facility Amendment #1 transfer. He invited testimony from both the applicant and public; there were no requests to testify or comment. He stated that the hearing would remain open for written comment until the close of the amendment comment period on May 10, 2012.

**D. Boardman Coal Plant, Amendment #9 (Action Item):** Prior to consideration of this item, Chair Wolfe recused himself from participating in this Action Item. Vice-Chair Barry Beyeler presided over this portion of the agenda. Andrea Goodwin, ODOE Energy Facility Siting Analyst, provided a PowerPoint presentation and background information regarding the Boardman Coal Plant and then explained the request for Amendment #9 (RFA #9). The certificate holder proposes to amend the site certificate to allow the temporary storage and processing (torrefaction) of biomass material at the facility site, and the temporary use of the processed biomass as fuel in test burns at the facility. Ms. Goodwin discussed the comments received from reviewing agencies and the public. One comment, from Friends of the Gorge, included language that could potentially be construed to be a request for contested case. After discussion, the Council concluded that the comment did not constitute a request for contested case. Council asked informational and clarifying questions and further discussed the types of biomass PGE plans to use.

**Action:** The motion was made by Councilor Mohlis, and seconded by Councilor Senn, to adopt the Final Order approving Amendment #9 to the Site certificate for Boardman Coal Plant.

**Vote:** Senn, yes; Mohlis, yes; Sumner, absent; Jenkins, yes; Beyeler, yes; Dowlin, yes; Motion passed.

**E. Coyote Springs, Amendment #10 (Action Item):** Andrea Goodwin, ODOE Energy Facility Siting Analyst, provided a PowerPoint presentation and brief overview of the amendment. The amendment removes emissions requirements from the site certificate that are regulated under the ODEQ Title V permit. Ms. Goodwin discussed the comments; there was no request for a contested case. The Council asked clarifying and informational questions.

**Action:** The motion was made by Councilor Sumner, and seconded by Councilor Mohlis, to adopt the Final Order approving Amendment #10 to the Site Certificate for Coyote Springs Cogeneration Project.

**Vote:** Jenkins, yes; Beyeler, yes; Dowlin, yes; Wolfe, yes; Senn, yes; Mohlis, yes; Sumner, yes; Motion passed.

**F. Perennial Wind Chaser Station (Action Item):** Andrea Goodwin, ODOE Energy Facility Siting Analyst, gave a brief update regarding the Perennial Wind Chaser Station project and the necessity of adding the City of Umatilla as an additional Special Advisory Group (SAG). The Council asked an informational question.

**Action:** The motion was made by Councilor Beyeler, and seconded by Councilor Dowlin, to appoint the Umatilla City Council as a Special Advisory Group for the Perennial Wind Chaser Station Project.

**Vote:** Jenkins, yes; Beyeler, yes; Dowlin, yes; Wolfe, yes; Senn, yes; Mohlis, yes; Sumner, yes; Motion passed.

**G. Petition for declaratory ruling (Action Item):** Renee France, DOJ Senior Assistant Attorney General, explained that on April 8, 2013, NW Natural (NWN) submitted a Petition for Declaratory Ruling to the Oregon Energy Facility Siting Council. The petition requests that the Council determine that NWN is authorized to seek an amendment to the Site Certificate for the Mist Underground Natural Gas Storage Facility (Mist Facility), including all related or supporting facilities described in the petition. Ms. France provided an overview and background information regarding the Mist Facility. She explained that NWN proposes to seek approval to expand the Mist Facility through the Council's amendment process. The proposed expansion would include an expansion of the site boundary, the development of two new reservoir facilities, new compressor stations, new gathering pipelines, and a new transmission pipeline. She stated that in response to NW Natural's declaratory ruling petition, the Council must decide whether to initiate a declaratory ruling proceeding. She also stated that if the Council agreed to issue a ruling they would then need to appoint the presiding officer and would need to direct ODOE staff to issue notice of the declaratory ruling hearing. The Council asked clarifying questions.

**Action:** The motion was made by Councilor Sumner, and seconded by Councilor Mohlis, that pursuant to ORS 183.410 and OAR 137-002-020, the Council agree to issue a ruling in response to the petition for a declaratory ruling filed by NW Natural on April 8, 2013 related to the Mist Underground Natural Gas Storage Facility.

**Vote:** Beyeler, yes; Dowlin, yes; Wolfe, yes; Senn, yes; Mohlis, yes; Sumner, yes; Jenkins, yes; Motion passed.

**Action:** The motion was made by Councilor Beyeler, and seconded by Councilor Senn, that the Council designate Todd Cornett as the presiding officer for the declaratory ruling hearing in the NW Natural declaratory ruling proceeding related to the Mist Underground Natural Gas Storage Facility.

**Vote:** Mohlis, yes; Sumner, yes; Jenkins, yes; Beyeler, yes; Dowlin, yes; Wolfe, yes; Senn, yes; Motion passed.

**Action:** The motion was made by Councilor Beyeler, and seconded by Councilor Sumner, that the Council direct ODOE staff to issue the Notice of the Declaratory Ruling Hearing required by OAR 137-002-030 with the date determined to be the same as the next EFSC meeting (June 21, 2013) and the location to be determined by the presiding officer.

**Vote:** Mohlis, yes; Sumner, yes; Jenkins, yes; Beyeler, yes; Dowlin, yes; Wolfe, yes; Senn, yes; Motion passed.

**H. Rule Making (Action Item):** Todd Cornett, Energy Siting Division Administrator, explained the necessity to appoint a rules coordinator and gave the Council the recommendation to appoint Lee Willeman as the rules coordinator.

**Action:** The motion was made by Councilor Mohlis, and seconded by Councilor Jenkins, that Council expressly delegate rulemaking authority to Lee Willeman as provided under ORS 183.

**Vote:** Sumner, yes; Jenkins, yes; Beyeler, yes; Dowlin, yes; Wolfe, yes; Senn, yes; Mohlis, yes; Motion passed.

**I. Rule Making (Action Item):** Lee Willeman, Policy Analyst, explained the reasoning behind the request for the Council to authorize staff to initiate rulemaking to amend the Council's rule for carbon dioxide emissions. He stated that ODOE would amend OAR 345-024-550 (2) carbon dioxide offset standard for base load gas plants and OAR 345-024-0590(5) standard for non-base load power plants. Mr. Willeman stated that ODOE staff anticipated completing the rulemaking process and proposing Council adoption of rule amendments at its September 2013 meeting.

**Action:** The motion was made by Councilor Jenkins, and seconded by Councilor Beyeler, that the Council authorize staff to initiate formal rulemaking proceedings to update OAR 345-024-0590(5) related to the carbon dioxide emissions standard for non base load plants.

**Vote:** Wolfe, yes; Senn, yes; Mohlis, yes; Sumner, yes; Jenkins, yes; Beyeler, yes; Dowlin, yes; Motion passed.

**Action:** There was an amended motion made by Councilor Jenkins, and seconded by Councilor Beyeler, that the Council also authorize staff to initiate formal rulemaking proceedings to update OAR 345-024-0550(2) related to the offset standard for base load gas plants.

**Vote:** Jenkins, yes; Beyeler, yes; Dowlin, yes; Wolfe, yes; Senn, yes; Mohlis, yes; Sumner, yes; Motion passed.

Lee Willeman, Policy Analyst, explained the reasoning behind the request for the Council to authorize staff to initiate rulemaking to amend the OAR 345 at Division 27 rules for EFSC Site Certificate Amendments. Mr. Willeman stated that ODOE staff anticipated completing the rulemaking process and proposing Council adoption of rule amendments in late 2013. Council made supporting statements that encouraged staff to not only make decisions in relation to the public workshops that were held but to take the opportunity to evaluate the whole amendment process.

**Action:** The motion was made by Councilor Mohlis, and seconded by Councilor Senn, that the Council authorize staff to initiate formal rulemaking proceedings for modifications to the rules related to EFSC site certificate amendments under OAR 345 at Division 27.

**Vote:** Dowlin, yes; Wolfe, yes; Senn, yes; Mohlis, yes; Sumner, yes; Jenkins, yes; Beyeler, yes; Motion passed.

**Amended Agenda Recommendations:** Todd Cornett, Energy Siting Division Administrator, Mr. Cornett made a recommendation to amend the agenda. His recommendations were that Agenda Item G be moved to before the lunch break. He also recommended adding to Agenda Item K an update of the Helix Supreme Court decision and an overview of the Draft Proposed Order process.

**Action:** The motion made by Councilor Sumner and seconded by Councilor Mohlis, to amend the agenda as recommended.

**Vote:** Sumner, yes; Jenkins, yes; Beyeler, yes; Dowlin, yes; Wolfe, yes; Senn, yes; Mohlis, yes; Motion passed.

**J. Military Airspace Advisory Committee Update (Information Item):** Todd Cornett, Energy Siting Division Administrator, clarified that Barry Beyeler was not appointed to this Committee as a representative of EFSC but rather in connection with his professional position with the City of Boardman.

Barry Beyeler, EFSC Member, gave an update on the issues and discussions that the Military Airspace Advisory Committee is working on. Mr. Beyeler stated that Morrow County and the US Navy are working together to address issues related to the military air space and wind turbines. Carla McClane, Morrow County Planner, spoke about the issues within Morrow County and Tamra Mabbot, Umatilla County Planner spoke on behalf of Umatilla County. Rick McArdle, Community Planning Liaison Officer with the US Navy, provided additional information on behalf of the US Navy. The Council asked informational questions.

**K. Public Comment (Information Item):** Larry Givens, Umatilla County Commissioner, provided public comment regarding the Special Advisory Groups (SAGs) and thanked ODOE staff for notifying the SAGs ahead of time on proposed projects and for being willing to have briefings with the SAGs.

There were no additional comments, either in person or by phone.

Todd Cornett, Energy Siting Division Administrator, mentioned that he had forgotten to announce in his secretary's report that Trey Senn, Current EFSC Council Member, has been reappointed to a second term.

Chair Wolfe announced a break to get working lunches, with meeting to reconvene at 12:10 p.m.

**L. DOJ Presentation (Working Lunch Information Items):**

**1. Amended Agenda Item-Update of Helix Supreme Court Decision (Information Item):** Renee France, DOJ, Senior Assistant Attorney General, provided an update on the Oregon Supreme Court decision in the Blue Mountain Alliance vs. EFSC (the Helix case) Ms. France stated that the Supreme Court affirmed EFSC's order approving the Helix amendment. She said that Supreme Court found that EFSC did not error in its decision to deny the contested case because there was not a significant issue of law or fact that may have affected the Council's determination. She also stated the Oregon Supreme Court concluded that EFSC correctly characterized the two-mile setback ordinance as a land use ordinance that was subject to the 'goal post' provision of ORS 469.504 and then also correctly

determined that the effective date of the ordinance precluded its consideration and also properly concluded that the ordinance was not subject to the 469.401 local ordinance provision for that reason. In response to a Council question, Ms. France confirmed that the Supreme Court's decision was unanimous.

**2. Amended Agenda Item-Overview of the DPO Process (Information Item):** Renee France, DOJ, Senior Assistant Attorney General, gave an overview of the proposed Draft Proposed Order (DPO) hearing process. She stated that, as proposed, the process would include a public hearing before both a hearing officer and the Council. The hearing officer would facilitate the public hearing as the presiding officer to ensure compliance with all procedural requirements but would not question or evaluate testimony submitted. Council members would substantively evaluate the evidence/ testimony presented, both orally at the public hearing and in writing before the close of the public hearing. Council would review/deliberate on the DPO at a regular EFSC meeting, either on the day following the public hearing or, if additional time is needed, at the next regular meeting. Following deliberations, the Council would make requests to ODOE staff regarding changes to DPO based on public hearing testimony and evidence. Staff would then incorporate Council requests into a Proposed Order. The Council asked if this would require a rule change and Ms. France said that it would not. The Council made comments supporting this new process.

**3. Ex Parte Contact and Public Meetings Law Presentation (Information Item):** Renee France, DOJ, Senior Assistant Attorney General, gave a presentation on Public Meetings Law and Ex Parte Contact. Ms. France provided information regarding basic public meeting law requirements and what is actually considered a public meeting. She also explained that Ex Parte communication is any oral or written communication to the decision maker that is made outside of the presence of all the parties to the hearing concerning a fact in issue in the proceeding. Council asked informational and clarifying questions.

**M. Public Comment (Information Item):** Chair Wolfe opened the floor for public comments; there were none. Chair Wolfe closed the comment period.

The meeting was adjourned at 2:07 p.m.