



Barry Beyeler, Chair ■ Renee Dowlin, Vice Chair ■ Hanley Jenkins II ■ Trey Senn ■ Betty Roppe ■ John Mohlis ■ Jack Billings

Energy Facility Siting Council

Minutes

August 18-19, 2016

Minutes Approved at the
November 3-4, 2016 EFSC Meeting

Boardman City Hall
200 City Center Circle
Boardman, OR

Meeting materials presented to Council and an audio recording of this EFSC Meeting are available online at: <http://www.oregon.gov/energy/Siting/Pages/Council-Meetings.aspx>

Call to Order: The meeting was called to order at 6:00 p.m. on August 18th by Chair Beyeler.

Roll Call: Council Chair Barry Beyeler and Council members, Betty Roppe, Hanley Jenkins, Jack Billings, and John Mohlis were present. Vice Chair Renee Dowlin and Council member Trey Senn were absent.

Oregon Department of Energy representatives present were Todd Cornett, Maxwell Woods, Sarah Esterson, Katie Clifford, Matt Lawyer, Rachel Wray and Cliff Voliva.

EFSC Counsel Paul Garrahan, Department of Justice (DOJ) (via phone), Jesse Ratcliffe, DOJ and Renee France DOJ, were also present.

A. Saddle Butte Wind Park (Action Item) – Renee France, Department of Justice – The Council considered the draft final order for the Saddle Butte Wind Park and whether to grant or deny issuance of a site certificate.

Mr. Cornett discussed that the purpose of this agenda item is for Council to review the draft final order put together by staff based on the direction received during prior meetings. He stated that, instead of requesting Council make a decision on the final order, staff is requesting the Council fully evaluate the draft final order and only take a straw poll. He stated that the applicant, Saddle Butte Wind LLC is past due on several invoices (\$38,898), one of which is more than 90 days and has been sent to collections. Also, there are additional invoices that have also been sent which are not yet past due (\$51,982 total with past due invoices). He stated that the Department has had multiple communications with the applicant about these invoices and they have indicated they may avail themselves of a statutory provision (ORS 469.441(1)) that allows them to seek judicial review in Circuit Court of any applications costs they establish are unnecessary or unreasonable. To date they have not made such a claim. He stated that the statute is also clear that payment of the portion of the application fees that are in dispute does not waive their right to seek judicial review of those fees later on.



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He concluded that if the applicant does not pay the past due invoices within 60 days of this Council meeting, staff will request Council reopen the record to consider evidence on compliance with the Council's Retirement and Financial Assurance standard. The current condition for this standard requires the applicant to get and maintain a bond or letter of credit for more than \$16 million. If the record were reopened, the department would likely recommend that the Council consider a final order denying the site certificate based on a finding of non-compliance with the Retirement and Financial Assurance standard.

Ms. France provided an overview of both versions of the draft final orders prepared by staff for Council's consideration and highlighted those sections of the final orders that addressed the issues raised in the contested case. Following Ms. France's presentation the Council deliberated and determined via a straw poll to support the form of the Final Order and Site Certificate that imposed condition O.8 under the Public Health and Safety Standard for Wind Energy Facility in the Council's rules. The Council did not take a final vote on the final order or the requested site certificate.

B. Public Comment: Irene Gilbert, La Grande, OR, discussed inconsistent application of both procedural and substantive rules between projects.

Following Public Comment Chair Beyeler called for a recess of the meeting at 7:15 p.m. until the following morning at 9:00 a.m. where the Council will meet in Executive Session.

Call to Order: The meeting was called to order at 9:00 a.m. on August 19th by Chair Beyeler.

Roll Call: Council Chair Barry Beyeler and Council members, Betty Roppe, Hanley Jenkins, Jack Billings, Trey Senn (via phone) and John Mohlis were present. Vice Chair Renee Dowlin was absent.

Executive Session to Consider Attorney-Client Privileged Communication on Agenda Item D. Hearing Officer Discussion – In accordance with ORS 192.660(2)(f) the Council entered into executive session to consider "information or records that are exempt by law from public inspection," which included consideration of records of privileged communications between the Council and its attorney. See ORS 192.502(9); ORS 40.225.

***Separate minutes of this executive session were provided to the Energy Facility Siting Council for review and is restricted from public disclosure due to attorney client privilege.

[9:45 a.m.] **C. Consent Calendar (Action Item):**



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1) Meeting Minutes

Action: A motion was made by Councilor Jenkins and seconded by Councilor Roppe that the minutes of the March 18, 2016 meeting be approved with changes to correct scrivener's errors (identified by Councilor Jenkins).

Vote: Billings, Yes; Senn, Yes; Mohlis, Yes; Roppe, Yes; Jenkins, Yes; Beyeler.
Motion carried.

Action: A motion was made by Councilor Jenkins and seconded by Councilor Mohlis that the Council approve the minutes of the April 21, 2016 meeting as presented.

Vote: Jenkins, Yes; Beyeler, Yes; Billings, Yes; Senn, Yes; Mohlis, Yes; Roppe.
Motion carried.

Action: A motion was made by Councilor Jenkins and seconded by Councilor Roppe that the minutes of the May 19-20, 2016 meeting be approved with changes to correct scrivener's errors (identified by Councilor Jenkins).

Vote: Senn, Yes; Mohlis, Yes; Roppe, Yes; Jenkins, Yes; Beyeler; Billings, Yes.
Motion carried.

Action: A motion was made by Councilor Jenkins and seconded by Councilor Mohlis that the minutes of the June 17, 2016 meeting be approved with changes to correct scrivener's errors (identified by Councilor Jenkins).

Vote: Billings, Yes; Senn, Yes; Mohlis, Yes; Roppe, Yes; Jenkins, Yes; Beyeler.
Motion carried.

Action: A motion was made by Councilor Jenkins and seconded by Councilor Billings that the minutes of the July 28, 2016 meeting be approved with changes to correct scrivener's errors (identified by Councilor Jenkins).

Vote: Roppe, Yes; Jenkins, Yes; Beyeler; Billings, Yes; Senn, Yes; Mohlis, Yes.
Motion carried.

2) Council Secretary Report

Mr. Cornett gave an update on the Legislative Joint Oversight Committee and stated the following schedule:

March 28th – Nuclear Safety Division

April 25th – Energy Planning and Innovation Division

May 26th – Energy Facility Siting Division

June 27th – Energy Development Services (Incentives)



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July 18th – Energy Development Services/Director’s Office and Central Services

August 22nd –

- Secretary of State Audit / Tax Credit Program
- Complete any unfinished program reviews
- Begin Committee discussion regarding recommendations

Sept. 20th – Review and discuss draft report and recommendations

October 17th – Review and discuss final report

Mr. Cornett discussed the ongoing recruitment for the UEA3, AS2 and the OPA2 positions. He stated that Mr. Lawyer had accepted a position with the Oregon Department of Aviation and will be leaving on August 31, 2016.

Mr. Cornett discussed items for the November meeting as follows:

- Rulemaking – Amendment and Sage grouse
- Summit Ridge Wind Farm Amendment
- Golden Hills Wind Project Amendment
- WECC update from Vijay Satyal
- Fee Schedule

Ms. France and Councilor Mohlis stepped down from the dais. Mr. Garrahan took over as counsel for the Council for the following agenda item.

D. Hearing Officer Discussion (Action Item) – Paul Garrahan, Department of Justice, Representing the Energy Facility Siting Council – The Council considered a potential conflict of interest of David Petersen, concerning his service as the Hearing Officer for the South Dunes Power Plant contested case process and his role as legal counsel for the applicant in the Wheatridge Wind Energy Facility site certificate.

Action: A motion was made by Councilor Roppe and Seconded by Councilor Jenkins that the Council conclude that a potential conflict of interest may arise in the future as a result of David Petersen’s service as Hearing Officer in the South Dunes Power Plant application contested case and his representation of the applicant in the matter of the Wheatridge Wind Energy Project application. Accordingly, it was moved that the Council record this future potential conflict in the minutes of this Council meeting, and that, pursuant to ORS 244.120(1)(c), the Council direct Mr. Petersen (1) to take care and exercise caution with respect to evaluating whether any decisions and recommendations he makes in his role as Hearing Officer would or could have a financial effect on his or his law firm’s clients, (2) to take care and exercise caution that the decisions and recommendations he makes in his role as Hearing Officer are not influenced by his role as attorney for the applicant for the Wheatridge Wind Energy Project, and (3) that he carefully comply with ORS 244.120 if he



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determines that any particular decision or recommendation that he encounters in the future in the South Dunes matter would or could result in a conflict of interest.

Vote: Billings, Yes; Senn, Yes; Roppe, Yes; Jenkins, Yes; Beyeler, Yes.

Motion Carried

Following agenda item D. Ms. France and Councilor Mohlis returned to the dais.

E. Summit Ridge Wind Farm 2016 Field Surveys Update (Information Item) – Katie Clifford, Energy Facility Siting Analyst – The Council received an update on the Summit Ridge Wind Farm’s 2016 field surveys and required consultations. The Site Certificate holder recently completed the 2016 Raptor nest, rare plants and special status vertebrate wildlife species surveys. The survey did not identify the presence of threatened or endangered species within the survey area. A study was conducted within 200 feet of the proposed turbine’s center strings. None of the target plant species were encountered during the survey. The results of the survey were provided to the Department of Agriculture and they commented they did not have questions or concerns. A ground based survey was conducted for above ground raptor nests and documented eight active raptor nests within the survey area, all of which were red-tailed hawks. In addition, a single active common raven nest was identified and eleven inactive stick nests were found. No special status raptor species were found breeding within the 2016 raptor nest survey area. ODFW recommended that the certificate holder consider avoiding construction within a 500 foot buffer from the nests from March 1-August 31. The Department is currently reviewing the second amendment request and considering appropriate mitigation measures for inclusion in the proposed order. Based upon ODFW’s feedback, the Department does not consider additional mitigation related to special status vertebrate wildlife species necessary or appropriate to satisfy the Council’s Fish and Wildlife Habitat standard. This presentation is further detailed in the staff report provided to Council.

F. Rulemaking (Information Item) – Todd Cornett, Assistant Director – The Council received an update on the current rulemaking activities and timelines associated with completion and presentation to Council. The timelines of these two rulemakings are further detailed in the presentation provided to Council.

G. Shepherds Flat Central Wind Facility: Amendments to Wildlife Monitoring and Mitigation Plan / Habitat Mitigation Plan (Action Item) – Sarah Esterson, Energy Facility Siting Analyst – The Council received an update regarding the Shepherds Flat Central Wind Facility avian fatality monitoring results. The Council considered additional mitigation measures proposed by the certificate holder, in consultation with the Department and the Oregon Department of Fish & Wildlife, to mitigate for avian fatalities in accordance with the Wildlife Monitoring and Mitigation Plan.



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Patricia Pilz, a representative of the certificate holder applicant provided additional detail related to the mitigation practices being proposed by the certificate holder.

Action: A motion was made by Councilor Billings and Seconded by Councilor Jenkins that the Council approve the amended Wildlife and Habitat Monitoring and Mitigation Plan for the Shepherds Flat Central, as presented by staff.

Vote: Jenkins, Yes; Beyeler, Yes; Billings, Yes; Senn, Yes; Mohlis, Yes; Roppe, Yes.
Motion Carried

This presentation is further detailed in the staff report provided to Council.

H. Council Consideration of Appointing Consultants (Action Item):

1) Boardman to Hemingway Transmission Line (Action Item) – Maxwell Woods, Senior Policy Advisor – The Council considered appointing a consultant to assist Department staff in the review of the application for site certificate.

Action: A motion was made by Councilor Billings and Seconded by Councilor Mohlis that the Council approve Cardno as a consultant for such purposes as to assist staff in the review or study of the application when necessary to effectively carry out the duties of the council and the review of the Boardman to Hemingway Transmission Line Project.

Vote: Senn, Yes; Mohlis, Yes; Roppe, Yes; Jenkins, Yes; Beyeler, Yes; Billings, Yes.
Motion Carried.

2) Carty Generating Station (Action Item) – Maxwell Woods, Senior Policy Advisor - The Council considered appointing a contractor to assist Department staff in the review of the request for amendment #1.

Action: A motion was made by Councilor Billings and Seconded by Councilor Jenkins that the Council approve AMEC as a consultant for such purposes as to assist staff in the review or study of the application when necessary to effectively carry out the duties of the council and the review of the request for amendment for the Carty Generating Station.

Vote: Beyeler, Yes; Billings, Yes; Senn, Yes; Mohlis, Yes; Roppe, Yes; Jenkins, Yes
Motion Carried.

(Note: Agenda Item I. Public Comment moved after Item J. by Council)

J. Climate Trust Annual Financial Audit Report (Information Item) – Todd Cornett, Assistant Director/Council Secretary. The Council received a presentation on the Climate Trust's 2015 Financial Audit. This presentation is further detailed in the staff report provided to Council.



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I. Public Comment (Information Item): Comments provided by Irene Gilbert, La Grande, OR and Gail Carbiener, Bend, OR. Ms. Gilbert requested public comments to be reflected in the minutes. She commented that the South Dunes decisions set new standards for requirements for someone to be allowed to have a contested case.

Gail Carbiener, Bend, OR, voiced his concern with the personnel at Cardno having worked for PacifiCorp and the concern for bias. Maxwell Woods, Senior Policy Advisor noted consultants are screened for a conflict of interest.

Matt Lawyer, Division Assistant, thanked the Council and his colleagues as this would be his last EFSC meeting. He accepted a position with the Department of Aviation.

(Note: Agenda Item K. Saddle Butte Wind Park Placeholder was not needed and Agenda Item L. Public Comment was not needed because the meeting ended with Agenda Item I. Public Comment.)

The meeting was adjourned at 11:25 a.m.