

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

## Energy Facility Siting Council Minutes November 3-4, 2016

Minutes Approved at the  
January 19, 2017 EFSC  
Meeting

**The Discovery Center Downstairs Classroom  
5000 Discovery Dr.  
The Dalles, OR**

**Meeting materials presented to Council are available online at:**

<http://www.oregon.gov/energy/facilities-safety/facilities/Pages/Council-Meetings.aspx>

**An Audio recording of this EFSC Meeting can be requested via a Public Records Request.**

**Call to Order:** The meeting was called to order at 12:30 p.m. on November 3<sup>rd</sup> by Chair Beyeler.

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

Oregon Department of Energy representatives present were Todd Cornett, Sarah Esterson, Katie Clifford, Esther Kooistra, Jason Sierman, Maxwell Woods, Kellen Tardaewether, Sean Mole and Cliff Voliva.

EFSC Counsel Renee France DOJ, was also present.

### A. Consent Calendar (Action Item): –

#### 1) Meeting Minutes

**Action:** A motion was made by Councilor Jenkins and seconded by Councilor Roppe that the minutes of the August 18-19, 2016 meeting combined with the minutes from the Executive Session held August 19, 2016 be approved.

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

#### 2) Council Secretary Report

Mr. Cornett discussed Friday, December 16<sup>th</sup> as the next scheduled EFSC meeting date in Salem. December's meeting will focus on annual Council items; the fee schedule that needs to be approved every two years, financial assurance forms and templates that are adopted on an annual basis and an election of officers. Mr. Cornett stated that there

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will likely be a public hearing on the Sage Grouse hearing, and a presentation on the rulemaking prioritization list for 2017. Meeting dates for 2017 will also be set at that time.

The Department of Energy's move is scheduled for December 9<sup>th</sup>, with December 12<sup>th</sup> being the first day at the new building. The estimated time for the December EFSC meeting will begin at 8:30 am.

Council Member Hanley Jenkins and Vice-Chair Renee Dowlin were reappointed for their 2<sup>nd</sup> terms; Marcy Grail replaced Council Member John Mohlis. Marcy Grail was appointed and confirmed by the Senate. She had a prior commitment and will be flying in tonight and will be here tomorrow.

Staffing updates –Kellen Tardaewether is our new siting analyst; Esther Kooistra is our new administrative specialist; Sean Mole is our Operations and Policy Analyst. We have one more position, a siting analyst position that is vacant, the last of our vacancies.

Mr. Cornett addressed modifying his answer to Councilor Billings' question from the last meeting regarding energy supplier assessment. Councilor Billings asked what portion of the agency was funded by the energy supplier assessment. Mr. Cornett's response was that the vast majority and that was incorrect. He wanted to clarify that 35% of the agency's revenue is derived from the ESA (Energy Supplier Assessment), 65% is a mix of application fees, grants, awards and different agreements. He stated that 21% Siting division itself is supported by ESA, so the 79% is funded by application fees.

The Legislative Joint Oversight Committee meets tomorrow looking at discussing final report and recommendations. They co-chairs came out with their own recommendations on Monday. Whether the committee adopts them is unknown. Specifically for the siting division they came out with several recommendations:

- Direct ODOE to convene a work group of diverse stakeholders to evaluate and report back to the Legislature on the following siting issues:
  - If there are opportunities for improvements in public participation in the siting process to make the process more transparent and understandable for non-industry participants;
  - If there are needed improvements to the contested case process;
  - Whether the current state jurisdictional thresholds are appropriate; and
  - If existing siting standards are adequate.
- Revise the definition of “single energy facility” to make clear when multiple smaller energy facilities are or are not a single facility.

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- Change the current cost recovery formula applied to site certificate holders to pay more of siting division costs. This will result in less revenue from the energy supplier assessment going to this division.

Chair Beyeler attended a recent John Day Snake River Resource Advisory Committee in October. At this meeting they toured the PGE Torrefaction Facility and discussed potential projects related to torrefying materials. This raised a point Chair Beyeler wanted to make Council members aware of; there are many projects within Oregon that might fall within the jurisdiction of EFSC. It is important for staff to be diligent about being aware of these projects which may or may not be EFSC jurisdictional. The ODOE staff tracks facilities that are out there, whether state, county or federal jurisdictional. Sometimes a county may not be aware, so they may inadvertently take an applicant through a review; we try to reach out to people and make sure they are aware of the EFSC threshold. We will provide letters and phone calls. Most recently we have done this with a Biofuel project in Southeastern Oregon and a Biofuel project in the Port of Morrow.

**B. Summit Ridge Wind Farm Informational Hearing on Transfer Request (Information Item) –** Sarah Esterson, Siting Analyst, provided an informational presentation pursuant to OAR 345-027-0100(7) regarding the transfer of the Summit Ridge Wind Farm site certificate from the current certificate holder LotusWorks-Summit Ridge I, LLC to Summit Ridge Wind Holdings, LLC.

Ms. Esterson explained a request to transfer a site certificate differs from the traditional request to amend site certificate in that it includes specific procedural requirements that are established in our division 27 rules and there are two specific standards that a transferee must demonstrate compliance with. While the certificate holder included their request to transfer the site certificate in their request to amend site certificate #2, Ms. Esterson explained that she would present the transfer request today and the larger presentation of the proposed order in request amendment #2 during tomorrow's Council meeting. The presentation today will focus on the Staff's evaluation of the transfer request and the transferee's ability to comply with the applicable standards.

Council received a staff report dated October 21, 2016, which included a summary of staff's evaluation of the transferee's ability to satisfy the applicable requirements that were provided both in electronic and hard copy format in the Council packets and the Council was also provided the proposed order with staff's evaluation and recommendations on September 8, 2016.

A little background on the facility, the Summit Ridge Wind Farm is a wind energy generation facility with an approved maximum capacity of 194.4 megawatts to be located in Wasco County. The facility has not yet been constructed.

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The existing certificate holder is LotusWorks-Summit Ridge I, LLC, and the existing parenting company is Lotus Group USA, Inc. The transferee is Summit Ridge Wind, LLC. The parent company is Summit Ridge Wind Holdings, LLC. A transfer procedural history slideshow was presented.

Ms. Esterson stated that in the proposed order recommendations, a new condition to ensure the transferee is able to demonstrate compliance with this standard, Condition 6.31 would require the certificate holder to notify the department within 7 days of changes in parent company corporate structure. Also Condition 10.4 was recommended to be amended to provide the Department the qualifications of the specialists identified to implement and manage the Habitat Mitigation Area.

The Retirement and Financial Assurance standard requires that the Council find the transferee has the ability to restore the site of the facility to useful non-hazardous conditions in the event the certificate holder stops construction or ceases operation. The standard also requires the certificate holder to obtain a bond or letter of credit. The certificate holder provided a letter from Heffernen Insurance Brokers that expressed a belief that the transferee could obtain a bond for 9 million that exceeds the current retirement cost estimate of 6.9 million dollars. They also provided a legal opinion letter from Ater Wynn, LLP, affirming the legal authority of the transferee to construct and operate the facility without violating any of their existing bond indenture provisions or similar agreement.

Ms. Esterson stated that as seen in the proposed order, ODOE is recommending the Council find, based on compliance with existing site certificate conditions and recommended new and amended conditions, that the transferee has the ability to satisfy the requirements of both the organizational expertise standard and the retirement and financial assurance standard. While the transfer request does require Council action, ODOE is requesting the decision be held after the presentation tomorrow and include the decision on the transfer request and the request for amendment at that time.

Chair Beyeler questioned the complexity of the shift in ownership as the application was submitted 10 months prior. It was determined the transfer request was included in the larger amendment request which included components that were much more complex. Mr. Cornett responded the evaluation would have been smaller if it was just the transfer request.

**Transfer Hearing Public Comment:** The applicant did not wish to comment. No other comments were provided.

**C. Saddle Butte Wind Park (Action Item)** – Renee France, DOJ. Prior to this agenda item, Renee France stepped down from the dais and Jesse Ratcliffe of DOJ joined the meeting via phone as

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legal counsel for the Council for purposes of this agenda item. Ms. France provided a report on behalf of ODOE staff and explained that a staff report was provided to Council showing the complete procedural history of the Saddle Butte Wind Park matter. At the August 18, 2016 Council meeting, Council was presented two versions of the draft Final Order as requested by the Council. One of the orders included a condition prohibiting wind turbines within the identified military training route under the General Public Health and Safety statute; the other version included the condition under the Council's Public Health and Safety standard for wind energy facilities at OAR 345-24-0010 (1).

At that meeting, the Council deliberated on the draft final orders, but didn't take a final vote. Instead, at staff's recommendation pending payment by the applicant of overdue invoices, the Council took a straw poll. The Council supported the version of the draft final order that included the military training route condition under the Council's standard. The applicant paid the amount owed for the past due invoices on October 14, 2016, although noting there is continuing discussion between the applicant and the department regarding some of the charges included in those invoices. At this point, the department does not have concerns about their ability to comply with the financial assurances standard. Therefore, this matter is before the Council. The Council has been provided the draft final order, consistent with the straw poll during the last meeting. Council Member Senn was not present during Council deliberations in straw polls August; but he has been provided with the audio recording of that meeting and relevant documentation. Councilor Senn confirmed he was provided with the relevant materials.

Jesse Ratcliffe, DOJ, requested based on straw poll if the Council members are still in the same mind to add minor modification to the language to include "and direct the chair to executive and issue the site certificate."

**Action:** A motion was made by Councilor Jenkins and Seconded by Councilor Billings that the Council issue the final order approving the site certificate for the Saddle Butte Wind Park as presented by staff and direct the Chair to execute and issue the site certificate.

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

## Break

**D. Amendment Rulemaking (Action Item)** – Jason Sierman, Rulemaking Coordinator – The Council received a presentation on proposed changes to the Council's site certificate amendment rules at OAR 345, Division 27. Mr. Sierman explained that the Council may direct the Oregon Department of Energy staff to proceed with rulemaking under ORS 469.470 and specific rulemaking authority to establish the type of amendment that must be considered in a contested case proceeding under ORS 469.405. This would authorize staff to file formal public

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notice of the Amendment Processes rulemaking to: amend and repeal existing rules in Division 27 and Division 15; adopt new rules in Division 27 and relocate condition rules under a new Division 25.

Materials are available online showing the EFSC Rulemaking Process. Mr. Sierman presented a refresher on how the rulemaking process works stating that the presentation is going to inform the Council members of staff recommendations of potential changes to the rules. He explained the five step rulemaking process, broken into informal and formal segments. The general rulemaking steps include developing a proposal for the informal process (everything before notice) whereas the formal process (legally required steps) include giving notice, receiving public comment, considering public comment and adopting and filing final rule (or not). Following the Council directive, staff worked on developing concepts that would improve the existing amendment processes. During this phase of concept development, staff received and considered public input on the site certificate amendment processes by holding two public workshops and three Rulemaking Advisory Committee (RAC) meetings. After considering staff's recommendations, the Council is being asked to initiate formal rulemaking for the Version 1 rules with or w/o changes.

Discussion followed regarding legal and procedural issues, as well as a comment regarding the need to strike a balance between efficiency and public involvement.

Rulemaking will continue tomorrow after Summit Ridge.

#### **E. Public Comment (Information Item) –**

Saddle Butte Wind, LLC. submitted a letter which was provided to the Council by Council Secretary Cornett.

Irene Gilbert, representing the Friends of the Grande Ronde Valley, voiced her concerns regarding amendment changes, public comment participation and influence and her concerns regarding federally impacted species.

Shanna Brownstein, NW Natural, expressed her concerns regarding the amendment process.

Elaine Albrich, Stoel Rives, expressed her concerns regarding the Amendment process and rulemaking.

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**Friday, November 4, 2016 at 8:30 a.m.**

**A. Call to Order and Roll Call:** The meeting was called to order at 8:30 a.m. on November 4<sup>th</sup> by Chair Beyeler.

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

Oregon Department of Energy representatives present were Todd Cornett, Katie Clifford, Esther Kooistra, Jason Sierman, Maxwell Woods, Kellen Tardaewether, Sean Mole and Cliff Voliva.

EFSC Counsel Renee France DOJ, was also present.

Council welcomed Marcy Grail to the EFSC Committee.

**B. Summit Ridge Wind Farm Presentation on Amendment 2 (Action Item)** – Katie Clifford, Siting Analyst. The public comment period and deadline for requesting a contested case closed on September 29, 2016. The presentation provided an overview of the project and the current amendment request, the Department's assessment of the amendment request compared to the Council's standards, and public and agency comments on the proposed order including a request for contested case proceeding. Ms. Clifford presented the request for amendment components, noting the requested amendment seeks to transfer the existing Site Certificate from LotusWorks-Summit Ridge 1, LLC to Summit Ridge Wind Holdings, LLC.; extend the construction start and completion deadlines by two years; authorize a lesser setback for select turbines from the right-of-way of any dedicated road within the site boundary; and add a new turbine option. No changes to the site boundary are proposed as part of this amendment request. The details of the request for contested case and the Proposed Order were presented with a reminder that staff is recommending denial of the contested case, and approval of the amended site certificate. Council deliberated on the contested case decision after Ms. Clifford's review of issues. See materials available online for public and agency comments on the Proposed Order.

**Action:** A motion was made by Councilor Jenkins and Seconded by Councilor Roppe that the Council deny the request for contested case on the Summit Ridge Wind Farm Amendment #2 because the issues identified in the request fail to raise a significant issue of fact or law that may affect the Council's determination that the facility, with the changes proposed by the amendment, meets an applicable standard, and that the Council adopt an order denying a contested case.

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

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Motion Carried.

**Action:** A motion was made by Councilor Billings and Seconded by Councilor Jenkins that the Council issue the final order on request for contested case, Amendment #2 and request for transfer of the Site Certificate for the Summit Ridge Wind Farm as presented by staff.

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

Motion Carried.

**(Note: Agenda D. Amendment Rulemaking continuation)**

**D. Amendment Rulemaking (Action Item)** – Jason Sierman, Rulemaking Coordinator, requested the Council after considering staff's recommendations, direct staff to initiate formal rulemaking for the Version 2 rules with or without changes; initiate formal rulemaking for the Version 1 rules with or without changes; not initiate formal rulemaking at this time and return to Council in the future with different recommendations; or not initiate formal rulemaking and cease all rulemaking activity related to this issue. See materials available online that show a staff report, showing process charts for existing and recommended review processes; Two Versions of Recommended Rules for Division 27 that show Division 15 redline changes and new Division 25 redlines showing relocation of rules relating to conditions and a Crosswalk Document that show how existing Division 27 rules relate to recommended Division 27 rules. Materials also show potential rulemaking scheduling, a timeline comparison, key changes and their rationale.

The Council indicated an interest in Version 1 rules but with changes to require the draft proposed order hearing to be in front of the Council and for Council to provide comments to staff after the conclusion of the draft proposed order hearing. The Council also indicated an interest in two public rulemaking hearings associated with this rulemaking project. The purpose of the first hearing will be for Council to listen to public testimony and direct staff to make changes to rule language.

**Action:** A motion was made by Councilor Roppe and Seconded by Councilor Jenkins that the Council authorize staff to initiate permanent formal rulemaking proceedings in Version 1 to adopt new rules relating to the amendment of site certificates in Division 27 and to renumber, repeal, and amend identified rules in Division 27 and Division 15, as presented by staff by providing the necessary notices and conducting the necessary rulemaking proceedings, but with public hearing to be held before the Council and allow Council input after the public hearing.

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

Motion Carried.

**Break**

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**E. Western Electricity Coordinating Council Presentation (Working Lunch Information Item) –**  
Vijay Satyal, Senior Energy Policy Analyst at WECC. The Council received an update on WECC - role and current trends in the Western Interconnection with a special focus on presentation in the Stakeholder 10 year based 2016 Study Program focusing on reliability impacts due to transmission expansion, grid level planning and high levels of renewable energy penetration. This presentation is further detailed in materials available online.

**(Note: Agenda C. Fish and Wildlife Habitat (Sage Grouse) moved to after WECC Presentation.**

**C. Fish and Wildlife Habitat (Sage Grouse) Rulemaking (Action Item) –** Jason Sierman, Rulemaking Coordinator – The Council received a presentation on proposed changes to the Council's Fish and Wildlife Habitat Standard rules at OAR 345, Division 21 and Division 22 to incorporate 2015 ODFW rules related to sage grouse conservation and make other related changes. The main goal of rulemaking is to incorporate Oregon Department of Fish and Wildlife's rules protecting Oregon sage-grouse habitat into EFSC's rules.

**Action:** A motion was made by Councilor Roppe and Seconded by Councilor Billings that the Council authorize staff to initiate permanent rulemaking proceedings to amend the identified Council rules, as presented by staff, by providing the necessary notices and conducting the necessary rulemaking proceedings.

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

**D. Public Comment (Information Item) –**

Brendan McCarthy, PGE. Mr. McCarthy commented the Rulemaking Amendment process was a long process and expressed concern the EFSC meeting was held with little advanced notice regarding rulemaking; he stated the length and extent of the process may be consumed by the legislative process.

David Becker, Law Office of David Becker. Mr. Becker expressed concern regarding the proposed removal of a requirement to identify federal threatened and endangered species from a site certificate application as part of the sage-grouse rulemaking.

**Adjourn**