



Oregon

Kate Brown, Governor



Oregon Energy Facility Siting Council
Solar PV Rulemaking Advisory Committee
Meeting #4 Summary

550 Capitol St. NE
Salem, OR 97301
Phone: 503-378-4040
Toll Free: 1-800-221-8035
FAX: 503-373-7806
www.oregon.gov/energy

Date: Wed. March 6, 2019

Time: 10:30 am – 2:30 pm PST

Place: Oregon Dept. of Energy; 550 Capitol St. NE, Salem, OR.

RAC Members: Amy Berg-Pickett, Cypress Creek Renewables; Ann Beier, Crook County; Barbara Boyer, Soil and Water Conservation Commission; Beryl Weinschenker, Oregon Solar Energy Association*; Carla McLane, Morrow County; Dan Morse, Oregon Natural Desert Association; Darwin Johnson, Lake County*; Irene Gilbert, Friends of the Grande Ronde Valley; Jim Johnson, Oregon Dept. of Agriculture; Joe Fennimore, Marion County; Jon Germond, Oregon Dept. of Fish & Wildlife; Joy Vaughn, Oregon Dept. of Fish & Wildlife; Matt Hutchinson, Avangrid Renewables; Michelle Slater, Obsidian Renewables, Patrick Mills, Confederated Tribes of the Umatilla Indian Reservation*; Paul Titus, Northern Wasco Public Utility District;* Rikki Seguin, Renewable Northwest

EFSC Members: Hanley Jenkins II, Vice Chair; Betty Roppe*

ODOE Staff: Max Woods, Sr. Policy Analyst; Christopher Clark, Rules Coordinator; Esther Kooistra, Admin. Assistant; Sean Mole, Operations Analyst

Public Comment: Damien Hall, Ball Janik LLP

The purpose of the meeting was to discuss what factors may be important to consider when determining if multiple solar projects constitute a “solar photovoltaic power generation facility,” as that term is used in the definition of “energy facility” under ORS 469.300(11).

The department provided a scenario asking whether two projects sited on the same parcel of land were separate facilities or parts of the same facility. RAC members discussed what factors could be considered generally, and how the question could be approached.

- RAC members identified factors such as timing, proximity, uptake, operations, and impacts to land use, wildlife, and agriculture as important, but non-determinative things to look at when making jurisdictional determinations.
- One RAC members stated that looking at the factors embedded in LCDC definition may be appropriate.
- Several RAC members stated that from a business perspective, factors include timing, separate uptake, and separate operations indicate projects are distinct facilities.
- One RAC member expressed that it is difficult to follow different agencies definitions of solar photovoltaic systems.

* Attended by phone

RAC members discussed how ownership could be considered when determining whether projects are parts of the same “energy facility.”

- Several RAC members stated that shared ownership of facilities should not be determinative.
- Several developers expressed concern about two separate owners being required to share a permit and thought that projects that do not share an owner should be considered separate facilities in most cases.
- One member of the public commented that ownership of projects is transitory and private, and would not necessarily be disclosed to a state agency.

RAC members discussed how timing could be considered when determining whether projects are parts of the same “energy facility.”

- RAC members representing local jurisdictions expressed concerns about the state making jurisdictional determinations after a county land use proceeding is final. Others agreed that jurisdictional determinations should be made up-front.
- Several developers expressed concerns about the level of uncertainty that would be created if jurisdiction could change after a permitted and operational project is purchased or sold. They and others expressed a business need for reasonable certainty in the determination after construction on a project has begun.
- If a new facility is proposed near a facility that has been permitted by a county and is in operation, the permitted facility should not be aggregated. If a permitted facility expands through a modification or amendment, jurisdictional questions may be raised. Counties have experienced similar issues with repowering of wind facilities.
- Substantial modification requires reopening of the conditional use process. What is considered to be substantial modification is determined by the conditions of approval.
- One RAC member suggested that applicants that reviewing solar developer’s long-term purchasing contracts may help identify plans for expansion of local jurisdictional facilities.

RAC members discussed how the department could consider proximity and shared infrastructure when determining whether projects are parts of the same “energy facility.”

- Most RAC members agreed that it is important for projects to be located near one another and share infrastructure to reduce overall impacts on the landscape.
- RAC members from county governments stressed that ensuring that facilities can share ancillary facilities, such as transmission lines, substations, access roads, and O&M buildings, is important for the management of other impacts on land use.
- Counties want colocation of transmission lines in well established corridors. Forcing the jurisdictional question, even under the context of clarification, based on a temporal decision, may force decisions that might not be in the best interests of local communities and resources.
- Several RAC members stated that while colocation of facilities and sharing of infrastructure are generally good practices, they make projects look more like a single facility in terms of impacts to wildlife and agriculture.
- One RAC member discussed how proximity connects to wildlife impacts and habitat fragmentation and reduced connectivity. Another added that proximity of projects may be beneficial or detrimental to wildlife based on the context and habitat functions of the location.

RAC members made recommendations about how the Department should approach these issues:

- Most RAC members agreed that no one factor should be determinative.

- Several RAC members suggested that the statutory definition of energy facility is clear, and no additional rulemaking is required.
- A RAC member suggested the department should consider non-rule alternatives such as development of guidance, and consider how those things weigh public involvement.
- One RAC member suggested that rules would not be a prohibition on projects, but would set a standard for review. Others commented that whether or not it is the intent, rules could result in a decrease in proposals.
- Several RAC members suggested that a multi-factorial evaluation of facilities, similar to the “15 questions,” was the best way to approach these issues. One RAC member suggested that rules could help make this evaluation more consistent and transparent.
- Some RAC members suggested that a cumulative impacts review which addresses land use impacts holistically would be preferred.
 - The Oregon Dept. of Agriculture would like all non-farm development to be looked at in a cumulative impact analysis.
 - One RAC member suggested EFSC participation in a prehearing conference for at the time of application for a conditional use permit could identify or resolve issues, or at least provide opportunity for appeal.
- One RAC member suggested the Council consider the NERC Bulk Electric System Definitions, which define how facilities may be aggregated based on acreage, a combination, transmission lines that need to be built, prior to submitting application.
- One RAC member thought that an examination of good practices for projects would be a better discussion to have.
- One RAC member commented that the most important areas of discussion for the responsible siting of solar energy were wildlife, wetlands, and cultural resources. Thought that more work was needed to incorporate analysis of these impacts at the local level.

The department provided an opportunity for members of the public to comment on the rulemaking.

- One commenter stated that guidance about siting could be helpful but that he did not believe there was a need for formal rules or guidelines. Discussed a need recognize policy and legal implications of any decision.

NOTE: The views presented in this meeting summary have been paraphrased and summarized by the department and may not reflect the order items were discussed or the phrasing used by participants. An audio recording of the meeting is available and should be considered to be the official record of this meeting. Please contact EFSC’s Rules Coordinator, Christopher Clark at EFSC.Rulemaking@oregon.gov, or call 503-373-1033, with any questions about this summary.