



ENERGY FACILITY SITING COUNCIL

Barry Beyeler, Chair ■ Hanley Jenkins II, Vice-Chair ■ Betty Roppe ■ Marcy Grail ■ Ann Gravatt ■ Kent Howe

Energy Facility Siting Council November 16, 2018 Meeting Minutes

Boardman City Hall
200 City Center Circle
Boardman, OR

November Minutes were approved at the December 14, 2018 EFSC meeting

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The meeting materials and audio recording presented to Council are available online at:
<https://www.oregon.gov/energy/facilities-safety/facilities/Pages/Council-Meetings.aspx>

FRIDAY, NOVEMBER 16TH, 2018

Call to Order: The meeting was called to order at 8:30 a.m. on November 16th, 2018 by Chair Barry Beyeler.

Roll Call: Council Chair Barry Beyeler, Council Vice-Chair Hanley Jenkins, Council Members Betty Roppe, Marcy Grail, Ann Gravatt, and Kent Howe were present.

Oregon Department of Energy representatives present were Assistant Director/Council Secretary Todd Cornett, Senior Siting Analysts Sarah Esterson, Operations Analyst Sean Mole and Division Assistant Esther Kooistra.

EFSC Counsel Patrick Rowe, Department of Justice (DOJ) was also present.

A. Consent Calendar¹ (Information and Action Items) – Todd Cornett, Assistant Director/Council Secretary.

1) Meeting Minutes

October 25-26, 2018 Meeting Minutes will be available for review and approval at the next Council Meeting.

2) Council Secretary Report

- a. **Agenda Modification:** The Department received a request by the Baker County Planning Director, Holly Kerns, to contract with a consultant to assist the County with their review of the Boardman to Hemingway Application for Site Certificate. If it wishes to consider Baker County's request at this meeting, the Council would have to vote to add this as an agenda item pursuant to OAR 345-011-0025.

Action: A motion was made by Councilor Roppe and seconded by Councilor Gravatt that the Council add consideration of Baker County's requests to contract with a consultant to assist the County in their review and comment of the Boardman to Hemingway Application for Site Certificate to today's agenda as Item F. Based on the deadline of November 26th to submit comments on the Application it is a matter that is so substantial and of such immediate concern that the Council should not defer action on the request until the next regular Council meeting, which is December 14th, 2018.

Vote: Vice-Chair Jenkins, Yes; Chair Beyeler, Yes; Councilor Gravatt, Yes; Councilor Howe; Yes, Councilor Grail, Councilor Roppe, Yes.
Motion Carried.

b. Staffing Updates:

Secretary Cornett said the Rulemaking Coordinator Recruitment was just finalized on Tuesday and hired Christopher Clark. Chris currently works as a Rulemaking Coordinator at the Oregon Department of Consumer and Business Services in the Workers Compensation Division so he is very familiar with the state rulemaking process. He has a Master's Degree in Public Administration from the University of Washington and a Bachelor's Degree in International Studies from Portland State University. He was also an Agro-Forestry Extension Agent in Niger for the Peace Corps. Chris' first day will be Monday, December 3rd.

c. Project Updates:

Solar PV Rulemaking: The second Rulemaking Advisory Committee meeting was held on November 8th in Prineville. Prior to the meeting we toured the Avangrid Gala Solar project just outside of Prineville. The meeting focused on issues/items that could be Solar PV specific standards. There were four issues identified to evaluate and discuss: Disposal/Waste – hazards or toxic materials; Wildlife Habitat; Glare Glint and Heat Island/Microclimate. Only the first two were discussed. The third RAC meeting will be scheduled soon. Patrick Rowe, Department of Justice, is evaluating the question asked by Council at the last meeting addressing whether the Council has the authority to develop new rules that identify objective criteria for treating multiple non-EFSC jurisdictional solar PV facilities as subject to EFSC jurisdiction if they functionally aggregate to the size of an EFSC jurisdictional solar PV facility.

The LCDC Solar PV Rulemaking meetings were discussed with the next meeting to be held December 6, 2018 in Salem.

¹ Audio for Agenda Item A = 00:00:41 – November 16, 2018

Bakeoven Solar Notice of Intent (NOI): On November 1st, 2018, the Department received a NOI from Avangrid Renewables for the Bakeoven Solar PV project in southeastern Wasco County. It is proposed to be located in the area between the Cities of Maupin and Shaniko. The project proposes 303 MW of solar PV panels, a 105 MW battery storage system, substation, O & M facility and approximately 11 miles of a 230 KV transmission line. The site boundary is proposed at around 3,000 acres.

Montague Wind Power Facility Amendment Determination Request (ADR): Approved wind energy facility with up to 262 wind turbines and a maximum generating capacity of 404 megawatts on approximately 33,691 acres. The ADR seeks to add 25.8 acres to the approved (Phase 1) site boundary to allow for the construction of more direct collector line paths than previously approved, and to modify an access road alignment to better accommodate farming practices. The Department received the ADR on October 30, 2018, will be reviewing the ADR and will issue a written determination to the certificate holder as promptly as possible.

d. Future EFSC Meeting Dates:

December 14 –The Dalles, OR. Wheatridge Wind Energy Amendment 2-Battery portion, evaluation by Council; Carty Solar PV Amendment.

Councilor Gravatt requested the location of EFSC meeting be reconsidered, creating a geographic balance. Secretary Cornett said that while not required, meeting locations have typically been associated with the location of facilities on the agenda.

e. Senator Olsen Workgroup:

The next EFSC Oversight meeting has yet to be scheduled.

B. Wheatridge Wind Energy Facility, Request for Amendment 3 of the Site Certificate²: (Action Item) – Sarah Esterson, Senior Siting Analyst.

The Council received a presentation from Ms. Esterson on the Proposed Order on Request for Amendment 3 of the Wheatridge Wind Energy Facility site certificate (proposed order). The Request for Amendment 3 seeks approval by the Energy Facility Siting Council for a third amended site certificate to allow additional flexibility in wind turbine technologies selected during final facility design. The certificate holder requested changes in wind turbine dimension specifications that would increase blade tip height from 476 to 499.7 feet (145 to 152.3 meters); increase blade length from 197 to 204.1 feet (60 to 62.2 meters); increase hub height from 278 to 291.3 feet (85 to 88.6 meters); increase rotor diameter from 393 to 416.7 feet (120 to 152.3 meters); and reduce minimum aboveground blade tip clearance 83 to 70.5 feet (25 meters to 21.5 meters). Following review of the proposed order, Council adopted the proposed order, with modifications and granted an amended site certificate.

Vice-Chair Jenkins made a comment that we've been able to go forward with the Amendment 3 request because it is under the more expeditious Type B review. While it may seem disconnected, the Type A review process was necessary for Amendment 2, the battery storage facility.

Ms. Esterson discussed six standards of note based on the scope of the change. Ms. Esterson noted that only the standards where comments were provided or a change recommended as a result of a comment would be presented, unless Council members had specific questions related to other standards.

² Audio for Agenda Item B = 00:28:28 – November 16, 2018

Ms. Esterson noted the receipt of a comment from Umatilla County on behalf of the Special Advisory Group, the Umatilla Board of County Commissioners, who had requested Land Use Condition 16 be further modified. After further review of the code, it was determined the setback requirement imposed from wind turbines to an urban growth boundary, referenced in the recommended amended condition, was intended to apply to the urban growth boundary of any city within Umatilla County, not just the “City of Umatilla’s” urban growth boundary, as incorrectly referenced in the draft proposed order.

Ms. Esterson discussed the Threatened and Endangered Species section of the Proposed Order. She described comments provided on the draft proposed order by the certificate holder requesting that the pre-construction survey area specified for Lawrence Milvetch be removed. Ms. Esterson described that in the proposed order, the Department recommended the condition be amended to allow flexibility in determining the survey area, based upon pre-construction agency review by ODOE and Oregon Department of Agriculture, but that the specificity of recommended survey area remain based on uncertainties anticipated in the final location of facility components that occur between pre-construction and actual component installation. Vice-Chair Jenkins asked if she had concurred with the Department of Agriculture and stated he wanted to make sure that the Department of Agriculture is comfortable with the decision making role they play in identifying the boundaries. Ms. Esterson stated the Department of Agriculture was consulted in the review of this particular condition and they expressed a low level of concern for impacts outside the area of disturbance. Ms. Esterson stated that from ODOE’s perspective, when working with facilities during pre-construction, there are a lot of changes. Having a survey area that expands a greater distance from the time of pre-construction, is important, as it is a buffer for level of uncertainty and allows changes to occur without necessitating additional survey work.

Ms. Esterson described that, in comments provided on the draft proposed order, the certificate holder requested to remove and amend two previously imposed conditions that applied to wind turbines operating in a noise reduced operation mode. Because the certificate holder maintains authority to build previously approved wind turbines in the layout as evaluated in the original final order, ODOE recommends Council not delete those conditions or amend them as requested, because the original noise analysis presented impacts based on wind turbines operating in a noise reduced operating mode. The certificate holder provided comments on the draft proposed order related to the changes recommended for noise conditions, replacing them with a more general statement of a noise reduction measure. ODOE recommends that no further changes be made to the noise control conditions, because they are specific to the impacts that had been evaluated on the record for the facility proceedings.

Ms. Esterson recommended Council modify the proposed order by incorporating a discussion of operational noise impacts, as presented in the certificate holder’s amendment request, into the Recreation section of the proposed order. The recommended analysis was presented to Council during the November 16, 2018 Council meeting.

Councilor Gravatt asked Ms. Esterson whether there was a concern that the certificate holder would not comply with DEQ’s noise standards, and whether removing the conditions, as requested by the certificate holder, would impact their ability to comply. Ms. Esterson responded that because the previous noise analysis presented impacts with mitigation – noise impacts assuming wind turbines were operating in a noise reduced operational (NRO) mode – that removal of reference to wind turbines operating in NRO mode would be inappropriate.

Action: A motion was made by Vice-Chair Jenkins and seconded by Councilor Roppe that the Council adopt the proposed order, as modified, as the final order and grant amendment 3 of the site certificate for the Wheatridge Wind Energy Facility as presented by staff, with the following modifications:

1. Further amend Recommended Amended Land Use Condition 16 – specifically sub (b) so that it reads: “2 miles from turbine towers to all city urban growth boundaries within Umatilla County;”
2. Delete existing footnote 23 on page 27 of the Proposed Order and replace it with the following: “In the proposed order, recommended amended Land Use Condition 16(b) stated, “2 miles from turbine towers to City of Umatilla urban growth boundary.” After review of the proposed order, Council modified Land Use Condition 16 to be consistent with UCDC 152.616(HHH)(6)(a), which establishes that the setback applies to all cities within Umatilla County, not solely City of Umatilla;”
3. In Section III.L which analyzes the Recreation standard, insert language presented by Sarah Esterson to Council during the November 16, 2018 Council meeting and emailed to Council on the same date. The purpose of this insertion is twofold. 1) It provides a single summary of noise analyses already provided in the proposed order; and 2) it provides noise analysis at the nearest important recreational areas that is not currently in the proposed order.

Vote: Chair Beyeler, Yes; Councilor Gravatt, Yes; Councilor Howe; Yes, Councilor Grail, Councilor Roppe, Yes; Vice-Chair Jenkins, Yes.
Motion Carried.

More information is located on the [Council Meetings website](#) for additional details pertaining to Ms. Esterson’s [presentation](#).

C. Public Comment³

This time is reserved for the public to address the Council regarding any item within the Council’s jurisdiction that is not otherwise closed for comment.

Ms. Irene Gilbert, 2310 Adams Ave, La Grande, OR. Ms. Gilbert commented on the amendment process, and was notified on Golden Hills, nothing was being considered as far as statutes referenced or documents provided after the public comment when someone was asking for a contested case. The comment she made was that the public is already required to be notified late in the process, because the application has already been deemed complete and the draft proposed order has been developed. Ms. Gilbert commented the new process does not work for the public and the expectation for completeness of comments is unreasonable under the new timeframes.

[Break]

D. Confederated Tribes of Umatilla Indian Reservation (CTUIR) (Information Item)⁴ – Wenix Red Elk, Public Outreach and Education Specialist.

The Council thanked Ms. Wenix Red Elk for her informative presentation on tribal resources within CTUIR ceded lands.

E. [WORKING LUNCH] Special Advisory Group Appointment (Action Item)⁵ – Sarah Esterson, Senior Siting Analyst.

The Council received a presentation from Ms. Esterson on the appointment of a Special Advisory Group for the Bakeoven Solar Project, a newly proposed 303 megawatt photovoltaic solar energy generation facility, to be located within Wasco County. Ms. Esterson described that it is a statutory requirement that the Council designate

³ Audio for Agenda Item C = 01:31:28 – November 16, 2018

⁴ Audio for Agenda Item D = 01:39:00 – November 16, 2018

⁵ Audio for Agenda Item E = 01:32:12 – November 16, 2018

as a special advisory group, the governing body of any local government within whose jurisdiction of a proposed facility would be located.

Action: A motion was made by Vice-Chair Jenkins and seconded by Councilor Grail that the Council appoint the Wasco County Board of County Commissioners as the Special Advisory Group to advise the Council in the proceedings related to the review of the Application for Site Certificate for the Bakeoven Solar Project.

Vote: Councilor Gravatt, Yes; Councilor Howe; Yes, Councilor Grail, Councilor Roppe, Yes; Vice-Chair Jenkins, Yes; Chair Beyeler, Yes.
Motion Carried.

More information is located on the [Council Meetings website](#) for additional details pertaining to Ms. Esterson's [presentation](#).

F. [ADDED TO AGENDA] Boardman to Hemingway, Request for Funding related to use of a Consultant to conduct the Review of Complete Application for Site Certificate (Action Item)⁶ – Kellen Tardaewether, Senior Siting Analyst.

Ms. Tardaewether provided a background to Baker County's Request to hire a consultant. Baker County explained that due to current staff time constraints, Baker County is unable to complete the requested review and agency report, therefore requesting to subcontract with a consultant to help Baker County complete the review and provide the requested information. The Council considered and deliberated on the request received from the Baker County Planning Director for funding approval for the use of a consultant to conduct their review of the Application for Site Certificate for the Boardman to Hemingway Transmission Line.

Councilor Roppe questioned how payment is reimbursed. Secretary Cornett stated the statutes grant EFSC and ODOE the authority to be reimbursed for all the costs associated with an application or amendment. It's the applicant or site certificate holder's responsibility to pay all of the costs associated with that review with the caveat that those costs need to be reasonable, just and necessary.

Councilor Gravatt asked what other consultants have we provided to reviewing agencies or counties, asking about the scope of costs. Secretary Cornett responded that the Council authorized use of a consultant for the State Historic Preservation office at the last council meeting and at a prior Council meeting had authorized the use of a consultant for Union County related to the Boardman to Hemingway project, but that he was not aware of any other circumstances.

Councilor Grail stated this is a large, complex and controversial project and requested more clarity around the comment made on land use and the potential impacts to public service since that specifically falls within the County. She'd like to learn from Baker County why they believe that Exhibits L and R should fall under that as well.

Holly Kerns, Baker County Planning Director, said the Exhibits referenced pertain to scenic resources or they pertain to land use or to public services.

Vice-Chair Jenkins identified the requests: 1) the time exception request that the Department has already granted; 2) the hiring of a special specific consultant to review specific exhibits; and 3) the request for reimbursement for the consultant's fee to review specific exhibits. He believes there should be a maximum amount for the cost range and provided his suggestions.

⁶ Audio for Agenda Item J = 02:48:15 – November 16, 2018

Council Members discussed the prior similar request made by Union County which included a not-to-exceed amount of \$10K.

Ms. Kerns said she is in the midst of 5 fairly large projects during this 45 day comment window which has constrained Baker County's ability to provide accurate and complete comments. Specifically documents within the Exhibits are fairly large especially with scenic resources.

Vice-Chair Jenkins stated he struggles with including Exhibits L and R, because those are resources that should be included in the County's Comprehensive Land Use Plan and they should be included as part of Exhibit K, so he struggles to understand why they are being segmented out and added to this request. Ms. Tardaewether responded the review request sent by ODOE to agencies are outlined in OAR 345-015-0200(4): (b) Issues significant to the agency and (e) Any other information that the reviewing agency believes will be useful to the Council in reviewing the site certificate application. Ms. Kerns mentioned the cross-referencing of standards and how they are spread throughout the exhibits. Secretary Cornett concurred with Ms. Kerns and agreed with her characterization.

Mark Stokes, Idaho Power Company, commented they don't intend to formally object to Baker County's request, but expressed disappointment in the additional delay and added cost.

Action: A motion was made by Councilor Grail and seconded by Councilor Roppe that the Council approve the Department recommendations set forth in the staff report to:

1. Approve Baker County's request to contract with David Petersen of Tonkon Torp, LLP, to assist the county complete its review of the Boardman to Hemingway Transmission Line Application for Site Certificate exhibits K, L, R & U; and
2. Approve funding for that work, not to exceed \$10,500. This approval is subject to the consultant's submitting proof of professional liability insurance consistent with the ODOE and Baker County Intergovernmental Agreement Exhibit C, Section C2. The Council finds the funding of this work is reasonable just and necessary because of the County's stated staffing and time constraints.

Vote: Councilor Howe, Yes; Councilor Grail, Yes; Councilor Roppe, Yes; Vice-Chair Jenkins, Yes; Chair Beyeler, Yes; Councilor Gravatt, Yes.

Motion Carried.

Meeting Adjourned at 1:00 p.m.