



ENERGY FACILITY SITING COUNCIL

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

Energy Facility Siting Council February 22, 2019 Meeting Minutes

February minutes were
approved at the May 16-17,
2019 EFSC meeting.

**Columbia Gorge Discovery Center & Museum
5000 Discovery Drive
The Dalles, OR**

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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>

<https://soundcloud.com/odoe/audio-recording-of-the-efsc-meeting-held-february-22-2019-in-the-dalles-oregon>

<https://soundcloud.com/odoe/2019-02-22-efsc-2-of-2>

FRIDAY, FEBRUARY 22, 2019

Call to Order: The meeting was called to order at 8:30 a.m. on February 22, 2019 by Chair Barry Beyeler.

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

Oregon Department of Energy representatives present were Assistant Director/Council Secretary Todd Cornett, Senior Policy Advisor Maxwell Woods, Siting Analyst Luke May, Rulemaking Coordinator Christopher Clark, Operations Analyst Sean Mole and Division Assistant Esther Kooistra. EFSC Counsel Patrick Rowe, Department of Justice (DOJ) was also present.

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

1) Meeting Minutes

Action: A motion was made by Vice-Chair Jenkins and seconded by Councilor Roppe that the Council approve the December 14, 2018 meeting minutes with correction of scrivener's errors.

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

Motion Carried.

2) Council Secretary Report

a. Agenda Modification:

Agenda Items F (The Climate Trust) & G (Type A/B Amendment Determination Notice) after Agenda C: Summit Ridge Request for Amendment 4; Agenda I (Appointment of Rules Coordinator before Agenda Item H (Solar PV Rulemaking Calendar).

b. Staffing Updates:

Mary Winters, newest Council Member, was appointed on December 13th. Mary is the Bend City Attorney.

c. Email Addresses:

Council members will be issued new state email addresses shortly.

d. Project Updates:

No project updates.

e. Legislative Update (We are in legislative session):

ODOE is actively tracking 169 bills. A handout was provided summarizing bills that in some way could impact a Council standard or how applications and amendments are reviewed.

f. Future EFSC Meeting Dates:

March 22, 2019 – in Salem, OR. The agenda will include a specific agenda item devoted to a legislative update with ODOE Director Benner and Associate Director for Government Affairs Robin Freeman; The Climate Trust 5 Year Report and a tour of the PGE Battery Storage facility in South Salem.

April 18-19, 2019 – likely Boardman/Pendleton, depending on the located needs for one or more Draft Proposed Order Hearings. [NOTE, April meeting has been cancelled]

May 23-24, 2019 – Potential date change to May 16-17, 2019 to avoid Memorial Holiday plans. [NOTE, May meeting is scheduled for May 16-17, 2019]

B. Stateline Wind Project, Request for Amendment 5 – Certificate Holder Referral to Council of Department’s Type A Amendment Review Process Determination¹: (Action Item) – Patrick Rowe, Department of Justice.

The Council considered the certificate holder’s referral of the Department’s January 9, 2019 determination that the “Type A” amendment review process is appropriate for Request for Amendment 5. The Council allowed the certificate holder and members of the public an opportunity to provide oral comment limited to the certificate holder’s “Type B” review amendment determination request and the Department’s “Type A” review determination. The Council did not accept general public comment on the facility or the amendment request during its deliberation.

Mr. Rowe provided a brief overview of the amendment process and the differences between Type A and Type B reviews. The request for Amendment 5 seeks Council approval to re-power 43 existing wind turbines (i.e. replacement of existing nacelles and turbine blades that would increase total turbine height from 416 to 440 feet); temporarily disturb previously used laydown areas and access roads; and new and amended site certificate conditions.

Sarah Stauffer Curtiss, on behalf of the certificate holder, provided a presentation for Request for Amendment 5 under the Type B review process. Ms. Curtiss discussed their stance that the proposed modifications are not complex; the technology is not new or novel and that there is insufficient public and agency interest to warrant a Type A review.

Chair Beyeler confirmed that even with the change of the nacelle, it still remains at 2.3MG; however the rotor sweep increases. Jesse Marshall, Project Developer for NextEra, confirmed the gearbox inside the nacelle would swap out and putting on the blades would lead to a 24’ height increase.

Councilor Gravatt asked if Stateline 1 or 2 had been retrofitted; Mr. Marshall said no. He added this retrofitting is to sell to a long term customer, rather than into the market.

Councilor Howe asked about the conditions of the foundation of the towers. Ms. Stauffer Curtiss said the proposed conditions that were worked out with DOGAMI and the certificate holder would allow for the continued checks for the stability of the foundation. The conditions allow for a check with the anchor bolts and the tensioning and the foundation grout remain sound.

Vice-Chair Jenkins asked Mr. Marshall about the efficiency increase that is occurring. Mr. Marshall responded it would be more frequently producing, an improvement in the net capacity factor increase in the output.

Max Woods provided the Department’s evaluation of factors discussing the complexity of proposed change, citing the wind turbine retrofit is complex. It is new for the facility and for Council and in the technical review of turbine foundations and structures by DOGAMI; anticipated level of public interest, anticipated level of reviewing agency interest in proposed change; likelihood of significant adverse impact; and in the type and amount of mitigation, if any.

Councilor Roppe questioned if the complexity involved ODOE not having the staff time to do their work. Mr. Woods responded there are factors that are involved. The key difference in Type A and B include time. A key point why Type A is important, DOGAMI had a good question (how do you know the structures in the foundation that exist would hold the new blades), and that took time to review. Councilor Roppe asked why we are not going with the Class B; that the rules were applied for a reason and if it’s because ODOE doesn’t have enough time, then we need to say that.

Mr. Woods discussed the coordination with reviewing agencies involving outreach and level of interest from the reviewing agencies and that the process took time and effort.

Councilor Winters commented the undefined meanings for “moderate” and for “low.” Mr. Woods responded it is difficult to speculate future interest. The level of public interest isn’t defined in rule and so the Department is trying to come up with a reasonable approach to get to that answer.

Councilor Roppe mentioned Stoel Rives addressing responses they had that covered their issues raised and asked how the department responded to that? She questions if they responded already, why will it increase in the future?

¹ Audio for Agenda Item B = 00:30:07 – February 22, 2019

Mr. Woods said ten years have gone by and he thinks there is higher level of public interest in wind projects, broadly speaking, particularly in Umatilla County where Stateline is located. He said community members were not surveyed for a general interest and we probably won't know until we release a public notice and receive public comments. Mr. Woods responded the department believes there is a moderate level of interest in the proposed changes.

Mr. Woods discussed the type of mitigation and how the department took a broader approach to what mitigation could mean, in this case, to require regular inspections of the foundations and structures themselves.

Councilor Winters asked if any mitigations where the public might want to hear about in a hearing or contested case or any mitigation at all. Mr. Woods responded any mitigation at all.

Vice-Chair Jenkins commented that on these factors, it's not whether two or more have been addressed; it's simply just one, then the logic is that it goes through the Type A process. Mr. Wood says there were four factors identified leaning towards Type A, but it could be 1 factor.

Chair Beyeler asked if there had been thought beyond the geological DOGAMI issues, looked at any stresses on the tower? Mr. Woods responded one of the outcomes was a recommendation for regular inspections as a way to maintain a regular safety schedule.

Councilor Gravatt stated, the Type B proceeding still allows for the opportunity for the public to comment with written comments.

Public Comment:²

Irene Gilbert, Friends of the Grande Ronde Valley/Individual. Ms. Gilbert commented the issue with public comment opportunity for Type B is that the Department doesn't do anything with the comments and that the only opportunity for the public is to spend thousands of dollars raising the issue to the Supreme Court. She believes that is the consensus of the public.

Councilor Roppe clarified that while Ms. Gilbert does not believe when she makes a written comment, that the Council reads it and takes it into consideration, they do in fact review and take into consideration all comments.

Ms. Gilbert mentioned that the original application for Stateline was in 2001, almost 20 years ago. She mentioned there has been a lot of changes in statutes and rules and questions how to mitigate areas that have already been disturbed and restored, and disturbed again, as a different level of impact. Ms. Gilbert commented on the changes in DOGAMI rules and of issues that have been changed that she believes haven't been evaluated or have been overlooked in previous amendments. She discussed her concern regarding the monitoring of wildlife impacts; impacts of moving and replacing huge pieces of equipment. Ms. Gilbert stated there is a lot of public interest as blade and nacelle replacement has never been done in Oregon and that Stateline is in a location where there is a lot of public interest.

Councilor Roppe stated the Council does read and take into consideration all written comments.

Certificate Holder Response Opportunity:³

Ms. Stauffer-Curtiss, in response to Vice-Chair Jenkins, referred to the rule language in considering other factors. She emphasized that the Type B process does not eliminate the opportunity for public comment, it only eliminates the public hearing. The proposed revisions in the site certificate conditions address Councilor Howe's concerns regarding wind turbine foundations. In response to the anticipated level of interest of reviewing agencies and public comments, Ms. Stauffer-Curtiss pointed out that reviewing agencies are required to review amendment requests and provide a response. It is therefore important for the Council to consider what level of reviewing agency interest should be subject to Type A review.

Mike Pappalardo, Environmental Manager for NextEra Energy, in response to Vice-Chair Jenkins' question, stated that NextEra has repowered close to 1,600MW in various states throughout the country. He said the foundation for their Siemens

² Audio for Agenda Item B Public Comments = 01:15:00 – February 22, 2019

³ Audio for Agenda Item B Certificate Holder Response Opportunity = 01:15:00 – February 22, 2019

2.3MW machines have been tested and can bear the weight and tension of slightly heavier gear boxes and blades. He said the repowerings in other locations are of similar vintage and they are finding that there is an increase in efficiency that makes it worth the effort.

Council Deliberation: ⁴

Councilor Grail commented it is important to recognize technology changes and that we need to navigate undefined criteria. Her personal hope is for the public to continue to show up and present information to the Council. Public comments are taken seriously; it does not diminish the ability to assess what has been submitted before the Council.

Chair Beyeler said having been in the utility industry for the last 40 years, he tends to look at this more as operation and maintenance, but trying to get to how to make that definition.

Vice-Chair Jenkins mentioned Mr. Rowe's review of the Type A and B process. He struggles with trying to elevate this to a Type A as the department has requested as this is a retrofit of a system that is not increasing the megawatts, but increasing the overall capacity.

Councilor Grail stated she does not take lightly disagreeing with staff, but in this case is comfortable with a Type B review vs Type A. She said she is comfortable with rejecting staff's recommendation. In regard to public comment and involvement, it is taken seriously. The Governor appointed seven Council members to represent the public, and their comments are taken seriously.

Councilor Winters commented that she appreciated how forthright the staff were. The criteria was intended for easier processes for projects that weren't substantive issues. Makes sense to have the Type B.

Councilor Roppe expressed difficulty in adopting staff's recommendation as she believes many comments were addressed.

Councilor Howe stated after the discussion and factors hearing about the DOGAMI conditions on the structural change, he is ok with Type B as well.

Vice-Chair Jenkins stated repowering is new to Oregon, but not new for the company. He is persuaded that the risk associated with an increase size of the nacelle or turbine has been adequately addressed in other circumstances.

Action: A motion was made by Councilor Grail and seconded by Vice-Chair Jenkins that the Council reject the Department's Type A Review Determination for Request for Amendment 5 of the Stateline Wind Project site certificate, and direct staff to review it under the Type B Review process based on the rationale set forth by the certificate holder. While this may be a new activity for the state of Oregon, it is not new to the industry and a substantial number of wind farms have been repowered throughout the country.

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

Motion Carried.

More information is located on the [Council Meetings website](#) for additional details.

[Break]

C. [10:00 a.m.] Summit Ridge Wind Farm, Public Hearing on the Draft Proposed Order on Request for Amendment 4 of the Site Certificate (Hearing) – Luke May, Siting Analyst.⁵

The hearing began after Council received a brief overview from staff. The purpose of the hearing is to provide comments to Council members on Request for Amendment 4 and the Draft Proposed Order on Request for Amendment 4 of the Summit Ridge Wind Facility site certificate. Request for Amendment 4 seeks approval by the Energy Facility Siting Council to extend the construction commencement and completion deadlines by 2 years to August 19, 2020 and August 19, 2023 respectively.

⁴ Audio for Agenda Item B Council Deliberation = 01:38:00 – February 22, 2019

⁵ Audio for Agenda Item C = 01:52:42 – February 22, 2019

The facility is not yet built, and would be located in Wasco County. The comment period on the Draft Proposed Order and amendment request closes at the end of the hearing.

Chair Beyeler began the hearing at 10:44 a.m.

Max Woods said the Department has thus far received just under one thousand written comments and most of those are identical in content. Council has received a copy of the identical comments, in addition, all comments have been posted on ODOE's website. Mr. Rowe re-stated that many comments are identical in nature and all comments have been posted to the website for Council's consideration.

Kevin Wetzel, Project Developer, Pattern Energy, provided a background of Pattern Renewables over the phone.

Public comment⁶:

John Nelson, The Dalles, OR. Mr. Nelson commented that his is a member of the school district for N. Wasco Schools, City of The Dalles Planning Commission, the Forest Collaborative and the Dalles Watershed Council, but here to represent himself. His main contention is to not extend the deadline because he feels this is a wild and scenic area, and the view from the tops of the canyon would be an issue. Spacing is an issue for raptors and located in an area that is wild and free. He stated people come to experience the atmosphere and this will dramatically affect this negatively.

Sheila Dooley, Mosier, OR. Ms. Dooley urged the Council to deny the request due to lack of information to make an informed decision. The application was originally submitted about ten years ago and studies are outdated. The project is partly sited along the Deschutes River where there are bald and golden eagles. New eagle surveys need to be done. Ms. Dooley stated this would harm views and would forever negatively impact recreational experiences. She urged the Council to deny due to the lack of information and the negative impacts.

Jill Barker, Mosier, OR. Ms. Barker asked the Council to deny the fourth extension of this project. She does not believe Pattern Energy has provided a good reason to extend the construction deadlines and stated it was not built because it is poorly sited and they have not been able to find a market or buyer for the power that would be produced. There is no demand for the power; it does not have enough power from the backup grid. The project threatens bald and golden eagles, raptors, songbirds, bats and game birds. Ms. Barker believes Pattern Energy has not provided updated avian studies. Since there's no demand for power, it's not an economically viable project.

Peter Cornelison, Hood River, OR. Mr. Cornelison stated Council rules will consider all comments received on record of the hearing. As of February 20, only 3.14% had been shared with Council. The Department has not provided Council with comments. The staff report fails to provide any compelling reasons why the statements have been withheld from Council. Mr. Cornelison stated please don't discount us an asterisk.

John Wood, Hood River, OR. Mr. Wood believes the reason this is a bad thing is the same for a lot of people. He explained when assessing the opposition by counting original content, you're only killing one eagle because the comments are the same or you're putting up one turbine because the comments are the same. He believes it is necessary to separate substantive from identical comments. Mr. Wood said raptor studies need to be updated and for scenic reasons he urged the extension to not be granted.

John Schwartz, Board Director of Deschutes River Alliance, representing himself. Mr. Schwartz stated the need to protect natural resources and commented on the value of resources are economic and aesthetic. He stated the population is growing and the demand for outdoor recreation and experience is growing immensely. He urged the deadline not be extended and requested to use the time and opportunity to look for alternatives and options for siting that would create a win-win.

Nathan Baker, Senior Staff Attorney, Friends of the Columbia Gorge. Mr. Baker submitted a letter on behalf of six conservation organizations, as well as a letter from Dr. Smallwood, an ecologist. Paper copies were given to the council members, omitted CV and exhibits from Dr. Smallwood's letter due to volume, but were submitted via email. Mr. Baker stated this project was extremely controversial when first proposed in 2009 and encouraged council members to review the 2011 final order. On pages 6, 7, 8, the site certificate lists people and entities that participated. The major issues include the

⁶ Audio for Agenda Item C Public Comments = 02:21:25 – February 22, 2019

scenic and wildlife impacts of the facility. Mr. Baker provided a letter from USFW that raised significant concerns about the impact to bald and golden eagles. Encourages Council to review that letter. Mr. Baker discussed the wildlife surveys and a recap that the surveys are decade old or were never done, yet Pattern is asking for extensions to operate in 2023, 14 years after the baseline surveys. He believes it's time to update the surveys. Mr. Baker asked the Council to deny the extension and if Pattern is serious, they will comply with the applicable standards.

Certificate Holder to respond:

Linnea Fossum, TetraTech, on behalf of the Certificate Holder, Pattern Energy. Ms. Fossum stated her purpose is to review facts for Council consideration. This is a request to extend construction deadlines, allowed by rules. The economics is not a part of the standards. The prior amendments that were implemented and adopted include modifications to the facility as well as construction. The third extension was simply a transfer of the site certificate. There are several themes in the comments received and she wanted to address visual impacts. Ms. Fossum said those impacts are not different from the Council's prior review and approval. The Council concluded the factors that were present in the scenic view would likely result in minimal impacts, if any, to the Columbia Gorge. Similarly to the Deschutes River, Council previously found that the facility is not likely to result in adverse impacts. There have been no changes to the facility proposal itself. In specific regard to biological surveys, the site certificate has numerous requirements that assure the facility as constructed will not have adverse impacts once the final design has been adopted at the time of construction, specifically 10.7, 10.13 and 10.14 require additional field surveys. In addition, habitation and mitigation plan must be updated and approved prior to construction. Ms. Fossum stated they feel there is ample protections in place.

Councilor Gravatt asked Mr. Nathan Baker if he was aware of the conditions (10.7, 10.13, 10.14) that Ms. Fossum highlighted.

Mr. Baker responded that the issue is regarding demonstrating current compliance; a lot of the surveys are being deferred to an unspecified point in the future. He also believes the amended draft habitat mitigation plan, dated January 2019, is woefully inadequate. He stated there were no field surveys performed and there are no micro-siting provisions in the plan, citing ODFW's letter commenting on the habitat mitigation plan regarding the passage of time.

Councilor Gravatt commented she does not agree with his characterization of the cart before the horse and commented this is how the process works and the applicant complies with the conditions as the project moves forward.

Mr. Woods stated the applicant has the option to extend the comment period if they want time to address the comments. Vice-Chair Jenkins stated we should offer the applicant the opportunity to submit rebuttal until March 11, if they so choose, in writing only, submitted to Council, before our next meeting on March 22. If they choose not to do that, we can close the record now. Pattern Energy declined to request to extend the comment period.

The public comment period closed at 11:51 a.m.

[Break]

F. [MODIFIED AGENDA] The Climate Trust (Information Item)⁷ – Todd Cornett, Council Secretary.

Mr. Cornett provided an update on The Climate Trust's obligation of offset funds and an update on the 5 Year Report preparation. As of December 5, 2017, The Climate Trust entered into contracts obligating at least 60 percent of the offset funds within two years after the commencement of construction of the Mist facility owned by NW Natural Gas Company. As such, The Climate Trust has complied with the specified requirements. The Climate Trust's 5 Year Report will be presented to the Council at the March meeting.

More information is located on the [Council Meetings website](#) for additional details.

⁷ Audio for Agenda Item F = 03:14:09 – February 22, 2019

G. MODIFIED AGENDA Type A/B Amendment Determination Notice (Information Item)⁸ – Todd Cornett, Council Secretary.

Mr. Cornett provided a summary of the November 16, 2018 Council meeting where Ms. Irene Gilbert requested she be provided a specific notice by the Department of all final determinations related to amendment determination requests. Her stated purpose was that a specific notice was required in order to be able to challenge a determination in Circuit Court. Following Ms. Gilbert's request, Council directed staff and DOJ to evaluate whether the Department is required to provide public notice when it makes a determination on a Type A vs Type B amendment review, beyond its current practice. Mr. Cornett discussed the existing notification requirements under both Type A and Type B categories and that while the department may provide additional amendment determination notifications beyond posting the determination on the project website and providing an update to Council during the consent calendar, they are not required to do so. Additionally, it was noted that the Department staff issues a monthly overview of all Siting Division activities that is sent out through GovDelivery and anyone is able to sign up to receive the email. This report includes a section on amendment determination requests.

After discussion, the Council directed staff to establish a specific brief email notice on all final determinations of amendment determination requests through GovDelivery with an appropriate disclaimer. Anyone interested in receiving these notices would have to register to receive these notices through GovDelivery.

More information is located on the [Council Meetings website](#) for additional details.

[Break]

D. Summit Ridge Wind Farm, Request for Amendment 4 of the Site Certificate (Information Item)⁹ – Luke May, Siting Analyst.

The Council received a review of the Draft Proposed Order on Request for Amendment 4 of the Summit Ridge Wind Farm site certificate. Request for Amendment 4, processed under Type A Review, seeks approval by the Energy Facility Siting Council of a fourth amended site certificate to extend the construction commencement and completion deadlines by 2 years. Luke May, Siting Analyst, provided a procedural history of the project. Based on changes in fact and law, the Department incorporated additional reasoning and analysis, and in some instances, recommends amending conditions associated with the following standards: General Standard of Review; Organizational Expertise; Structural Standards; Land Use; Retirement and Financial Assurance; Fish and Wildlife Habitat; Public Health and Safety Standards for Wind Energy Facilities; Siting Standards for Transmission Lines; and Noise Control Regulation.

Council Roppe questioned how many timelines can be authorized.

Mr. Woods described the rulemaking that occurred in 2017, where the old rules allowed no limit to the extensions; but every extension could only be two years. With the 2017 Rulemaking, the Council came up with a different plan for projects approved after the effective date of the new rules. The new plan allows only 2 requests to extend the time request after the initial approval with each extension being three years. However, Mr. Woods explained that the new amendment rules brought forward the two year extensions time frames with no limit to the number of extensions for projects approved prior to the effective date of the new amendment rules. Summit Ridge can therefore only be approved for a two year time extension but the Council can grant as many times as it sees fit.

Mr. May discussed Council's Scope of Review for an amendment to extend construction deadlines. Pursuant to OAR 345-027-0071, Council shall review the draft proposed order; evaluate compliance with applicable standards, laws that could be impacted by the change; consider all comments received; and provide comments to staff for consideration in the Proposed Order.

Councilor Gravatt asked if there were other wind projects with time extensions resulting in more robust conditions. Secretary Cornett responded thus far they have only been because of changes in statute or rule.

⁸ Audio for Agenda Item G = 03:29:25 – February 22, 2019

⁹ Audio for Agenda Item D, Part 2 of 2 = 00:00:01 – February 22, 2019

Secretary Cornett reiterated we would continue this agenda item to the next council meeting to further review materials. Having said that, the Department will begin working on the Draft Proposed Order and will be making evaluations, but not finalizing until they receive direction from Council.¹⁰

Councilor Grail made a comment about the number of comments that have come in and asked how the number of comments has been managed in the past and questioned moving forward how to address public comments.

Secretary Cornett stated that under the prior amendment rules there was no public hearing. On applications the public hearings on Draft Proposed Orders used to be conducted in front of Hearing Officer outside of a council meeting. Under the new amendment rules, DPO hearings on Type A amendments must be held in front of Council.

Councilor Roppe made a comment related to the number of formatted comments that include the same content. Ms. Roppe wanted the public to know that the Council does listen and take them into consideration.

Secretary Cornett stated the unique comments and the individuals tied to those comments were provided to Council, however, all comments were reviewed.

Councilor Winters commented that in her experience having represented private citizen groups and the public, she has tried regularly to tell the public to get their comments or big packages submitted earlier. It's an unrealistic expectation for staff and volunteers to read and be well prepared when comments are submitted the night before. Please try to get things submitted in advance.

Councilor Gravatt stated it's abundantly clear there is an extraordinary level of public interest in this project and it is incumbent on us to review these comments and come back in March and hear what staff has to say.

Chair Beyeler stated we don't think of the public as an asterisk. The first thing we look at is the public comments.

More information is located on the [Council Meetings website](#) for additional details.

E. Public Comment¹¹

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.

Irene Gilbert, Friends of the Grande Ronde Valley and herself. Ms. Gilbert commented about the rules and interpretations and the definition of what is a significant impact. Ms. Gilbert stated it hurts credibility when the definition is way different than 99% of the population since there is no clear criteria, it causes a lot of angst for a lot of people. Ms. Gilbert commented the A/B amendment angers the public as the use of a Type B evaluation is going to be causing a lot of anger with a lot of people. Ms. Gilbert encouraged Council to think what a reasonable person thinks when these things get built while making decisions. Ms. Gilbert suggested when public meetings are held, that decisions not be made the same or following day.

Sheila Dooley, Mosier, OR. Ms. Dooley asked if the surveys were independent unbiased surveys. Secretary Cornett stated it is the site certificate applicant's responsibility to hire qualified professionals to conduct surveys and then they are reviewed by ODOE and ODFW.

Max Greene, Staff Counsel at Renewable NW, regarding the Solar PV RAC, provided written comments and wanted to highlight attention to the direction Council provided to the RAC originally in June 2018 and staff's administration of the RAC process when it comes to standards. She is seeking clarity regarding the purpose and scope of the RAC and of the Council's underlying rulemaking project. Mr. Greene questioned the RAC's discussion of whether or not specific standards should be developed for the siting of solar PV facilities include consideration of existing standards.

More information is located on the [Council Meetings website](#) for additional details.

¹⁰ Audio for Agenda Item D, Part 2 of 2 = 01:28:05 – February 22, 2019

¹¹ Audio for Agenda Item E, Part 2 of 2 = 01:39:22 – February 22, 2019

I. [AGENDA MODIFICATION] Appointment of Rules Coordinator (Action Item)¹² – Christopher Clark.

The Council appointed Christopher Clark as Council's Rules Coordinator in accordance with ORS 183.330(2).

Action: A motion was made by Vice-Chair Jenkins and seconded by Councilor Grail that the Council appoint Christopher Clark as Rules Coordinator for the Energy Facility Siting Council as provided under ORS 183.330(2).

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

Motion Carried.

More information is located on the [Council Meetings website](#) for additional details.

H. [AGENDA MODIFICATION] Solar PV Rulemaking Update (Information Item)¹³ – Christopher Clark, Rules Coordinator.

Mr. Clark provided an update of the EFSC Solar PV Rulemaking Project and the LCDC Solar PV Rulemaking Project.

Mr. Clark updated Council on the status of the first issue in the initial scope of the EFSC rulemaking project, which is to evaluate whether multiple non-EFSC jurisdictional solar PV facilities could aggregate in a way that the aggregate is functionally the size of an EFSC jurisdictional solar PV facility. Mr. Clark explained that in the Fall of 2018 several RAC members questioned the Council's authority to expand its statutory jurisdiction by rule as suggested, and requested Council to obtain legal advice. Mr. Clark stated that in consultation with legal counsel, staff believes that Council could not expand its statutory jurisdiction by rule, but it can explain how it interprets and applies its jurisdiction for solar PV facilities. Mr. Clark added that this refinement of the scope is reflected in the summary of the Solar PV Rulemaking project for Agenda Item J.

Mr. Clark discussed feedback on whether specific standards should be developed for solar PV facilities. Mr. Clark said the RAC had discussed several issues, but generally speaking, RAC members did not identify any issues specific to solar PV facilities which they felt weren't addressed by the general standards. Mr. Clark added that there were areas where RAC members thought further conversation was needed, in particular the Wildlife standard. Several stakeholders thought that while the wildlife standard is adequate to address the impacts of a single facility, they felt the current standard may not adequately address the cumulative landscape level impacts of solar development on migration patterns and habitat connectivity.

Mr. Clark also addressed the request from Renewable Northwest, the Association of Counties, and Oregon Solar Energy Industries Association to clarify whether the scope should address what additional standards could be developed for solar PV facilities, but what standards these facilities could have an exception from. Mr. Clark commented that while staff believes this is a valid line of inquiry, staff thinks it is outside the scope established by Council and suggested Council consider it when discussing Agenda Item J.

Mr. Clark stated that there was an additional RAC meeting scheduled for March 6, 2019, and that the agenda would be published with input from this meeting. Mr. Clark asked Council for direction on formation of a wildlife subcommittee and explained staffs proposal for how it would operate.

Councilor Gravatt made a comment on the wildlife subcommittee; looking at cumulative impacts feels like something the Legislature should direct. If it's information gathering for staff, she does not have a problem. But a rule considering wildlife impacts is a stretch.

Mr. Clark responded that he felt that as RAC members, it may be reasonable for stakeholders to expect their advice to be considered for inclusion in a rule.

¹² Audio for Agenda Item I, Part 2 of 2 = 01:51:49 – February 22, 2019

¹³ Audio for Agenda Item H, Part 2 of 2 = 01:54:40 – February 22, 2019

Vice-Chair Jenkins voiced his concern that this issue has been a concern for wind. Cumulative impacts to wildlife habitat is a general issue for energy development and requires a very extensive effort. He state he was reluctant to evaluate this just for solar. Suggested a discussion about where the Council thinks the assessment should go on cumulative impacts to wildlife from energy development generally.

Councilor Roppe commented one size does not fit all. Does not believe rules fit one size; there is diversity in the land. Requested clarification comment from Mr. Greene on significant tension in the RAC group.

Mr. Clark responded he believes what Mr. Greene is referring to is that Renewable NW has made a proposal at several points in time that staff should be looking at additional and specific standards, but also looking at the current general standards that may not apply to solar facilities. Staff has responded that is outside of the scope. Mr. Clark said his understanding is they believe that is within the scope or that Council gave broader direction.

Vice-Chair Jenkins stated we are obligated by state law to process applications for solar farms on larger parcels and rules need to be written for those statutes. The question is what is a larger solar facility.

Councilor Roppe discussed Eastern Oregon Counties and their concerns.

Vice-Chair Jenkins said the purpose of the RAC was to have a conversation as to what is a single energy facility and elements/factors have not been identified and he believes the purpose is being diverted from having that conversation.

Chair Beyeler commented that the accumulation aspect needs to be looked at and what was really being asked for was to look at the old rules and have the old DCLC rules go away.

Patrick Rowe, DOJ, commented the way he understands the comment from Mr. Greene was that existing standards can already address these concerns. His impression was that they were not requesting new standards.

Chris Clark added that he thinks they would also like us to look at existing general standards and say which ones are not applicable to solar facilities.

Vice-Chair Jenkins discussed the LCDC rules and ODFW standards for wildlife habitat; and how geographic concerns are already addressed. Mr. Jenkins stated because solar is new, we are trying to get ahead of solar, instead of the catch up game with wind.

Councilor Winters commented that the RAC needs direction from Council, and that unless there was a problem we need to fix other than the definition of solar facility, it does not make sense to expand the scope.

Councilor Gravatt believes cumulative impacts is an issue, but believes it is not EFSC's issue, but that the Oregon Legislature needs to determine if that's an issue. She does not believe EFSC has that jurisdiction or authority to determine that. Ms. Gravatt stated if this is a threshold question; have we determined as a Council that we have insufficient rules for solar?

Secretary Cornett provided a background to the inception of this rulemaking. During the establishment of the annual rulemaking schedule in December 2017, there was discussion about projects being arbitrarily split just below the threshold. Knowing that was a concern with wind and to get ahead of that conversation in solar, the department raised that question; is this something Council would be interested in looking at, to determine the definition of a single solar facility. It was Council that raised the third question to look at potential additional standards for solar. We have not identified anything that is lacking. Mr. Cornett mentioned at this point, we want to have clarity and reasonable scope to work on, but we're working with Council's direction from December 2017.

Council members discussed the issue of project splitting and how Oregon land use law does not have the same body of case law on the issue as other states such as Washington.

Councilor Howe commented would it help the Solar RAC to identify what a multiple project is versus a single? Mr. Howe commented the question to impacts to wildlife and wildlife habitat are big questions that may get off track when trying to answer the first question.

Secretary Cornett said the three questions are 1) is there validity in having a subcommittee related to cumulative effect and that we would have to be open to including that in the rule language; 2) the scope of this rulemaking with regards to what the Department took from Council was to look into any new additional standards (should we look at the elimination of standards associated with solar PV rulemaking?); and 3) The Council's authority to do this in regard to the first question which will be delegated to Patrick Rowe during Executive Session.

Vice-Chair Jenkins stated his concern in losing the focus of this RAC. Mr. Jenkins said we need to stay focused on whether or not we want to define a single energy facility as it relates to solar PV sites. He believes there is enough work to do with just that one question and if we add additional requirements to the RAC, we will lose the focus of that one issue.

Councilor Gravatt stated she is not uncomfortable in expanding the scope to include cumulative effects. On the request from AOC, Renewable Northwest, and OSEIA, Ms. Gravatt requested clarity on what they are asking for.

Secretary Cornett stated that staff will reach out to the groups so that information can be made available in March.

Councilor Howe and Chair Beyeler are not in support of the creation of a subcommittee.

Council deferred the LCDC rulemaking project update until the next Council meeting. More information is located on the [Council Meetings website](#) for additional details.

J. Adoption of 2019 Rulemaking Calendar (Action Item)¹⁴ – Christopher Clark, Rules Coordinator.

The Council received a review of the 2019 rulemaking calendar and status of 2018 rulemaking priorities.

Mr. Clark recommended a 2019 schedule of rulemaking projects including Statutory Minor Corrections; Solar PV – Single Energy Facility; Trojan ISFSI Compliance (New); Administrative Housekeeping; General Compliance; Scenic Resources, Protected Areas, and Property Owner Notification; Exemptions from Site Certificate; Noise Standard (New); and Historic, Cultural and Archaeological Resources (New).

No public comments were made.

Action: A motion was made by Councilor Roppe and seconded by Councilor Gravatt that the Council approve the 2019 Energy Facility Siting Council rulemaking project schedule as presented by staff.

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

Motion Carried.

More information is located on the [Council Meetings website](#) for additional details.

K. Executive Session to Consider Attorney-Client Privileged Communication

ORS 192.660(2)(f) allows the Council to enter into executive session to consider "information or records that are exempt by law from public inspection." This includes consideration of records of privileged communications between the Council and its attorney. See ORS 192.502(9); ORS 40.225. All Council members present met in an Executive Session to confer with EFSC Counsel Patrick Rowe regarding a DOJ memorandum providing advice about the Council's authority to adopt rules applicable to the siting of a solar photovoltaic power generation facility. The Council did not make, propose or vote on any motion, proposal, resolution, order, ordinance or measure during the Executive Session.

Meeting adjourned.

¹⁴ Audio for Agenda Item J, Part 2 of 2 = 02:45:30 – February 22, 2019