



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 March 22, 2019 Meeting Minutes

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

**Oregon Department of Energy – Meitner Conference Room
550 Capitol Street NE
Salem, 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, MARCH 22, 2019

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

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

Oregon Department of Energy representatives present were Assistant Director/Council Secretary Todd Cornett, Senior Policy Advisor Maxwell Woods, Senior Siting Analyst Sarah Esterson, Siting Analyst Luke May, Operations Analyst Sean Mole, Communications Outreach Cliff Voliva and Division Assistant Esther Kooistra. EFSC Counsel Patrick Rowe, Department of Justice (DOJ), Director Janine Benner, Associate Director of Government Relations Robin Freeman and Senior Climate Policy Analyst Lesley Jantarasami were also present.

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

1) Meeting Minutes

February 22, 2019 minutes were not available for review. The full audio is available here: <https://www.oregon.gov/energy/facilities-safety/facilities/Pages/Council-Meetings.aspx>

2) Council Secretary Report

a. Agenda Modification:

No modifications.

b. Amendment Determination Requests

At the last EFSC meeting Council directed staff to provide email updates through Gov Delivery of any receipts of Amendment Determination Requests and staff determinations. There is now an option to sign up to receive Gov Delivery notices for all Amendment Determination Requests. Also, notice will go to the General Mailing list which includes those requesting to receive every notice and the specific mailing list for the project. Gov Delivery was utilized for the first notice of the Biglow Canyon Amendment Determination Request. The notice included a brief description of the request and the determination and provided a link to the project page where the full information was available. Based on a comment from Council Member Grail we also included the following statement: *“The Department is providing this notice that it has posted the written determination to its website as a courtesy and may, at its discretion, cease providing such notices in the future. By providing this notice the Department is not creating a basis for any cause of action asserting a right to continuous or future receipt of such notices.”*

Biglow Canyon

The existing Biglow Canyon project is a 217 turbine wind energy facility located in Sherman County. It is owned by Portland General Electric and has been in operation since 2007. PGE submitted a request to determine whether an amendment was required to transition crane pads from a temporary disturbance to a permanent disturbance. These transitions would occur over the life of the facility, only when cranes are needed to conduct maintenance. Crane pads will also ultimately be required for facility decommissioning, so PGE is requesting to leave them in place once they are established rather than to remove them and be required to re-establish them during another maintenance action and at decommissioning.

PGE made its request on December 17, 2018 and the request was posted to the project page. Department Staff emailed the PGE’s request to Council members on January 3, 2019. On March 14, 2019, Staff concluded that an amendment was not required based on an evaluation of the factors under OAR 345-027-0050(4).

Staff emailed its determination to council and indicated that under OAR 345-027-0057(6), at the request of a Council member or the certificate holder, the Department must refer its determination to the Council for concurrence, modification, or rejection. The Department also requested that if any Council member requests formal review of the Department’s determination, to let them know at the Council meeting. Staff’s determination was posted to the website and a notice sent through Gov Delivery on March 18, 2019.

c. Future EFSC Meeting Dates:

Availability of Council Members for future meeting dates:

April 18-19, 2019 – Esther sent out an email cancelling the April meeting.

May 16-17, 2019 – We expect to have a two-day meeting in Condon, Oregon.

June – Series of days to hold the Boardman to Hemingway Draft Proposed Order hearings in Ontario, Baker City, La Grande, Pendleton and Boardman.

B. Montague Wind Power Facility, Construction Update and Results of Wildlife Surveys¹: (Information Item) – Sarah Esterson, Senior Siting Analyst.

The Council received a status update on the construction status of Phase 1 of the Montague Wind Power Facility, which includes 56 wind turbines and related or supporting facilities. Staff also provided an update on results of wildlife and habitat surveys, as required by Site Certification Condition 10.

Council Member Gravatt shared by way of full transparency, three shipments (of towers) of the wind turbines that have gone to the Montague project have gone through the Port of Portland. Council Member Gravatt works for the Port of Portland but is not directly involved in marine shipping.

Ms. Esterson provided a facility background of the project; located in Gilliam County. The certificate holder is Montague Wind Power Facility, LLC and the parent company of certificate holder is Avangrid Renewables, LLC, the U.S. division of Iberdrola, S.A. The original site certificate was issued in September 2010. A requested Fourth Amended Site Certificate ("Phase 2") is currently under review and includes wind, solar, battery, and site boundary changes.

Ms. Esterson provided a background context of why survey results were being presented to Council at a Council meeting. The site certificate contains a Condition that directs the Department to come back to Council and present the results of the certificate holder's pre-construction surveys. The Council imposed a similar requirement in the Summit Ridge site certificate.

Ms. Esterson presented the survey results to Council regarding the pre-construction surveys, including Habitat Assessment (Condition 31); Protocol-level T&E Species Survey (Condition 94); and Raptor Nest Surveys (Condition 95 and 96).

Council Member Winters asked how the condition was reviewed in terms of protocol. Mr. Woods responded there is standard protocol that references approval by ODFW. Ms. Esterson shared that the protocol is submitted, verified by ODFW and determined whether it is consistent with established protocols, then the results are reviewed again as a two-step process.

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

C. Oregon Department of Energy, Oregon Climate Authority, and Legislative Update² (Information Item) – Janine Benner, Director; Robin Freeman, Associate Director of Government Relations; and Lesley Jantarasami, Senior Climate Policy Analyst.

The Council received an update from Director Janine Benner, Robin Freeman and Lesley Jantarasami regarding the Oregon Climate Authority bill and other legislation relevant to the Department.

Ms. Freeman discussed how the Legislature had introduced a little over 2600 bills and ODOE is tracking about 218 bills; prioritizing about 30 bills. Ms. Freeman deferred House Bill 2329 to Secretary Cornett who provided a summary of that bill and others that in some way could impact a Council standard or how applications and amendments are reviewed.

Director Benner discussed Governor Kate Brown's Five Priorities with two pieces in those priorities that affect ODOE. A new agency, Oregon Climate Authority, would be created under Senate Bill (SB) 928 to address climate change. Director Benner discussed how energy policy would be modernized and brought into the 20th century. HB 2020 establishes the Cap and Trade program; the responsibilities would live within the new agency. The bill establishes an Oregon Climate Board that is modeled from the Oregon Agriculture Board. A proposed work group would meet to assess the ultimate locations for EFSC and Nuclear Safety, but the proposed bill would include both divisions in the OCA.

Ms. Jantarasami provided highlights of HB 2020: Oregon Climate Action Program, aka "Clean Energy Jobs Bill, Cap and Trade Bill." Ms. Jantarasami discussed the new House Bill 2020's Proposed Goals is to achieve a reduction in Greenhouse Gas emission levels to at least 45% below 1990 levels by 2035 and 80% below 1990 levels by 2050. The purposes of the program is achieving reduction of regulated GHG emissions; promoting GHG emissions sequestration and mitigation; promoting climate adaptation/resilience; assisting households, businesses, and workers affected by Oregon's economic transition.

¹ Audio for Agenda Item B = 00:13:30 – March 22, 2019

² Audio for Agenda Item C = 00:40:18 – March 22, 2019

Ms. Jantarasami discussed the regulated emission sources under Oregon Climate Action Program (OCAP), Covered Entities, the Annual Allowance Budget (CAP), Tradeable Compliance Instruments, Allowance Reserves and Direct Allocation, Energy Assistance Programs, Expenditure Requirements, New Funds for Specific Purposes, Energy Project Examples, Required Reports, New Committees and Changes to Existing Authorities.

D. The Climate Trust (Information Item)³ – Sheldon Zakreski, Chief Operating Officer.

Mr. Zakreski provided a background about The Climate Trust, provided the purpose of the Five Year Report, and discussed the CO2 Standard, TCT's Performance, HB2020 and the future of the CO2 Standard. Mr. Zakreski stated qualified organizations must produce a report every 5 years following the year it first received monetary pathway funds and until it has spent at least 80% on all of the offset funds it has received. Also documented is the qualified organization's performance administering the funds and the impact of offset project purchase decisions. The purpose includes providing a regular opportunity for the qualified organization to recommend changes for Council to consider and to propose to the legislature.

Mr. Zakreski discussed key performance metrics: timelines, financial, Oregon impacts, Climate Impacts and concluded with takeaways that The Climate Trust has met the 60% of funds committed in two years requirement in 15.5 months on average; obligated \$15.1M of \$24.3M of offset purchase funds received; 52% of obligated dollars spent in Oregon; retired offsets equivalent to eliminating annual emissions from 288,000 homes. Mr. Zakreski stated The Climate Trust is supportive of HB 2020 eliminating the EFSC CO2 Standard.

Councilor Winters requested to view a graph for the true up to see the money coming in from each site certificate, providing the net benefits. Councilor Winters questioned why The Climate Trust is supportive of HB 2020 and Mr. Zakreski answered they are not only supportive of how it addresses the CO2 standard, but The Climate Trust is supportive of the larger bill in mission reduction projects via offsets and that The Climate Trust has been supportive of Cap and Trade, an economy wide approach to cap emissions effectively reducing emissions, supporting positive economic growth.

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

E. Public Comment (Information Item)⁴

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.

Anne Jannette Banuelos, representing the Oregon Labors Union.

Ms. Banuelos urged companies develop projects in Oregon to take into consideration using the Oregon workforce.

F. [Working Lunch] Summit Ridge Wind Farm, Continuation of Council Review of the Draft Proposed Order on Request for Amendment 4 of the Site Certificate (Information Item)⁵ – Luke May, Siting Analyst and Sarah Esterson, Senior Siting Analyst.

The Council continued its review of the Summit Ridge Wind Facility RFA 4 Draft Proposed Order, which was continued from the February 22, 2019 Council meeting, as well as comments received on the record of the draft proposed order and at the public hearing. Request for Amendment 4 seeks Council approval to extend the construction commencement and completion deadlines by 2 years.

Mr. Max Woods, Senior Policy Advisor, specified the Council must review public comments. Mr. Woods noted that the department will respond to those comments in the Proposed Order. Also, Staff will solicit Council's input on the Department's assessment, and Staff requests that the Council indicate whether it has any issues with the Draft Proposed Order. The record is closed, but the issues raised on the record may be raised at a contested case proceeding. Next steps include the Proposed Order and an opportunity for commenters to request a contested case. Mr. Woods noted that the amendment rulemaking in 2017 required a DPO, and public hearing in front of the Council.

³ Audio for Agenda Item D = 01:47:22 – March 22, 2019

⁴ Audio for Agenda Item E = 02:20:35 – March 22, 2019

⁵ Audio for Agenda Item F = 02:23:14 – March 22, 2019

Mr. May provided an overview of the facility. The Certificate Holder is Summit Ridge Wind, LLC, with the certificate holder parent company as Pattern Renewables 2 LP, a subsidiary of Pattern Energy Group 2 LP. The facility is approved, but not yet constructed and would include 72 wind turbines, which would generate approximately 194.4 MW. The request for amendment 4 includes a construction deadline extension, commencement deadline extended from August 19, 2018 to August 10, 2020 and completion deadline extended from August 19, 2021 to August 19, 2023. The request also includes changes to Conditions 4.1 and 4.2.

Mr. May stated all comments received on the record have been provided to Council and are available on ODOE website. The issues raised include economic feasibility of the project; raptor surveys; habitat mitigation; Federal Eagle Protection; impacts to avian species; Oregon Supreme Court review of amendment rules; Division 21 rules relating to climate change and disaster resilience; and visual concerns.

Mr. May discussed the Comment Review Overview document and the comments raised by Friends of Grande Ronde Valley. Mr. May stated ODOE's response includes that: rules adopted by the Council are valid unless held otherwise by the Oregon Supreme Court. He stated that rules do not require the Council to make a finding on the explanation of need, and the Council was provided with all comments received before the close of the public record. Mr. May shared that the department relied on discussions with the Oregon Water Resources Department (OWRD) to classify the water used at the O&M building as "domestic."

Councilor Winters expressed her opinion that – relating to the "explanation of need," it is implicit that the explanation given must be a reasonable and rational explanation. Councilor Winters then asked if the applicant's explanation of financial ability meets the justification, for this request, from the staff's perspective. Mr. Woods agreed that the stated reasoning within the certificate holder's "explanation of need" was consistent with timeline extension requests from other projects.

Vice-Chair Jenkins noted another point worth making is that this process alone will take approximately a year in a new two year timeline extension.

Councilor Grail commented that as we go through these processes, to not forget that our legislature and Governor are in the process of proposing changes, something that the developers must navigate and that which will ultimately affect the market – although that's certainly not within the Council's control.

Ms. Esterson discussed issues and responses regarding Plant and Wildlife Impacts and Mitigation, with the first issue relating to habitat mitigation to include habitat loss from displacement. ODOE's response was that there is not guidance as to assess air space as habitat.

Vice-Chair Jenkins said it wasn't clear to him the reason the Department's response only addresses categories 2 and 6 and suggested the department go back and look at that language. It was clear that some of Category 3 and 4 were added to Category 2, but not all of Category 3 and 4. Mr. Woods clarified Category classifications further – at the time of the original site certificate application review, the facility site boundary included habitat Categories 2, 3, 4, and 6. However, during a previous site certificate amendment, ODFW conducted an assessment and mapping of big game winter range habitat in eastern Oregon, and furthermore, ODFW policy determined that big game winter range that is not otherwise considered Category 6, should be considered Category 2. Portions of the Summit Ridge site boundary are located in mapped big game winter range habitat and as such, habitat that was previously considered Categories 3 and 4 are now considered Category 2 because of that habitat's value as big game winter range. Accordingly, the only habitat categories now present in the site boundary are Categories 2 and 6.

Ms. Esterson discussed comments from a letter from Mr. Smallwood regarding Applicability of the USFWS's Eagle Take Rule and Eagle Conservation Plan Guidance; Cumulative Impact Assessment (the department does not have a standard for a cumulative assessment condition. This recommendation is not tied to a standard); Post-Construction Monitoring and Mitigation; and Detection Surveys.

Councilor Winters asked how the survey area is established. Ms. Esterson responded that there is standard protocol. There is no set survey area when the survey does not relate to T&E species - and is dependent on species and intent. Ms. Esterson said there was a Raptor Nest survey, but the purpose of that survey was not to evaluate fatality, as the comment suggested.

Ms. Esterson continued to discuss Plant and Wildlife Impacts and Mitigation, comments received from Friends of Columbia River Gorge and from Ms. Irene Gilbert and Friends of Grande Ronde Valley.

Mr. May discussed comments raised regarding the O&M building water well, visual/noise impacts, public health and safety, facility generating capacity and roads.

Secretary Cornett stated for complete clarity of process, the Department would like to hear from Council of any concerns, comments, anything Council would like to see in the proposed order within findings and within conditions.

Councilor Grail asked if the Department has been in communication with the developers about the feedback and comments that were heard from individuals in February. Mr. Woods stated there has not been communication with the Developer, as the record is closed. Mr. Woods said the issues that were raised from members of the public were addressed as they were the same issues raised by other parties.

Councilor Winters requested that in the conditions that are drafted for the protocols, to make it as clear and user friendly to the reviewing public as possible.

Chair Beyeler commented that he was on the Council at the time the amendment rules process began and one of the main questions, based on a single facility, was about the timeline extension request opportunities.

Vice-Chair Jenkins shared his specific comment about the wildlife monitoring mitigation plan requiring that the certificate holder coordinate and collect. He requested clarity in the study's collection of mortality, rather than written out as data.

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

Meeting adjourned.