



# 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 May 16-17, 2019 Meeting Minutes

### Hotel Condon – “Lori’s Place” Restaurant 202 S. Main Street Condon, 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>

## THURSDAY, MAY 16, 2019

**Call to Order:** The meeting was called to order at 3:30 p.m. on May 16, 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, Senior Siting Analyst Sarah Esterson, Siting Analyst Chase McVeigh-Walker, Rules Coordinator Christopher Clark, Operations Analyst Sean Mole, Communications Outreach Cliff Voliva 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 – February 22, 2019 EFSC Meeting and March 22, 2019 EFSC Meeting**

**Action:** A motion was made by Councilor Roppe and seconded by Vice-Chair Jenkins that the Council approve the February 22, 2019 and March 22, 2019 meeting minutes with correction of scrivener's errors.

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

Motion Carried.

### **2) Council Secretary Report**

#### **a. Staffing Updates:**

Luke May, Siting Analyst, has accepted a position with the Natural Resources Defense Council in Washington D.C. His final day was last Wednesday. Maxwell Woods will be the lead on the Summit Ridge Wind project today in place of Luke.

Chair Beyeler and Councilor Roppe's terms conclude on June 30, 2019. Currently we do not have replacements. Action does not need to be taken for Chair Beyeler to remain Chair, until his resignation or until he is no longer on the Council.

#### **a. New Projects:**

We are about to receive a Notice of Intent for a new Solar Project in Jefferson County called the **Madras Solar Project**.

On April 23, a request by Portland General Electric for Amendment 11 to the **Port Westward Generating Project** in Clatskanie was received. The existing project is a 650 MW natural gas combined-cycle combustion turbine system. The amendment proposes to add a 4 to 6 MW battery energy storage system which could either be composed of lithium batteries or flow batteries. The amendment is currently under review for completeness.

On behalf of Duane Kilsdonk, Compliance Officer, Secretary Cornett provided an update on the **Mist Underground Natural Gas storage facility** owned by NW Natural and consists of underground natural gas storage reservoirs, compressor stations, gathering pipelines, and Operation and Maintenance facility and gas transmission pipelines. The facility is located in Columbia County, near the community of Mist and was originally approved in 1981. On April 21, 2016, the Council approved Amendment 11. Construction commenced on June 18, 2017. All buildings have been constructed with roof and siding complete. The remaining tasks is the commissioning of the electrical and controls at the Compressor station. Construction must be completed by April 21, 2020.

#### **b. Council Member Site Visit:**

Earlier today, Chair Beyeler, and Council Member Howe attended a site visit of the Montague Wind Facility. ODOE staff members Sarah Esterson, Chris Clark and Cliff Voliva, as well as Department of Justice Attorney Patrick Rowe were also in attendance.

**c. Agenda Modification:**

No modifications.

**d. Amendment Determination Requests**

Montague Wind Power Facility owned by Avangrid Renewables, submitted an amendment determination request and asserted that their proposed use of a temporary crane path outside of the site boundary does not trigger an amendment. They are currently under construction for phase 1 of this project and they need to move two cranes, one time each, from the northern to southern portions of the project area. On May 7, 2019, an announcement was sent via GovDelivery, informing the public of staff's determination that an amendment was not required. ODOE is requesting to hear from the Council today if any council member wishes to raise this for full council review.

**e. Legislative Updates:** Secretary Cornett provided legislative updates through email. There were no further updates.

**f. Future EFSC Meeting Dates:**

Availability of Council Members for future meeting dates:

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

July – Likely cancelled.

## **B. Special Advisory Group Appointment<sup>1</sup>: (Action Item) – Maxwell Woods, Senior Policy Advisor.**

Council was presented with the appointment of the Jefferson County Board of Commissioners as the special advisory group for the proposed Madras Solar Project Application for Site Certificate. The applicant for the proposed solar facility is EcoPlexus.

**Action:** A motion was made by Vice-Chair Jenkins and seconded by Councilor Roppe that the Council appoint the Jefferson County Board of Commissioners as the special advisory group for the proposed Madras Solar Project Application for Site certificate. The applicant for the proposed solar facility is EcoPlexus.

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

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

## **C. Boardman to Hemingway Transmission Line, Hearing Officer Appointment<sup>2</sup> (Action Item) – Maxwell Woods, Senior Policy Advisor.**

The Council considered the appointment of a Hearing Officer from the Oregon Office of Administrative Hearings to conduct the contested case proceeding for the proposed Boardman to Hemingway Transmission Line project.

**Action:** A motion was made by Councilor Grail and seconded by Councilor Roppe that the Council appoint Ms. Alison Greene Webster as Hearing Officer from the Oregon Office of Administrative Hearings to conduct the contested case proceeding for the proposed Boardman to Hemingway Transmission Line project. **Vote:** Councilor Howe, Yes; Councilor Winters, Yes; Councilor Gravatt, Yes; Councilor Grail, Yes; Councilor Roppe, Yes; Vice-Chair Jenkins, Yes; Chair Beyeler, Yes. Motion Carried.

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<sup>1</sup> Audio for Agenda Item B = 00:16:22 – May 16, 2019

<sup>2</sup> Audio for Agenda Item C = 00:22:52

– May 16, 2019

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

## **D. Obsidian Solar Center, Update on Ratified Order for SHPO Consultant Appointment (Information Item)<sup>3</sup> – Maxwell Woods, Senior Policy Advisor.**

The Council received an update on the Department's use of consultants to provide the Oregon State Historic Preservation Office assistance in the review of impacts to resources protected under the Council's Historic, Cultural and Archeological standard (Oregon Administrative Rule 345-022-0090) for the preliminary Application for Site Certificate for the proposed Obsidian Solar Center. A contract was signed with sub-consultant, Golder Associates recently and the review of Exhibit S will be moving forward. The Department will provide updates accordingly.

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

## **E. Montague Wind Power Facility, Draft Proposed Order on Request for Amendment 4 of the Site Certificate (Information Item)<sup>4</sup> – Chase McVeigh-Walker, Siting Analyst.**

The Council received a presentation on the Draft Proposed Order on Request for Amendment 4 of the Montague Wind Power Facility site certificate. Request for Amendment 4 seeks Council approval of the following modifications: expansion of the site boundary and micro-siting corridor; adding up to 81 wind turbines; adding a solar photovoltaic generating system of up to 1,190 acres; adding a 100-megawatt battery storage system, and adding related or supporting facility components. The public comment period is scheduled to close at the conclusion of the public hearing (Agenda Item F). The Council will be reviewing the public comments and deliberate on the substance of the draft proposed order on Agenda Item K. The certificate holder's request for amendment and the Department's draft proposed order can be found on the Department's website at: <https://www.oregon.gov/energy/facilities-safety/facilities/Pages/MWP.aspx>

Mr. McVeigh-Walker presented a facility overview: the certificate holder is Montague Wind Power Facility, LLC. and the Certificate Holder Parent Company is Avangrid Renewables, LLC. The facility is currently under Phase 1, 202 MW wind (56 turbines). The facility is located entirely in Gilliam County, containing approximately 33,717 acres on private land. The Site Certificate became effective September 10, 2010, and has been amended three times in June 2013; December 2015; and July 2017.

Mr. McVeigh-Walker discussed the three design scenarios: Proposed Design Scenario A: up to 81 wind turbines; lithium-ion or flow battery storage system; 3-mile segment of aboveground 230 kV transmission line; related or supporting facilities. Proposed Design Scenario B: up to 48 wind turbines; lithium-ion or flow battery storage system; 3-mile segment of aboveground 230 kV transmission line; related or supporting facilities and Proposed Design Scenario C: Solar photovoltaic array up to 1,189 acres; lithium-ion or flow battery storage system; 3-mile segment of aboveground 230 kV transmission line; related or supporting facilities.

Mr. McVeigh-Walker confirmed that the size, number of turbines and geography is the same between Scenario A and B.

Councilor Winters asked about the timing of when staff responds to technical comments. Mr. Woods said the Department can provide a special staff report addressing specific comments, but is dependent on format. Councilor Winters stated she wanted to make sure concerns are addressed.

Secretary Cornett provided the differences between EFSC's goal exception process and LCDC's goal exception process.<sup>5</sup>

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<sup>3</sup> Audio for Agenda Item D = 00:26:32 – May 16, 2019

<sup>4</sup> Audio for Agenda Item E = 00:31:19 – May 16, 2019

<sup>5</sup> Agenda Item E = 01 24:10

Audio for – May 16, 2019

Councilor Howe questioned how land use laws translate to the county, and if the county incorporates that into the comp plan. Secretary Cornett responded this question was raised several months ago by Morrow County and the Department is currently looking into it.

In regard to Noise Control Regulation, Councilor Gravatt asked why the existing Condition 107 is not sufficient for Phase 2.

Mr. McVeigh-Walker said the material provided in the request for amendment provided noise contours for each of the three design scenarios represented by the different thresholds, but it was unclear that a few identified noise sensitive receptors would be under the thresholds. Mr. McVeigh-Walker added that without any additional information in support of those contours, the Department felt comfortable imposing the operational monitoring to insure that the questionable areas were within the threshold. Mr. Woods said the monitoring is only required if preconstruction modeling showed it was within 1 decimal at a receptor of the allowable standard. The Department felt that this was a way to verify the condition that the noise regulation was being satisfied.

Councilor Gravatt asked if the FAA has any requirements on Solar. Mr. Woods said the FAA requires use of their online assessment database tool. Mr. Woods said on tall structures there is a hazard/no hazard determination, but he does not believe they do the same for solar arrays.

Councilor Winters asked if there were any case law that might interpret EFSC's authority to take a goal exception.

Mr. Rowe responded that in the California Oregon Border project from the early 2000s, people challenged the Council's taking an exception to Goal 3. Mr. Rowe said two points he wanted to share: 1) The Supreme Court found EFSC does not need to do an alternatives analysis when taking a goal exception; 2) Factual findings that Council may make in taking a goal exception need to be supported by substantial evidence in the record. In this instance, if the reasons justify taking a goal exception because of local economic benefits provided by the project, the Council should make sure there is substantial evidence that demonstrates the local economic benefits.

## Break

### **F. [5:30] Montague Wind Power Facility, Public Hearing on the Draft Proposed Order on Request for Amendment 4 of the Site Certificate (Hearing)<sup>6</sup> – Maxwell Woods, Senior Policy Advisor.**

The public hearing on the Draft Proposed Order on Request for Amendment 4 of the Montague Wind Power Facility site certificate began after Council received a presentation from Staff (Agenda Item E). The purpose of the hearing is for members of the public to provide verbal comments to Council members on Request for Amendment 4 and the Draft Proposed Order on Request for Amendment 4.

Mr. Woods provided a brief overview of the facility and of the Public Hearing process. He stated that written comments can also be submitted until close of hearing and that all comments received prior to tonight's hearing have been provided in full to Council. Mr. Woods stated Chair Beyeler will serve as the Hearing Officer and the applicant, Avangrid Renewables, would have an opportunity to comment. Public comment will occur next and finally the certificate holder will have an opportunity to respond to public comments.

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<sup>6</sup> Agenda Item F = 02:07:05

Audio for : – May 16, 2019

The applicant, Avangrid Renewables presented an overview of Avangrid Renewables, project history, project map and proposed site boundary changes, design scenarios and phasing, DPO and proposed conditions.

Mr. Brian Walsh, Avangrid Renewables, 1125 NW Couch Street, Portland, OR 97209, provided a background of Avangrid Renewables as Owner/Operator, as a leader in responsible Renewable Energy Development with the North American headquarters in Portland, Oregon.

Mr. Brian Hutchinson, Avangrid Renewables, 1125 NW Couch Street, Portland, OR 97209, described how scenarios are being used in their analysis. Scenario A has the most turbines that would be built for Phase 2 and Scenario B is the tallest turbines that can be built on the facility, with Scenario C being solar only. Mr. Hutchinson explained each scenario equates to 202MW.

Vice-Chair Jenkins asked why the applicant submitted three scenarios instead of just one scenario. Mr. Hutchinson responded that they wanted to show what a 202 MW facility would look like.

Mr. Walsh said the number of acres that would be impacted with the wind area, the actual footprint of the facility is smaller. The distinction is the analysis area is 13,000, not the actual impacts. Mr. Hutchinson discussed survey areas.

Councilor Winters, asked if there was a visual height analysis that the community could see between the first and second scenarios. Mr. Hutchinson stated a ZVI analysis was submitted, that provided a scenario using the most turbines.

Ms. Elaine Albrich, Davis Wright Tremaine, Land Use Attorney for Avangrid Renewables, 1300 810 5<sup>th</sup> Ave, Portland, OR 97201 stated their request for comments on the DPO provided staff with proposed findings and condition language and summarized request for revisions and clarifications. Ms. Albrich stated overall Montague supports the DPO, proposed findings, and proposed conditions with some recommended revisions and clarifications.

Vice Chair Jenkins asked why the proposed transmission line was not located in the right of way of Hwy 19 instead of across farm fields. Mr. Walsh responded that there are risks locating transmission lines in road rights-of-way. The ROW is much wider than the current road and shoulder and often times they have to be on the outside edge of the ROW in for safety reasons in case there is a future road expansion. For that reason, even in the ROW the transmission poles would likely be on the farmer's field. However, subject to support by adjacent farmers, they are open to doing it either way. He appreciates the Council's feedback.

Ms. Albrich stated a supplemental alternative analysis to the proposed route was provided.

#### **Public Comments:** <sup>7</sup>

Irene Gilbert, representing Friends of the Grand Ronde Valley and herself. Ms. Gilbert expressed her concern with the Draft Proposed Order and she believes rules are being incorrectly applied, OAR 469.370(5) and OAR 469.373 regarding requesting a contested case and in providing all of the information during the public hearing. The second issue she has is that the Department of Navy should have been included in the advisory group, based on the safety issue for pilots. Ms. Gilbert discussed the impacts to religious groups, using the Amish as an example, of a reasonable setback and of weed management.

Eudora S. Olsen expressed her concern with mailings. Gilliam County provided her mailing address for the last 37 years. Ms. Olsen shared her concerns of turbine placement on Upper Rock Creek Road and provided her written testimony. She requested Council members take a tour of the school.

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<sup>7</sup> Agenda Item F = 02 38:58

Audio for

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Erin Weedman, Weedman Brothers, Weedman Farms, LLC., Ms. Weedman shared her support as she has been involved with Avangrid working on projects. She said she comes today as a mom and as a landowner, on both sides of Hwy 19, with Weedman Brothers and Weedman Farms LLC. Ms. Weedman stated her dad is a pilot and has an airstrip right across from her house and flies from Sherman and Gilliam Counties on a daily basis this time of year, as do numerous spray pilots. She commented her appreciation in working with Avangrid and urged others with concerns to work with Avangrid.

Dennis Macnab, Highland Hills Ranch, 23050 Wolf Hollow Rd. Condon, OR, expressed his concern of financial impacts and visual impacts. He owns a destination hunting ranch with guests from all over the world and he is concerned that wind turbines will have visual impacts for his ranch. Mr. Macnab does not agree with an analysis that the scenic resource would not be impacted. He requests a continuation and would like to see the financial impact on non-agricultural businesses.

Councilor Gravatt asked Mr. Macnab if his concern is limited to the wind components or if he also has concerns related to the solar and battery. Mr. Macnab responded his concern is with the wind portion and also expressed his concern that other businesses were not notified or asked for their input on the amendment.

Steve Shaffer, former Judge for Gilliam County, Box 414, Condon, OR 97823. Mr. Shaffer stated renewable energy is a huge economic impact for Gilliam County. During his time in office, each year, a little more than 6M in Strategic Investment

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Program agreement fees are provided by renewable energy developers into the County's discretionary fund which pays for things like new sewer and water projects, a new reservoir, a new fire hall in Condon, and remodeling of health clinic building. He also mentioned other benefits such as bringing in young people into the county.

Chuck Little, written testimony submitted

Rodney McGuire, written testimony submitted

Brian Skeahan, Community Renewable Energy Association, over the phone. Mr. Bryan reiterated written comments submitted earlier. Encouraged Council to adopt the amendment.

Michelle Colby, Gilliam County Planning Director, echoed a comment made earlier encouraging EFSC to take up the Task of evaluating how the county incorporates a goal exception associated with the solar portion of the amendment into the County's comprehensive plan.

### **Applicant Response**<sup>8</sup>

Mr. Walsh reiterated the different design scenarios and specifically discussed Olex homes that would be impacted. The turbines require a noise easement from the neighbors and homes closest to Baseline Road. Ms. Albrich said there are specific controls in place with the conditions that require further noise analysis and ultimately the land owners in the Olex control the location of those turbines and is included in Exhibit X.

Ms. Albrich discussed scenic resources and Goal 5 in the Comprehensive County Plan, identifying the Gilliam County Special Advisory Group did not identify any specific "rock outcroppings" that should be considered as a significant or important scenic resources in the analysis area and that Council previously considered rock outcropping as scenic resources approximately seven miles from site boundary. Therefore, Ms. Albrich concluded no further action is needed.

Ms. Albrich stated the certificate holder requests the Council close the public hearing and leave the written record open for two weeks to allow certificate holder the opportunity to provide written response to public comments and testimony and final legal argument.

Mr. Macnab requested additional time to submit additional evidence into the record of economic impacts on recreational businesses.

Mrs. Albrich proposed seven days to allow Mr. Macnab and public to provide additional written response and at that time, the comment would close.

Secretary Cornett and Council discussed timeframes for submission and review.

**Action:** A motion was made by Vice-Chair Jenkins and seconded by Councilor Roppe that the Council leave the written record open for the Montague Wind Power Facility on request for Amendment 4 of the Site Certificate until May 23, 2019 at 5 p.m. for all persons and for the site certificate holder to have the opportunity to submit written responses to any submitted public comments in writing until May 30, 2019 at 5 p.m.

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

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<sup>8</sup> Agenda Item F = 03 19:46

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Chair Beyeler acting as the presiding officer for the hearing said the time is 7:47 p.m. on May 16, 2019, and closed the oral portion of the public hearing and will accept written comments from all persons until May 23, 2019 at 5 p.m. and written responses to any submitted public comments by the site certificate holder until May 30, 2019 at 5 p.m.

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

The meeting was recessed at 7:48 p.m. and will continue Friday, May 17, 2019 at 8:30 a.m.

## FRIDAY, MAY 17, 2019

**Call to Order:** The meeting was called to order at 8:30 a.m. on May 17, 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, Senior Siting Analyst Sarah Esterson, Siting Analyst Chase McVeigh-Walker, Rules Coordinator Christopher Clark, Operations Analyst Sean Mole, Communications Outreach Cliff Voliva and Division Assistant Esther Kooistra. EFSC Counsel Patrick Rowe, Department of Justice (DOJ), was also present.

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

- 1) Agenda Modifications:** Secretary Cornett recommended a break after the public comment period. Given Council's decision to extend the comment period for Montague Wind Power, Agenda K is no longer needed. The comments that were received yesterday were scanned and emailed to Council. Prior to the next council meeting, please review those comments. The written material is important, but the oral comments are also important. Staff will be evaluating audio recordings as well. When Council is reviewing materials, please take that into consideration. Prior to the meetings, a summary of the public comments will be provided to Council.

### **G. Stateline Wind Project, Request for Amendment 5 of the Site Certificate (Action Item)<sup>9</sup> – Sarah Esterson, Senior Siting Analyst.**

The Council reviewed the Proposed Order on Request for Amendment 5 of the Stateline Wind Project site certificate. Request for Amendment 5 is specific to Stateline 3, a geographic unit of the facility, and seeks approval to change the name of Stateline 3 to Vansycle II; repower 43 existing wind turbines, which includes replacing existing rotors (blades and hub) and gearbox (nacelles). Wind turbine repowering would increase the maximum blade tip height from 416 to 440 feet and rotor diameter from 305 to 354 feet, and would lower the minimum aboveground blade tip clearance from 111 to 85 feet. The amendment request also seeks approval for construction of temporary laydown and access roads, and new and amended conditions.

Ms. Esterson began the presentation with a reminder that the request for Amendment 5 is being reviewed under the Type B process. Changes in the Proposed Order from the comments on the Draft Proposed Order will be discussed. Ms. Esterson provided a facility overview: FPL Energy Stateline II, Inc. is the Certificate Holder and the Certificate Holder Parent Company is NextEra Energy Resources, LLC. The facility is operational with 222 megawatt wind; 166 wind turbines and located in Umatilla County. Ms. Esterson provided an overview of the amendment request and reviewed the proposed order, focusing

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<sup>9</sup> Agenda Item G = 04 22:00 : May 17, 2019  
Audio for : –

on changes from the Draft Proposed Order to Proposed Order as result of comments. Ms. Esterson also commented this is the first repowering project under the EFSC jurisdiction, as the certificate holder requests approval to repower 43 existing wind turbines associated with the Stateline 3 geographic unit of the Stateline Wind Project.

Ms. Esterson stated the recommended changes (draft proposed order to proposed order) includes: 1) a restriction of repowering 2 specific wind turbines until the Umatilla County road right-of-way setbacks associated with Condition 142 can be satisfied; 2) describing how the repowering would not increase overall or individual wind turbine generating capacity, but newer technology allows system to operate more efficiently; and 3) addressing public comments related to noise modeling (wind shear) and certificate holder responses to noise related comments. Ms. Esterson said the certificate holder provided a noise analysis using CadNA, an industry standard for noise evaluation and mentioned a comment from a member of the public expressed concern on the adequacy of the manufacturer based noise level.

Vice-Chair Jenkins stated it is important to note the applicant has demonstrated it is likely they will meet the noise standard, but if they cannot meet the noise factor, there is an alternative process to evaluate that. Vice-Chair Jenkins recommended deletion of line 29-31 on page 45 for clarification of comments received from CTUIR related to cultural monitoring during ground disturbing activities.

**Action:** A motion was made by Vice-Chair Jenkins and seconded by Councilor Gravatt that the Council adopt the proposed order, with modifications, as the final order and submit the fifth amended site certificate for the Stateline Wind Project with the following change: on page 46 of the order, eliminate the last sentence that begins with “additionally” on line 24 through 26.

**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.

## H. Public Comment<sup>10</sup>

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, 2310 Adams Ave, La Grande, OR. Ms. Gilbert shared general comments about the state energy siting process and her concern with Oregon Department of Energy making process changes and including them in site certificates, leaving the Site Developer to defend the change in interpretation. Ms. Gilbert expressed her concern with the Type B process, concern with rotor sizes and adjoining developments that have exceeded thresholds. Ms. Gilbert commented on the preponderance of evidence and urged the Council to make decisions independent of the recommendations from the Department of Energy.

Nathan Baker, Senior Staff Attorney with the Friends of the Columbia Gorge, provided a handout. Mr. Baker commented on OAR 345, revision 27, regarding the scope of Council’s review. Mr. Baker also discussed OAR 345- 027-0071 regarding contested case requests. Mr. Baker stated to raise the possibility of an issue, rather than prove the case, that the person requesting the contested case does not need to present any change in fact or law.

Terry Casey provided written comment. Mr. Casey stated his problem is in the use of tax incentives and the construction is going to contractors not using local hires.

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<sup>10</sup> Audio for Agenda Item H = 00:32:00 – May 17, 2019

<sup>11</sup> Agenda Item I = 00 54:06 May 17, 2019

Audio for : –

Break

**I. Summit Ridge Wind Farm, Council Decision on Requests for Contested Case; and the Proposed Order on Request for Amendment 4 of the Site Certificate (Action Items)<sup>11</sup> – Maxwell Woods, Senior Policy Advisor.**

Mr. Woods provided an overview of the facility; Summit Ridge Wind with Pattern Renewables 2 LP as the Certificate Holder’s Parent Company. The facility is approved, but not yet constructed. The site boundary contains approximately 11,000 acres in private land within Wasco County. The Site Certificate was amended three times in August 2015, November 2016 and December 2017. Mr. Woods described the Request for Amendment 4 includes extending the beginning construction deadlines by two years to August 10, 2020 and extending the construction completion deadline to August 19, 2023.

Mr. Woods discussed the request for amendment history. At its February 2019 meeting in The Dalles, Council held a public hearing on the amendment request and Draft Proposed Order. At the February and March 2019 meetings, Council reviewed public comments and the DPO. On April 2, the Department issued its proposed order, as well as a notice of the opportunity to request contested case on the proposed order. The Department’s proposed order addresses all public comments received on the record of the DPO that are within EFSC jurisdiction. The proposed order continues to recommend the Council grant

Audio for : –

the beginning and ending construction timeline extension request, subject to existing and amended site certificate conditions.

Mr. Woods discussed the process for the Council to consider requests for contested case on the Proposed Order on Request for Amendment 4 of the Summit Ridge Wind Farm site certificate. If Council accepted a contested case request, it would direct a contested case to be conducted. If Council denied all contested case requests but found that one or more issues raised in the request would be addressed through amending the proposed order, Council can direct staff to amend the proposed order to address those specific issues. The amended proposed order would then be recirculated and any person who commented on the draft proposed order would have an opportunity to request a contested case on the specific sections that were amended in the amended proposed order. If Council denied all contested case requests, Council would proceed to review the Proposed Order on Amendment 4 and either adopt, modify, or reject the proposed order as the final order.

Mr. Woods stated there are three requests to conduct a contested case from Irene Gilbert, Fuji and Jim Kreider, and a joint request from a group of five organizations: Friends of the Columbia Gorge, Oregon Wild, Oregon Natural Desert Association, Central Oregon LandWatch and the East Cascades Audubon Society.

Vice-Chair Jenkins stated in this case that Oregon Department of Fish and Wildlife also concurred the baseline surveys are adequate and do not need to be replaced. Mr. Woods said ODFW has a role as an advisor to ODOE and confirmed that they concurred that the baseline surveys are adequate, but that Council may disagree with ODFW.

Councilor Winters asked if there were anything particular in these contested case requests that is different or new information in the contested case requests, compared to the comments submitted at the public hearing [on the record of the DPO]. Mr. Woods said in the contested case requests itself, no new information was presented from the original comments on the record of the public hearing [of the DPO]; and all of the parties have properly raised their issues; ample evidence was submitted in the record to support their argument. Mr. Woods also noted that no new evidence *can* be submitted in the contested case requests, rather the requests must reference to the comments submitted on the record of the public hearing for the DPO.

Councilor Gravatt expressed she was inclined to grant a contested case, stating that some of the staff report was dismissive of the concerns raised. She questioned the requirements of the pre-construction surveys. Mr. Woods discussed the required Fish and Wildlife habitat conditions (Condition 10.7).

Mr. Woods discussed the contested case issues, which can be located [here](https://www.oregon.gov/energy/facilities-safety/facilities/Council%20Meetings/2019-05-1617%20Powerpoint%20Presentation.pdf): pages 70-91.  
<https://www.oregon.gov/energy/facilities-safety/facilities/Council%20Meetings/2019-05-1617%20Powerpoint%20Presentation.pdf>

Councilor Grail asked if there were any response from Wasco County. Mr. Woods said Wasco County had provided a comment on the amendment request that they had no issue with the compliance with any of the code provisions. There was a comment letter that discussed a handful of turbines that required a setback variance from County road and the County recommended continuing the variance be applied.

Mr. Rowe reminded Council of the procedure for reviewing contested case requests. He emphasized that if the Council is inclined to grant any request(s) for a contested case, it will need to identify which issue(s) will be addressed in the contested case and also identify who will be parties to the contested case.

Mr. Woods responded to Chair Beyeler's question if after two years, whether further monitoring would be necessary. Mr. Woods said there is a requirement for review and there is ongoing monitoring of the project for the life of the facility, just not for fatality monitoring. There is a requirement for monitoring for how the facility can be affecting raptor nests in the area for the life of the project. Mr. Woods said he would need to research after the two years, if data warranted, additional monitoring could be required of the site certificate holder ongoing.

Mr. Woods provided options for Council Decision on Request for Contested Case.

Council deliberated on the issue:

Councilor Grail commented she would not take data that is a decade old and this issue seems to be repeated and questioned if this was normal practice.

Councilor Roppe asked if that criteria was set by Fish and Wildlife. Mr. Woods said not necessarily and that although the recommendations are from ODFW, the final decision on compliance is the Council's decision. Mr. Woods also responded that wildlife updates were conducted in 2016 and there is pre-construction validation requirements as conditions in the site certificate.

Vice-Chair Jenkins reiterated consultation with ODF&W has confirmed the surveys were adequate.

Councilor Gravatt stated she was inclined to grant the contested case limited to the species habitat issues raised by the Friends and commented this project has demonstrated an immense amount of public interest. She expressed her frustration with the Site Certificate holder; by choosing not to keep the public comment open to address those comments.

Councilor Winters asked a procedural question, what would it look like timing wise, opposed to a contested case issue, to look at an amendment condition for further surveys and discussion with ODF&W to update the plan. Mr. Woods described the contested case timeline, the procedural steps outlined in the procedural and council rules and gave a timeline of six months. Mr. Woods also described the process for remanding requirements from staff.

Chair Beyeler echoed Councilor Grail's stale data has been a reoccurring theme and it is always a balancing act. He stated the heavy reliance on ODF&W review and that ODF&W does not always have the outcomes people want.

Councilor Grail stated she was not persuaded by timing, but with the updated data.

Councilor Howe recommended denying the contested case requests. He suggested under option two, to include additional bird monitoring after two years and including a condition that if ODFW agrees that additional monitoring is needed to include that condition. As for updating the survey data, that could be an additional condition. He recommended the Council deny the contested case and add amended conditions.

Vice-Chair Jenkins does not support the contested case, but believes there should be changes to the proposed order and staff can make those changes and bring it back to Council at an appropriate time given the notification requirements. He believes the needs to address water resources issues associated with gallons per day and to address the requirement for Fish and Wildlife standards based on others' input. He agrees with Councilor Howe that surveys will not provide additional information to evaluate the standard, but is not opposed to adjusting the conditions with additional surveys.

Councilor Winters summarized the contested case requestors may not feel they have their day in court, but we can do part of what they are requesting with amended conditions. Mr. Woods stated pre-construction wildlife surveys results can be a required condition as an option and that documentation is circulated to the public. Mr. Woods said the use of a pre-construction survey is routine, but it is used to validate the findings. If there needs to be more robust surveys pre-construction, that is a separate pathway.

Councilor Roppe stated she is not inclined to grant a contested case and agrees with option two.

Chair Beyeler discussed initial water issues and in the reconsideration, lowering to an industrial classification, asked if it was verbal or in writing. Mr. Woods confirmed in writing via email.

**Action:** A motion was made by Councilor Gravatt and seconded by Councilor Winters that the Council conduct a contested case proceeding on the Proposed Order for the Summit Ridge Wind Farm on Request for Amendment

4 to address the following issues, A3 Fish Wildlife and Habitat issues raised by the Friends of the Gorge, et al.

**Vote:** Councilor Gravatt, Yes; Councilor Grail, No; Councilor Roppe, No; Vice-Chair Jenkins, No; Chair Beyeler, Yes; Councilor Howe, No; Councilor Winters, No.

Motion Denied.

**Action:** A motion was made by Vice-Chair Jenkins and seconded by Councilor Roppe that the Council deny each of the requests for contested case by Friends of the Gorge Et. Al; Ms. Irene Gilbert, as an individual and representing Friends of the Grande Ronde Valley; and Fuji and Jim Kreider on the Proposed Order for the Summit Ridge Wind Farm Amendment 4 because the requests fail to raise a significant issue of fact or law that may affect the Council's determination that the facility meets applicable laws and Council standards, and that the Council issue a written order denying the contested case requests.

We find that the persons requesting a contested case raised issues regarding fish and wildlife and water usage that amendments to the Proposed Order would settle in a manner satisfactory to this council.

Accordingly the Council directs staff to amend the Proposed Order as follows:

Change condition 10.9 to clarify that the certificate holder shall not use more than 5,000 gallons of water per day from the onsite well at the O & M building.

Consult with the Oregon Department of Fish and Wildlife to amend condition 10.7 to require the certificate holder to conduct field based pre-construction fish and wildlife habitat surveys of the entirety of the micrositing corridor plus the habitat mitigation parcel based on a protocol approved by Oregon Department of Fish and Wildlife. The results of the survey shall be used to inform final facility layout and design. The Department in consultation with ODFW shall verify that the final layout and design minimizes habitat impacts based on field surveys. The results shall be presented to Council by Department Staff and Oregon Department of Fish and Wildlife Staff, and posted on the Department's website.

Require consultation with Oregon Department of Fish and Wildlife after the results of the two-year fatality monitoring. Require mitigation if the results show exceedances of thresholds of concern in the Wildlife Monitoring and Mitigation Plan. Require the Department staff and Oregon Department of Fish and Wildlife staff to present the results of the fatality monitoring and consultation outcomes to Council. Make necessary changes to the Wildlife Monitoring and Mitigation Plan to reflect the amended condition. And after making these amendments, send a notice of the amended proposed order to the certificate holder and those persons who commented on the record of the public hearing on the draft proposed order.

**Vote:** Councilor Gravatt, No; 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.

## Break

## J. [WORKING LUNCH] 2019 Administrative Housekeeping Rulemaking (Action Item)<sup>11</sup> – Christopher Clark, Rules Coordinator.

Mr. Clark provided an overview of the Housekeeping Rulemaking Project with the purpose of the project to improve the clarity and consistency of the rules and make minor procedural changes. The Council was given an opportunity to review staff recommendations for rule changes and deliberated to authorize staff to issue a Notice of Proposed Rulemaking. Mr. Clark discussed some issues initially proposed for the project are on hold pending outcomes of the legislative session (HB

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<sup>11</sup> Audio for Agenda Item J = 02:43:24 – May 17, 2019

2020 and SB 928) and that most proposed changes are related to electronic transmission of application materials and noticing requirements.

Mr. Clark provided a summary of proposed amendments that can be located [here](#). The draft proposed rules can be located [here](#).

**Action:** A motion was made by Vice-Chair Jenkins and seconded by Councilor Roppe that the Council authorize staff to file the Notice of Propose Rulemaking with the Oregon Secretary of State for the draft proposed rule changes, as presented by staff, and schedule a rulemaking hearing for the Council’s August meeting.

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

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

**K. [REMOVED] Montague Wind Power Facility, Draft Proposed Order on Request for Amendment 4 of the Site Certificate (Information Item) – Chase McVeigh-Walker, Siting Analyst.**

This agenda item was removed.

Meeting adjourned at 12:50 pm.