



ENERGY FACILITY SITING COUNCIL

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

Energy Facility Siting Council August 22-23, 2019 Meeting Minutes

Thursday, August 22, 2019 at 3:00 p.m.

Friday, August 23, 2019 at 8:30 a.m.

Port of Morrow - Riverfront Room

2 Marine Drive Boardman, OR

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

Thursday, August 22, 2019 - Boardman

Call to Order: The meeting was called to order at 3:00 p.m. on August 22, 2019 by Chair Barry Beyeler.

Roll Call: Council Chair Barry Beyeler, Council Members Marcy Grail and Kent Howe were present. Council Member Mary Winters arrived shortly after roll call at approximately 3:10 p.m. Council Member Ann Gravatt attended remotely via telephone but did not attend until 5 p.m.

Oregon Department of Energy representatives present were Senior Policy Advisor Maxwell Woods, Senior Siting Analyst Sarah Esterson, Senior Siting Analyst Katie Clifford, Senior Siting Analyst Chase McVeigh-Walker, Rules Coordinator Christopher Clark, Operations Analyst Sean Mole, Temporary Division Assistant Erica Euen, and Communications Outreach Jennifer Kalez. EFSC Counsel Patrick Rowe of the Department of Justice was also present.

A. Wheatridge Wind Energy Facility, Draft Proposed Order on Request for Amendment 4 of the Site Certificate (Information Item) – Sarah Esterson, Senior Siting Analyst, gave a presentation on the Draft Proposed Order on Request for Amendment 4 of the Wheatridge Wind Energy Facility site certificate; a public hearing was conducted as Agenda Item D; the written comment period extended through September 9, 2019. Request for Amendment 4 (RFA4) seeks Council approval to add 1,527 acres to the approved site boundary within Morrow County for construction and operation of up to 150 megawatts (MW) of photovoltaic solar energy facility components, up to 41 distributed energy storage (battery) system sites and expansion the Wheatridge West collector substation. RFA4 also seeks Council approval for site certificate condition amendments. The certificate holder's RFA4 and the Department's Draft Proposed Order on RFA4 are available for review at: [Department's Wheatridge Wind Energy Facility webpage](#).

Council Member Kent Howe asked Sarah if the Conditional Use Permit must be applied for through Morrow County or if the permit is incorporated into the EFSC process. Sarah answered that it is incorporated in the process.

B. Perennial Wind Chaser Station, Draft Proposed Order on Request for Amendment 1 of the Site Certificate (Information Item) – Katie Clifford, Senior Siting Analyst, gave a presentation on the Draft Proposed Order on Request for Amendment 1 of the Perennial Wind Chaser Station site certificate; a public hearing was conducted as Agenda Item D, which concluded the public comment period. Request for Amendment 1 (RFA1) seeks Council approval to extend the construction commencement and completion timelines by two years for the previously approved 450 MW natural gas-fueled power generation facility and related or supporting facility components. The certificate holder's RFA1 and the Department's Draft Proposed Order on RFA1 are available for review at: [Department's Perennial Wind Chaser Station Webpage](#).

Council Member Mary Winters asked Katie to clarify why the department thought the certificate holder had met two or more criteria under ORS 215.274 / UCDC § 152.617(II)(7)(B).

Katie explained the department's findings and conclusion.

Max requested Katie explain the ZLD (zero liquid discharge) options.

Katie explained that it is an option for managing cooling tower system water.

Max asked to make sure Council understood the monetary path option for compliance with the EFSC Carbon standard.

Max noted that the meeting was ahead of schedule and asked to move to agenda item G.

Chair Beyeler approved the agenda modification.

G. The Climate Trust Audit Update (Information Item) – Maxwell Woods, Acting Council Secretary, gave a presentation on The Climate Trust's 2017 Financial Audit.

C. Site Certificate Amendment Process Rulemaking (Action Item) – Patrick Rowe, Department of Justice and Christopher Clark, Rulemaking Coordinator. Christopher Clark provided an overview of the history of the 2017 Amendment Rulemaking project, including adoption of permanent rules in October 2017 through Administrative Orders EFSC 4-2017 and EFSC 5-2017. Patrick Rowe provided an overview of the decision that the Supreme Court issued on August 1, 2019. He explained that the Court held that there had been one procedural error and one substantive error in the rulemaking. The procedural error said that the October 2017 rules were invalid because the Council had failed to substantially comply with ORS 183.335(3)(d). The substantive error appeared in three rules, which stated that the right to seek judicial review of an amendment proceeding under the Type B review process was limited to those persons who had provided written comments by the written comment deadline, and that judicial review would be limited to the issues raised in that person’s comments. Mr. Rowe explained that the rules were based on ORS 469.403, which limits judicial review for decisions that have gone through a contested case proceeding. Mr. Rowe explained that because Type B review does not allow for contested cases, the Court held a different statute, ORS 183.482, governs judicial review of Type B amendment decisions and that that statute does not include any requirement for a person to have commented on the record to obtain judicial review. Mr. Rowe and Mr. Clark explained the Department’s recommendation for Council to adopt temporary rules to replace the rules that were held invalid. Mr. Clark discussed the procedures for adopting temporary rules. Mr. Rowe discussed the justification for adopting temporary rules, including the State’s position that failure to adopt temporary rules could result in serious prejudice to certificate holders with pending amendment requests who are dependent on a timely decision on their request from Council. Mr. Clark and Mr. Rowe also recommended the Council initiate rulemaking to adopt permanent rules within 180 days.

Mary Winters asked if there was any case law interpreting authority to adopt temporary rules in a similar situation where a rule was invalidated.

Patrick Rowe answered yes, about four that he knows of. He explained that in one of those situations it was interpreted that the court would not put itself in the agency’s position, so if the agency identifies the need for the temporary rules the court would uphold the temporary rules.

Kent Howe asked for clarification of which facilities are included under ORS 469.410(1), which the temporary rules would not be applied to.

Christopher Clark answered that the rules would not apply to old facilities existing prior to the siting process.

Christopher Clark provided a projected timeline for adoption of permanent rules, which include a 30-day period to solicit written input from stakeholders prior to considering proposed rules in October, a rulemaking hearing in November, and consideration of permanent rules in December.

Marcy Grail noted that the timeline to make new permanent rules seems too ambitious and that there could be weather or other issues delaying the process.

Max Woods explained that the Department had that in mind when creating the timeline and there is a buffer around the timeline to ensure accordance with the 180-day expiration of the temporary rules.

Chair Beyeler asked what would happen if the temporary rules expired before new rules were adopted.

Patrick explained that if that happened we would be in a similar situation as we are now.

Ann Gravatt asked for clarification on the timeline for new rulemaking process and noted that she would like to hear from stakeholders/public.

Max and Chris explained that a public comment period and hearing would take place for the permanent rule making.

Marcy Grail moved to adopt recommended temporary rules and file rules immediately.

Kent Howe seconded that motion commenting that because of extreme prejudice against and comments from certificate holders in the process it is important to move forward with temporary rules.

Motion passed unanimously.

Marcy Grail moved to initiate permanent rule making, direct staff to solicit permanent rules to propose, and propose those permanent rules at the Oct 2019 EFSC meeting.

Mary Winters seconded the motion.

Motion passed unanimously.

D. [5:00 pm] Wheatridge Wind Energy Facility, Public Hearing on the Draft Proposed Order on

Request for Amendment 4 of the Site Certificate (Hearing) – Sarah Esterson, Senior Siting Analyst, gave a brief presentation. Barry Beyeler, Council Chair/Presiding Officer, opened the public hearing at 5:55 pm on the Draft Proposed Order on Request for Amendment 4 (RFA4) of the Wheatridge Wind Energy Facility site certificate after Council received a brief overview from staff. The purpose of the hearing was for members of the public to provide verbal comments to Council members on RFA4 and the Draft Proposed Order on RFA4. RFA4 seeks Council approval to add 1,527 acres to the approved site boundary within Morrow County for construction and operation of up to 150 MW of photovoltaic solar energy facility components, up to 41 distributed energy storage (battery) system sites and expansion of the Wheatridge West collector substation. RFA4 also seeks Council approval for site certificate condition amendments. The written comment period on the draft proposed order and amendment request was open until September 9, 2019 at 5:00 PM.

NextEra Energy (Certificate Holder) Mike Papalardo – Thanked the department and council for their efforts.

Carla McLane – Representing Morrow County clarified that Next Era does have a conditional use permit and are working diligently toward other permits. The county has encountered a few things that they will be asking for clarification on, but nothing problematic or too concerning. She mentioned working with NextEra staff has been pleasant. She offered to answer any questions concerning the county on the matter.

Irene Gilbert – Noted there was extreme prejudice and that she doesn't like that EFSC approved temporary rules without input from the public.

Chair Beyeler asked the certificate holder if they would like to request the comment period to be extended.

Certificate holder answered, "No."

Written public comment period closed September 9, 2019 at 5pm.

Chair Beyeler closed the public hearing at 6:10PM

E. [5:45pm] Perennial Wind Chaser Station, Public Hearing on the Draft Proposed Order on Request

for Amendment 1 of the Site Certificate (Hearing) – Barry Beyeler, Council Chair/Presiding Officer, opened the public hearing on the Draft Proposed Order on Request for Amendment 1 (RFA1) of the Perennial Wind Chaser site certificate. The purpose of the hearing was for members of the public to provide verbal comments to Council members on RFA1 and the Draft Proposed Order on RFA1. RFA1 seeks Council approval to extend the construction commencement and completion timelines by two years. The comment period on the Draft Proposed Order and RFA1 closed at the end of the hearing.

Richard Allen (Certificate Holder's legal representation) – Thanked Katie and the department/council. Spoke to applying for an amendment under the rules. Touched on comments they had received and explained that they had responded to them. Offered to answer any questions and asked the Council to refer to their written comment submittal.

Ryan Rittenhouse (Friends of the Columbia Gorge) – Stated that the site certificate is expired and cannot be renewed or changed. Thinks the request for amendment was submitted under invalid rules. Thinks they must submit a new application for a site certificate. Asking ODOE/Council not to process amendment request. Reiterated that the site certificate is expired and void. Mentioned public health and environment concerns including climate change issues. Other methane gas power plants are nearby, so this would create a hotspot of emissions.

Dan Serres (Columbia Riverkeeper) – Agreed with prior testimony by Ryan Rittenhouse. Stated that site certificate is void. Council must consider changes in facts or law, such as the cradle-to-grave impacts of fracked gas and more information about how climate change is a threat to Oregon and the Columbia River watershed. Methane leaks are likely from facility

operation. The facility would also result in VOC emissions and other air pollution. The Carty Generating Station emitted more air pollution than the facility was originally permitted for. The Perennial Wind Chaser Station would be non-base load, and air emissions are not limited by the DEQ permit during facility startup/shutdown; therefore, VOCs from Perennial are likely to be more than expected too. Smog-forming pollution from the facility may impact air quality at protected areas. The DEQ Air Contaminant Discharge Permit expires July 26, 2020 if Perennial does not commence construction by that date, but their request for amendment to their site certificate is for a construction commencement date later than that. There is no place for natural gas in Oregon's energy future. The facility is not needed and hasn't demonstrated a market for it.

(by phone) Emily Krafft (350 PDX) – Presented concern with the DPO and stated the site certificate is invalid. Adverse impacts on environment, health, and climate. Significant changes since site certificate was issued. We must reduce GHGs and phase out fossil fuels and increase renewable energy. Does this facility promote Oregon's energy policy (ORS 469.010)? The facility would impede OR's transition to renewable energy. Fracked gas is now known to be comparable to coal instead of a bridge fuel. Perennial Power Holdings, Inc. owns a 40 percent stake in American Bituminous Power Partners. In 2018 the Associated Press reported that American Bituminous Power Partners was at risk of bankruptcy. The U.S. Environmental Protection Agency has found that the coal waste plant was not fully in compliance with Clean Air Act requirements. Urged council to deny the request.

(by phone) Dena Turner – Urged council to deny the RFA stating that there are no customers for the facility and noting they do not have a power purchase agreement. Fracked gas has cradle-to-grave impacts. Changes in fact or law include climate science that shows natural gas is no longer a bridge fuel. The site certificate is invalid.

(by phone) Janine O'Rourke (350 PDX) – Facility will negatively affect our future. Approving would go against OR's GHG reduction goals. There is no market need for this facility. Urged council to review public comments and to deny request.

(by phone) Eileen Fromer – Reject the request for amendment due to the climate change implications. Threatens health and climate. Oregon energy policy is moving away from natural gas infrastructure. There is no power purchase agreement, and this facility is not needed or wanted. Urged council to deny the request.

Richard Allen (Certificate Holder) – Council does not have authority over federally-delegated programs so air quality permits do not fall under council but instead DEQ. As for climate the council has the Carbon Dioxide standard. Responding to the comment that the plant is not needed he said there is no need standard that council has and that the market will decide whether they get a purchase agreement.

Marcy Grail asked if Richard Allen would be present tomorrow.
Richard Allen responded yes.

Chair Beyeler closed the hearing at 6:57PM

Meeting Adjourned at 6:58PM

Friday, August 23, 2019 - Boardman

Call to Order: The meeting was called to order at 8:30 p.m. on August 23, 2019 by Chair Barry Beyeler.

Roll Call: Council Chair Barry Beyeler and Council Members Marcy Grail, Kent Howe, and Mary Winters were present. Council Member Ann Gravatt attended remotely via telephone.

Oregon Department of Energy representatives present were Senior Policy Advisor Maxwell Woods, Senior Siting Analyst Sarah Esterson, Senior Siting Analyst Katie Clifford, Senior Siting Analyst Chase McVeigh-Walker, Rules Coordinator Christopher Clark, Operations Analyst Sean Mole, Temporary Division Assistant Erica Euen, and Communications Outreach Jennifer Kalez. EFSC Counsel Patrick Rowe of the Department of Justice was also present.

F. Consent Calendar – Approval of minutes; Council Secretary Report; and other routine Council business.

Marcy Grail moved that meeting minutes from May and June be approved.
The motion passed unanimously.

Availability for future meetings –

September: Mary Winters is unavailable

October: Kent Howe and Ann Gravatt are unavailable

(Agenda Item G occurred between B & C)

H. [9:00 am] Rulemaking Hearing: 2019 Housekeeping Rulemaking Project (Hearing) – Christopher Clark, Rules Coordinator, introduced the hearing and invited public comments on the proposed amendments to OAR chapter 345. Mr. Clark confirmed that the deadline to provide the Council with oral or written comments on the proposed rule amendments was the close of the hearing.

Ann Gravatt asked for Patrick Rowe’s advice on the verbiage of “will” vs. “shall.”

Max assured Ann that Patrick would speak to that later in the meeting, as part of Agenda Item N.

Marcy noted that there was concern mentioned in public comment that we did not give enough notice.

No one expressed interest in providing public comment so Mr. Clark recessed the hearing at 9:04 am. The hearing was reopened at 9:30 am during discussion of Agenda Item I. No one expressed interest in providing public comment and the hearing was adjourned.

I. Perennial Wind Chaser Station, Council Review of Draft Proposed Order on Request for Amendment 1 of the Site Certificate (Information Item) – Katie Clifford, Senior Siting Analyst. Council will review the Draft Proposed Order, consider comments received on the record of the Draft Proposed Order public hearing, and may provide comments to staff on the Draft Proposed Order for consideration in the Proposed Order.

Katie discussed the Confederated Tribes of the Umatilla Indian Reservation’s request that a cultural resources monitor be present during construction ground-disturbing activities. In response to a question from Chair Beyeler, Katie stated that the Department would have to consider whether construction worker training would still be necessary if a cultural resources monitor is present.

Kent Howe asked if the PUC has determined that the facility is needed to meet the State of Oregon’s energy needs. Max explained that is a little outside our scope but that the PUC considers whether power generating plants are needed when they evaluate rate cases (rate recovery requested by regulated investor-owned utilities). However, Council cannot consider whether it is needed or not because by statute, Council is precluded from considered “need” for a power generating facility.

Mary Winters asked about the limits of the information request based on testimony about a parent company going into bankruptcy. She wanted to know if they can only ask for information or if they can check into the legitimacy of the information. Katie responded by going over the applicable rules that requires the certificate holder to explain the need for the timeline extension and let council know it is just an information requirement. Max said not having a power purchase agreement is a common reason for a timeline extension request. He added that regarding the concern about the parent company, ODOE staff will need to investigate that further and consider that in light of the Organization Expertise standard before they can speak to that.

Marcy asked about a comment that indicated the certificate holder did not meet the timeline for submitting an amendment. Max explained that they did meet the deadline.

Mary said that if the Council must simply take at face value the certificate holder's explanation of the need for a timeline extension, it's not particularly helpful information to Council. Max suggested that the permanent rulemaking contemplate this.

Ann commented that she does not see any evidence that the facility is something that one of the utilities has included in their integrated resource plan; therefore, Council cannot look to the PUC for any indication that the facility is needed by an investor-owned utility in Oregon.

Mary asked for staff comment on the comments made about the DEQ air quality permit.

Katie responded that they need to investigate that further before they can discuss it in depth.

Max added that the council does not have an air quality standard, but the Council considers visibility and plumes related to the Protected Areas and Scenic Resources.

Marcy asked how in-depth the Council should look into changes in fact or law.

Max and Katie provided examples and said that Council should look into changes as they pertain to Council standards.

Marcy said it's important to help the public understand the scope of Council's review (specifically, any limits on that scope).

Ann noted that the Council is under a fair level of public scrutiny and that members of the Council have been appointed by the Governor and approved by the legislature to act as representatives of the public. Ann takes public comment seriously. She is aware of what the Council's limitations are, but also notes that Council members are there to act as representatives of the public.

Based on staff recommendation, Council carried over the review of comments and the DPO to the September 26-27, 2019 meeting.

J. Public Comment – This time was reserved for the public to address the Council regarding any item within the Council's jurisdiction that was not otherwise closed for comment.

Jodi Parker – encouraged council and local government to adopt hiring standards for construction on energy facilities to require utilizing local workforces.

Carla McLane – wanted to remind council about the disconnect between county process and council process, specifically goal 3 and goal 5 standards.

Chair Beyeler closed the public comment period at 9:40 a.m.

K. Nolin Hills Wind Power Project, Request for Extension of Notice of Intent Timeline (Action Item) –

Katie Clifford, Senior Siting Analyst. Council considered a request from Capitol Power Corporation to extend the expiration date for the Notice of Intent for the proposed Nolin Hills Wind Power Project by one year.

Marcy moved that council approve request to extend the expiration date for the Notice of Intent for the proposed Nolin Hills Wind Power Project by one year.

Kent Howe Seconded the motion.

Motion passed unanimously.

L. Montague Wind Power Facility, Council Review and Decision on Amendment 4 of the Site

Certificate (Action Items) – Chase McVeigh-Walker Senior Siting Analyst. Council reviewed the Proposed Order on Amendment 4. Request for Amendment 4 seeks Council approval of the following: Expansion of the site boundary and micro-siting corridor; construction and operation of up to 81 wind turbines; construction and operation of a solar photovoltaic generating system of up to 1,189 acres; construction and operation of up to a 100-megawatt battery storage system, and related or supporting facility components.

Chair Beyeler asked if turbines would be constructed in the same area as the solar array as depicted in the image.

Chase explained the image was of a combination of options so no, it would be either solar or turbines in that specific area on the map.

Kent Howe asked about turbine set back requirement terminology.

Max clarified for him.

Beyeler asked about a minor discrepancy in the DPO.

Chase noted he mislabeled a condition (52) so a numbering typo made two conditions 52, the second one should be 53.

Marcy moved to approve the Proposed Order on Amendment 4 with modifications.

Kent Howe seconded.

Motioned passed unanimously.

M. Summit Ridge Wind Farm, Council Decision on Requests for Contested Case; and the Amended Proposed Order on Request for Amendment 4 of the Site Certificate (Action Items) – Sarah Esterson, Senior Siting Analyst. The Council first considered requests for contested case on the Amended Proposed Order on Request for Amendment 4 of the Summit Ridge Wind Farm site certificate, and then reviewed the Amended Proposed Order on Amendment 4. Request for Amendment 4 seeks Council approval to extend the construction commencement and completion deadlines by two years.

Max explained Supreme Court decision.

Marcy asked for clarification on why the department did not seek out more information regarding Irene Gilbert's comment.

Marcy asked for clarification on why the department did not seek out more information regarding to Gilberts comment.

Sarah explained it was because it wasn't applicable to this actual site.

Mary asked how public participation and response will work into the process.

Sarah explained how public will be noticed and given the opportunity to comment.

Action Item 1:

Sarah explained the 3 action options.

Council deliberated.

Marcy Grail moved to deny contested case because the request did not raise significant issues of law or fact.

Motion was seconded by Kent Howe

Motion passed unanimously.

Action Item 2:

Sarah explained the 3 action options.

Marcy Grail moved to approve the Amended Proposed Order and adopt the Final Order with modifications related to renumbering rule references.

Motion was seconded by Kent Howe

Barry Beyeler, Mary Winters, Kent Howe, and Marcy Grail voted yes. Ann Gravatt voted no. Motion passed 4-1.

N. Rulemaking: 2019 Housekeeping – Council Deliberation (Action Item) – Christopher Clark, Rules Coordinator, provided an overview of the rulemaking project and summarized public comments received before the close of the public comment period. As of that time, the Council had received two public comment letters and one comment letter from staff. Mr. Clark summarized the issues raised in the public comment letters and provided department responses. The first issue was to reject all rule changes which would revise rules declared invalid in Friends v. EFSC. Mr. Clark explained that the department agrees with this recommendation for separate reasons. The second issue is to retain the word "shall" to denote an obligation instead of "must" or "will."

Marcy Grail expressed hesitancy to discuss this issue before counsel has reviewed.

Patrick Rowe stated that Council could discuss, but may choose to defer a decision pending further review.

Ann Gravatt asked what the intent of the changes from “shall” to “must” and “will” was.

Mr. Clark explained the rationale behind the department’s drafting choices and explained that there was not an intent to create a substantive change in the operation of the rules.

Mary Winters stated that there is a legal debate about use of the word shall, and that there is a general move away from its use.

Mr. Clark recommended Council defer action until counsel has reviewed.

Marcy Grail asked why we have received comments that this change was not properly noticed.

Mr. Clark explained that non-substantive changes are often not specifically described in notice, but that the language was included in both draft and proposed rules provided to stakeholders.

Mr. Clark summarized the third recommendation to revise the term “by mail or email” to state that notices will be sent by “mail and email” in all proposed and existing rules. Mr. Clark explained that the Department does not recommend taking action on this issue at this time.

Mr. Clark summarized the Department’s testimony and recommendations on the rules.

Council deliberated.

Council decided to defer action until September.

Irene Gilbert commented on the rulemaking off the record.

Mr. Clark added that Irene did provide advice on this rulemaking project.

Meeting adjourned at approximately 12:30 pm.

For more details visit the [Council Meetings website](#)

