



ENERGY FACILITY SITING COUNCIL

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

Energy Facility Siting Council September 26-27, 2019 Meeting Minutes

Thursday, September 26, 2019 at 4:00 p.m.

Friday, September 27, 2019 at 8:00 a.m.

Clatskanie – Clatskanie River Inn

600 E Columbia River Hwy, 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, September 26, 2019 – Clatskanie

Call to Order: The meeting was called to order at 4:00 p.m. on September 26, 2019 by Chair Barry Beyeler.

Roll Call: Council Chair Barry Beyeler, Vice Chair Hanley Jenkins, and Council Members Kent Howe, Marcy Grail, and Jordan Truitt were present.

Oregon Department of Energy representatives present were Council Secretary Todd Cornett, Senior Policy Advisor Maxwell Woods, Rules Coordinator Christopher Clark, Compliance Officer Duane Kilsdonk, Operations Analyst Sean Mole, Temporary Division Assistant Erica Euen, and Communications Outreach Cliff Voliva. EFSC Counsel Patrick Rowe of the Department of Justice was also present.

A. Consent Calendar (Action Item) – Todd Cornett, Council Secretary. Approval of minutes; Council Secretary Report; and other routine Council business.

August 2019 meeting minutes were not yet reviewed by council and it was decided to move approval of minutes to 09/27 in order to give council the opportunity to review.

Secretary Cornett announced that Chair Beyeler had tendered his resignation to Governor Brown – October 2019 will be his last meeting. Chair Beyeler was thanked for his service and presented a token of appreciation.

Secretary Cornett announced that the department had hired a new Division Assistant that council will meet at the October 2019 meeting.

Secretary Cornett updated council on:

- research into council's authority in requiring updates to County Comprehensive Plans as part of the site certificate process;
- amendment determination requests for Shepherd's Flat Central, Klamath Cogeneration Project; and
- amendment rulemaking

Availability of future meetings:

October (Salem)- Beyeler, Jenkins, Grail, Truitt, Winters are available. Gravatt and Howe will not be in attendance.

November (Location TBD) 21-21st- Jenkins, Howe, Grail, Truitt are available. Will need to check with other council members

December-19th-20th (Location TBD)

B. Obsidian Solar Center Hearing Officer Appointment¹ (Action Item) – Maxwell Woods, Senior Policy Advisor. Council considered appointment of a Hearing Officer from the Oregon Office of Administrative Hearings to conduct a draft proposed order public hearing and contested case proceeding on the Proposed Order on Application for Site Certificate for the Obsidian Solar Center, a proposed solar photovoltaic energy generation facility in Lake County, Oregon. For project details visit [Department's Obsidian Solar Center webpage](#)

Vice Chair Jenkins moved to appoint Joe Allen, Administrative Law Judge, Oregon Dept of Administrative Hearings, as Hearing Officer

Council Member Grail seconded

Motion passed unanimously

C. Bakeoven Solar Project Hearing Officer Appointment² (Action Item) – Maxwell Woods, Senior Policy Advisor. Council considered appointment of a Hearing Officer from the Oregon Office of Administrative Hearings to conduct a contested case proceeding on the Proposed Order on Application for Site Certificate for the Bakeoven Solar Project, a proposed solar

¹ Audio for Agenda Item B = 00:28:09 – September 26, 2019

² Audio for Agenda Item C = 00:33:15 – September 26, 2019

photovoltaic energy generation facility in Wasco County, Oregon. For project details visit [Department's Bakeoven Solar Project Hearing Officer webpage](#)

Vice Chair Jenkins asked if there were any issues with the appointing the same hearing officer for Item B and Item C. Mr. Woods said there should not be any conflicts or issues, as timing of the two contested case processes is expected to be staggered, and hearing officer work during a contested case is not typically a 'full time job.'

Vice Chair Jenkins moved to appoint Joe Allen, Administrative Law Judge, Oregon Dept of Administrative Hearings, as Hearing Officer
Council Member Grail seconded
Motion passed unanimously

D. Bakeoven Solar Project Consultant Appointment³ (Action Item) – Maxwell Woods, Senior Policy Advisor. Council considered appointing a consultant to support the technical review of Exhibit W Retirement and Financial Assurance for the proposed Bakeoven Solar Project Application for Site Certificate.

Vice Chair Jenkins asked if there were any issues between Golder and Avangrid (Avangrid is the developer of the Bakeoven Solar Project)
Mr. Woods said there shouldn't be any issues but he will confirm and conduct a conflict of interest check with Golder to verify.

Vice Chair Jenkins moved to appoint Golder & Associates Corporation as a technical consultant, assuming there is no conflict of interest
Council Member Grail seconded
Motion passed unanimously

E. Port Westward Generating Project, Draft Proposed Order on Request for Amendment 11 of the Site Certificate⁴ (Information Item) – Christopher Clark, Rules Coordinator, gave a presentation on the Draft Proposed Order on Request for Amendment 11 of the Port Westward Generating Project site certificate (RFA11). Portland General Electric is the certificate holder. For project details visit [Department's Port Westward Generating Project webpage](#).

Chair Beyeler asked if this would be similar to the one they toured in Salem
Mr. Clark explained that it was similar in function but could be different in battery type and design.

Vice Chair Jenkins asked how big the energy facility boundary was.
Mr. Clark answered the energy facility site boundary was 26 acres approximately, and the site proposed battery energy storage system ("BESS") is about 100 ft x 90 ft.

Council Member Grail asked if the developer chose amendment review process Type A
Mr. Clark said that because there was no request for a specific type, it was automatically a Type A, the default process.

Secretary Cornett noted that one comment that was received via email while meeting was in progress would be printed and handed out to council members

F. [5:04 pm] Port Westward Generating Project, Public Hearing on the Draft Proposed Order on Request for Amendment 11 of the Site Certificate⁵ (Hearing) – Council Chair Barry Beyeler, Presiding Officer. The Council conducted a public hearing on the Draft Proposed Order on Request for Amendment 11 of the Port Westward Generating Project site certificate (RFA11). The purpose of the hearing was for members of the public to provide verbal comments to Council members on RFA11 and the Department's Draft Proposed Order on RFA11. For project details visit [Department's Port Westward Generating Project webpage](#)

³ Audio for Agenda Item D = 00:34:21 – September 26, 2019

⁴ Audio for Agenda Item E = 00:40:24 – September 26, 2019

⁵ Audio for Agenda Item F = 01:05:00 – September 26, 2019

Ms. Irene Gilbert provided comment on concerns about the federal endangered species act, specifically the Columbia white tailed deer, bald eagles (habitat), golden eagles (habitat), and invasive weeds. Ms. Gilbert raised concerns with the lack of surveys regarding species protected by the Bald and Golden Eagle Protection Act. She requested additional time to ensure her rule references were correct. Ms. Gilbert raised concerns about monitoring timelines in the proposed Revegetation and Noxious Weed Control Plan, stating that there should be no end date to a developer's responsibility to control noxious weeds. Ms. Gilbert recommended Council reject proposed changes to the water way and wetland setbacks to be changed, as it's risking contamination or damage to significant water ways.

Portland General Electric (Certificate Holder) representative Lenna Cope responded to Ms. Gilbert's comments, offering explanations for decisions related to Ms. Gilbert's concerns.

Vice Chair Jenkins moved to leave the record open until September 27, 2019 at 8:30 am in order to give Ms. Gilbert time to validate her information regarding the rules referenced in her comment.

Council Member Grail seconded

Motion passed unanimously

Meeting adjourned at 5:46 pm

Friday, September 27, 2019 - Clatskanie

Call to Order: The meeting was called to order at 8:00 a.m. on September 27, 2019 by Chair Barry Beyeler.

Roll Call: Council Chair Barry Beyeler, Vice Chair Hanley Jenkins, and Council Members Kent Howe, Marcy Grail, and Jordan Truitt were present.

Oregon Department of Energy representatives present were Council Secretary Todd Cornett, Senior Policy Advisor Maxwell Woods, Rules Coordinator Christopher Clark, Compliance Officer Duane Kilsdonk, Operations Analyst Sean Mole, Temporary Division Assistant Erica Euen, and Communications Outreach Cliff Voliva. EFSC Counsel Patrick Rowe of the Department of Justice was also present.

(Agenda continuation of Item A occurred between F & H)

A. Consent Calendar – Approval of August 2019 EFSC meeting minutes

Council Member Howe motioned to approve meeting minutes from August 22-23rd 2019.

Council Member Grail seconded

Vice Chair Jenkins and Council Member Truitt recused themselves because they did not participate in the August meeting.

Motion passed.

G. Boardman to Hemingway Transmission Line Project, Council Ratification of Chair Approval of Extension of Record for Applicant Response to Draft Proposed Order Public Comments⁶ (Action Item) – Todd Cornett, Council Secretary, gave a presentation with a request pursuant to OAR 345-011-0010(3) to ratify an emergency Council Chair action approving Idaho Power Company's (Applicant) request to extend the record by 45-days, from September 23 to November 7, 2019, to allow the applicant adequate time to review and respond to the substance and volume of comments received by the August 22, 2019 draft proposed order public comment deadline. For project details visit [Department's Boardman to Hemingway Transmission Line webpage](#)

Council Member Grail recused herself from the agenda item

⁶ Audio for Agenda Item G = 00:07:29 – September 27, 2019

Vice Chair Jenkins asked Mr. Rowe about statutes regarding the applicant's request for an extension to respond to comments.

Mr. Rowe read the applicable statutes to the council.

Vice Chair Jenkins commented that it is important to him to give sufficient time to both public and the applicant, but that they have already provide sufficient time to the public.

Vice Chair Jenkins motioned to support the emergency order allowing Idaho Power until November 7, 2019 to respond to public comment, but not to allow any additional public comment beyond the 45 day extension granted to Idaho Power.

Council Member Howe seconded

Motion passed

H. Annual Election of Council Officers⁷ (Action Item) – Todd Cornett, Council Secretary. Pursuant to OAR 345-011-0010(1) the Council shall annually elect a chair and a vice-chair.

Chair Barry Beyeler Motioned to appoint Hanley Jenkins as Chair and Marcy Grail as Vice Chair

Council member Howe seconded

Motion passed

Vice Chair Jenkins motioned that Barry Beyeler remain as chair through the rest of his term (October 2019)

Council Member Howe seconded

Motion passed

F. Continuation - At 8:19 am Chair Beyeler closed the public hearing, and comment period regarding Agenda Item F. Prior to the closing of the public hearing and comment period Ms. Gilbert provided information regarding the rules referenced in her prior comments and Portland General Electric provided its response to comments.

I. Housekeeping Rulemaking - Council Deliberation and Decision⁸ (Action Item) – Christopher Clark, Rules Coordinator. After considering all the comments received on the record for this rulemaking, the Council deliberated and decided whether to approve final rule language, or provide additional direction to staff.

Vice Chair Jenkins told council he prefers the term "must" over "shall" and agreed with staff recommendations. All other council members concurred.

Council Member Howe moved to adopt the proposed changes to the rules and to use the term "must" to denote an obligation.

Vice Chair Jenkins seconded

Motion passed unanimously

The council deliberated how to respond to a request to provide a written statement of how the Council will determine if the rules are meeting their objectives.

Council Member Howe discussed that if the council includes a follow up requirement to determine whether or not the new rules are accomplishing the objectives, it is importance the method be simple, clear, and objective.

Vice Chair Jenkins suggested evaluating the method of delivery based on complaints received to make sure they are meeting their obligations and make changes if not.

Council Member Grail suggested that they go above and beyond requirements by statute to get information out to the public

Secretary Cornett explained that the council has complete discretion to not include a follow up requirement, be very general about a follow up requirement or be very specific about one.

Vice Chair Jenkins suggested Council conduct an annual review of the complaints regarding the updated rules and providing that to council. Council Member Grail concurred.

⁷ Audio for Agenda Item H = 00:15:46 – September 27, 2019

⁸ Audio for Agenda Item I = 00:20:39 – September 27, 2019

Council Member Grail asked if staff can solicit public feedback, including from the certificate holders, without making it a formal agenda item?

Secretary Cornett answered that looking into this question on a project basis is something they can build into the process. Council Member Grail expressed that would be helpful.

Vice Chair Jenkins moved to have staff flag the issues and provide an evaluation at the end of the year of the date of the adoption of this rule.

Council member Grail asked if staff can solicit feedback about how to determine whether or not new rules are meeting their intended objective.

Secretary Cornett answered that staff can build that question in to the notice/solicitation as part of the rulemaking process. Council Member Grail replied that would be helpful.

Council member Howe seconded

Motion passed unanimously

J. Wheatridge Wind Energy Facility, Council Review of Request for Amendment 4 of the Site Certificate (RFA4), Draft Proposed Order on RFA4 and Public Comments⁹ (Information Item) – Maxwell Woods, Senior Policy Advisor, gave an overview. Council reviewed the Draft Proposed Order on RFA4, considered comments received on the record of the Draft Proposed Order Public Hearing held on August 22, 2019 and written comments received by the September 9, 2019 deadline, and had the opportunity to provide comments to staff on the Draft Proposed Order for consideration in the Proposed Order. 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 Grail asked for some clarifications about the request regarding public notices.

Mr. Woods explained the notice process.

Vice Chair Jenkins asked if this is a replacement to what was already approved.

Mr. Woods answered it’s in addition to the prior approval and they are seeking approval to have the option to use another type of battery storage.

Vice Chair Jenkins asked when the wind turbine construction deadline was.

Mr. Woods answered he believed it was May of 2020, and they are not seeking an extension to the current deadline.

Vice Chair Jenkins asked if this is the first time the department has put together a draft weed management plan.

Mr. Woods explained this was not the first time, and the plan would go through a final review with local weed management department to ensure needs are met.

Vice Chair Jenkins asked if the function of working with the county is to come up with a plan that could be adopted.

Mr. Woods confirmed that is exactly what the purpose is.

Vice Chair Jenkins asked how restoration below the anticipated three foot depth of impact could affect the restoration bonding dollar amount.

Mr. Woods answered that the final design hasn’t been completed but depending on final design, and bonding estimates it’s possible it could increase the final bonding dollar value. We would reevaluate and increase the bond if necessary.

Vice Chair Jenkins asked how “Winter” is defined.

Mr. Woods answered it’s been defined as Dec 1 – March 31, but seasons vary depending on variables.

Chair Beyeler asked how often the unit cost table is updated.

Mr. Woods answered it’s not. It’s at the time of council decision. The bonding amount is submitted prior to construction. Table/bonding amounts are adjusted periodically for inflation.

⁹ Audio for Agenda Item J = 00:53:48 – September 27, 2019

Vice Chair Jenkins asked about land use comments.
Mr. Woods gave an overview of the comments.

Council Member Grail praised Sarah's (ODOE Siting Analyst Sarah Esterson) work on this matter and explained that in response to some comments about abiding by the laws, she believes the council is doing so and some things are outside of the council's scope. Sometimes the public thinks we have a broader authority than we do.
Mr. Woods gave an overview regarding the Oregon Department of Environmental Quality and what is federally delegated and what's not.

Council Member Grail commented that she believes the notice process is working, as she feels more of the public is getting engaged.
Mr. Woods agreed.

Secretary Cornett solicited comments from council regarding anything they wanted staff to include in the Proposed Order. There were no additional comments provided by council members.

K. Public Comment Period¹⁰ – This time was reserved for the public to address the council regarding any item within the council's jurisdiction that is not otherwise closed for comment.

Ms. Irene Gilbert, Friends of the Grande Ronde Valley stated she would like to see changes in public notification distance requirements because areas of notices are sometimes too small, especially regarding noise issues. She also expressed concern about time given for other agencies, third parties, and the public to comment. She explained that the notices don't explain why they are getting the notices, or what the potential impact could be as a resident in the area. Supports a 1-mile radius for notification purposes. Believes that all comments should be public even ones from reviewing agencies or ones not looked at by the council.

Daniel Serres, Columbia Riverkeeper encouraged council to update the monetary offset rate for the carbon dioxide standard from \$1.9/ton to \$2.85/ton which is allowable after 10/23/2019 and expressed he felt it had been too long since the issue was addressed/updated. He referenced ORS 469.503.

Secretary Cornett responded that at the November or December council meeting staff will be proposing a rule making schedule for 2020. Council can review this offset rate every two years, and intends to include it as a potential 2020 rulemaking item. Also, there will be an opportunity for the public to comment during this agenda item.

Mike Pappalardo, NextEra Energy thanked council and ODOE for their efforts regarding the Wheatridge Wind amendment.

L. Perennial Wind Chaser Station, Council Review of Request for Amendment 1 of the Site Certificate (RFA1) and Draft Proposed Order on RFA1 and Public Comments¹¹ (Information Item) – Maxwell Woods, Senior Policy Advisor, gave an overview. Council reviewed the Draft Proposed Order on RFA1, considered comments received on the record of the Draft Proposed Order Public Hearing held on August 22, 2019, and had the opportunity to provide comments to staff on the Draft Proposed Order for consideration in the Proposed Order. RFA1 seeks Council approval to extend the construction commencement and completion timelines by two years for the previously approved 415 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](#). This is a continuation of Council's review of the Draft Proposed Order and public comments from the August 23, 2019 Council meeting.

There were no comments provided by council members to be included in the Proposed Order.

¹⁰ Audio for Agenda Item K = 01:44:54 – September 27, 2019

¹¹ Audio for Agenda Item L = 02:00:05 – September 27, 2019

M. Compliance Program Update¹² (Information Item) – Duane Kilsdonk, Compliance Officer, gave a presentation on the Department’s energy facility compliance program.

Vice Chair Jenkins asked if Oregon Department of Fish and Wildlife(ODFW) accompanies him on evaluations or do they submit to you their evaluation.

Duane answered he does a desk audit, usually goes alone, but there are times when ODFW will be on site.

Council Member Howe asked for an example of an exempt or non-jurisdictional facility.

Mr. Kilsdonk answered ZeaChem, now ZeaOne, an ethanol facility located in Boardman.

Secretary Cornett further explained council’s jurisdiction with regards to these types of facilities.

Chair Beyeler asked if the Nuclear Safety Division assists in the research reactors located at OSU and Reed.

Mr. Kilsdonk answered that he does count on their expertise when the need arises. He clarified these facilities do not produce power, they are strictly for research.

Vice Chair Jenkins asked the age Trojan Nuclear Facilities Independent Spent Fuel Storage Installation canisters, and life expectancy?

Mr. Kilsdonk answered they are 20+ years old. The original information said they would have a 40 year life expectancy design and now are proposed to be 60 years.

Chair Beyeler asked if they need to make improvements or changes to the current storage system will overcast the canisters like they did up at Hanford.

Mr. Kilsdonk answered yes.

N. Port Westward Gen. Project RFA 11 Council Review of DPO and Public Comments (Working Lunch¹³ – Information Item)

– Christopher Clark, Rules Coordinator, gave an overview of the comments received on the record of the Draft Proposed Order on Request for Amendment 11 of the Port Westward Generating Project Site Certificate. Council reviewed the Draft Proposed Order, considered comments received on the record of the Draft Proposed Order public hearing, and had the opportunity to provide comments to staff on the Draft Proposed Order for consideration in the Proposed Order. For project details visit [Department's Port Westward Generating Project webpage](#)

Vice Chair Jenkins asked about the County’s position on the land use for battery storage, stating the County had not identified the need for any amendments to the County’s permitting and stated he supported the County’s position on that. Secretary Cornett explained that we can follow up on that with the county if the council would like. There was no direction from council to do so.

There were no comments provided by council members to be included in the Proposed Order.

A. Clarification - Mr. Rowe, Legal Counsel, explained that even though only 3 council members voted on the approval of the August meeting minutes, because there was a quorum and a majority of council members present voted to approved the minutes, it was a valid vote.

Meeting Adjourned

Chair Beyeler expressed his gratitude to the council, department, and public during his time in service on the council.

Adjourned at 12:07

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

¹² Audio for Agenda Item M = 02:21:26 – September 27, 2019

¹³ Audio for Agenda Item N = 03:25:40 – September 27, 2019