



ENERGY FACILITY SITING COUNCIL

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

Energy Facility Siting Council October 25, 2019 Meeting Minutes

Friday, October 25, 2019 at 10:00 a.m.
Oregon Department of Energy
550 Capitol Street NE
Salem, OR 97301

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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>

Friday, October 25, 2019 – Salem, OR

Call to Order: The meeting was called to order at 10:00 a.m. on October 25, 2019 by Chair Barry Beyeler.

Roll Call: Council Chair Barry Beyeler, Vice-Chair Jenkins (phone), and Council Members Marcy Grail (phone), Mary Winters and Jordan Truitt were present.

Oregon Department of Energy representatives present were Senior Policy Advisor Maxwell Woods, Rules Coordinator Christopher Clark, Policy Analyst Chase McVeigh-Walker, and Kellen Tardaewether, Operations Analyst Sean Mole, Division Assistant Michiko Mata, and Public Affairs Specialist 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.

Approval of September 2019 EFSC meeting minutes:
Vice-Chair motioned to approve the September minutes as they are
Council Member Grail seconded
Motion passes

Secretary Cornett thanked Chair Beyeler for his years of service, and presented a token of gratitude to Chair Beyeler, and then presented him with a plaque on behalf of ODOE.

Janine Benner Director ODOE spoke briefly expressing her gratitude to Chair Beyeler for his years of service.

Kellen Tardaewether, Siting Analyst presented a “Chair Bear” to Chair Beyeler, also expressing gratitude to Chair Beyeler’s service on the EFSC Council on behalf of the Siting Division.

Secretary Cornett announced that Council member Ann Gravatt has resigned, and as of noon today we are down to 5 council members. He also introduced the newly hired Division Assistant, Michiko Mata.

Secretary Cornett updated council on:

- Bakeoven Solar Project council appointed contractor Golder Assoc. Vice-Chair Jenkins asked during the September Council meeting if there were any conflicts between the applicant and the contractor. Secretary Cornet confirmed there are no conflicts.
- Amendment requests were received from all three Shepherds Flats projects to “repower” the wind turbines, which would include installing longer turbine blades, and changing the blade-tip clearance from 25 meters to 21.5 meters. Today you will be evaluating Shepherds Flat Central Amendment #2, a separate amendment. In May we received amendment determination requests for all three prior amendment requests in order to go through the Type B process. October 23rd ODOE determined the Type B process was justified. ODOE posted required notices.
- November 20, 21 meeting will be in The Dalles, OR. Explained the importance that all five council members are available in order to have a quorum. Availability: Mary will attend by phone, Marcy, Jordan, Haney, Kent in person
- December 19, 20 meeting will be in the Eastern part of the Gorge [Note, the December EFSC meeting will be in Pendleton].

Concludes sec report 10:12 am (audio 17:12)

B. Shepherds Flat Central Request for Amendment 2 - Council Final Decision (Action Item)¹ – Chase McVeigh-Walker, Senior Siting Analyst. The Council reviewed the Proposed Order on Request for Amendment 2 of the Shepherds Flat Central site certificate. Request for Amendment 2 seeks approval to upgrade or repower two existing turbines (Turbine numbers 368 and 370), existing turbine blades with longer blades, and the replacement and modification to associated machinery including the rotor upgrade (replacing the hub casting), modification to existing nacelles roof, and installation of a new gearbox and bedplate in the nacelle. The longer turbine blades would increase the blade-tip height and rotor diameter for the two turbines, remaining within the parameters allowed by the site certificate. The longer turbine blades would lower the minimum allowed blade tip clearance for the two turbines from 25 meters to 21.5 meters. The amendment request also seeks approval to utilize previously approved areas of temporary and permanent disturbance (access roads and crane paths). The amendment request is being reviewed under the Type B amendment review. For project details visit [Shepherds Flat Central Project Page](#).

Chair Beyeler asked if they are changing the nacelles as well or just the blades?

Mr. McVeigh-Walker responded that they are making modifications to the nacelles.

Chair Beyeler asked if there would be any modification to the generation capacity.

Mr. McVeigh-Walker responded that there would be no increase to generation capacity or increase in the weight of the nacelle, and in fact would decrease the weight.

Mr. McVeigh-Walker outlined the process for a type B amendment review. The Council and Department does not hold a DPO public hearing nor is there an opportunity to request a contested case. When the comment period closed, and no comments received, we issued the Proposed Order October 21, 2019. Concurrently the Department issued a public notice regarding the issuance of the Proposed Order.

Secretary Cornett explained that in this type of amendment the council does not review the request until it reaches DPO. At that time the staff would present the DPO, any comments received, and we would be soliciting any type of input from the council to include in the proposed order.

¹ Audio for Agenda Item B = 00:17:20 – October 25, 2019

Mr. McVeigh-Walker explained that because there were not comments received, or changes made it would be appropriate to provide just an overview of the DPO.

Vice-Chair Jenkins: Looks like we did received a comment from ODFW, did we not?

Mr. McVeigh-Walker: Yes, a comment was received during the preliminary amendment request review.

Vice-Chair Jenkins: Why just [turbine] 368, and not [turbine] 370 also? We identified potential load issues with both, but only 368 for the crack assessment.

Mr. McVeigh-Walker: The engineers identified potential for crack issues in a supplemental evaluation. The report evaluated both turbines, but only identified issues at turbine 368. The supplemental survey recommended use of turbine 368 for up to 5-6 months by the engineers, but that we singled out turbine 368 because that is what the engineers recommended from their evaluation.

Mr. McVeigh-Walker: Referred back to Vice-Chair Jenkins's question regarding the ODFW comment. The Department evaluated the comment, which was received during the preliminary request for amendment review, in response to their recommendations to a bird and bat monitoring study to be conducted for each of the turbines. The certificate holder asked for revisions to the mitigation study program to address any indirect impact of bird and bat collisions. The Department recommended that condition 83 be amended to update a reference to the WMMP of Amendment #1, and attach to Amendment #2.

Vice-Chair Jenkins: Have we gotten a response to the applicants amended mitigation plan? Per Steve Cherry's letter dated December 17, he is asking for monitoring of the two turbines that are to be retrofitted, along with two other turbines. Has that been addressed or not?

Mr. McVeigh-Walker: I don't have them in front of me, but the revisions were attached to the DPO and did not receive any comments from the public or anyone including the reviewing agencies, who were notified.

Chair Beyeler: [Federal Aviation Administration assessment form] 7460's were done originally on the certificate at the 150 meter height?

Mr. McVeigh-Walker: Yes, well at the build height of 135 meters, but council approved the 150 height.

Chair Beyeler: Did the FAA look at the 150 height originally.

Mr. McVeigh-Walker: Yes

Vice-Chair Jenkins: Moved to adopt the order and issue the second amendment site certificate.

Council Member Grail seconded

Motion carries

B. (11:00 am) Rulemaking Consideration of Proposed Amendment Rules ² (Action Item) – Christopher Clark, Rules Coordinator. The Council has considered rulemaking advice received from stakeholders on what permanent rules should replace the temporary rules governing the site certificate amendment process adopted at the Council's August meeting. After considering the advice, the Council reviewed draft proposed rules prepared by staff and considered issuing a Notice of Proposed Rulemaking. For more information about Rulemaking visit the [Agency's Rulemaking Page](#).

11:02 am Chair Beyeler requested a short pause until we get all parties back in the room.

11:04 am – back to session

Mr. Clark provided a brief overview of the proposed rules and the history of the projects. During his presentation, Mr. Clark also provided an update on the status of Temporary Rules adopted by the Council at its August meeting.

Mr. Clark provided a summary of advice provided by stakeholders. Mr. Clarke also provided an option to Council to add public notification at the time of the submittal of the preliminary amendment request to make people aware of the amendment. This would not include a public comment period. Mr. Clark stated that currently OAR 345-027-0360 requires

² Audio for Agenda Item C = 00:56:35 – October 25, 2019

the department to post an announcement of the preliminary request to the website and that the Department includes new amendment requests in the Monthly Siting report which is sent out by GovDelivery.

Mr. Clark stated that the Council could require the Department to send out a formal notice of the preliminary application. The Department did not recommend making this change, but put it forward for Council's consideration and discussion. There was no additional discussion.

Mr. Clark continued his review of advice provided by stakeholders.

Mr. Clark provided an overview of changes to the temporary amendment rules proposed by Staff. These changes were previously included in the 2019 Housekeeping Rulemaking Projects.

Mr. Clark described proposed changes to noticing requirements related to contested cases.

Council Member Winters stated that she liked changes to the noticing requirements, but asked if when we say "by mail or by email only" if a person commented by email if the notice would just go to their email if that was our only way of reaching them.

Mr. Clark responded that this is correct. When people sign up for gov delivery we would be sending the notice electronically. When the Department only has an email address the notice would be sent electronically as well.

Council Member Winters asked if a person is required to provide a physical address when they testify.

Mr. Clark responded that this is correct.

Mr. Clark described proposed changes to the property owner listing requirements for a request for amendment.

Council Member Winters asked if the "property which is the subject of the request" will be well defined enough that people understand the property boundaries?

Mr. Clark responded that the underlying statute is based on tax lots and county assessors tax lot maps. Our interpretation would be the property list would be based on the entire tax lot verses just the facility.

Secretary Cornett stated that this change tracks back to land use statues, and that there is probably case law on the subject. It can be complicated, but this should really refer back to the tax lot instead of site boundaries. This ensures that everyone within the 500 foot boundary from the tax lot(s) on which the project is located would get notification [note, the 500 foot distance is applicable when facilities are proposed in a farm or forest zone; the notification distance varies for facilities proposed in urban growth boundaries or without urban growth boundaries but not in farm or forest zones].

Vice-Chair Jenkins noted that the rule refers to subject property, it doesn't say tax lot. He asked what happens when we have several tax lots within the same property.

Council Member Winters stated that she understands updating the language so all can understand, instead of having to go to case law. She commented that she is not sure that the rule explains what the defined boundaries are.

Mr. Clark commented that the language is almost identical to the adopted changes we made in September, and that if clarification is needed we may need to address those rules as well. Staff believes that the context of the rule is clear enough, but if the council feels more clarification is needed, staff will bring back proposed language for a separate rulemaking process.

Secretary Cornett stated that we can provide clear interpretation of the language on the record of the rulemaking. Secretary Cornett stated that we don't want to have varied language across rules with the same intent.

Chair Beyeler commented that many wind farms can often be on several properties. He asked if we are suggesting that only the people within 500 feet of the property the wind turbine is on.

Secretary Cornett stated that the proposed rules would mean at minimum the notice would go out to not just those near the turbines, it would be 500 feet from the property which the turbines are located on when the facility is located in a farm or forest zone.

Mr. Clark responded that Chair Beyeler was correct. Notice would go to the tax lot to those which the turbines sit on plus adjacent properties within a certain distance from those properties.

Secretary Cornett stated that Staff could have diagrams in November to present during the hearing to further demonstrate the intent.

Vice-Chair Jenkins confirmed.

Mr. Clark summarized staff's recommendations, and recommended that council review the rules within two years of adoption, around the same 5 year timeline that would have been required for the 2017 amendment rules. This will allow us to see how the rules are working, receiving feedback from the public, have an opportunity to resolve any outstanding issues, and asked for Council's feedback.

Chair Beyeler stated that he thinks this type of review needs to happen regularly. Reviewing them in this time frame is a good idea.

Council Member Winters agreed.

Mr. Clark stated that the proposed rulemaking timeline is to schedule the rulemaking hearing for the next meeting, then issue the notices today, or early Monday. This would trigger our public comment period. After the public comment period we would compose the draft rules to present at the December meeting, and then adopt also in December to be effective late December or January.

Vice-Chair Jenkins asked if the motion language is correctly worded because it talks about approving the proposed rule. Asked if Council is only authorizing the notice.

Mr. Clark responded that the motion was worded that way because the Council would be proposing the rule changes, it would approve the draft proposed rules to go into the notice. Clarified that Council would not be adopting rules at this time.

Vice-Chair Jenkins: Motion to approved the proposed draft rules.

Council Member Winters seconded

Motion carries

D. (11:51 am) Public Comment Period³ – 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. There were no public comments.

Meeting adjourned

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

Adjourned at 11:52 am

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

³ Audio for Agenda Item D = 01:45:15 – October 25, 2019