



ENERGY FACILITY SITING COUNCIL

Hanley Jenkins, Chair ■ Marcy Grail, Vice-Chair ■ Kent Howe ■ Mary Winters ■ Jordan Truitt ■ Cynthia Condon

Energy Facility Siting Council January 23-24, 2020 Meeting Minutes

Thursday, January 23, 2020 at 5:00 p.m.

Friday, January 24, 2020 at 8:00 a.m.

Best Western Plus Hood River Inn – Columbia Room

1108 E. Marina Way

Hood River, OR 97031

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- I. Solar PV Rulemaking (Information Item) – Christopher Clark, Rules Coordinator.

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

Thursday, January 23, 2020 – Hood River, OR

Call to Order: The meeting was called to order at 5:00 p.m. on January 23, 2020 by Chair Hanley Jenkins.

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

Oregon Department of Energy representatives present were Assistant Director for Siting/Council Secretary, Todd Cornett, Senior Policy Advisor Maxwell Woods, Rules Coordinator Christopher Clark, Senior Siting Analyst Kellen Tardaewether, Senior Siting Analyst Sarah Esterson, Senior Siting Analyst Chase McVeigh-Walker, Operations Analyst Sean Mole, Division Assistant Michiko Mata, and Public Affairs Specialist Cliff Voliva (joined at 5:32 pm). EFSC Counsel Patrick Rowe of the Department of Justice was also present.

Opening Remarks

Secretary Cornett indicated there were no agenda modifications

A. Consent Calendar (Action Item)¹ – Todd Cornett, Council Secretary, Approval of minutes, Council Secretary Report, and other routine Council business.

December meeting minutes

Council member Howe moved that the Council approve the minutes of the December 19-20, 2019 meeting as presented with no modifications.

Council Member Truitt seconded the motion.

Motion carried.

Secretary Cornett explained that the short legislative session begins on February 3, 2020 and will conclude on March 8, 2020. He wasn't sure the dates of the Senate Rules Committee, but they would do executive appointments during that timeframe. Secretary Cornett confirmed that Governor Brown has appointed Cynthia Condon to fill one of the two Council vacancies. Secretary Cornett stated that Ms. Condon was the former President of Pacific Pride Services, and currently serves as a member of the Salem Electric Board. Secretary Cornett mentioned that Ms. Condon did join the December meeting by phone, and planned to do the same for the January meeting even though she had not been confirmed yet.

Chair Jenkins welcomed Cynthia Condon.

Project Updates:

Bakeoven Solar Project

on January 17, 2020 Sarah Esterson, Senior Siting Analyst issued the Draft Proposed Order (DPO) for the Bakeoven Solar Project and the associated public notice. The notice included the date and time of the hearing Tuesday, February 25th at 6:00 pm at the Civic Center in Maupin, OR. Unlike amendments, the DPO hearing is not required to be conducted in front of the Council. However, it has been the practice for the last several years and not conducting a hearing in front of Council will only happen under extenuating circumstances. This is one of

¹ Audio for Agenda Item A = 00:01:36 – January 23, 2020

those times since the DPO hearings for both Obsidian Solar Center in North Lake County and the Bakeoven Solar Project in Wasco County could both happen at the March Council meeting. This forced staff to choose whether one of them is in front of Council and other one is not or extending out the time for one of the projects by a month to have one hearing in front of Council in March and the other one in April. This is because the hearing has to occur within the vicinity of the project. Staff chose the Obsidian DPO hearing to occur in front of Council because more public participation is expected for that project.

Secretary Cornett explained to Council that they are not obligated to attend the Bakeoven Solar DPO hearing, but they were certainly welcomed and encouraged to either attend in person or by phone. He also noted that having 5 Council members in attendance by phone or in person would constitute a quorum, so he asked Council members let him know if they planned to attend.

Chair Jenkins asked when and where the hearing would take place?

Secretary Cornett replied it will be Tuesday February 25th approximately at 6 pm in Maupin, OR. There will be a call in option for that DPO hearing.

Vice Chair Grail asked him to also remind her of the EFSC meeting dates for March.

Secretary Cornett responded it was March 12-13, 2020 and that all Council members had previously indicated they would be available. He also noted that Cindy Condon had indicated she would be available potentially having 6 Council members present at the March meeting. The Obsidian DPO hearing on March 12th in the 6 pm range at the N. Lake County High School which is about 45 minutes East of LaPine, OR. *[Note: the March EFSC meeting will not be held in La Pine/North Lake County. It will be held on March 13 in The Dalles, Columbia River Gorge Discovery Center]*

Chair Jenkins indicated he would drive from Burns and would be driving himself.

Amendment Rulemaking – Appeal of Temporary Rules to Oregon Supreme Court

On January 16th, 2020 Secretary Cornett sent an email to Council Members letting them know that the Oregon Supreme Court issued their final opinion on the challenge by the Friends of the Columbia River Gorge and other associated petitioners of the Council's temporary amendment rules. The Council's rules were upheld.

Council Secretary outlined the issues:

Issue #1 Whether the Council Prepared a Sufficient Statement of Serious Prejudice

Council argued there was serious prejudice to site certificate holders currently undergoing amendment review in order to justify the temporary rules. Failure to establish temporary rules raised questions about what, if any, rules were applicable and how they related to the status of existing amendments.

Petitioners contended that the Council's findings failed to support its determination that prompt action was needed to avoid serious prejudice.

Supreme Court determined the Council's statement of serious prejudice was sufficient.

Issue #2 Whether OAR 345-027-0311(1) Is Valid

"will continue to process all requests for amendment and amendment determination requests submitted on or after October 24, 2017 for which Council has not made a final decision prior to the effective date of

these rules, without requiring the certificate holder to resubmit the request or to repeat any steps taken as part of the request prior to the effective date of these rules."

-Petitioners contend this would result in the rules being in effect for more than 180 days.

-Petitioners argue that the applicability provision is an unlawful attempt to retroactively legitimize actions that took place under the invalid 2018 rules.

The Supreme Court rejected both arguments.

Issue #3 Whether the Rest of the Rules Are Valid

Petitioners argued the temporary rules were effective for more than 180 days since the temporary rules largely adopted the prior rules and therefore they were effectively one set of rules.

The Supreme Court rejected this argument

Chair Jenkins stated that he wasn't sure if his question was for Secretary Cornett or Mr. Rowe. Reading through the Supreme Court decision, they didn't like Council telling them they didn't have to meet a substantial prejudice requirement, but they upheld the argument for that issue anyway.

Secretary Cornett responded with his interpretation that they upheld the substantial prejudice argument that the department made on behalf of Council.

Legal Counsel Rowe also stated that they would look to see if there is prejudice, but they determined that there was prejudice. Which established merit for the temporary rules.

Legislation Session

Secretary Cornett outlined the session dates of February 3, 2020 and March 8, 2020. Then went on to outline the following bills:

SB 1530: The latest cap and trade bill being proposed. While there are a lot of differences related to cap and trade, the introduced bill is consistent with HB 2020 during the last session in that it would eliminate the Council's carbon standard in its entirety.

Governor Wildfire Bill: The department is aware that Governor Brown is working on a wildfire bill. We do not have any details but given the dialogue on this issue at the last Council meeting, he thought Council would be interested in this.

Secretary Cornett stated he had no idea if this would apply to any of our projects, but a reminder to Council that applicable local land use standards are set at the time of an application or amendment submittal but applicable statutes, rules and council standards are those in effect on the date the site certificate is issued.

Secretary Cornett stated that those two were the only proposed legislation that we are currently aware of that does or could relate to Council. Since the end of session will occur before the next meeting, we would keep Council updated by email regarding any Council related legislation.

Future Meeting Dates:

March 12th & 13th – North Lake County school for Thursday evenings Obsidian Solar's DPO hearing, and then drive back to LaPine. Staff and Council would stay in LaPine, OR Thursday night then Friday's meeting would be held in LaPine. Secretary Cornett told Council that staff would use vans to transport staff and council to North Lake

County then back to LaPine for anyone that would like. [Note: the March EFSC meeting will not be held in La Pine/North Lake County. It will be held on March 13 in The Dalles, Columbia River Gorge Discovery Center]

April 23rd & 24th – Tentative dates since Vice Chair Grail will be on vacation and Secretary Cornett stated that we could look at other dates if needed and that Cindy Condon had indicated she would be available, which would mean there would still be a quorum.

Vice Chair Grail stated that she would be on vacation, but if the agenda was arranged appropriately she'd be able to call in for any action items if needed.

Secretary Cornett responded that he appreciated that, and that the meeting potentially would be in Rainier in April. If she was fine with the dates the department could load the action items into the agenda based on Ms. Grail's availability, and the informational items outside of that.

B. Pre-Approved Financial Institutions – Council Decision ² (Action Item) – Maxwell Woods, Senior Policy Advisor. Council considered a request from NextEra Energy Resources to add Travelers Casualty and Surety Company of America to the list of financial institutions approved to act as issuers of financial instruments for the retirement of energy facilities.

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

Vice Chair Grail motioned to approve Travelers Casualty and Surety Company of America as a pre-approved financial institution for site certificate holder's use in obtaining the financial assurance instruments for the retirement of their facilities, and direct staff to add Travelers Casualty and Surety Company of America to the pre-approved list for 2020.

Council Member Winters seconded the motion.

Motion carried.

C.1 [5:20 pm] Boardman to Hemingway Transmission Line, Council Review of Draft Proposed Order and Public Comments ³ (Information Item) – Kellen Tardaewether, Senior Siting Analyst, Sarah Esterson, Senior Siting Analyst, Maxwell Woods, Senior Policy Advisor. Council received a presentation reviewing the Boardman to Hemingway Transmission Line Draft Proposed Order (DPO), comments received on the DPO and responses from Idaho Power (applicant) to comments received on the DPO. The Boardman to Hemingway Transmission Line is a proposed 500 kV transmission line, approximately 280 miles long in Oregon, that would cross five Oregon counties. Idaho Power Company is the applicant. This item is continued from the December 2019 meeting. For project details visit [Department's Boardman to Hemingway Transmission Line Project webpage](#).

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

Vice Chair Grail recused herself, stepped away from the Council table, and joined the audience.

² Audio for Agenda Item B = 00:21:28 – January 23, 2020

³ Audio for Agenda Item C.1 = 00:25:57 – January 23, 2020

Section IV.F. Protected Areas: OAR 345-022-0040

Council member Winters stated that she tried pulling up the rule. She understood the standard with the proposed and alternate routes, but asked if she was understanding it correctly. Council Member Winters asked if a proposed route was found to have a significant impact or issue, but the alternative route is even more significant, can we ignore the issues in the proposed route because there is a worse one environmentally? Is that the way the rule is written?

Mr. Woods responded that yes, when a proposed transmission line goes through a protected area. Mr. Woods referenced the second sentence of the rule (pulled up and read the rule) (Sub 1)

Council Member Winters: It doesn't say you must, it says you may. So there is discretion.

Mr. Woods responded that there is discretion because it says it is to be determined by the council if the alternative route has greater impacts. It doesn't say to how that is determined. Noting that Sub 2 only applies to the one section going through the Blue Mountain Corridor. Idaho power proposed an alternative route. Oregon Parks and Recreation Department (OPRD), and the Department agreed that the alternative route that hopped over highway 84 multiple times would be more impactful than the proposed route.

Chair Jenkins stated this is the South side of 84 next to the Grand Ronde River. Some of that land is owned by the state.

Mr. Woods responded that is correct. This is one of those areas where in the Wallowa Whitman National Forest there is a designated utility corridor by the National Forest Service, which the transmission line mostly follows. From what he could tell the designated corridor was not done in conjunction with anyone else because it ends at a state park. It's a difficult area to minimize impacts because you end up in the Blue Mountain Corridor, which is difficult to avoid. The assessment done by the agency in conjunction with OPRD determined the alternative route would be more impactful. The agency doesn't usually allow a project or facility to go through a protected area, and to his knowledge they have never allowed it. This was a unique situation.

Methodologies (Visual Impacts)

Mr. Woods stated that the visual duration would be anyone driving through the Blue Mountain Corridor is probably driving at a high rate of speed, assuming the viewer perception impact would be brief. You could contrast that with a person on a hiking trail in the mountains.

Council Member Winters asked if there were any consideration of cumulative impacts, because it seems if you start at a baseline which already has impacts, and you don't look at cumulative impacts, it's easy to say one more impact is not significant. There is a lot of bias in the criteria if you don't look at cumulative impacts.

Ms. Tardaewether responded that the evaluation includes what is existing on the landscape and also includes doing the visual simulations by adding in the structures of the facility for those evaluations.

Council Member Winters responded that you're not really considering (the baseline) what about the next time someone wants to come in and add something. The baseline changes with every new review and action and we are not taking into account the future cumulative impact?

Ms. Tardaewether stated the cumulative impact like if there were a pristine landscape?

Council Member Winters responded yes, but does it matter if it's pristine or not?

Ms. Tardaewether responded that BLM and the Forest Service have guidelines for what is described as pristine landscape. They have policies and management plans with a no build or development policy, so

there is a higher value if there were any pristine landscapes meaning that any facility structures there would also have corresponding higher impact as you go through the evaluation because it would have a higher original ranking for a pristine landscape as its baseline.

Mr. Woods used the Eagle Cap Wilderness area as an example because it has no developments, even though the project would not go through this area. If you put a project in an area like that with no existing developments it would mean that anything would be extremely visible, and might even be a significant impact. Addressing Council Member Winters statement that maybe the agency does need to evaluate what is on the landscape already. There are areas the project would go through that already have small developments, like in Malheur County and Southern Baker County. There are a few visual simulations from a couple areas and the project itself was the only thing human made that was visible. It's hard to get anywhere in the world today without some human modifications, but there are some. Other areas, following the freeway, like near the cities of Baker and La Grande, and thinking about getting to the end by the Port of Morrow by the Longhorn Substation which is surrounded by heavy industrial development. He doubted that anyone would say that the Longhorn Substation caused any substantial visual impact because its in the middle of an industrial area and adjacent to the freeway. So going back to having to consider what is existing on the landscape does inform how the impact evaluation is done. The BLM and the Forest Service have full time professionals that do this for Federal agencies. This methodology was adopted specifically for Council's review.

Council Member Winters stated that either alone or in combination with other factors it's kind of a classic cumulative impact and if you had a situation where there where (not saying this project does) multiple transmission lines going through rural or low-income areas where you were looking at this through an equity lens of is this a good thing for the community. She would look at that criteria.

Mr. Woods noted for the record that the phrasing of cumulative impacts is done at the federal level and the agency didn't do that specifically. The phrase we don't use is "future projects", we aren't going there as part of this review, and just wanted to state that for the record.

Council Member Winters stated she understood, and that other states have their analyses.

Council Member Winters stated that staff walked Council through the standard, but the application of that standard is hard to piece the comments to because the commenters didn't do that, the applicant did, sort of. Based on the information available, it is difficult to determine the applicant has met the standard.

Mr. Woods responded that as of today they didn't have to.

Council Member Winters responded that is the piece she's missing. She understands the test, the rule, but the application to everything in the record she didn't.

Mr. Woods stated that they were going to present a couple of these, we aren't going to present all 74 protected areas or all of the comments. There is a visual assessment in the application materials. Our DPO summarizes this, but it's in the back of Exhibit L. Over the next year of the contested case phase or when we come back again for Council final review it would be a good idea for council to dive in to the materials.

Chair Jenkins announced that before the group moved on to the next area of the presentation that there is about an hour left until we need to adjourn. That there is a number of standards to go through for tonight, and more for tomorrow.

Oregon Historic Trail ACEC – National Historic Oregon Trail Interpretive Center Parcel (NHOTIC)

Chair Jenkins asked if these were representations from NHOTIC?

Mr. Woods and Ms. Tardaewether confirmed and stated they were from different observation points.

Council Member Winters asked if the BLM had a position on the view of the corridor.

Ms. Esterson stated that part of our findings rely on the fact that the BLM is the lead agency through the NEPA review, and that it approved the project.

Ms. Tardaewether also stated that BLM is the one who told Idaho Power to put the transmission lines on that location. Idaho Power evaluated other alternatives that were further away on the West side as well as the East side. The East side was the most preferred, but there is the Sage Grouse habitat. The BLM is the one that proposed it in front of the resource that they manage.

Chair Jenkins stated that there is 10-20 years of evaluations prior to the route and other alternatives that Council was evaluating. We weren't being presented with those other alternative routes that were evaluated and abandoned as a part of their process. They were considered part of the BLM process, and as he asked earlier they aren't privy to the BLM process as they did their evaluating, other than to know it happened and they identified a preferred route.

Ms. Tardaewether replied that they did have a record for the facility, and the record goes back a long ways. The preliminary application was submitted in 2013. Idaho Power paused that, and picked up the review and submitted an amended preliminary application in 2017. Council is tasked with what the applicant has proposed. The applicant has not proposed any alternatives to this route, but Council has access to the records with the previous information/routes submitted to EFSC. There is also the siting studies of all the different routes, and why they were changed. Staff would have to figure out how it's valuable and appropriate to include that information to the Council. The Council wouldn't be picking an alternative route because there was not one proposed in that area.

Mr. Woods stated Ms. Tardaewether was right it is part of the context of the history of why the project is where it is now, but Council is tasked with reviewing what they had in front of them. He outlined that in the DPO there other routes that had been considered. It's important to note the NHOTIC and Baker Valley is perhaps the most difficult spot of the entire route. There used to be a route called Virtue Flat that went behind the center, but the route was eliminated due to the Sage Grouse core habitat, along with an OHV area. There was another option further to the West of the current proposed route called Sunnyslope that was near irrigated farm lands. This area is very difficult with the multiple resources recognizing a lot of work has gone in to the routing, and it's not perfect. The BLM has authorized this route, but have pushed it 100 feet off their land.

Section IV.J. Scenic Resources: OAR 345-022-0080

Chair Jenkins, in reference to scenic byways and other scenic travel corridors asked if these were adopted after the comprehensive plans were developed or if comprehensive plans were amended to include them. ODOT didn't bring them to the Counties.

Ms. Esterson confirmed.

Section IV.L. Recreation: OAR 345-022-0100

Chair Jenkins referring to the map on the screen. Is the red the proposed, and is the blue the alternative?

Ms. Tardaewether confirmed, and a side note they pulled up a map of Ladd Marsh on the second screen which they were going to speak about then move on to Morgan Lake.

Discussion between Ms. Tardaewether and Ms. Esterson on what to bring up on the screen

Chair Jenkins the area to the left of the proposed route is not marsh land like the areas to the right or East. The area to the left is more mountainous and starts out as pasture land grading into timber, which is the area between the red and blue lines. He didn't see it on the map, but he thought where the purple line is on the map is where the county road was, which is where the slope changed to marsh on the right(East) from timbered forested land. Is the existing route the purple line?

Mr. Woods stated that he thought the purple line is the road.

Chair Jenkins stated the orange line is Highway 84 or it's the Pipeline.

Mr. Woods/Ms. Tardaewether stated that yes, that is the pipeline. That there is a petroleum line that does run through the area. The dotted line is an existing 230 kV transmission line.

Chair Jenkins noted that there are a number of corridors through there in addition to the 230kV line. There are two gas lines and 2 fiber optic lines which are all in that same area.

Chair Jenkins pointed out the proposed line and the existing line which is an Idaho Power line that comes into the city limits of La Grande, and on the south side of Geckler Lane is their substation. On the north side of Geckler lane is the BPA's substation, and is the start of the BPA's line. Chair Jenkins mentioned that since the proposed Idaho Power line is the entire length of the line it's avoiding the existing connection between the Idaho Power line and the BPA line. That's why the proposed line goes across the hill instead of coming into town. It's paralleling the line as it goes through Ladd Marsh and paralleling the 230 kV line coming out of BPA heading West next to the highway. He stated that he thinks this gave context to why Idaho Power is proposing to go diagonally across the hill side.

Mr. Woods thanked Chair Jenkins, and stated that going down and through La Grande would be difficult. That it would be tricky and possibly unnecessary to follow the existing line through the city. Union County gave a comment early in the process on the record that requested the line not be visible from the city of La Grande. Part of that routing is probably to eliminate or minimize the viewshed of the facility from the city of La Grande.

Chair Jenkins added that the County's original position was that the lines did not cross cultivated crop land, and not be visible from the city of La Grande. Those were the only two initial criteria the County requested as part of their review of the application.

Morgan Lake Park

Chair Jenkins stated the Morgan Lake road terminated at Morgan lake, it goes from the city of La Grande to the lake, and there are side roads that branch off before you get to the lake. In the early 70's there was a County road that went all the way through to the Grande Ronde River, but it was vacated.

Mr. Woods responded that the remnants have been removed.

Chair Jenkins responded that he didn't believe they were completely removed, that there are remnants there that the land owners use.

Council Member Winters asked what kind of road it was.

Chair Jenkins said the road that goes from La Grande to the lake is a gravel road, and has very steep pitches.

Council Member Winters asked if vehicles using the road would be heavier utility trucks?

Chair Jenkins replied that yes utility trucks would need to use that road which means they'd need a road use agreement with the County.

Council Member Winters asked if the County asked for any upgrades to be made to the road as part of the project approval?

Ms. Tardaewether, Chair Jenkins, and Council Member Winters further discussed that the City manages Morgan Lake, but the road is a County road built to County gravel standards. Ms. Tardaewether stated that

they would be further discussing more about this and the transportation and management plan in Public Services on Friday.

Council Member Winters stated that a use agreement is different than a condition of approval that requires to upgrade infrastructure, like paving it for example. It surprised her that you could have commercial use on a road that was typically for recreation and that it's gravel.

Chair Jenkins responded to Council Member Winters that it's residential and recreational and that it's too steep to pave. It would be a toboggan run certain times of the year, if it got icy and it was paved you'd have no control. There is no room to pave it either.

Council Member Winters asked if it's a gravel road doesn't it still become an issue in the winter?

Chair Jenkins replied that they sand it, and people use chains that live up there. There is very little recreational use of Morgan Lake in the winter except for some ice fishing. There is very little use of the park during the winter.

Mr. Woods asked Council if they could talk more about this tomorrow, there were a lot of comments that came up regarding these roads. The proposed route does go over the road they were talking about, but both routes would use the road. Mr. Woods went on to mention the Glass Hill Alternative, the BLM called Glass Hill it's preferred route even though this is not their land. It's not preferred by anyone except BLM, the land owners preferred the land further to the East. Numerous comments came in asking how Council couldn't even consider BLM's preferred route. The response is it's not Federal land, and Idaho Power is not required to comply with non-Federal land identified by the BLM. So the Glass Hill route is not even in the application.

Chair Jenkins stated that they were not being presented as an alternative. Even though there is a fair amount of testimony related to this.

Ms. Tardaewether thanked Mr. Woods for bringing that point up as people are still asking about why other alternative routes were not being included.

Section IV.G. Retirement and Financial Assurance: OAR 345-022-0050

Council Member Winters: I don't know about the rest of you, but I had little to no ability to figure out if this is appropriate or a good deal, referring to staff's proposed conditions allowing Idaho Power to variation to the typical bond requirements. Even simple bonds are not easy, and making it complicated usually means it's hard to call out the bond. The bond is only as good as it's enforceability. Ms. Winters asked Patrick if they've done research on this.

Legal Counsel Rowe responded that his predecessor is the one who researched this along with Mr. Woods. So Mr. Woods would probably be in a better position to speak about it. He did have a chance to review her analysis, and his understanding was that it is sufficient. DOJ did look at this and they found it was sufficient, but maybe Mr. Woods would be able to speak more to that.

Mr. Woods stated that ODOE and DOJ have worked on this issue since it's been one of the bigger issues of how to do this that is fair yet minimize risk to the State. There were two parts to this, one being the facility would never likely be removed according to Idaho Power and second is that Idaho Power is a regulated utility in two states that has rate recovery options. The argument is that there would be money if the facility had to be retired and removed. He felt this was a reasonable approach.

Council Member Howe stated \$140 million today wouldn't have the same purchasing power in 100 years.

Mr. Woods responded that inflation is built in, and it's different than the 1/16th construction. The \$140 million was on 2016 dollars. So at the time of construction commencement, should Council approve the approach would be updated for inflation at the time of construction and again in the future to account for it.

Secretary Cornett mentioned that every single bond the agency has annual inflation built in.

Ms. Tardaewether asked if the department had ever cashed in or used a bond?
Secretary Cornett confirmed to his knowledge a bond has never been cashed in.

Council Member Winters stated it's not an easy process, but 50 years seems like a long time to her. Technology is changing extremely fast, so in 50 years the world could be so different. She felt 20 years seemed more reasonable to her. If the project had to be abandoned or changed going through the PUC today is very hard, and protective of the rate payers. Their purpose is to protect the rate payers so they don't care. The bond is where they are acting on behalf of local governments protecting against bankruptcy.

Chair Jenkins agreed with Mary that 50 years was a long time. He understands transmission lines, and knows the plan is they would remain there a long time. They would more likely be repowered than replaced. He is 70 years old looking back 50 years there had been a lot of changes.

Meeting adjourned at 7:38 pm

Friday, January 24, 2020 – Hood River, OR

Call to Order: The meeting was called to order at 8:01 a.m. on January 24, 2020 by Chair Hanley Jenkins.

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

Oregon Department of Energy representatives present were Assistant Director for Siting/Council Secretary, Todd Cornett, Senior Policy Advisor Maxwell Woods, Rules Coordinator Christopher Clark, Senior Siting Analyst Kellen Tardaewether, Senior Siting Analyst Sarah Esterson, Senior Siting Analyst Chase McVeigh-Walker, 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.

Opening Remarks

Secretary Cornett indicated there were no agenda modifications.

C.2 Boardman to Hemingway Transmission Line, Council Review of Draft Proposed Order and Public

Comments⁴ (Information Item) – Kellen Tardaewether, Senior Siting Analyst, Sarah Esterson, Senior Siting Analyst, Maxwell Woods, Senior Policy Advisor. Council received a presentation reviewing the Boardman to Hemingway Transmission Line Draft Proposed Order (DPO), comments received on the DPO and responses from Idaho Power (applicant) to comments received on the DPO. The Boardman to Hemingway Transmission Line is a proposed 500 kV transmission line, approximately 280 miles long in Oregon, that would cross five Oregon counties. Idaho Power Company is the applicant. This item was continued from the December 2019 meeting. For project details visit [Department's Boardman to Hemingway Transmission Line Project webpage](#).

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

⁴ Audio for Agenda Item C.2 = 00:02:39 – January 24, 2020

Legal Counsel Patrick Rowe reminded council of where they were in the process, and this is their opportunity to provide any direction to staff in regards to changes, revisions, or supplementations between the DPO, and the Proposed Order. Mr. Rowe acknowledged they had really good discussions yesterday, but if they had any actual directions regarding to standards, he suggested that Council bring those up as they occur instead of waiting until the end.

Vice Chair Grail recused herself and stepped away from the council table.

Section IV.G. Retirement and Financial Assurance: OAR 345-022-0050 (Continued from Thursday)

Council Member Winters asked if they were going to go back to the financial piece they ended with Thursday evening?

Council Member Winters stated that she would like to give direction to staff regarding a shorter bond time.

Chair Jenkins also expressed interest in something less than the 50 years. Then asked the other Council Members how they felt.

Council Member Truitt stated that he agreed with Ms. Winters that they have no idea what the next 50 years will hold at the rate technology is improving. Mr. Truitt stated he didn't know if 50 years was a good timeline or not. Are the communities going to develop their own efficient energy sources along the way that they don't require the transmission line in the next 50 – 100 years. Are there studies or reports on this?

Ms. Tardaewether stated that there were additional comments that she wasn't sure if Council wanted them to review them or not.

Council agreed that they did want to bring them back up.

Secretary Cornett asked Ms. Tardaewether if she could bring up the 5 year language. This is where we want to look at the language to see where there is opportunity at 5 year increments to make changes and require additional bonding amounts based upon changed circumstances. He wanted Council to look at it, and see if it provided comfort, as circumstances change it's not just waiting for the 50 year period for something to kick in.

Mr. Woods said one more thing to consider about the standard itself is that the bonding is the "back-stop to the back-stop to the back-stop," meaning this only comes into play if Idaho Power or any of it's successors do not exist at a time when the transmission line would not be used. Requiring the State of Oregon to remove it from the landscape. The first obligation to the standard is met through mandatory conditions. If the facility is operated for a certain period of time, and then no longer needed, the owner of the facility has to remove and restore the land. Which would be Idaho Power or if purchased by another entity. It's only in the event that the owner goes bankrupt or the owner walks away from their obligation to maintain the facility, and no other ownership takes place. So this is used as a last piece of protection, this is not to be used to retire the facility at some point in the future.

Council Member Winters stated that this all assumes things have gone bad in the industry. The same way things have happened in nuclear sites even though this may not have happened in Oregon with energy sites it has happened with other industries that the public has had to pay for due to things going wrong. The 5-year is better protection because it's required, it's something that EFSC will need to be comfortable with the expertise to analyze the economics of the industry every 5 years, as it's a lot to ask of volunteer citizens to understand, believe, and trust the hired consultants. That is the purpose of bonds to begin with because EFSC members aren't experts at understanding the industry. Of course the entities are going to give good reports, they aren't going to say they will be going under in 3 years, and they really should be posting a bond. Reality is it's going to happen a couple years after they come in. It is a risk.

Ms. Tardaewether stated we could include language that the department may engage one of its consultants to do an independent review.

Mr. Woods added that the language could be updated to say “must”.

Council Member Winters added that it should also say at the applicant’s expense.

Mr. Woods agreed.

Chair Jenkins stated that Council should consider adding “other information” so they aren’t just relying on the reports from Idaho Power.

Council Member Howe agreed, he liked the quinquennial review as it keeps it current and from getting out of hand because they were waiting 50 years.

Mr. Woods apologized for not focusing on this in Thursday’s presentation.

Chair Jenkins stated that it sounded like we have an agreement with the additional language from Secretary Cornett.

Council Member Winters stated she was skeptical, but yes she was okay with the additional language.

Council Member Truitt asked if it would be worth evaluating the cost to the consumer if the bond were to be expedited by 30 years. If passing that cost to the consumer to expedite or move up the bond and that cost is then passed on to the consumer. What could the average rate increase be for the consumer, is that a concern?

Council Member Winters stated that in the scale of numbers, she didn’t know what that meant for rate making. It could be a penny.

Ms. Tardaewether also responded that they didn’t know, that it’s not a factor they look at in the evaluation. It is in the record, they had that evaluation so it could be part of the consideration.

Chair Jenkins also responded to Mr. Truitt that quick math with those numbers is \$26 million for 30 years. It’s substantial.

Council Member Truitt stated that it’s probably not our concern what the rate difference is, but it might be something to consider down the road.

Ms. Tardaewether asked if Council wanted to include language regarding “may” engage a consultant?

Chair Jenkins confirmed.

Secretary Cornett stated what he heard is take note of “other information” in the record, hire a consultant, and require certificate holder to pay for the costs.

Chair Jenkins confirmed.

No other questions.

Section IV.H. Fish and Wildlife Habitat: OAR 345-022-0060

Chair Jenkins stated that one of the issues with weeds is that Counties do not uniformly list the weeds under the same classifications. The issue we have with Baker and Union County, is that Baker County has given up on whitetop. Whitetop is a noxious weed that is dangerous for wildlife and livestock, and they’ve given up on trying to control it so they don’t list it as one of the weed categories that need to be controlled by private land owners. Union County is trying to hold off the transfer of whitetop from Baker County into Union County. It is a listed weed in Union County, and land owners are very concerned with the transfer from projects like this where you have equipment moving from one county to another. Chair Jenkins stated he understood there are weed

management plans and there are attempts to control weeds, but to keep that in perspective and it is an outstanding issue that we need to address adequately.

Mr. Woods acknowledged Chair Jenkin's concern.

Council Member Winters asked Mr. Woods to explain how it worked when EFSC had jurisdiction over the local regulations and we say in our order that you have to work with the County on your weed control plan with a condition saying the applicant can't just walk away from weed issues in a couple years. In the local government world there is code enforcement authority. The state level might not be as regulatory as they could do at the local level with their code enforcement authority. So what is the jurisdiction there?

Mr. Woods replied that as with all EFSC facilities they end up with a local and State dual regulation compliance after a facility site certificate has been issued and the facility constructed. We have examples where Ms. Esterson and ODOE's Compliance Officer Duane Kilsdonk have been working with the local weed master. In that instance, the County called the department and said an EFSC facility had a weed problem, and we worked closely with the local weed master to control it.

Council Member Winters said assuming the certificate holder ignored the weed control requirements, could the jurisdiction go to their local municipal court with a code enforcement violation?

Secretary Cornett responded that the short answer is yes. That there is a provision that local governments have obligations within the site certificate based on their permits and standards. It's a double compliance responsibility, so it's not just EFCS relying on the expertise of the County to help us out on particular standards. Local jurisdictions have that compliance obligation as well, but in reality the site certificate is the more significant element if they are failing to meet a condition. That is why we have a full time Compliance Officer. Based on his annual review and on a process that someone can make a claim that they are not meeting the conditions of approval. We can have the Compliance Officer go out and complete an inspection. The site certificate provides leverage to ensure compliance with the conditions of approval because it can be terminated. If the County wanted to, they also have the avenue that Council Member Winters referenced.

Council Member Howe asked if all the management plans have to be finalized before construction begins, or can they be completed by segment?

Ms. Tardaewether also responded that there is a theme to the conditions where there is a true up or a finalization. They say prior to the construction of a phase or segment of a facility which is really the departments attempt to contemplate if Council approves the proposed facility, what construction would actually look like, and the obligations that had to be met with all the conditions. That is because the transmission line won't all be built all at once, so this is contemplating that it will be constructed in phases. For example Idaho Power would submit their plans for a specific segment of work to the County, and potentially do that several times based on the type of work or how the construction is broken out. Ms. Tardaewether asked Council Member Howe if that answered his question.

Council Member Howe confirmed it did, and that there could be a segment within any of the management plans that isn't finalized, and instead of holding up the entire project it would just hold up that segment allowing them to start construction elsewhere.

Mr. Woods confirmed that is exactly what they thought about when writing the DPO.

Section IV.I. Threatened and Endangered Species: OAR 345-022-0070

No Questions

Section IV.K. Historic, Cultural, and Archaeological Resources: OAR 345-022-0090

Council Member Winters asked when is the Section 106 Review supposed to occur?

Ms. Tardaewether: The department is recommending that Council extend the timeline to 4 years to begin and 4 years to finish (under General Standard of Review). That is (partially) because Section 106 is such a

heavy lift, it's subject to compliance with the programmatic agreement which involves all the tribes that are identified in Council's reviewing process plus other federally designated tribes. It's an elaborate process, and anticipating a long process, estimating to take 4 years with construction completion.

Mr. Woods confirmed that it is a very labor intensive by both the Federal Government and SHPO.

Council Member Winters stated she was just trying to make sure she was following what the department was asking Council to find. Are we to defer to the Section 106 process because that process makes the determination of all the impacts, some of which are not yet known? Is that what you're asking us to decide?

Ms. Tardaewether responded that was correct, the assumption is that resources are designated as "unevaluated" and assumed to be eligible for the NRHP and therefore protected by the council standard, and potentially mitigated. After the Section 106 process determinations of eligibility there are actually going to be many resources are determined not eligible, and dropped from the list.

Council Member Winters asked if they were only considering direct impacts to crossing the Oregon Trail, not being next to the trail? It struck her that some people walking the trail may think it's a direct impact being seen from the trail, not just crossing the trail. Is that the view of the rest of the Council?

Ms. Tardaewether responded that in the process direct impacts are on the ground, indirect impacts are something you can see or hear.

Chair Jenkins also stated that what Council Winters described was by definition indirect impact.

Council Member Winters asked if you are 2 inches from the side of the trail that is considered indirect impact because it didn't cross?

Mr. Woods agreed with Chair Jenkins. The indirect impact is still an impact, its just another way of understanding it in a different capacity. It's a way to categorize the impact, that yes you put a transmission line along the Oregon Trail there will be some sort of impact. However, the trail rut is not disturbed, and intact.

Chair Jenkins I would describe a direct impact as a loss of the resource. Indirect is you still have the resource, but you have a partial or indirect impact. If you site a tower on a sage grouse lek, you lose that sage grouse lek. If you site one on the trail, then you've lost that trail segment.

Council Member Winters asked if you've crossed it to where you physically can't go there, you've lost that resource? To her, it relates to what is the resource. If it was a trail that the public didn't want to use anymore because a mile of it is next to a transmission line, that takes away the experience of it. She wasn't sure if that's indirect. If it was a mile away or off in the distance then she would agree. She struggled with the idea that it had to cross the trail in order for it to be a direct impact.

Chair Jenkins said here we are focusing on the Oregon Trail, which is not in use versus a recreational trail that would be in use. There are several locations identified along the Oregon Trail that are on private land that don't provide access to the public because it's private land.

Legal Counsel Mr. Rowe stated that he doesn't normally interject, but the finding that the Council needs to make in regards to these standards and not to result in significant adverse impact. That impact could be indirect or direct, so if they were concerned that there was indirect impact that would be significant adverse that would be a basis for a finding.

Section IV.M. Public Services: OAR 345-022-0110

Council Member Howe referring to the Table PS-2, asked if that was the number of people temporarily relocating to construct the project.

Ms. Tardaewether indicated there are some assumptions utilizing some of the local workforce living in the area, but in the table they were just talking about new people temporarily moving to the area.

Council Member Winters said I know our time is tight, but (regarding transportation plan) looking at Union County's comments on the Morgan Lake road that we talked about yesterday. The County said they didn't want the project but if the Council approved the project that road should have a guard rail, and should be widened to two lanes to accommodate the traffic. In the transportation plan, we require them to work with the County, but does Council know what the County was asking, and then say this is the condition of the development?

Chair Jenkins responded that it wasn't the county, it was the city that was making that comment.

Council Member Winters stated the question is how much have they looked at their request over their infrastructure, and yes we would make that a condition.

Mr. Woods replied that this was the type of thing they expected the County and the applicant to work through in their pre-construction traffic true-up. The traffic routes may change based on final design, so you'd have to make sure the actual roads being used are the ones being assessed. At some point you have to say there needs to be final engineering design done for establishing what roads need to be used. Those are the roads we need to care about. If the County was requesting something as specific as a two lane road with a guard rail there would have to be a specific and necessary reason for the upgrade in regards to B2H. They can't just use Idaho Power as a way to do something they couldn't find money otherwise. However, if it was specific and necessary for safety to conduct that work, then yes, that is the kind of thing that a requirement could be put in place.

Council Member Winters commented that normally when you have an approval you have to have the conditions of approval established. If you are deferring specific details about conditions of approval to another time you have to be clear about how the details are established and that it is a valid requirement. Have we made it clear enough that if we are deferring the specific details that we are giving the local impacted communities the ability to say "yes we can make you upgrade" or conditions that are clear to say they had that authority.

Mr. Woods responded we will have to go back and look at the plan and condition.

Chair Jenkins stated also there may be an alternative to what the County is recommending. He thought traffic control would be way cheaper than building a two lane road in a canyon.

Ms. Tardaewether responded that they will have to go back and look at the comments. There has to be something that is demonstrated to have an impact in the County's code. It's gets complicated because this is not a residential road, it's very narrow, and to do what the County is requesting you'd have to widen the road, and go through an easement process, it just gets complicated really quick. However, she stated they would go back and review it.

Council Member Winters stated that brings up another question for her, is it a good road for trucks to be on if it's that dangerous. It didn't seem fair to the local residents that we could make it accessible for heavier trucks, but they couldn't upgrade it because it's too limited. So maybe it should just be a local access road.

Mr. Woods responded that yes, we are talking about this one road, but it's just an example of the process. He did say that the typical conditions when there is a deferral the department maintains the final decision as in a "yay" or "nay" to what the agreement is. In the case of a disagreement somebody has to be the decision maker, which could be the Council. Reminding the Council they have the option to be the decision maker if they felt strongly enough about something.

Council Member Winters said traffic studies happen all the time, none of this is impossible.

Mr. Woods responded that when a local government requires a consultation with ODFW or SHPO, most of the time an agreement can be met. Sometimes there is disagreement which then requires the department to make a final decision.

Council Member Winters said her perspective is this is a facility s, to the extent that it is valuable it is a value to citizens that don't live in the communities. You can like or not like development, but at least local development has some benefit to that community, if you support local growth. However, in this case you're impacting local communities where the value is outside of their community, and Council should be cognizant of that.

Ms. Tardaewether stated we are doing what we can within the scope of Council standards. That is what they were confined by.

Chair Jenkins stated to Ms. Tardaewether that it was 10:12 am that he was going to give them the 15 minutes identified for break. He requested they finish by 10:20 am, to please condense the rest of the material.

Section IV.N. Waste Minimization: OAR 345-022-0120

No questions

Section IV.O. Division 23: Need Standard for Nongenerating Facilities:

OAR 345-023-0005 Need for a Facility

No questions

OAR 345-023-0020 Least-Cost Plan Rule

Council Member Howe asked if Ms. Tardaewether was saying they can't rely on Oregon Public Utility Commission acknowledgment, and EFSC needs to go an additional step?

Ms. Tardaewether responded that how the DPO was currently written, it said the Least-Cost Plan Rule has been met.

Mr. Woods said when the PUC acknowledged Idaho Power's Integrated Resource Plans in 2007, 2009, 2011, 2013, 2015 IRP's they included the B2H for permitting and planning only. ODOE directed the applicant saying it wasn't the same as acquisition because permitting and planning does not mean construction. The change in the 2017 plan that was acknowledged by the PUC was that it included acquisition of B2H. Council's need standard is met if the PUC acknowledges an IRP that includes acquisition of the resource.

Chair Jenkins stated that the time was now 10:20 am, and he expected Ms. Tardaewether to wrap things up.

Ms. Tardaewether explained they had the topics of Need, Fish Passage, and Noise to cover. She recommended finishing the other agenda items, then circle back to this item at the end. Ms. Tardaewether deferred to Secretary Cornett for suggestions and noted the need for the discussion to occur in front of the public.

Mr. Woods stated that Noise and Need were the two areas that were important and should be covered.

Secretary Cornett stated they had a packed agenda, and had to cover everything on the agenda. Suggested ways to move forward included: 1) compressing other agenda items; 2) continuing this agenda item outside of that meeting, through phone calls; 3) not discussing the remaining items at all and relying on the department to evaluate the comments and reflect them in the Proposed Order.

Chair Jenkins stated that since this was an information item, and a quorum was not needed they could address the remaining issues after the last agenda item has been completed. Allowing staff to finish the

remaining agenda items while they still had a quorum, and allowing Council Member Winters to leave on time.

All agreed

Secretary Cornett also suggested they move forward with the agenda and not take a break, but those that need a break take one as needed.

Vice Chair Grail rejoined the Council table

D. [10:24 am] Permanent Amendment Rulemaking – Council Decision⁵ (Action Item) – Christopher Clark, Rules Coordinator. Council will continue review of public comments received on the proposed rules and consider adoption of permanent rules to govern the site certificate amendment review process. For more information about Rulemaking visit the [Agency's Rulemaking Page](#).

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

Mr. Clark provided a procedural history of the rulemaking project, summarized the proposed rules, and presented staff's analysis of public comments received on the rulemaking record.

Options for early public notice.

Mr. Clark reviewed additional options for public notice early in the amendment review process. Options included providing notice receipt for a preliminary amendment request, providing notice on the date of completeness determination, and reinstating provisions for an optional information meeting.

Vice Chair Grail asked if using an informational meeting meant the public can not speak or testify? Is it just presenting them the information?

Mr. Clark responded that they would not take official testimony or comments that staff would be required to respond to in a formal way. He added that the public could certainly ask questions, but it would not be a hearing or a venue to raise issues on the record. Any issues discussed at the informational meeting would not be allowed to be used at any contested case proceedings, unless those issues were raised during the Draft Proposed Order comment period.

Vice Chair Grail stated that she didn't want to create a superficial thing where we are giving them an opportunity to say something. She was okay with not formally responding, but it seemed fake to her. She didn't want to create a situation where people say they come to these meetings, but Council didn't do anything with the information.

Chair Jenkins responded that is the risk of an information meeting. It's not an opportunity for the public to provide testimony, it's only to provide the public information regarding the amendment.

Vice Chair Grail stated that with that explanation she wasn't sure if that met the public's concerns with the ability to comment.

Mr. Clark stated that there are risks to consider, but there are benefits as well. Anytime you have an opportunity for a face to face interaction with the people conducting the process or the certificate holder, the opportunity to raise questions all increase the transparency in the process, even if it didn't allow legal review it's still an opportunity, and provides value.

Chair Jenkins stated that this is the public's interest in early notice.

⁵ Audio for Agenda Item D = 02:22:54 – January 20, 2019

Council Member Winters stated a meeting is only as good as people knowing about the meeting and being able to get there. Often in land use, notice is given to the homeowners associations, and the developers are the ones who were required to hold the information meetings. It's really the site certificate holder that needs to give the information early if what the public wants is early notice to understand the project, and be able to comment. Council Member Winters asked if there was an indication in comments on timing between the two options?

Mr. Clark replied that the previous rules in 2017 included a notice at receipt of preliminary request for amendment.

Secretary Cornett state the previous rules required a notice within 7 days of receipt of a request for an amendment. A completeness review was not even contemplated in the prior rules.

Council Member Winters stated that this was just notice, no comment period. There was no timeframe, just that it has to be done sometime after it was received.

Mr. Clark responded that was correct, but they could be more specific if needed. They could add it if notice needs to happen within 7 days.

Council Member Winters stated that this is just a notice, giving the public a heads up, and they should watch for more information about the amendment. She stated that they've previously talked about how people don't always watch the website so utilizing that as a notification mechanism does seem like a good idea. The earlier people are aware of an amendment the better. The notice is a way to provide that early information.

Chair Jenkins said my concern is and was in 2017, by giving this notice the presumption is there is a complete application, and there isn't. In the Land Use world you don't give notice until you have a complete application. In the EFSC process there could be several iterations of requests for additional information. He was concerned about the moving target of the material. He felt in 2017 and still feels notice should occur after receipt of a complete application. Chair Jenkins also stated he felt reviewing agencies get fatigued with the notices.

Council Member Winters said I feel we've received pushed back from the community. She felt that with citizens the information gets lost, they get busy, and they felt the time-periods were too short that they couldn't get the information out to their constituents. There is no perfect way, but how do you inform them information is coming, and to watch for it. That's what this was intended to do.

Chair Jenkins replied that the people that don't know are generally the adjacent owners. Everyone else including the special interest groups are watching the website.

Secretary Cornett stated that staff posts everything on the website and they have a monthly siting report that provides updates on all active projects. Some of the interest group individuals who are interested in our projects have signed up to receive those.

Chair Jenkins said as long as those adjacent property owners understand this was preliminary and not a complete application he wasn't opposed to mailing those special notices, but it has to be clear that this is not a complete application.

Vice Chair Grail referring to the fatigue of notices within agencies stated that in her experience she did do a lot of deleting of emails, but it also prompted her to know something is happening, and you may want to get information on the website. However, we keep hearing the people want communication and we should try to meet them in the middle.

Council Member Howe asked if there was potential for frustration from the public when they get a notice, then call the department and the department can't give them answers because there isn't a complete application. Is that going to become frustrating to the general public?

Request for Contested Cases

Mr. Clark discussed issues related to the information required in a request for contested case and recommended Council delete the proposed OAR 345-027-0371(6)(e) and OAR 345-015-0016(5)(d) in response to the comments.

There were no questions or disagreements.

References to "Council Standards"

Mr. Clark discussed a recommendation made in public comment that references to "Council Standards" should be modified to also refer to "applicable laws." Mr. Clark recommended Council amend the proposed rules as suggested.

There were no comments or disagreements.

Limitations on Issues in a Contested Case OAR 345-027-0371(10)(a)

Mr. Clark discussed a recommendation that the council should reject proposed rules which limit the issues a party to a contested case may participate on in a Type A Review.

Vice Chair Grail stated she struggled with this. As she looked around the council table stating they all have different backgrounds and experiences, it bothered her to think that with Ms. Winter's background she could raise something that Ms. Grail wasn't allowed to. She understood from a procedural process, but she personally didn't like it, and it would be a disservice if we can't rely on others knowledge.

Chair Jenkins stated that what they are proposing is that the Council "may" limit. His concern is how do we determine when to limit issues, and he is concerned that when people want to respond to issues others have raised. He was firm "you raise it or you waive it.

Mr. Clark pulled up the proposed language on the screen, and outlined the proposed language.

Council Member Winters said this might be for Mr. Rowe, but procedurally if we adopt this, when and how would Council do this if they wanted to limit the issues by party.

Legal Counsel Rowe said the way this rule is proposed it doesn't outline the criteria or the context. As for what criteria the Council would apply, there is none.

Council Member Winters expressed concern about how to implement this.

Mr. Clark: After receiving the request for a contested case Council would be required to issue an order to those requests, either approving or denying them. That order would also identify and establish the parties. Council would then be required to issue a contested case notice under the Administrative Procedures Act. That notice must explain how the parties may participate, provide details regarding the hearing, and specific the areas they are allowed to participate in.

Council Member Winters said that would be the time to put any limitations on parties regarding issues?

Mr. Clark confirmed and provided the rationale.

Chair Jenkins commented that they were back to wrestling with "may".

Council Member Winters agreed, and said she was not opposed to it, just that it was hard to apply.

Council Member Howe stated he felt that “raise it or waive it” was appropriate, but he could see where it could be of value in limited circumstances. The “may” would need some standards or criteria around it, which is something that a Rulemaking Advisory Committee could come up with in the future.

Vice Chair Grail stated she likes clean and neat, and yes or no. The longer she is a Council Member the more she realizes that it’s not clean and neat, and they are put in positions that require them to think their way through. As to what Council Member Winters said earlier, the industry will keep changing, the items presented are going to change, and she felt they needed ways to be responsive. She understood the raise it or waive it, but didn’t feel it was always realistic.

Scope of Council Review OAR 345-027-0375

Mr. Clark discussed a public comment that the proposed rules would impermissibly weaken or narrow the substantive scope of Council’s review of requests to amend a site certificate.

There were no comments or disagreements

Council Member Winters stated she felt the rules were good, and recommended moving forward with them, but referred back to notices stating that if there are people out there that want to comment and want early notice, we should listen to them. She recommended that we provide notice at the earliest possible time as long as we are careful to explain that it is only a notice and not a comment period. She agreed that notices have not caught up with the modern world. Texting or tweeting notices would make a significant difference, but that isn’t an option yet so they just have to do the best they could.

Secretary Cornett stated just to be clear, Council is interested in the option which would provide early notice but not a comment opportunity?

Council Winters confirmed, but we need to give a timeline. She was afraid if you didn’t give a timeframe they’d get push back.

Secretary Cornett responded that he felt 2 weeks was a reasonable expectation, and then make the requirement for the property owner lists to be submitted to ODOE with the application materials. The property owner list would have to be generated from the assessor’s records within 60 days of the notice to be current.

Vice Chair Grail responded that would make her feel much better. Sometimes the public feels we don’t listen and this would help show them we are listening.

Chair Jenkins asked how they would change the language in (a), send notice within 14 days by mail; asking Mr. Clark if he had any recommendations.

Mr. Clark responded that within 14 days after receiving the request.

Council Members asked if days meant business days or if the 14th day falls on a Sunday it moves to the Monday?

Secretary Cornett responded that is typically their process, but they didn’t have anything to clarify that. However, they could be specific in the language to say calendar days.

Council Member Howe supported the changes that staff recommended to OAR Chapter 345, but going back to 371 (10)(a) the issue with the “may” limit the parties in contested case. Do they need to revisit this or do they need to move it to the RAC?

Chair Jenkins requested that that item be put on the agenda list for the RAC for 2022.

Vice Chair Grail motioned to adopt the proposed amendments to OAR Chapter 345, with the changes recommended by Staff, as permanent rules with the following modifications to include the changes:

Edit 1 - Add the following language:

OAR 345-027-0360(2): Within 14 calendar day after receiving a preliminary request for amendment, the Department must notify the public that a preliminary request for amendment has been received by:

(a) Sending notice by mail or email to:

(A) All persons on the Council's general mailing list as defined in OAR 345-011-0020;

(B) All persons on any special mailing list established for the facility;

(C) The reviewing agencies for the facility, as defined in OAR 345-001-0010(52); and

(D) The property owners on the list provided under OAR 345-027-0360(1)(f);

(b) Posting an announcement on the Department's website to notify the public that a preliminary request for amendment has been received. The announcement must include a copy of the preliminary request for amendment.

Edit 2 – Do not include the following track change proposal by staff in OAR 345-027-0371(10(a)) below and retain the language in the Temporary Rules.

If the Council finds that the request identifies one or more properly raised issues that justify a contested case proceeding, the Council must conduct a contested case proceeding according to the applicable provisions of OAR 345-015-0012 to 345-015-0014 and 345-015-0018 to 345-015-0085. The Council must identify the contested case parties and shall identify the issues each contested case party may participate on. The parties to a contested case proceeding must be limited to those persons who commented on the record of the public hearing and who properly raised issues in their contested case request that the Council found sufficient to justify a contested case, except that the certificate holder is an automatic party to a contested case. The Council may limit the issues a limited party to a contested case proceeding may participate on ~~must be limited~~ to those issues that party properly raised in its contested case request and that the Council found sufficient to justify a contested case, ~~except that~~ the certificate holder may participate on any issue the Council found sufficient to justify a contested case proceeding;

Council Member Howe Seconded the motion.

Secretary Cornett clarified he did have the changes reflected in the voting record.

Motion carried unanimously.

E. Public Comment Period⁶ – This time was reserved for the public to address the Council regarding any item within Council jurisdiction that was not otherwise closed for comment. *Note that the public comment timeframe related to the Boardman to Hemingway Transmission Line Draft Proposed Order was closed.*

Brian Walsh (Avangrid Renewables)

Mr. Walsh provided a quick overview of Avangrid Renewables, and stated they hold 5 or 6 site certificates through EFSC, and one in review, Bakeoven Solar Project.

Mr. Walsh stated his comments were referring to the Retirement and Financial Assurance Standard and the Council's Policy for evaluating if the proposal meets the standard. The Council's key policy has been not to take scrap value into consideration or other justifications for decreasing the amount of financial assurance that must be posted prior to construction or delaying the posting of financial assurance. The policy issue had been raised several times over the years, but the Council has yet to re-evaluate the policy. Although it did come up earlier that morning with B2H, and he had a chance to speak with Ms. Esterson regarding the background on that. He

⁶ Audio for Agenda Item E = 03:25:19 – January 24, 2020

stated that was a positive and what they are proposing will support those as well. Referring to the Bakeoven Solar Project Mr. Walsh stated this was their first application for a site certificate in several years, and it's a good opportunity to present an alternative approach to satisfying the Retirement Standard. He included the traditional approach as well as an alternative in the site certificate application for a vehicle for the Council to review and reconsider the Retirement Policy. Mr. Walsh stated the DPO was just issued and they would be providing more information for the record to support the Council's policy as approval of the alternative approach. He said they understood the Council's desire for consistency, but he asked the Council to consider the current and future market conditions, economic reality for renewable projects, and that retirement securities are important. Mr. Walsh felt it's responsible development to post a decommissioning security and make assurances to the public and the County that their facility is decommissioned at the end of its life.

He asked the Council if there was any information he could provide them during the open record period that would help in the policy discussion going forward.

Vice Chair Grail responded that if they had data from somewhere else that would be helpful. Oregon shouldn't always have to be the trailblazer, so if he had anything to share it would be helpful.

Mr. Walsh responded they would have no problem providing more info. Along with the manufacturing warranty and lifespan. Mr. Walsh stated that solar panels specifically had a standard warranty of 25-50 years. Most, or about 80% of them, in that 30 years will still be about 82% efficient. Proving that there is a life well beyond the 30 years, also similar to the wind turbines lifespan. He stated he would add good cases outlining salvage value at the time of decommissioning into the record.

Chair Jenkins informed Mr. Walsh that later in the agenda Council would be talking about repowering wind farms, asking him if he saw a pattern in practice to repowering solar.

Mr. Walsh confirmed there is a practice of repowering, mostly to wind turbines providing an additional 25-30 years of life. Mr. Walsh asked Chair Jenkins if that answered his question.

Chair Jenkins responded that he was specifically talking about solar power facilities not wind.

Mr. Walsh apologized, and explained that the solar projects are becoming more and more efficient, but as technology was improving it would make sense to repower the modules. When that would happen still needed to be determined. The driving factor behind the wind repowering was the expiring tax credits, which may also provide incentive for solar repowering. Regardless the facilities will continue to generate for years to come in the future.

No phone comments

Short break to grab lunches at 11:35 pm

- F. [11:55] (Working Lunch) Shepherds Flat South Request for Amendment 2⁷ (Action Item)** – Chase McVeigh-Walker, Senior Siting Analyst. The Council will review the Proposed Order on Request for Amendment 2 of the Shepherds Flat South site certificate. Request for Amendment 2 seeks Council approval to install longer turbine blades on the existing towers, known as wind turbine repowering. The repowering would also include the replacement and modification to associated machinery on the turbines. The amendment request is being reviewed under the Type B amendment review process. For project details visit [Department's Shepherds Flat South Project webpage](#).

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

⁷ Audio for Agenda Item F = 00:00:50 – January 24, 2020

Chair Jenkins asked about the duration of condition 108 relating to annual consultations with ODFW and Gilliam County weed control departments regarding revegetation and weed control. Because it just says annual is there a specific duration?

Secretary Cornett responded that by not specifying a specific conclusion, it would be through the life of the facility, unless Council wanted to establish specific guidelines outlining a conclusion if there was a successful trend.

Chair Jenkins asked if they knew what the original site certificate required. It made sense that after 5 years if it were trending towards success then there needed to be some finality to it. Then asked the rest of the Council their thoughts.

Council Member Winters stated it made sense they wouldn't need to consult anymore if the plan is accomplished. It's for the vegetation and weed control assuming, it's timing and method, so they would need a way to monitor if it had been successful. Her question was could it go wrong, like 3 years later?

Chair Jenkins suggested adding language "Until all parties agree" that it's been successfully implemented.

Secretary Cornett proposed they add the language on the screen so Council could see it, and be comfortable with it. He advised ODOE staff to update the language on this item and they would circle back at the end of this presentation to review the language.

All agreed

Chair Jenkins referring to condition 111, asked if it was the site certificate holder or a third party?

Mr. McVeigh-Walker confirmed "or third party", and pointed out where the language could be found in the order. Then went on to read the language for Chair Jenkins.

Mr. Woods discussed the minor language changes, then pulled up the proposed language on the screen. Council then went through and reviewed the changes.

Vice Chair Grail motioned that the Council adopt the proposed order as the final order and issue the 2nd amended site certificate for Shepherds Flat South with the following modifications and adopt the final order:

Edit 1 – Amend Conditions 104 and 105 to require the certificate holder to also include Gilliam County in the notification of Construction Commencement and completion dates. The amended conditions would then require the certificate holder to not only notify the Department of these dates, but also the two counties in which the facility is located.

Edit 2 - Add the bold language below to Condition 108

(b) following completion of RFA2 facility repower activities:

(i) Restore areas temporarily disturbed by RFA2 facility repower activities according to the methods and monitoring procedures described in the Revegetation Plan that is incorporated in the Final Order on Amendment 2 for Shepherds Flat South as Attachment D and as amended from time to time.

(ii) Consult annually with the Department, ODFW, Gilliam and Morrow County Weed Control Departments on timing and methods for revegetation and weed control.

[if mutually agreed upon by the Department, ODFW, Gilliam and Morrow County Weed Control Departments, the annual consultation may be discontinued after 5 years. This provision does not relieve the certificate

holder from complying with its weed control obligations as described in Condition 107 and 38, and any other provisions of applicable state or local requirements for weed control.]

Edit 3 - Change “commandment” to “commencement” on Page 14 of Proposed Order

Council Member Winters seconded.

Motion carried unanimously.

G. Shepherds Flat Central Request for Amendment 3, Turbine Repower Amendment⁸ (Action Item) – Chase McVeigh-Walker, Senior Siting Analyst. The Council will review the Proposed Order on Request for Amendment 3 of the Shepherds Flat Central site certificate. Request for Amendment 3 seeks Council approval to install longer turbine blades on the existing towers, known as wind turbine repowering. The repowering would also include the replacement and modification to associated machinery on the turbines. The amendment request is being reviewed under the Type B amendment review process. For project details visit [Department's Shepherds Flat Central Project webpage](#).

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

Chair Jenkins outlined a few edits for staff to update before voting.

Chair Jenkins reminded Council they were on amendment #3 because amendment #2 only included two of the turbines, and this amendment is for the rest of the turbines.

Mr. McVeigh-Walker replied that was correct, and why the condition numbering sequencing was off by four.

Chair Jenkins asked if staff has new motion language?

Mr. Woods brought it up on the screen.

Vice Chair Grail motioned to approve the Proposed Order as the Final Order as recommended by staff, with the following changes:

Edit 1 - Condition 26, changes to sub (g) as presented by Chair Jenkins

Eliminate the strikethrough of the words “certificate” and “to”

Edit 2 - Change word “Commandment” to “commencement” on page 14 of Proposed Order

Edit 3 - Add the bold language to Condition 112

(b) following completion of RFA3 facility repower activities:

(i) Restore areas temporarily disturbed by RFA3 facility repower activities according to the methods and monitoring procedures described in the Revegetation Plan that is incorporated in the Final Order on Amendment 3 for Shepherds Flat Central as Attachment D and as amended from time to time.

(ii) Consult annually with the Department, ODFW, Gilliam and Morrow County Weed Control Departments on timing and methods for revegetation and weed control.

⁸ Audio for Agenda Item G = 00:38:34 – January 24, 2020

[if mutually agreed upon by the Department, ODFW, Gilliam and Morrow County Weed Control Departments, the annual consultation may be discontinued after 5 years. This provision does not relieve the certificate holder from complying with its weed control obligations as described in Condition 111 and 38, and any other provisions of applicable state or local requirements for weed control.]

Council Member Winters seconded.

Motion carried unanimously.

Break until 12:55 pm

H. [12:55 pm] Council Review of Requests for Reconsideration and Rehearing, Summit Ridge Wind Farm Site Certificate Amendment #4 ⁹ (Possible Action Item) – Maxwell Woods, Senior Policy Advisor, and Patrick Rowe, Legal Counsel. The Council will review requests for reconsideration and rehearing regarding Council’s decisions on the Summit Ridge Wind Farm Site Certificate Amendment #4. Council approved Amendment #4 at its August 2019 meeting. For project details visit [Department's Summit Ridge Wind Farm Project webpage](#).

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

Council Member Winters asked what the OAR was and if it was their rule?

Mr. Rowe confirmed it was their rule pertaining to amended site certificates.

Council Member Winters asked when they say “likely,” their brief said you didn’t have to prove the standard was met.

Mr. Rowe responded it was a fair statement. He referenced the issues raised already on the record assuming evidence had already been provided verses just stating the standard wasn’t met.

Secretary Cornett in terms of sequencing of Councils evaluation of the requests for reconsideration and the interpretation of “may”, which would be preferred first and second?

Mr. Rowe asked that the interpretation was first.

Chair Jenkins stated he agreed that it’s important to address the interpretation of “may” first then the order. He supported staff’s definition of “may.”

Council Winters stated she was trying to think of another plausible definition of “may.” She asked if there was any other ground they could consider because she couldn’t think of any. She stated they could have a higher standard for “may”, but she couldn’t think of one.

Council Member Howe agreed, and appreciated staff bringing it to Council instead of letting it fall to the wayside. He indicated he was fine with the interpretation to get it settled and behind them, but wouldn’t it be better to change the rule and the word “may” to “likely to”?

Mr. Rowe confirmed that it would, but in the mean time we need to address it in a Council Order until the rulemaking reconsideration in 2022.

Council Member Howe stated that if Council was in agreement then they should add that to the motion that the language change to the rule will be reconsidered in 2022.

⁹ Audio for Agenda Item H = 00:48:00 – January 24, 2020

Vice Chair Grail stated she concurred as long as they take action because they could just let it die, but that doesn't mean they should.

Council Member Truitt agreed with Vice Chair Grail.

Secretary Cornett stated that they have since split the motion language out, and he could provide the motion language.

Council Member Truitt motioned that the Council, in a formal written order, state its interpretation of "may", as that word is used in OAR 345-027-0371(9), to have the meaning presented by staff in its staff report – it means that to determine an issue justifies a contested case proceeding, Council must find that a request for a contested case regarding a site certificate amendment raises a significant issue that "*is in some degree likely*" to affect the Council's determination regarding the facility's compliance with applicable laws and Council standards.

And that we revisit this rule language in 2022 during the next amendment rules review.

Council Member Howe Seconded.

Motion carried unanimously.

Council Member Truitt motioned that the Council deny all requests for reconsideration and rehearing on Summit Ridge Amendment 4 in a formal written order, based on the findings presented by staff in its staff report.

Council Member Howe seconded.

Motion carried unanimously.

I. [1:28 pm] Solar PV Rulemaking¹⁰ (Information Item) – Christopher Clark, Rules Coordinator. Staff will present preliminary findings and recommendations regarding the solar PV energy facility rulemaking project, and request Council feedback on the project before returning to the Rules Advisory Committee. For more information about Rulemaking visit the [Agency's Rulemaking Page](#).

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

Mr. Clark provided background on the Solar PV rulemaking project and an overview of its history and scope.

Mr. Clark provided an overview of the thresholds for a solar photovoltaic power generation facility to be an energy facility.

Council Member Howe asked are those numbers drawn out of the air or is 1,280 [acres]and 1,920 [acres] like a quarter or half of a square mile? What is the equivalent to?

Mr. Clark responded that 160 [acres] is approximately one quarter of a square mile, and 1,280 is 2 square miles, and 1920 is 3 square miles. So they are working in land sections.

Chair Jenkins asked Mr. Howe if he was asking for the genesis of those numbers?

¹⁰ Audio for Agenda Item I = 01:21:35 – January 24, 2020

Council Member Howe asked Mr. Clark if he said the 1,920 [acres] was 3 square miles.

Mr. Clark confirmed.

Council Member Howe responded to Chair Jenkins that it was, but that 3 square miles felt random and there had to be something behind that other than if it's the size that felt large enough.

Chair Jenkins mentioned that Mr. Cornett was involved in that legislation, and that he might be able to shed more light on that.

Secretary Cornett stated that the acreages go back to 2013 when they proposed language related to 640 or 320. Land in Eastern Oregon is developed in large acreages based on township/range/section, so the acreage increments are based on sections from the public land survey system.

Mr. Clark provided an overview of challenges in making jurisdictional determinations, providing a map of Antelope Valley, CA as an illustration.

Chair Jenkins mentioned that it looked like a lot of agricultural land.

Mr. Clark confirmed it was, and he wasn't sure of how their zoning worked there, but there is some dry land agriculture as well as pressure for housing development, and some open space protected areas.

Mr. Clark presented several alternatives the Council could pursue to address what is considered to be a "solar photovoltaic power generation facility" as that term is used in the definition of "energy facility" under ORS 469.300(11), including adopting guidelines based on the "15 questions", adopting a definition based on Oregon Land Conservation and Development Commission rules, or a hybrid of the two.

Council Member Howe asked if most of the information required by the 15 questions was available as public information or is it confidential.

Mr. Clark responded that he wasn't sure if the information about revenue sharing agreements or common debt & equity financing were public, but he wasn't sure if those are things they'd even want to look at under Council review. He stated they could request certain filings if they needed them.

Chair Jenkins stated there was some obligation to move forward with this rulemaking since there is a risk with solar projects. So he did not agree with staff's first alternative to conclude the rulemaking and make no changes. Second, the 15 questions didn't work for wind, and they weren't able to implement them or adopt them as rule so they haven't been used, and he was reluctant to try to implement them for solar. Third is the LCDC rule and criteria, which he thought was a viable option. He also felt the multi-factor option was a viable option. The last alternative is the burden of proof is on the department to prove the applicant is trying to game the system or not. He felt the burden of proof should not be on the department. He felt it left alternatives 3 & 4 to discuss, and asked Council how they felt.

Vice Chair Grail said one of the concerns she had is in regards to infrastructure. She agreed with Chair Jenkins comments and that the hybrid alternative seems like a good approach, but she felt it was important not to get into a situation that the Council was pinned to where Council didn't have some level of discretion or give up authority to make the decisions that needed to be made.

Council Member Howe said I agree with that. Usually I am more towards clear and objective, the bright line. However, it could limit the Council's discretion. He asked if there was a way to have the 15 factors be clear and objective.

Secretary Cornett responded that staff also preferred a bright line trigger to do the evaluation, which didn't mean the determination would be one thing or another. Just that there would be a bright line if a review was required. He stated that staff hoped Council would like this idea as much as they did, then they'd write up some language related to the evaluation to bring to the RAC for their input.

Council Member Howe stated he was in support of pursuing the concept and making the 15 questions as objective as possible.

Chair Jenkins said with that do we need to take a vote to add this to the scope of the RAC, as we've been challenged in the past for the scope this RAC

Mr. Clark responded that he didn't believe they needed to take a vote, but if they felt it would help they could or if they wanted to settle on one or more alternatives to take to the RAC they could. However, staff isn't looking for formal action.

Secretary Cornett asked Mr. Clark if he could walk through a description between the 15 questions idea and the multi-factorial concept to ensure everyone was on the same page.

Council Member Howe asked if the hybrid approach referred to the multi-factorial process.

Mr. Clark responded that the hybrid approach used a bright line test to determine when a review was required and the multi-factorial process would be used in the review.

Chair Jenkins confirmed his understanding that the LCDDC definition would be used as the bright line and then use the factor analysis to make the decision.

Mr. Clark confirmed.

Chair Jenkins stated that in his experience the Counties haven't adopted any clear standards, they were just using LCDDC rules. Unless some Counties have in the last four years.

No need for action. Unanimous head nods from Council.

Vice Chair Grail stated that they've had questions from the public on why they didn't have anything in EFSC standards regarding local standards and local manufacturing. She was just raising the issue, and didn't need a response.

Mr. Rowe responded that he looked at a similar issue in context, and to include or use local labor it would have to be authorized by the legislature.

Vice Chair Grail thanked Mr. Rowe.

Secretary Cornett stated that it would be helpful to have one or two Council members monitoring the RAC meeting. to help translate any questions or concerns that came up from the participants. He stated that Chair Jenkins participated previously and thought Vice Chair Grail stated she was interested.

Vice Chair Grail stated she was interested and would be present if she is able.

Secretary Cornett stated they anticipate one more RAC meeting before coming back to Council with draft rules.

Mr. Clark clarified that an agency can't appoint its own representatives to be members of a RAC. However, they welcomed the participation and it's beneficial for them to have Council members there.

Chair Jenkins looked for confirmation that they would just be participants and not part of the RAC committee.

Secretary Cornett confirmed.

Council Member Winters asked how often they met.

Mr. Clark: There is no set schedule, but this is the last meeting before any decisions. They've had 4 meetings, this up-coming would be the 5th and final meeting.

Chair Jenkins stated that any language developed by staff would be inclusive of anything required by HB 2329, so they didn't need any feedback?

Mr. Clark confirmed.

C.2 [2:16 pm] Boardman to Hemingway Transmission Line, Council Review of Draft Proposed Order and Public Comments Continuation ¹¹ (Information Item) – Kellen Tardaewether, Senior Siting Analyst, Sarah Esterson, Senior Siting Analyst, Maxwell Woods, Senior Policy Advisor. For project details visit [Department's Boardman to Hemingway Transmission Line Project webpage](#).

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

Council member Winters departed since a quorum was not needed to finish presenting this agenda item. Vice Chair Grail recused herself and stepped away from the table to join the audience.

Ms. Tardaewether and Mr. Woods reminded the Council members leaving the meeting that the meeting is recorded and they could review as necessary.

Mr. Woods noted for the record that Vice Chair Grail recused herself, and Council Member Winters left. Stating that they no longer have a quorum, but this is an information item so a quorum is not needed.

Section IV.O. Division 23: Need Standard for Nongenerating Facilities:

(Continued) OAR 345-023-0020 Least-Cost Plan Rule

Ms. Tardaewether re-introduced this standard by reiterating that the presentation includes the recommendations in the DPO as well as response to comments received on the DPO. The standard 345-023-0020(2) has been met, "The Council shall find that a least-cost plan meets the criteria of an energy resource plan described in section (1) if the Public Utility Commission of Oregon has acknowledged the least cost plan," that the applicant has demonstrated the need for the facility under OAR 345-023-0005(1), and the Council must find that the Need Standard has been met.

Ms. Tardaewether continued by summarizing the comments on the DPO contend that the standard language "... the capacity of the proposed facility... identified for acquisition...acknowledged by the PUC" was not met. The comments contend that the applicant only demonstrates that 20% of the MW capacity is met. Ms. Tardaewether continued that the Council's rules and standard do not provide explanation of capacity so the Department points to capacity as defined in ORS 469.300 for transmission lines identifiers capacity as 230 kV (volts), rather than MW.

Council Member Howe stated that B2H stated that they were only using 20% or so what should be covered, 2050 megawatts, is a megawatt more than a kilowatt?

Ms. Tardaewether confirmed, and explained the calculation to get to the 20%. Kilo volts and mega watts are different units.

Ms. Tardaewether clarified that, for other facilities, council does not "cap" the MW output of facilities and that the Council is not reviewing a transmission line for a capped MW output, and that it is common for transmission lines to have extra capacity not used to allow for future transmission needs.

OAR 345-023-0030 System Reliability Rule for Electric Transmission Lines

¹¹ Audio for Agenda Item C.2 (Continued) = 02:09:34 – January 24, 2020

Mr. Woods stated it has always been a 500 kV line since the early 2000's even before Idaho Power had funding partners. The PUC has always looked at it as a 500 kV line, and acknowledged the permitting and construction of a 500 kV line.

Ms. Tardaewether expanded on the DPO comments stating they contend that the applicant has not demonstrated that the facility is needed to enable the transmission system of which it is to be a part to meet firm capacity demands for electricity, because Idaho Power did not demonstrate that BPA and Pacific Corps also need the facility. BPA is not regulated by the State, therefore does not have to submit an IRP to the PUC and complies with federal regulations. The Department points to the EFSC process requiring information from an applicant and not outside partners.

No other comments or questions.

Section IV.P. Division 24 Standards

Ms. Tardaewether briefly discussed Council's authority to establish an EMF committee, but that statute and rule may not be used to approve or deny an application for site certificate.

No comments or questions.

Section IV.P.1. Siting Standards for Transmission Lines: OAR 345-024-0090

No comments or questions.

Section IV.Q. Other Applicable Regulatory Requirements Under Council Jurisdiction

No comments or questions.

Section IV.Q.1. Noise Control Regulations: OAR 340-035-0035, OAR 340-035-0010 and OAR 340-035-0100

Mr. Woods asked when was that started?

Ms. Tardaewether responded 1979 she thought.

Ms. Tardaewether discussed the methodologies and assumptions that went into the applicant's noise analysis. The applicant requested the Department review and approve its proposed baseline sound monitoring program, field measurement methodology and instrumentation. Under OAR 340-035-0035(3)(a), sound measurement procedures may differ from those in the Sound Measurement Procedures Manual (NPCS-1) if they are approved in writing by the Department. Ms. Tardaewether discussed why Mr. Woods' email was included as part of Exhibit X, to demonstrate the applicant received Department approval but that the caveat language he included was noting that Council has the ultimate decision making authority to disagree with a component of the baseline monitoring program.

Ms. Tardaewether discussed the steps the applicant took with establishing baseline monitoring to establish noise sensitive receptors and then outlined the conservative assumptions including the voltage modeled and lower baseline estimates from the Department.

Council Member Howe asked if this was an exception to EFSC or in DEQ's rules?

Ms. Tardaewether responded that they were the exception in DEQ's noise rules but they do not administer them or manage them, and because it falls under the Council's jurisdiction, it's Council's decision. Council is interpreting, reviewing, approving or denying the exception.

Mr. Woods stated Council adopted DEQ noise rules as part of their standard.

Council Member Howe asked if the exception would require the Counties to approve the exception.

Ms. Tardaewether responded that this was not under land use.

Chair Jenkins stated that if a house was proposed to a County for approval after the construction of the power line, it would have to be sited far enough away from the line because it would be a noise sensitive receptor.

No further comments or questions.

Section IV.Q.2. Removal Fill Law: OAR 141-085-0500 through-0785

No comments or questions.

Section IV.Q.3. Water Rights: OAR 690-310-0000; OAR 690-380-0000

No comments or questions.

Section IV.Q.4. Fish Passage: OAR 635-412-0035

No comments or questions.

Meeting adjourned at approximately 3:33 pm

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