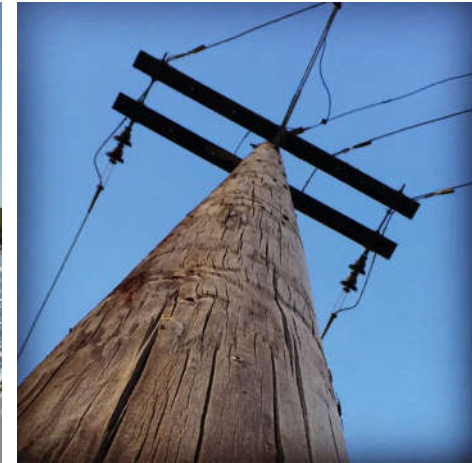


Oregon Department of **ENERGY**

Energy Facility Siting
Council Meeting

Columbia Gorge
Discovery Center
The Dalles, Oregon

March 13, 2020



Opening Items:

- Call to Order
- Roll Call
- Announcements



Announcements:

- For those attending in person:
 - Comment Registration Cards are available on the table.
 - GovDelivery Sign Up Cards to receive project information by email are also on the table
- Those participating via the AT&T phone line, please mute your phone and if you receive a phone call, please hang up from this call and dial back in after finishing your other call



Announcements continued:

- If you would like to address the Council, please do not use the speaker phone feature, because it will create feedback
- For those signed onto the webinar, please do not broadcast your webcam
- Please silence your cell phones
- Energy Facility Council meetings shall be conducted in a respectful and courteous manner where everyone is allowed to state their positions at the appropriate times consistent with Council rules and procedures. Willful accusatory, offensive, insulting, threatening, insolent, or slanderous comments which disrupt the Council meeting are not acceptable. Pursuant to Oregon Administrative Rule 345-011-0080, any person who engages in unacceptable conduct which disrupts the meeting may be expelled.



Agenda Item A

- Council Secretary Report



Agenda Item B (Information Item)

Bakeoven Solar Project – Council Review of Draft Proposed Order and Public Comments

March 13, 2020

Sarah Esterson, Senior Siting Analyst

Maxwell Woods, Senior Policy Advisor

Patrick Rowe, Legal Counsel, Oregon Department of Justice



Council Scope of Review

OAR 345-015-0230

- Review DPO, DPO Comments by issue/standard, Applicant's response to issues raised; Department recommendations
- Provide comments for Department consideration in proposed order
 - Provide comments individually, consensus or vote at EFSC meeting
 - Provide comments by issue or standard as staff presents

Council Review of DPO and Comments

PLACEHOLDER SLIDES



Agenda Item C (Information Item)

2020 Short Legislative Session Update

March 13, 2020

Maxwell Woods, Senior Policy Advisor



Agenda Item D (Action Item)

Council Review of Boardman Coal Plant Aerial Photography Monitoring Program

March 13, 2020

Maxwell Woods, Senior Policy Advisor



Boardman Coal Plant

- Boardman Coal Plant will cease burning coal by end of year.
- PGE (certificate holder) implements a terrestrial ecological monitoring program.
- Program includes monitoring and surveys for birds, mammals, vegetation, amphibians/reptiles, fish. Required consultation with ODFW, and report submitted to ODOE annually.
- Monitoring program includes aerial photography as part of vegetation monitoring.
- PGE requests to cease the aerial photography monitoring now.



Boardman Coal Plant

- ODOE and ODFW support the request to cease aerial photography.
- 40 years of data have shown no impact from plant emissions on surrounding vegetation.
- Similar request made in 2004; Council denied request at that time. 15 years additional information provide strong justification to end the aerial photography.



Agenda Item E

PUBLIC COMMENT



Agenda Item F (Information Item)

Annual Work Plan

March 13, 2020

Sean Mole, Operations Analyst, Oregon Department of Energy



Annual Work Plan Overview

- Used to establish current process improvement activities and report on completion of past activities.
- Provides direction and priorities for staffs' efforts beyond day-to-day activities and other established responsibilities.
- Prioritized tasks will be considered when developing biennial budgets and assigning day-to-day work activities.
- Provides a record of completed tasks and a location for a prioritized list of identified future tasks.

High Level Goals

Applicant/Site Certificate Holders – Increase applicant/certificate holders' trust and perception of value of the state energy siting process by decreasing the siting process unknowns.

Public – Increase and enhance the public's understanding, participation and trust in the state energy siting process.

Reviewing Agencies – Increase the quality and quantity of Energy Siting Division's connections to local, state, federal and tribal agencies that participate in the state energy siting process.

Regulatory Clarity – Increase the efficiency, effectiveness, transparency, accountability and predictability of the site certificate process.

Process Improvement – Systematically evaluate underlying business processes to achieve highest possible efficiency.

Adaptability – Strengthen the ability of the Energy Facility Siting Council, and Energy Siting Division's staff and processes, to adapt to changes in energy markets and environmental constraints, and the subsequent changes to applications for site certificates as well as department and division staffing and priorities.



FY 2020-21 Prioritized Tasks

- Project Management Tool – Continued Development
- Boardman Coal Plant – Documentation Review
- Performance Metrics – Begin Development
- Pre-Application Packet Update – Continued Improvements
- Public Documentation Review and Updates – Continued Improvements

Post 2020-21 Tasks

- Compliance Program Evaluation
- Condition Tracking Tool
- Records Management Database
- Reset/Restructure Siting Division Data Storage Drives
- Pre-Application Packet Update
- GIS Division Training Program
- Local and Federal Project Boundaries

Agenda Item G (Information Item)

Contested Case Process Overview

March 13, 2020

Patrick Rowe, Senior Assistant Attorney General
Oregon Department of Justice



EFSC Contested Case Process

(Information Item, March 13, 2020)

Patrick Rowe

Senior Assistant Attorney General

Oregon Department of Justice

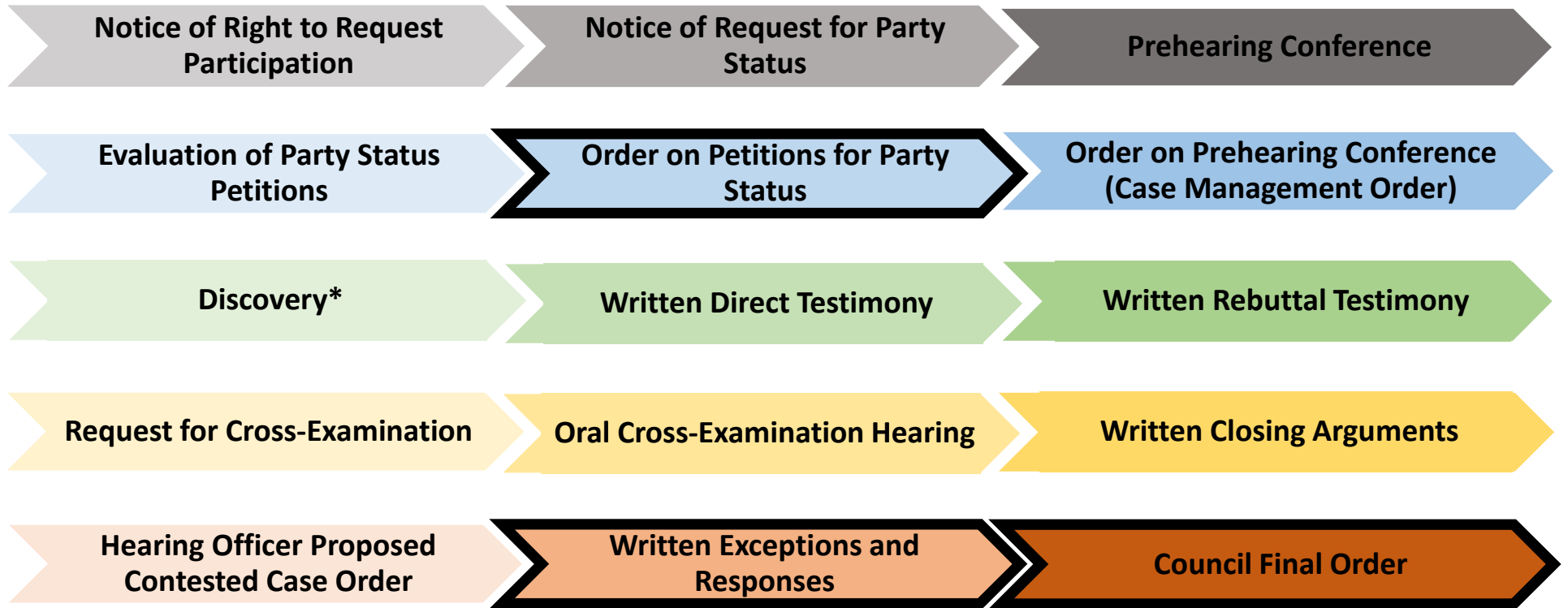


OREGON
DEPARTMENT OF
ENERGY

EFSC Process Overview



EFSC Contested Case Overview



EFSC Contested Case Process

(OAR 137-003-0001 through 137-003-0092 | OAR 345-015-0012 through -0085)

Mandatory for all Site Certificate Applications (ORS 469.370(5))

- Conducted by Independent Hearing Officer
- Applicant is automatically a party
- Others are eligible to request party status if they provided comment in person at the Draft Proposed Order public hearing or in writing during the comment timeframe
- Issues limited to those raised on the record of the public hearing



Notice of (right to request) Contested Case / Participation

(OAR 345-015-0014)

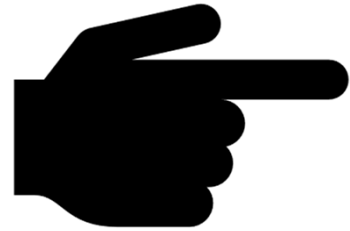
- Issued concurrently with the Notice of Proposed Order
- Establishes deadline for requesting party status
- Lists requirements for requesting party status
 - Only persons who have commented in person or in writing on the record of the public hearing receive notice and are entitled to request to participate
- **Identifies proposed date, time, and place of pre-hearing conference**



Summary Contested Case

If no Requests for Party Status:

- Proposed Order is forwarded to Council and the **Contested Case hearing is concluded.**
ORS 469.370(6)



Requests for Party Status and Notice of Requests

(OAR 137-003-0005, OAR 345-015-0016)

To raise issue in a contested case, issue must be within Council jurisdiction, and person must have raised the issue on the record of the public hearing on the Draft Proposed Order with sufficient specificity.

Sufficient specificity - the person must have presented facts at the public hearing that support the person's position on the issue and afford the decision-maker an opportunity to respond to the issue.

Person requesting party status must include in petition: statement of issue(s), reference to how issue was raised on the record, description of person's interest in the case.

Hearing Officer issues **Notice of Request(s) for Party Status**: Provides all petitioning parties with party status petitions and service list

- Gives all persons opportunity to respond to other petitions
- **Confirms or revises prehearing conference date, time and location**



Evaluation of Party Status Requests

OAR 345-015-0016(3):

- Hearing Officer decides who will be granted party status and what issues will be addressed in the contested case
 - HO assesses whether issue(s) are within the Council's jurisdiction
 - HO assesses whether issue was raised on the record with sufficient specificity



Prehearing Conference

(OAR 345-15-0023(5)(g), 345-015-0083; OAR 137-003-0035, 137-003-0575(3))

- Hearing Officer may allow oral argument on petitions for party status
- Persons requesting party status and parties must:
 - appear at the prehearing conference, through legal counsel or persons authorized to represent them in the contested case hearing
 - confirm the issues they would like to address in the contested case, and
 - raise any issues regarding the contested case process, or such issues will be waived
- Hearing Officer will address schedule, how discovery will be handled, decide order of proof, and other procedural matters
- Hearing Officer may conduct additional prehearing conferences



Order on Petitions for Party Status

- Issued by Hearing officer
 - Grants or denies party status
 - Must include appeal rights



Order on Prehearing Conference (Case Management)

(OAR 345-015-083)

- Can be combined with Order on Party Status
- Identifies all issues in Contested Case
- Limits parties to those issues they raised on the record of the public hearing
- Establishes schedule for contested case hearing
- Addresses any other outstanding procedural issues



Discovery

OAR 345-015-0023(5) and OAR 137-003-0025

- Hearing officer can allow for full range of discovery, e.g.:
 - depositions
 - requests for production
 - property inspections
 - requests for admission
 - interrogatories



Written Direct Testimony

- Parties' written evidence and testimony related to each issue that party raised (and Hearing Officer included in the contested case)
- Testimony must include a statement of the witness qualifications
- Not an opportunity to raise new issues
- Can include new evidence to support established contested case issue(s)

Written Rebuttal Testimony

- Written response to other parties' direct testimony
- Not an opportunity to present additional direct testimony/evidence
- Can include additional evidence/testimony to respond to others parties' direct testimony

Requests for Cross-Examination

- Can be incorporated into rebuttal testimony or submitted separately
- Parties' opportunity to request to question other parties' witnesses



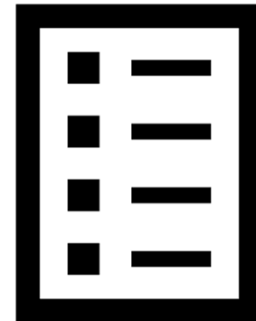
Oral Cross-Examination Hearing

(OAR 137-003-0040(6), OAR 137-003-0050)

- Testimony is under oath
- Not an opportunity to elaborate on a party's own direct testimony
- Must relate to evidence that is adverse to the examining party's position on the issue

Written Closing Argument

- No new evidence/testimony
- Parties' final argument to support their position(s) on issue(s) they raised



Hearing Officer's Proposed Contested Case Order

(OAR 345-015-0085(4))

- Addresses only issues in the contested case
- Recommends to the Council findings of fact and conclusions of law on all contested case issues
- Hearing Officer serves the Proposed Contested Case Order on all parties



Written Exceptions and Responses

(OAR 345-015-0085(5),(6),(7))

- Parties may file exceptions (written objections) to the Hearing Officer's Proposed Contested Case Order
 - Directed to Council
- Parties may file written responses to those exceptions
 - Directed to Council
- Council may adopt, modify or reject the Hearing Officer's Proposed Contested Case Order.



Council Adoption of Final Order

(OAR 345-015-0085(8), ORS 469.370(7))

At conclusion of the contested case, Council shall issue a final order, approving or denying the site certificate. Council may adopt, modify or reject the Department's Proposed Order as the Final Order.

If Council modifies or rejects Department's Proposed Order (e.g., based on HO's Proposed Contested Case Order) Council must:

- Provide public notice of action to adopt final order
- Provide the applicant and contested case parties opportunity to comment on material changes to the Department's Proposed Order

If Council Final Order approves the application, Council must issue a Site Certificate.



Appeal of Final Order (ORS 469.403)

- The Oregon Supreme Court has jurisdiction to review Council's Final Order approving or rejecting the site certificate application
- Only parties that participated in the contested case may appeal Council's Final Order
- Issues on appeal are limited to those raised by the parties in the contested case



Agenda Item H (Action Items)

Wheatridge Wind Energy Facility Council Review – Approval, Modification or Rejection of Condition Exception Request and Habitat Mitigation Plan Amendment

March 13, 2020

Sarah Esterson, Senior Siting Analyst



Council Review of Exception Request

- Laurent's Milkvetch Overview
- Impact Assessment
- Mitigation Proposal
- Oregon Department of Agriculture Comments



Council Review of Habitat Mitigation Plan Amendment

- Modification of Temporary Impact Methodology
- Oregon Department of Fish and Wildlife Comments
- Incorporation of Exception Request components



Council Deliberation



Agenda Item I (Action Item)

Rulemaking Initiation to Clarify Standard for Contested Case Requests for Type A Site Certificate Amendments

March 13, 2020

Maxwell Woods, Senior Policy Advisor

Christopher Clark, Rules Coordinator



Background

- Council has received requests related to the meaning of the term “may”, as it is used in OAR 345-027-0371(9):

“* * * To determine that an issue justifies a contested case proceeding, the Council must find that the request raises a significant issue of fact or law that *may* affect the Council’s determination that the facility, with the change proposed by the amendment, meets the applicable laws and Council standards included in chapter 345 divisions 22, 23 and 24. * * *” Emphasis added.

- At its January meeting Council clarified that the word “*may*” in the rule means an issue is “*in some degree likely to*” affect a Council determination and directed staff to issue an order clarifying how the rule would be applied to future contested case requests
- Council also recommended the rule be further amended to clarify this meaning in rulemaking scheduled for 2022.

Proposed Rule Change

- Staff recommends Council conduct rulemaking to amend rule language to clarify standard.
- Consistent with other rules which convey a standard of proof, staff recommends “may” be replaced with “is reasonably likely to”
- “Reasonably likely” expresses that a requestor must provide evidence or argument to demonstrate that there is meaningful likelihood that the Council’s decision will be affected by a contested case, but certainty is not required.

Proposed Rule Change

OAR 345-027-0371(9)

After identifying the issues properly raised the Council must determine whether any properly raised issue justifies a contested case proceeding on that issue. To determine that an issue justifies a contested case proceeding, the Council must find that the request raises a significant issue of fact or law that ~~may~~ is reasonably likely to affect the Council's determination that the facility, with the change proposed by the amendment, meets the applicable laws and Council standards included in chapter 345 divisions 22, 23 and 24. If the Council does not have jurisdiction over the issue raised in the request, the Council must deny the request.

Council Decision on Permanent Rules

Option 1

Approve proposed rule change as presented; direct staff to issue the notice of proposed rulemaking.

Option 2

Approve the proposed rule change and direct staff to issue the notice of proposed rulemaking with modifications.

Option 3

Reject the proposed rule change pending 2022 amendment rulemaking.

BREAK



Adjourn

