



ENERGY FACILITY SITING COUNCIL

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

**Energy Facility Siting Council
April 24, 2020
Meeting Minutes**

**Friday, April 24, 2020 at 8:30 a.m.
Virtual Zoom Teleconference Meeting**

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

Friday, April 24, 2020 – Virtual Zoom Teleconference

Call to Order: The meeting was called to order at 8:31 a.m. on April 24, 2020 by Chair Jenkins.

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

Oregon Department of Energy representatives present by telephone were Assistant Director for Siting/Council Secretary, Todd Cornett, Senior Policy Advisor Maxwell Woods, Senior Siting Analysts Sarah Esterson, Chase McVeigh-Walker, Kellen Tardaewether, Rules Coordinator Christopher Clark, Fiscal Analyst Sisily Fleming, Operations Analyst Sean Mole, Division Assistant Michiko Mata. EFSC Counsel Patrick Rowe of the Department of Justice was also present by telephone.

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

March Meeting Minutes

Council Member Vice Chair Grail motioned that the Council approve the minutes of the March 23, 2020 meeting as presented.

Council Member Howe seconded the motion.

Motion carried.

Council Secretary Report

COVID-19 and Business Operations:

Secretary Cornett stated as a result of COVID-19 the agency is also making adjustments like everyone else so they can continue to conduct business. Examples included this Council meeting and the next Council meeting which will be conducted entirely by teleconference and webinar and the Siting staff have been entirely working from home for the last month. However, there are few rare occurrences that staff have to go into the office, such as when Division Assistant Michiko Mata has to do a notice or as in today Operations Analyst Sean Mole went in to the office to run the webinar and Secretary Cornett expressed his gratitude to those staff members that do occasionally need to be in the office. Otherwise it's business as usual, and that the Siting staff is doing extremely well adjusting to the new normal. Staff continues to make good progress, and the impacts to timelines have been limited as things continue to move forward.

Biennial Energy Report:

Secretary Cornett explained that in 2017 the legislature passed a new requirement that ODOE develop a Biennial Energy Report to inform local, state, regional, and federal energy policy development and planning investments. The first report was issued in 2018, and provided foundational energy data, examined the existing policy landscape, and identified options for continued progress toward meeting the State's energy goals. The Department is just beginning to work on the 2020 Biennial Energy Report, and Secretary Cornett sent emails to Council asking for any input they may have or would like the Department to evaluate. The department is also doing similar outreach to other stakeholders. Secretary Cornett asked if Council had any questions or if they would like more detail at future Council meetings.

Chair Jenkins said that it would be great to review it once it's in draft form.

¹ Audio for Agenda Item A = 00:02:54 – April 24, 2020

Oregon Renewable Energy Site Assessment Grant:

Secretary Cornett said he previously reported that the Oregon Department of Energy and the Department of Land Conservation and Development was working on a Department of Defense, Office of Economic Adjustment grant related to renewable energy development and the military. We are about 6 months into the grant. The grant provides the Department the funding to hire consultants and work with key stakeholders to:

- Conduct compatibility assessments throughout the State of Oregon on:
 - Military needs,
 - Renewable energy markets, and
 - Renewable energy development constraints and opportunities
- One of the key deliverables will be an Oregon Renewable Energy Siting Mapping Tool and associated GIS data layers that will be available online with the purpose of raising awareness of where certain areas have potential conflicts and constraints, such as military assets and where other areas there are no conflicts or constraints.

The Department will keep Council updated on the progress of the grant and it is expected the GIS tool will be a very valuable tool in the future.

Project Updates:

- **Reed College & Oregon State University Research Reactors**
Both Reed College & Oregon State University have research reactors. They are very small scale used for research purposes, and that both research reactors have been temporarily shut down and secured as a result of COVID-19.
- **Columbia Pacific Ethanol in Boardman**
The department received a report from Columbia Pacific Ethanol located in Boardman that they were ceasing the grinding of corn with the intent of using up the stockpiles they had and then would be putting the facility into cold idle and maintain a limited crew onsite. This is due to the reduction in liquid fuel needs because people are driving less. This facility typically produces 25% of the ethanol that goes into gas in Oregon. Once there is increased demand for ethanol to be put into gas, operations will resume.
- **Obsidian Solar Center**
Last Thursday, April 16th, Governor Brown issued Executive Order 20-16. Subsection 2(c) relating to public meetings during the COVID emergency period says:
Any requirements by law or policy that testimony during a public meeting or hearing be taken in person do not apply if the public body provides an opportunity for submission of testimony by telephone, video, or through some other electronic or virtual means, or provides a means of submitting written testimony, including by email or other electronic methods, that the public body may consider in a timely manner. This paragraph does not apply to contested case hearings held pursuant to ORS chapter 183.

Based on that Executive Order we will be holding the Obsidian Solar Center Draft Proposed Order public hearing entirely by phone and webinar during the evening of Thursday, May 21st. The regular Council meeting is scheduled for Friday, May 22nd. The DPO public hearing had been previously scheduled for April 23, but was delayed due to the COVID pandemic and inability to be present in person. The written comment has been extended from the previously scheduled April DPO hearing to the close of the DPO hearing on May 21st.

- **Wheatridge Amendment and ADR**

The Department received the preliminary amendment request for amendment #5 on March 6th. As a reminder, the Wheatridge Wind Energy Facility is currently under construction.

The amendment request is to split the facility into two site certificates. One site certificate would be for 100MW of wind and would be called the Wheatridge Renewable Energy Facility I and the remaining portions of the wind and solar would be called Wheatridge Renewable Energy Facility II. NextEra Energy Resources who is the current parent company will remain the parent company of both site certificates for now.

The site certificate holder has also requested amendment 5 to be reviewed under the Type B review process. On March 25th the Department determined that the Type B review process was justified and sent a courtesy email to the notification list. On April 16th the Department determined the amendment request to be complete.

On April 17th the Department issued the Draft Proposed Order and sent notice of a written comment period which concludes on May 8th. Secretary Cornett anticipated staff bringing the matter in front of Council at the May meeting for final decision on the amendment request.

The approved project is located in Morrow and Umatilla County. Wheatridge Renewable Energy Facility I would be entirely located in Morrow County, and II would be in both Morrow and Umatilla Counties. The facility components currently under construction are only in Morrow County. Ms. Esterson, the project lead, has done a very good job in her ability to be thorough and move the project along in a timely manner, and this is a good example of business as usual while teleworking.

- Montague Amendment and ADR

On April 20th the Department received the preliminary request for amendment #5 to the Montague Wind Power Facility. Phase 1 of this project consists of 56 wind turbines and has a maximum generating capacity of 202 megawatts. Phase 2 is approved to consist of some combination of up to 81 wind turbines and a solar photovoltaic array on up to 1,189 acres. The project is located entirely in Gilliam County.

Amendment number 5 proposes to:

- Remove 4,110 acres from the previously approved site boundary. This is the area where Washington Ground Squirrel was found when doing preconstruction surveys.
- Expand the approved solar micrositing area from 1,189 acres to 1,536 acres and relocate some approved solar facilities to this new area, but not expand the overall facility site boundary.
- Add a switching station
- Remove a condition related to transmission line setbacks
- Splitting the site certificate into three site certificates
- Transfer the 2 of the three new site certificates although the Parent Company, Avangrid Renewables will remain the same.

The site certificate holder has also requested amendment 5 to be reviewed under the Type B review process.

The project is located entirely in Gilliam County and Sarah Esterson is the project lead. Since the request has just been received, staff has not yet had the chance to add it to the Department's website. Staff will begin reviewing it for completeness and evaluating the Type B request shortly.

Council Member Winters wanted to clarify the public hearings under the Governor's order. Ms. Winters stated they will have video testimony, and then the ability for phone testimony as normal.

Secretary Cornett confirmed that was correct, and that there are three ways the public will be able to provide comments through the end of the comment period. They can provide them in written form by email, fax, or submit just by paper. They can provide them orally through the Zoom webinar platform during the public hearing. They can also provide them orally via telephone that connects into the Zoom webinar platform. A computer is not needed to comment by phone.

- Legislative Concepts

Secretary Cornett explained they are now in the 2021 legislative cycle, and that any legislative concepts proposed by agencies need to be developed now. Maxwell Woods sent Council two proposed legislative concepts from the Siting Division.

The first concept would be to change the Energy Facility Siting Council quorum from 5 members to 4 members. The Department has found other boards and commissions that have 7 members only requires there be a majority of members (4) to constitute a quorum. EFSC has a statutory requirement of 5 members, which is likely due to needing 4 affirmative votes to approve a site certificate. However, the times Council votes on a new site certificate is pretty infrequent.

In recent years there have been around 10 meetings per year, and during that time there have been extended periods where there have been Council member vacancies when there are only 5 or 6 members. At times, the Department has been forced to scramble at times to ensure a quorum. Changing from a 5 member quorum to a 4 member would provide additional flexibility to hold EFSC meetings.

Council Member Howe asked if a majority of members present or majority members on the Council would constitute a quorum because this can make a big difference when voting. Would it take a majority of Council members present or a majority of Council members on the Council to pass a motion?

Secretary Cornett explained that the statute says 5 members constitutes a quorum. It doesn't say a "simple majority", it had to be 5. While there is the ability to suspend quorum rules, that would only apply to extenuating circumstances. Typically you would need 5 Council members to hold a meeting with action items that required a vote, and that you could hold a meeting with 4 members with information items not requiring a vote without a quorum. If a Council member recuses themselves, in all but the site certificate vote it would just have to be the simple majority that would result in a motion passing or failing. This allows the Council to continue to have the ability to continue to vote even if a member recused themselves. Secretary Cornett asked Council Member Howe if that answered his question.

Council Member Howe asked to confirm if the quorum was changing from 5 to 4 members, or if it would be a majority of Council members currently on EFSC?

Secretary Cornett replied they would be proposing it to change from 5 to 4. It wouldn't be on a sliding scale based on the number of Council members currently on EFSC.

Council Member Condon asked whether if council member vacancies was typical?

Secretary Cornett replied that while it's not normal to have vacancies it does occur. Council members may choose to step down prior to the conclusion of their term for whatever reason, and there may not be any legislative days where the Senate evaluates and ultimately votes in members and commissioners, resulting in gaps of time. There are other times that they haven't received any letters of interest from prospective Council members. The timelines have to align pretty well in order for there to be a seamless transition from one Council member leaving and another replacing them. However, a Council member can go beyond their term limits as long as they are not replaced, meaning

they could be on for 3, 6 or even 9 months after their term ends waiting until the Senate replaces them.

Council Member Condon said the reason she asked the question was more related to is it a larger question of people's unwillingness or inability to serve.

Secretary Cornett replied that they try to find good geographic representation, good professional backgrounds so that the Council members have some diversity of representation of Oregonians. The Department asks a lot of the Council members, so it's difficult at times to find the right person who is willing to put in the amount of time and energy required to be a Council member that is also a good representation of Oregonians as well.

Council Member Condon replied that one of the reasons she asked was that during her confirmation hearing one of the members of the committee asked her if she realized how much work there is involved in this. She asked if vacancy is a larger issue.

Secretary Cornett said he appreciated Council Member Condon's question, and it something the Department is trying come up with better strategies of doing outreach to solicit interest from people to participate on the Council. He stated he didn't know much was being asked of other boards and commissions but he speculated the demands on the Energy Facility Siting Council was on the high end of boards and commissions in regards to number of meetings and volume of materials they ask of them to evaluate.

Mr. Rowe referring back to Council Member Howe's question regarding a quorum said that they would be dropping the quorum requirement from 5 to 4, meaning you can have a vote with 4 members, but you'd still need to have all 4 members vote in the same way in order to pass a vote. They are still a 7 member Council.

Council Member Howe thanked Mr. Rowe, and said that helped. The majority of members, it's clear in the law that majority of the 7 member Council. They are currently at 6 members now, as long as you have majority of those 6 in a vote it passes; as opposed to if you have a quorum of 4 members that vote on a motion, it's not a majority of those members present, it's a majority of the members of the Council.

Mr. Rowe confirmed.

Secretary Cornett stated that as the move forward with the legislative concept they would flesh that out in terms of the information they would provide as in the documents to the Governor's office and Legislature. It's a valid question and they would make sure it gets included.

Secretary Cornett stated that the second legislative concept would result in that standby generators would automatically be exempt from the need to secure a site certificate from EFSC. Currently for a standby generator to be a state jurisdictional facility it must be over 25 MW in size. The standby generators that the Department is aware of are typically diesel fueled and installed in case there is a loss of electricity from the grid, allowing them to continue operation in those circumstances. They are largely associated with data centers, semiconductor industry, and located in urban industrial zones.

In order to receive an exemption from having to go through the site certificate process from EFSC, the project developer must currently demonstrate to EFSC that they have received all applicable land use permits from the County or the City in which they are located, and all applicable permits related to air and water from the Oregon Department of Environmental Quality, and that the generator is electrically incapable of connecting to the power grid.

Given how standby generators are narrowly defined, it seemed unlikely there are other environmental or resource issues of concern that would be addressed via an EFSC site certificate review process that would

not by covered by DEQ permitting or local land use permitting. As such the Siting Division believes there is little to no value in going through that exemption process, which is why they are proposing facilities that meet those requirements would not have to seek that exemption or a site certificate.

It is still early in the 2021 legislative process and these concepts may or may not move forward. However, if they did staff will keep Council informed. Secretary Cornett Maxwell Woods was the lead on developing these legislative concepts, and Council was welcome to send any questions to Mr. Woods or himself.

Future Council Meetings

The May 21st & 22nd meeting will be entirely on the phone/webinar. The meeting start time on Thursday will be at 4:30 PM, which they have a couple agenda action items before moving onto the draft proposed order hearing at 5:30 pm. The start time on Friday would be at 8:30 AM, and they have a confirmed quorum for both days.

The next meeting is scheduled for June 25th & 26th. While a meeting is definitely needed, it is unclear if it will be a one day or two day meeting, and if the meeting will be in person or not. The Department has a production cycle that puts them 3-4 weeks out to make all the logistical requirements. If at 3-4 weeks prior to the council meeting date it is unclear we are able to hold an in-person meeting it will have to be done by phone. Secretary Cornett confirmed availability of all Council members for the June meeting.

- B. [9:06 a.m.] Bakeoven Solar Project, Application for Site Certificate (Action Item)**² – Sarah Esterson, Senior Siting Analyst. The Council received a presentation on the Application for Site Certificate for the Bakeoven Solar Project, a proposed 303 megawatt solar energy generation facility, to be located in Wasco County. Council reviewed changes from the Draft Proposed Order to the Proposed Order, and the conclusion of the contested case (no petitions were received). Following the presentation, Council approved the Proposed Order as the Final Order and issued a site certificate. For project details visit [Department's Bakeoven Solar Project webpage](#).

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

Ms. Esterson described changes made from the DPO to the Proposed Order in response to Wasco County Planning Department's DPO comments requesting that the applicant be required to enter into an agreement with Wasco County Ambulatory Services to ensure adequate service could be provided during proposed facility construction. Changes were incorporated into the Department's proposed Public Services Condition 4(b) and (c).

Council Member Winter asked if Wasco County was satisfied with the condition.

Ms. Esterson confirmed that she had coordinated with Wasco County Planning Director, Angie Brewer, and Virginia Fuller, Southern Wasco County Ambulatory Service, and that both entities were satisfied.

Ms. Esterson described changes made from the DPO to the Proposed Order related to the ability of the City of Maupin's water right to meet proposed facility construction water demand, which were incorporated in response to Council's March 13, 2020 DPO review comments. Ms. Esterson discussed analysis obtained from the Oregon Department of Water Resources Mary Bjork, which confirmed that the city's one permit limit, a cubic feet per second water withdrawal limit from Maupin Springs, would not be exceeded if proposed facility construction utilized the projected worst-case water quantity (77 million gallons/year).

² Audio for Agenda Item B = 00:36:08 – April 24, 2020

Council Member Condon asked in regards to the water rights, since the March meeting there has been news with respect to a mega drought. What responsibility does the Council have if the facility is approved and then there is a severe drought, and the water situation changes, and if someone could explain how could Council approve a facility given a change of water resource? Are they relying on the City of Maupin to say they have plenty of water? When environmental conditions change how do you make those decisions?

Ms. Esterson replied that her understanding is that the Oregon Department of Water Resources establishes limitations on water availability and could change those water rights or permits. Which would then filter up to the applicant in their ability to obtain water. For this facility the applicant has always communicated it would be built in phases and the likelihood of them using the worst case amount is fairly low, but the worst case, or maximum impacts, are typically evaluated during the siting process to ensure resources could withstand the impact. The scope of the Department and Council's review for facility-related water use is based on impacts to City of Maupin's water right, whether the facility has identified sources with sufficient water supply, and whether the facility needs a permit from Oregon Department of Water Resources. Department has verified these questions by confirming with ODWR that the City of Maupin's current water right can facilitate the need.

Secretary Cornett added that one of the differences between this facility and other facilities is that they will only need the high volume of water during construction. They won't need the high volume for operation as in some facilities. As Ms. Esterson pointed out it's been proven they won't need a water right because of the availability, and staff has come to the conclusion that if circumstances change and Maupin cannot provide them the water then they may have to find other sources for that water. If they had a need to drill for a well on that sight then it could trigger an amended site certificate. They could also find another municipal water source and truck in the water at a cost. The Department would evaluate any changes to water sources to determine if any changes to the site certificate would be needed.

Council Member Howe found the record and findings support approval, and motioned that the Council approve the Final Order, as presented by staff, and issue a Site Certificate for the Bakeoven Solar Project.

Vice Chair Grail seconded.

Council Member Condon stated that other on the Council may be more comfortable with dealing with these things, but they are relying on a financial resource point of view on the ability to get a bond. If the applicant has a bond then the State of Oregon would be well protected, is that a reasonable statement?

Ms. Esterson confirmed that was correct, and that a bond is a pre-construction requirement and that they wouldn't be able to start construction without a bond or letter of credit for the full amount of phase or version of the facility that's identified at final design.

Council Member Condon stated to follow up on that, if there were a change in financial capacity to the parent company and the LLC no longer had that as a resource and could not pay the cost of a bond in future years, is that a possibility or what happens then?

Secretary Cornett stated that once a bond is posted it has to be updated on an annual basis to adjust for inflation. Failure to update or post a bond, results in a violation of a condition to the site certificate, they would seek to remedy that by having them post that bond, but ultimately failure to post the bond would result in termination the site certificate by the Council.

Council Member Condon questioned whether there were any timeframes when bonds or letters of credit would not be current or cover the entirety of the facility on the landscape, leaving the state at risk.

Secretary Cornett and Sisily Fleming, Fiscal Analyst confirmed they would not relinquish the old bond until the new bond was in place. Therefore, the State is always in a position to pull the bond to use the money associated with that to decommission a facility.

Council Member Condon asked if the bond was for the life of the project, like 40 years?

Secretary Cornett confirmed the financial assurance is for the life of the facility until the certificate holder either ceases operation, coming to Council with a decommissioning plan or something happens that requires the State to utilize the bond in order to decommission that facility.

Chair Jenkins stated that they had a motion and a second, then asked if there were any more questions, none proposed so Chair Jenkins called the Secretary for a vote.

Motion carried.

C. [9:55 am]Council Authorization of Proposed Solar PV Rules (Action Item)³ – Christopher Clark, Rules Coordinator. The Council received an update on feedback provided by the rules advisory committee appointed for the solar PV rulemaking project on March 9, 2020, and considered staff’s draft proposed rules and recommendations for this project. Staff requested Council’s authorization to issue a Notice of Proposed Rulemaking and initiate formal proceedings to adopt the proposed rules.

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

Mr. Clark provided an overview of the proposed rules and feedback provided by the advisory committee appointed for the project.

Mr. Clark explained that the staff recommended Council adopt a definition of “solar photovoltaic power generation” based on language included in rules adopted by the Land Conservation and Development Commission. Mr. Clark explained the need an authority for adopting such a rule.

Mr. Clark explained that staff recommended amending the language to better align with the description of solar photovoltaic power generation facility components provided in site certificate application. Mr. Clark mentioned that some stakeholder recommended removing the term “other facilities” but staff did not recommend making the change because there could be other components such as fencing that should be evaluated..

Council Member Condon asked if fencing should be included as a major component part of the definition so there is no ambiguity?

Mr. Clark responded that it’s a reasonable thing to look at, and if Council would want that component to be evaluated with the same weight as any other component, that is something the Council could include if it wanted to ensure review of impacts from fencing. Mr. Clark asked that Council specify if it wanted to make that change when a motion was made.

Mr. Clark explained that Staff recommended the rules be amended to exclude related or supporting facilities from the definition except for the purposes of calculating acreage used by the facility.

Secretary Cornett added that during the RAC meetings they heard very clearly from developers that multiple facilities interconnect with the same sub-station and that the associated transmission lines connecting to that sub-station may be very close to each other, but the actual generating facilities may be very far apart. Secretary Cornett explained that Staff wanted to be very clear that those circumstances wouldn’t trigger the proximity requirement to evaluate if two or more facilities were actually one larger

³ Audio for Agenda Item C = 01:26:04 – April 24, 2020

facility. Secretary Cornett added that that is different than the physical occupation of land by the facility and therefore when determining the size of a facility for the acreage threshold, staff is recommending including the facility and all its related and supporting facilities be included.

Mr. Clark explained that the proposed rules intended to use criteria for used to determine when solar facilities are combined for the purposes of determining when a goal exception is needed under the LCDC rules as a trigger for a deeper multifactor analysis. Mr. Clark explained that the proposed rules would use the “proximity criteria” in the LCDC rule and would eliminate the “tract criteria.”

Mr. Clark explained how the two criteria worked. Mr. Clark explained that that the tract criteria was not recommended because staff does not look at underlying land ownership, the criterion was easily avoidable, and because stakeholders were concerned that facilities that are not under common ownership should not be combined.

Mr. Clark explained that the staff recommended adopting a proximity criteria that provided that any solar project proposed within one mile of an existing facility under common ownership may be subject to jurisdictional review.

Council Member Condon stated she was confused in respect to the tract, and not looking at the underlying ownership under the tract criteria but looking at ownership under the proximity.

Mr. Clark explained that LCDC looks at land ownership as the basis for looking at land use impacts and to determine if a goal exception is needed for the purposes of getting a conditional use permit process. He explained that the Department looks at the total acreage used by a facility, and if that triggers Council’s jurisdiction it would cause the facility to acquire a site certificate. He added that the Department looks at the owner of the facility as the person who’s going to be responsible for mitigating or addressing any impacts of the facility, not necessarily the land owner.

Council Member Condon replied asking if that meant the landowner has no outstanding responsibility should something go awry.

Mr. Clark responded that the certificate holder that holds all the responsibilities for compliance with site certificate conditions.

Mr. Clark explained that the Department does look at the underlying property ownership for notification purposes only.

Mr. Clark explained a new section of rule differentiating between a “project” and a “facility.”

Mr. Clark explained that staff proposed to eliminate language in the LCDC rule providing exceptions for feed-in tariff an net metering projects.

Mr. Clark explained the proposed procedural rule for what factors would be used to determine when a solar project is part of a proposed or existing solar facility and the process and standard for making the determination.

Mr. Clark explained that the proposed rule would allow any person, including the Department, to petition for a declaratory ruling with respect to the applicability of the proposed rules and ORS 469.300.

Council Member Condon stated she was interested in the use of the word “person.”

Mr. Clark stated that under the statutory language “person” had broader meaning than just a natural person.

Chair Jenkins asked if the declaratory ruling is used when evaluating the factors.

Mr. Clark confirmed that was correct, and stated how it would work. He explained that the ruling itself would be a determination by the Council of whether or not a proposed project was separate from existing and proposed facilities or if it was actually an expansion of an existing facility.

Chair Jenkins stated he didn’t feel it was clear in the procedures part of the proposed rules, and how the trigger is evaluated or what action is taken.

Mr. Clark responded that it may not as explicit as it could be, but that there were references between the proposed definition and procedural rules. He stated that the intent was for the definition of the rule to state that Council may determine if it is independent or not, and the procedural rule provides the procedures to use to determine whether or not they are independent. Mr. Clark stated that staff were open to suggestions.

Chair Jenkins asked if it would be the Department or Council that would do the evaluation?

Mr. Clark replied that it would be the Council evaluating the factors, but the Department, as staff would be the ones looking at land use applications or looking at the notices the local Governments were required to send them under HB2329. He commented that the trigger for Council action is a petition, and they are using the definition more as a way to identify when a petition is justified or not.

Chair Jenkins recommended that the Department might want to think about whether it’s necessary to have something that precedes the (1) for the declaratory ruling about the determination of the 1 mile and common ownership evaluation. Chair Jenkins asked Mr. Clark to think about it and to see if something needed to be included there.

Mr. Clark replied that staff will certainly look at it and could make any changes to the proposed rules as long as they based on testimony from either the public, Council, or someone in the Department.

Vice-Chair Grail asked how the rule would apply to developers that were already in process.

Mr. Clark replied that they are just proposing rules, and if or once they decide to move forward with the rulemaking today he would issue the notice of the proposed rulemaking. The rules wouldn’t be effective for at least 50 days, so they are expecting Council to receive all the comments by June and the rules would be effective sometime in July. He explained that the rule is written so that even if two projects are within 1 mile of each other and both have been issued a conditional use permit before that July effective date, the Council is not going to take any active steps to go back and look at them unless additional development was proposed.

Vice-Chair Grail explained that they didn’t want to see any manipulation of the process or create new problems.

Mr. Clark explained additional changes to implement HB 2329 (2019).

Council Member Condon asked if the changes to the definition of “energy facility” would cause any other issues or conflicts when the term energy facility is used in any other rules or statutes?

Mr. Clark explained how the new provision in ORS 469.320 works, and that once regulatory authority is deferred to Council the facility should be treated like any other energy facility.

Mr. Clark concluded by requesting Council to authorize staff to issue the notice of proposed rulemaking and initiate formal proceedings to adopt the proposed rule changes in attachment 1 of the Department's staff report. He also recommended that Council schedule a rulemaking hearing for June 25, 2020 at 5:00 pm to be conducted as part of the June Council meeting.

Council Member Condon asked if the definition of "proposed solar photovoltaic power generation project" should come before its use.

Mr. Clark stated that they could change the order if that was Council's preference.

Council Member Condon replied that she just noticed it but was not sure that changed is needed.

Chair Jenkins asked the Council members what they wanted to do about fences?

Council Member Condon stated she would recommend to include fences partly because it might not be considered an electrical facility component and it's pretty significant.

Mr. Clark clarified that they would be specifying "fencing" as an energy facility component.

Chair Jenkins asked Council if there were any objections.
No objections provided.

Council Member Howe asked if the term "posts", are referring to the posts that are holding up the solar panels, correct?

Mr. Clark confirmed.

Council Member Howe replied that he agreed with adding the word "fencing".

Chair Jenkins stated there were no other questions or objections so they needed to go on to the motion.

Vice-Chair Grail motioned that Council approve staff's request for authorization to issue a notice of proposed rulemaking and initiate formal proceedings to adopt the proposed rules presented by staff with the following modifications to the proposed definition of "solar photovoltaic power generation facility" include fencing.

Chair Jenkins added that staff would initiate the proceedings.

Council Member Condon seconded the motion.

Motion carried.

D. [11:06 a.m.] Council Initiation of Rulemaking to Update Carbon Offset Rate (Action Item)⁴ – Christopher Clark, Rules Coordinator. The Council reviewed staff's preliminary recommendations to update the monetary rate for carbon offsets in OAR 345-024-0580 and considered a request to initiate the rulemaking process.

⁴ Audio for Agenda Item D = 02:35:39 – April 24, 2020

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

Mr. Clark provided an overview of the Council's Carbon Standard and "monetary pathway", and explained the need and authority to update the monetary offset rate for carbon offsets. Mr. Clark explained that any change in the rate must be based on the empirical evidence of the cost of offsets and Council's finding that the change will be economically achievable with the new rate.

Mr. Clark stated that based on early review, a maximum increase of 50 percent is justified and recommended Council pursue the maximum increase.

Vice Chair Grail asked Mr. Clark to define economically achievable, explaining similar issues were being addressed by the PUC and consumer advocacy groups.

Mr. Clark replied that is something the Department will be working through as the process goes forward, but how they have addressed it in the past is how the marginal change in the cost of energy or the cost of constructing a facility would change with a proposed rate increase and whether or not the change of cost would affect the ability of a certificate holder to construct the facility. He stated that testimony in the past recommended that they should look at and whether or not the proposed increase would change the recommended portfolio options a utility is looking at in its integrated resource plan and impacts to electricity consumers as well. He explained that part of what the Department was recommending is to sit down with the stakeholders to double check the methodology and assumptions used to make sure that their statements of economic achievability were reasonable, well-founded, and consistent with other areas. Mr. Clark said he would have a more concise answer for Council in May.

Council Member Winters asked what empirical evidence the Department used for the graph and if there would be any additional review done?

Mr. Clark replied that the data was provided by The Climate Trust and the EFSC rate provided is in rule. He explained that the TCT price is the average negotiated price that appears in the emissions offset agreements procured by TCT. Mr. Clark added that the average voluntary market price published by Ecosystem Marketplace was included for comparison and was the comparator they have used in the past. Mr. Clark stated that this was the data, as far as this being the preliminary analysis they will look at additional advice provided by stakeholder, but these are the numbers the Department intended to use as the basis for their recommended findings to Council.

Council Member Condon asked if there was background information in regards to offsets, and if the purchased offsets are audited to show they provided the offset that was intended?

Mr. Clark replied yes, there is an audit. He explained that if the certificate holder decides to directly invest in offsets or implement offsets themselves or through a third party they need to demonstrate the offset projects actually reduce the production of greenhouse gas emissions to meet the standard but if they use this monetary pathway, once they give the offset funds to the trust they are not responsible for actually achieving the offsets. He explained that TCT does have an obligation to appropriately manage and appropriate the funds, which Mr. Clark felt they did and that TCT also provides a 5 year financial and performance audit to the Council, and he believed they also provide an annual update as well. Mr. Clark asked Secretary Cornett to confirm.

Secretary Cornett confirmed Mr. Clark was correct, and stated that the Department will be asking TCT to provide an annual update at the May Council meeting.

Council Member Condon stated the reason she asked was as the price increases, will there be more push back of we are asked to pay the money, but what does it really result in that matters, that is measurable. Ms. Condon thanked Mr. Clark and Secretary Cornett and she looks forward to the report.

Mr. Clark explained that the actual offsets produced from the offset funds are usually less than the amount of carbon dioxide emissions that the certificate holder is responsible for reducing because the amount of money provided isn't enough to produce the amount of offsets that the standard requires. He explained that, because of the way the statute was written it didn't matter, it's an assumed rate that determines what the certificate holders have to provide. He explained the other reason is that only 80% of those funds provided under the monetary offset rate actually have to be used for offsets. The other 20% are used for the Administration in monitoring and contracting costs associated with implementing the offsets and securing them. Mr. Clark said he really believed TCT did a great job and they maximize the offsets or maximize the impacts with the money they receive and that structural drivers are why the amount of carbon dioxide or greenhouse emissions removed from the atmosphere are less than the amount needed to make the standard. He added that there is additional money received for contracting and identification of offset projects that are separate from this, but like he said it's only 80% of offset funds goes directly towards offset projects so there is some discussion of what the actual rate should be in relation to these costs.

Secretary Cornett added that Council should remember that standard is in statue so Council doesn't really have the ability to make changes other than what they were focusing on the monetary offset rate or what the most efficient gas plant was. He noted that when the standard was created in the mid 90's it was the first of its kind in the Country and therefore cutting edge and wasn't so so anymore. He explained that the Department justifiably hears from the public regarding heightened concerns about greenhouse gasses, and there is an increased interest in how our carbon offset standard works.

Council Member Howe asked that since the carbon standard is based upon being within 17% of the carbon emissions of the most efficient fossil fuel generating facility, if the new proposed power generation facility that is based on fossil fuel exceeds 17% of the most efficient then this triggers, but if they are less than the 17% there is no trigger?

Mr. Clark confirmed that is correct and explained how the amount of excess emissions was calculated.

Chair Jenkins asked Mr. Clark how he would like the motion, if he would like it one motion or two?

Mr. Clark replied that he had a couple more issues, but he believed he had it as one motion in their timeline. However, if they wanted to make changes he asked they were specific when they make the motion.

Mr. Clark explained staff's recommendations to appoint an advisory committee and to expedite the timeline for this project by sending early notice to legislators.

Council Member Winters stated she is completely supportive of this update, and it's long overdue so she is very glad the Department is bringing this up. Council Member Winters also stated she is supportive of the RAC and whenever there is a financial impact it's important to include stakeholders and the environmental community. As for the members she deferred to Mr. Clark as he would have better knowledge of who should participate. She confirmed that the motion language in the timeline is combined, and unless Chair Jenkins felt it was necessary to separate it she was comfortable moving forward as proposed.

Vice Chair Grail asked how the notice to lawmakers would indicate that it is a draft?

Mr. Clark replied they include their draft recommendation, their draft of statement of fiscal impacts, statement of economic achievability, and they note that it is a draft. He explained that a statement that staff is sending the notice to satisfy the requirements of ORS 183.335(3)(a) and that staff would be sending subsequent notice once the public notice was sent with their final recommendation included.

Mr. Clark outlined the Departments recommendations to Council.

Council Member Condon stated she's comfortable with the first two, but expressed concerns about the recommendation to approve the timeline apart from the notification to legislators.

Mr. Clark explained that approving the timeline doesn't set it in stone, but that the important part was to approve sending the notices to legislators early because that is something that is allowed, but not part of Council's normal practice.

Council Member Winters asked if they need to modify the motion language if the timeline needs to change because the motion language says they approve the timeline as presented by staff or you're saying we already have the flexibility if it needed to be changed?

Mr. Clark responded that the Council could make adjustments and that staff were only looking for an approval of a recommended timeline because they are looking at an expedited process. The Council would be approving that expedited process with the recommended timeline rather than setting these dates in stone. Mr. Clark offered that if Council wasn't comfortable with approving the timeline they could modify the motion language to allow for more flexibility.

Chair Jenkins stated that recommend motion language could be to add "to the extent possible".

Council Member Winters agreed, and the "general timeline as approved by staff"

Council Member Howe also agreed, and said "general rulemaking timeline proposed by staff".

Mr. Clark responded that his intention was not to tie their hands or commit them to something that wasn't achievable.

Council Member Howe motioned that the Council approve staff's request to initiate the rulemaking process to update the monetary rate for carbon offsets in OAR 345-024-0580. I further move that Council approve the methods for obtaining public input and general rulemaking timeline proposed by staff.

Council Member Winters seconded.

Council Member Condon stated the language with the timeline is still concerning to her partly because it suggests a forgone conclusion.

Secretary Cornett replied that the additional language "general timeline" creates the intended flexibility . Based upon the RAC or other circumstances they would adjust the timeline as necessary. Secretary Cornett also wanted to mention it doesn't presuppose any sort of Council decision on a rule. It simply sets out the

steps that need to be done or in this case what the Department is recommending, and trying to hit the timelines.

Chair Jenkins added that the minutes will reflect that.

Motion Carried.

- E. [11:55 a.m.] Financial Assurance Update**⁵ – Sisily Fleming, Fiscal Analyst. The Council considered adding a financial institution to the 2020 pre-approved list.

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

No questions from Council.

Vice Chair Grail motioned the Council approve Hanover Insurance Group 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 Hanover Insurance Group to the pre-approved list for 2020.

Council Member Howe seconded.

Motion carried.

- F. Public Comment Period**⁶ – 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 Bakeoven Solar Project Draft Proposed Order was closed.

Timothy McMahan:

Mr. McMahan thanked Mr. Clark on the presentation regarding the CO2 rule, it was very helpful. Mr. McMahan suggested that when they refer to economically achievable for the standard that the Department includes an evaluation or explanation on how that applies to natural gas storage verses just generation because they are two very different kinds of models. The second thing is there was a bit of passing conversation regarding other potential recommendations under the Governor's Executive Order 20-04, and as the Department is proceeding and reacting to the EO he requests that the regulated community be notified of any ideas that may be coming along.

Secretary Cornett responded that agency as a whole is working on responding to the Executive Order on greenhouse gasses. Each division within the agency is working on this and at some point they'll move forward with something more publicly once it's vetted internally. To Mr. McMahan's point on NW Natural being a different entity as a natural gas power plant, the Department agrees. Which is why they proposed to Council that NW Natural be part of the Carbon Rulemaking RAC.

Erin Saylor Staff attorney with Columbia River Keeper:

Ms. Saylor stated she was very thankful for the work that has gone into the staff report for the carbon offset rate, and to second what her colleague Dan Serres suggestion that they broaden the advisory committee to include 350 PDX and the Oregon's Physicians For Social Responsibility.

⁵ Audio for Agenda Item E = 03:25:04 – April 24, 2020

⁶ Audio for Agenda Item F = 00:00:00 – April 24, 2020

No further comments via Webinar.

No phone public comments.

Chair Jenkins closed public comment period.

Secretary Cornett added that before they leave, they had a nice opportunity to hear public comments, and that during the next Council meeting it will be an actual full public hearing. He knew there was interest in the Obsidian Solar Project, but wasn't sure how many people will participate. However, he wanted to get a sense from Council if there are any additional ideas to make this platform work better for them, to please let the Department know and they would do their best to do that.

Vice Chair Grail stated she was pleasantly surprised on how smoothly the meeting went, and expressed her gratitude to Michiko Mata, Sean Mole, and the rest of staff for the work to make it happen, that they did a test to make sure things would work. It definitely went better than she expected, and pleasantly happy we included a break. Vice Chair Grail had nothing further to say other than it exceeded her expectations.

Council Member Howe agreed and the staff did a great job getting this organized and it worked fantastic, so thank you.

Council Member Truitt seconded Mr. Howe and Vice Chair Grail.

Chair Jenkins noted Ms. Grail's comment regarding breaks, and will make sure there are sufficient breaks.

Meeting adjourned at 12:05 pm

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