



ENERGY FACILITY SITING COUNCIL

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

Energy Facility Siting Council May 21-22, 2020 Meeting Minutes

Thursday, May 21, 2020 at 4:30 p.m.
Friday, May 22, 2020 at 8:30 a.m.
Virtual Zoom Teleconference Meeting

Table of Contents

- A. Consent Calendar – Approval of minutes; Council Secretary Report; and other routine Council business.
- B. Hearing Officer Appointment for Madras Solar Energy Facility (Action Item) – Chase McVeigh-Walker, Senior Siting Analyst
- C. Radioactive Waste Disposal Enforcement Rulemaking Initiation (Action Item) – Christopher Clark, Rules Coordinator
- ~~D. Obsidian Solar Center, Draft Proposed Order Public Hearing (Public Hearing) – Joe Allen, Senior Administrative Law Judge, Oregon Office of Administrative Hearings and Council appointed hearing officer~~
Upon request of the applicant, this public hearing was postponed until the Department reschedules and re-notices.
- E. Wheatridge Wind Energy Facility, Council Review of Proposed Order on Request for Amendment 5 (Action Item) – Maxwell Woods, Senior Policy Advisor
- F. Oregon Department of Energy Update (Information Item) – Janine Benner, Director
- G. Public Comment Period
- H. The Climate Trust Annual Update (Information Item) – Sheldon Zakreski, Executive Director of The Climate Trust
- I. Carbon Monetary Offset Rate Update-Consideration of Proposed Rules (Action Item) – Christopher Clark, Rules Coordinator
- J. Construction Disruptions Related to the COVID-19 Pandemic (Information/Action Item) – Christopher Clark, Rules Coordinator
- ~~K. Obsidian Solar Center, Council Review of Draft Proposed Order (Information Item) – Kellen Tardaewether, Senior Siting Analyst~~
As a result of Agenda Item D public hearing being cancelled, this agenda item is also cancelled.

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

Thursday, May 21, 2020 – Virtual Zoom Teleconference

Call to Order: The meeting was called to order at 4:31 p.m. on May 21, 2020 by Chair Jenkins.

Roll Call: Council Chair Hanley Jenkins, Vice Chair Marcy Grail, Council Members Kent Howe, Jordan Truitt and Cynthia Condon were present by teleconference. Mary Winters joined the teleconference at 4:35 pm.

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 Chase McVeigh-Walker, Kellen Tardaewether, Rules Coordinator Christopher Clark, Ken Niles, Jeff Burrigh, Operations Analyst Sean Mole, Division Assistant Michiko Mata. EFSC Counsel Patrick Rowe of the Department of Justice was also present.

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

April Meeting Minutes

Vice Chair Grail motioned that the Council approve the minutes of the April 24, 2020 meeting as presented.

Council Member Winters seconded the motion.

Motion carried.

Agenda Modifications

Secretary Cornett indicated two agenda modifications. Obsidian Renewables, LLC, the applicant for the Obsidian Solar Center project requested to cancel the Draft Proposed Order hearing, Agenda Item D and reschedule it to a time when it can occur in the vicinity of the project. The second agenda modification is the cancellation of Agenda Item K, Council's possible review of the Obsidian Draft Proposed Order and comments. Since the public hearing will not occur we are unable to move forward with agenda item K.

We are currently working to determine a date and location for the rescheduled hearing. Once we are able to do that we send out a new notice. This will include:

- Paper notice to adjacent property owners and others signed up to receive paper notices
- Email notice to anyone signed up for that
- Newspaper notice

In the meantime, the public comment timeframe is still open and people are free to submit written comments.

Council Secretary Report

- Staffing/Council Updates
Secretary Cornett announced that Sean Mole, the Division's Operations Analyst has submitted his resignation and his last day will be May 29th. Sean was thanked for his service. ODOE is moving forward with recruiting for his position and hopes to conclude the recruitment in the next 30 days.

Vice Chair Grail expressed that Sean has always been gracious and hilarious to work with, thanking him for all the support he's given to her and the rest of the Council.

¹ Audio for Agenda Item A = 00:03:10 – May 21, 2020

Council Member Howe echoed Council Member Grail's statement, and added Sean had great technical abilities with the teleconferences, and the presentations Sean gave were always informative and professional.

Chair Jenkins stated Sean will be missed, thanking him for all the help he's provided to him over the years. Wishing him the best of luck in the future and in Hong Kong.

- Project Updates
 - Montague Wind Power Facility Request for Amendment #5
 - On April 20, 2020 the department received preliminary request for Amendment #5 to the Montague Wind Power Facility from the certificate holder, Avangrid Renewables. Avangrid also requested amendment #5 be reviewed under the Type B review process.
 - On April 27, 2020 the Department sent out a notice of receipt of the preliminary amendment request which included a description of the request for Type B review.
 - Amendment #5 requests to:
 - Split the existing site certificate into three new site certificates, all to be wholly owned subsidiaries of Avangrid Renewables
 - Reduce the site boundary area from 47,056 to 42,946 acres;
 - Expand the solar micrositing corridor area from 1,189 to 2,725 acres;
 - Construct a new switching station;
 - Remove site certificate Condition 89(a);
 - After a full evaluation of the preliminary request for amendment, the Department determined that maintaining the Type A review was justified because we consider the request to be complex; we anticipate a moderate level public and reviewing agency interest; there is a likelihood of a significant adverse impact; and, changes to required mitigation are expected.
 - On May 19th the Department sent out a courtesy announcement of this determination. The Department's full written determination is located on the Montague Wind Facility project webpage.
- Future Council Meetings
 - June 25-26 - The state is only beginning to open up and since we do not have any location drivers for the June meeting, we are likely to hold the June Council meeting via webinar and phone only.

On Thursday evening the 25th we have three rulemaking hearings scheduled starting at 4:30 PM
 - Carbon Offset Rate Update
 - Type A Amendment Contested Case Threshold (aka "may")
 - Solar Photovoltaic Facilities

On Friday morning the 26th council will evaluate the comments on all three of these rulemakings and possibly make a final decision on all three.

There may be additional agenda items but that is what we are aware of right now.

All Council Members confirmed they are still available for the June meeting resulting in a quorum.

- July 23-24 – While there are not agenda items or location drivers yet, Secretary Cornett checked on Council member availability. Council Member Winters previously indicated she would not be available but everyone else said they were which will allow for a quorum.

Council Member Winters raised the question of public safety in regards to returning to in-person Council meetings given the ongoing COVID-19 Pandemic.

Secretary Cornett replied he appreciated her comments regarding public safety and they will be having discussions about returning to in-person Council meetings.

Secretary Cornett announced Council Member Condon joined the teleconference, and they now had a full quorum (Ms. Condon was present the entire duration, but was stuck as an “attendee” until this point).

- B. [4:51 p.m.] Hearing Officer Appointment for Madras Solar Energy Facility (Action Item)**² – Chase McVeigh-Walker, Senior Siting Analyst. Council considered appointment of a Hearing Officer from the Oregon Office of Administrative Hearings to conduct all proceedings for the Madras Solar Energy Facility a proposed solar photovoltaic energy generation facility In Jefferson County, near Madras, Oregon. For project details visit the [Madras Solar Project Page](#).

Vice Chair Grail motioned that Council appoint Joe Allen, Administrative Law Judge from Oregon Office of Administrative Hearings as the Hearings Officer for the proceedings for Madras Solar Energy Facility, as recommended by staff.

Council Member Howe seconded.

Motion carried.

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

- C. [4:56 p.m.] Radioactive Waste Disposal Enforcement Rulemaking Initiation (Action Item)**³ – Christopher Clark, Rules Coordinator requested Council to initiate rulemaking to revise rules in OAR 345-029 related to enforcement of rules and laws governing the disposal of radioactive waste materials in Oregon. For more information visit the [Rulemaking page](#).

Mr. Clark provided an overview of staff’s recommendations for the scope and objectives of the rulemaking project. Mr. Clark recommended that the rulemaking project be open to any issues identified by staff or stakeholders related to the enforcement of laws and rules governing the transportation or disposal of radioactive materials or wastes. Mr. Clark explained that the project would focus on division 029, but that some issues related to division 050 may be discussed.

Chair Jenkins asked if staff was recommending to only look at radioactive waste disposal and not to enforcement of site certificates?

Mr. Clark confirmed, and explained they are looking at any issues related to Division 29, but any changes staff recommended would specifically be related to radioactive waste. They would not be looking at enforcement of site certificate conditions or other compliance measures.

Mr. Clark described some of the specific issues that may be considered during the rulemaking project, including whether penalty amounts for violations of division 050 are sufficient.

² Audio for Agenda Item B = 00:19:27 – May 21, 2020

³ Audio for Agenda Item C = 00:24:27 – May 21, 2020

Mr. Clark recommended that the Council authorize use of a RAC for this project, and requested that Council delegate management of the RAC's membership to the Department's Nuclear Safety and Emergency Preparedness Division.

Council Member Howe stated he thought Mr. Clark mentioned the penalties were up to \$100/day, but in the staff report the civil penalties showed it was up to \$25,000/day.

Mr. Clark replied Council Member Howe was correct, and by statute the penalty is up to \$25,000/day of violation. He explained that the Statute also required Council to establish a schedule of penalty amounts for different violations within that maximum range and that the rules set the base penalty for violations of the laws governing disposal of radioactive waste at \$100/day. He explained that if the penalty was willful, repeated, or resulted in significantly impacting the public health or safety, it could be increased to a maximum of \$500/day by the modifiers in rule.

Mr. Clark provided a proposed timeline that would allow for permanent rules to be adopted by the end of the year. Mr. Clark concluded with Staff's request to initiate rulemaking and authorize use of a RAC under the management of the Nuclear Safety and Emergency Preparedness Division.

Chair Jenkins asked for clarification that the scope was what Mr. Clark had on his slide as well as what was on page 3 of the staff report and that the method used to obtain public input is to use a rules advisory committee, and delegate the appointment of the rules advisory committee members to Ken Niles' Division and that Mr. Niles would ultimately present their recommendation to Council.

Mr. Clark confirmed that the scope was correct, but clarified that they may identify other issues that may be addressed during the process. Mr. Clark explained that it would be the Council's decision on how hands on they wanted to be with the appointment of the rulemaking advisory committee members.

Secretary Cornett added that like other rulemaking advisory committees they would let Council members know about the meetings and if any of them wanted to call in or attend, they were welcome to do so. They wouldn't want to have a quorum, but one or two Council members would be beneficial.

Chair Jenkins stated he didn't have any issues with the Nuclear Safety Division identifying the RAC members.

Vice Chair Grail agreed and stated it fell under their scope and expertise.

Council Member Howe motioned that the Council approve the request to initiate rulemaking to revise rules in OAR 345-029 related to enforcement of rules and laws governing the transport and disposal of radioactive materials and wastes in Oregon, as presented by staff. And to further authorize use of an advisory committee to assist in the development of the proposed rules and delegate management of the advisory committee to Ken Niles.

Council Member Winters seconded.

Motion carried.

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

~~D. Obsidian Solar Center, Draft Proposed Order Public Hearing (Public Hearing) – The proposed Obsidian Solar Center facility includes approximately 400 megawatts of solar photovoltaic power generation equipment and~~

~~its related or supporting facilities, occupying up to 3,921 acres in north Lake County, near Christmas Valley, Oregon. The applicant is Obsidian Renewables, LLC.~~

Upon request of the applicant, this hearing was postponed until the Department reschedules and re-notices.

ADJOURN at 5:16 pm – ODOE staff remained on the line until 6:00 PM to ensure anyone that joined for the Obsidian hearing knows it has been cancelled at the applicant’s request.

Friday, May 22, 2020 – Virtual Zoom Teleconference

Call to Order: The meeting was called to order at 8:32 a.m. on May 22, 2020 by Chair Jenkins.

Agenda Modification:

Chair Jenkins recommended a break after Agenda Item G – Public Comment Period.

Secretary Cornett reiterated that Agenda Item K, the Council’s possible review of the Obsidian Solar Facility Draft Proposed Order and comments was cancelled and postponed because yesterday’s public hearing was cancelled and postponed.

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 teleconference were Agency Director Janine Benner, Assistant Director for Siting/Council Secretary, Todd Cornett, Senior Policy Advisor Maxwell Woods, Senior Siting Analysts Sarah Esterson, Chase McVeigh-Walker, Katie Clifford, 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 teleconference. Sheldon Zakreski, Executive Director of The Climate Trust also attended by teleconference.

E. Wheatridge Wind Energy Facility, Council Review of Proposed Order on Request for Amendment 5 (Action Item)⁴ – Maxwell Woods, Senior Policy Advisor provided a presentation on the Proposed Order on Request for Amendment 5 of the Wheatridge Wind Energy Facility site certificate. Request for Amendment 5, being reviewed under the Type B review process, seeks Council approval to split, and share some, facility components into two site certificates, within redefined site boundaries, with new facility names and one new certificate holder. Both site certificate holders would continue to be owned by NextEra Energy Resources, LLC. Council will approve, modify or reject the proposed order as the final order and grant or deny issuance of two new site certificates. For project details visit the [Wheatridge Wind Energy Project Page](#).

Council Member Condon asked to clarify that the O&M building is shared, but there is no responsibility to facility I (WREFI), and if they could provide more explanation on that? All the responsibility is with facility II (WREFII), but it’s shared usage, why is that different?

Mr. Woods replied that it’s because facility I is much smaller, and is expected to be finished and constructed by the end of this year. Facility II is much larger, has more components, including battery storage units, and the shared agreement of the facility retirement estimates. The O&M building is not that large compared to the other shared facilities, which is why Mr. Woods believed the responsibility is housed within facility II.

Council Member Condon asked in these provisions, is the O&M building included as a shared facility? Will there be an agreement that states the O&M facility is shared?

⁴ Audio for Agenda Item E = 00:05:17 – May 22, 2020

Mr. Woods confirmed, one of the edits made from the DPO to the Proposed Order is they previously had a list to show what was shared. It was an inclusive closed list in the DPO, the Proposed Order change edited the condition to simply state “any constructed shared facilities”. This would include the O&M building.

Chair Jenkins asked Mr. Woods to talk about the battery storage, as his understanding was that the 20 megawatt battery storage facility goes with facility I. The 30 megawatt battery storage facility is shared between both facilities. Is that correct?

Mr. Woods replied the 20 megawatts would only be with facility II. The 30 megawatt would be shared between the two. None of the battery is under construction right now, and he wasn't sure what the plan was for the future yet. If the 20 megawatt battery were to be built it would be in Umatilla County and wholly owned and operated by facility II. The 30 MW system would be Morrow County based, and would have an agreement to share between the two facilities.

Chair Jenkins asked if the battery storage was conjunction with the solar arrays, or is it both the wind turbines and solar?

Mr. Woods replied it could be both.

Council Member Winters stated she felt the DPO was well written, and the presentations have been good.

Vice Chair Grail motioned the Council adopt the proposed order as presented by staff as the final order and issue two site certificates for the Wheatridge Renewable Energy Facility I and Wheatridge Renewable Energy Facility II.

Council Member Winters seconded.

Motion carried.

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

F. [9:06] Oregon Department of Energy Update (Information Item)⁵ – Janine Benner, Director. The Council received an update from the Agency's Director regarding: 1) ODOE's strategic planning efforts; Governor Brown's Executive Order 20-04 on greenhouse gas emissions reductions; and 3) ODOE's work on the next Biennial Energy Report.

Chair Jenkins and Council Member Winters thanked Ms. Benner for the presentation, as it's helpful to see how everything they do with ODOE fits together in the big picture.

Secretary Cornett announced an incorrect link/announcement in the agenda, which has been corrected. Suggested we continue, but have a secondary public comment time frame for those that did join late.

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

G. 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 Bakeoven Solar Project Draft Proposed Order was closed.

⁵ Audio for Agenda Item F = 00:34:49 – May 22, 2020

⁶ Audio for Agenda Item G = 00:54:55 – May 22, 2020

Irene Gilbert

Ms. Gilbert commented on the decision process between Type A and Type B amendment reviews. She used the recent decision on Shepherds Flats repowering amendments to make the following points:

- It is very frustrating to the public to not be able to have any recourse to challenge Type B amendments, other than to the Supreme Court, because the Council typically doesn't respond positively to public information or public comments
- She felt the factors to justify a Type B amendment (complexity of the proposed change, anticipated level of public interest, anticipated level of reviewing agency interest, the likely hood of significant adverse impact, and the type and amount of mitigation if any) were not met for the Shepherds Flats amendments.
- She tracked Council's discussion regarding local land use regulations and proximity of certain wind turbines to the Bonneville Power Administration's transmission line. She felt the Council came to the wrong conclusion regarding the applicability of the local land use regulations to the amendment.

Secretary Cornett answered a question from the public regarding an additional comment period during the COVID-19 agenda item.

H. [9:48 a.m.] The Climate Trust Annual Update (Information Item)⁷ – Sheldon Zakreski, Executive Director of The Climate Trust, provided Council with an update including The Climate Trust's 2019 Financial Audit.

Secretary Cornett added that typically he would provide the annual audit update to Council, but because Mr. Zakreski was scheduled for this presentation he built the Financial Audit component into his presentation. He just wanted to clarify with Council that he did provide that staff report to Council which outlined Mr. Zakreski description of the findings associated with the audit justifying compliance with the "Qualified Organization" rules.

Vice Chair Grail asked Mr. Zakreski how many people do they have on staff at this time?

Mr. Zakreski responded they currently have a staff of 6 people since 2018.

Council Member Howe asked if the Legislature adopts a cap and trade, how is that going to affect the carbon reductions standards or the Climate Trust?

Mr. Zakreski responded that with the CO2 standard the last two iterations of the cap and trade legislation considered by the Legislature did have a sunset clause for the CO2 standard. Basically money was provided to the Climate Trust under specific criteria and expectations. They had that on-going obligation to spend those funds in adherence to the CO2 standard.

Council Member Condon stated she was curious about the administration costs, a project was mentioned with Oregon State that involved hiring that would require additional administration. Are there projects that require much less administration, but it's always a 20% administration fee or does it differ depending on the project?

Mr. Zakreski replied that the 20% is the ceiling established by the standard. A third party auditor does an annual review of how they receive the revenue from that 20% component. Administration is part of it, but it also covers other aspects. He used Oregon State as an example because that is one project they are hiring the third party verifier. Other examples include projects that would require significant staff time to review or deal with any issues. At times they will also run into legal disputes that require significant time to review or resolve.

I. [10:15 a.m.] Carbon Monetary Offset Rate Update-Consideration of Proposed Rules (Action Item)⁸ – Christopher Clark, Rules Coordinator provided an analysis on the potential fiscal impacts and economic

⁷ Audio for Agenda Item H = 01:05:02 – May 22, 2020

⁸ Audio for Agenda Item I = 01:34:06 – May 22, 2020

achievability a proposed rate increase and reviewed advice provided by the advisory committee appointed for this project and other stakeholders. Council considered a request to initiate formal rulemaking proceedings to adopt the proposed increase. For more information visit the [Rulemaking page](#).

Mr. Clark provided an overview of staff's preliminary recommendation to increase the monetary offset rate and the analysis used to prepare the recommended findings of economic achievability and fiscal impact statements.

Council Member Winters asked for clarification on what a developer has to pay above the baseline in the original chart in Mr. Clark's presentation. How would that be changed?

Mr. Clark replied that in 1997 the Legislature set the baseline rate at .57 cents per ton, starting in 2000 the Council could increase it up to 50% in any 2 year period, and that's only been done 3 times, most recently in 2017 when Council set the current rate of \$1.90/ton.

Council Member Winters asked if the legislature had revisited the rate since that time?

Mr. Clark replied that there had not been additional legislative review, and he assumed the belief was that the 50% increase every 2 years would be sufficient to account for any fluctuations in market prices, general cost, or inflation. He explained that there was about a 10 year period that Council did not take any action on this, and that the rate got a little behind.

Council Member Condon stated she attended the RAC meeting, which was very informative and well done. One question she had is if there was not an increase, decrease, or a review every 2 years you get behind. Is this an opportunity to require a review every two years? Does Council have a rule to require them to review this every 2 years?

Mr. Clark replied that Council could adopt a rule that binds them to revisiting this every 2 years, although he wasn't sure if he would recommend that without prior consultation with legal counsel. He explained this is also something that could be done in an internal management directive, and added that ODOE staff intended to keep a 2 year schedule to increase the rate to a rate that is comparable to actual costs, and felt they could get to parity within the next decade.

Secretary Cornett added that once a year staff brings a proposed rulemaking schedule to Council at the end of every year. So that is something to consider, as this would be on that schedule every year.

Vice Chair Grail stated that Mr. Zakreski commented that everyone has chosen the monetary path. Since no one is choosing anything but to pay the money, it indicates our fees are so low that applicants that pay the offset rate are still cost ahead. She asked if there was any conversation that the rate should be informed by the number of facilities using the offset rate as opposed to just the cost associated with offsets.

Mr. Clark replied there are several ways to look at it from a policy perspective, but the way statute was written the change in the rate has to be based on the evidence of the cost of offsets. That is something that we didn't choose by rule, that is something the Legislature has determined how it's set. He explained that the statute doesn't say how the data had to be interpreted, and that Council may decide that exact parity with the cost of offsets is not required.

Vice Chair Grail stated she understood the Statute, but was curious if the conversation came up with the dialog in the RAC meeting.

Mr. Clark stated there was some conversation about resource planning and future plans to develop new gas-fired generating resources in the RAC meeting and that staff was interested in looking at the issue more holistically.

Vice Chair Grail motioned that the Council find that increasing the monetary offset rate for carbon dioxide emissions from \$1.90 to \$2.85 is justified by empirical evidence on the costs of offsets, and that such an increase is unlikely to affect the economic achievability of the Council's Carbon Standard for Natural-gas Fired Power Plants. Based on these findings, I further move that Council initiate formal proceedings to adopt permanent rules to increase the rate and authorize staff to issue the notice of proposed rulemaking, as presented in Attachment 2.

Council Member Winters seconded.

Motion carried.

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

J. [10:53 a.m.] Construction Disruptions Related to the COVID-19 Pandemic (Information/Action Item)⁹ –

- I. Staff Presentation – Christopher Clark, Rules Coordinator provided a presentation on construction disruptions related to the COVID-19 pandemic.

Mr. Clark provided an overview of the presentation and explained that the Department was putting forth several rulemaking options to address construction disruptions related to the COVID-19 pandemic for Council's consideration without a specific recommendation for action.

Secretary Cornett announced that there is a specific public comment time frame for this agenda item.

Mr. Clark explained that construction timelines for facilities that are approved but not yet constructed could be affected by the COVID-19 pandemic. He explained that if a facility fails to meet construction beginning deadlines without submitting a request for an extension, the Council must terminate the site certificate. He explained that there was some flexibility in the rules to make reasonable accommodations for a failure to meet construction completion deadlines. Mr. Clark provided options for the Council to provide relief from construction beginning deadlines. Those options included: (1) directing staff to expedite the process for review of requests for an amendment to extend construction deadlines related to the pandemic; (2) adopting rules to allow Council to stay expiration and termination of a site certificate when failure to begin construction by the deadline was due to the COVID-19 pandemic; and (3) adopting rules to allow Council to stay expiration and termination of a site certificate when failure to begin construction by the deadline was with good cause.

Mr. Clark explained the first option.

Council Member Winters asked if the Council would be able to hear from legal counsel during, citing comments from Friends of The Columbia Gorge that raised legal concerns.

Secretary Cornett replied certainly, they'd always have the option to seek the advice of Legal Counsel in a public forum, or a special Executive Session if more appropriate.

Council Member Winters asked what the first option would look like if it automatically require the Type B review process.

Mr. Clark replied it wasn't automatically Type B. Based on the direction Council gave staff, staff would receive the amendment determination request, process it as normal with the additional consideration of whatever direction Council provided. Even if Council said they believed that any of the requests should be processed

⁹ Audio for Agenda Item J = 02:12:22 – May 22, 2020

under the Type B process, there is no way to make it automatic. It's just indicating that it is the preferred method, and staff would review the requests with that in mind?

Chair Jenkins stated that the first option doesn't require a rule change, it really pivots on findings associated with the impacts from the COVID-19 pandemic to the specific project. He asked if there is some way they can require the applicant to provide findings to prove the delay is a direct result to COVID-19 without adopting rules?

Mr. Clark replied that is correct, and that the Council can be specific or as broad as they wished. He explained that if the Council is clear with the criteria that they would require for staff to treat a request differently than any other Type B amendment requests, they could implement that through an internal management directive, as long as it was consistent with their current rules. This would just be a special consideration, and to some extent would still need to be looked at on a case-by-case basis.

Vice Chair Member Grail stated she was worried about "kicking the can" She stated it felt very subjective to her, and the more prescriptive they could be, the better it would be for the developer and ensuring they were upholding the Council's responsibilities.

Council Member Howe feels the same way as Vice Chair Grail. He felt option 1 seems to require a lot more work like staff resources, and costs to the applicant and was interested in hearing the other two options that may be less of a drain to staff.

Council Member Winters stated she was hesitant to do anything until the Supreme Court rules on the validity of the Governor's order. She stated she is struggling with how they come up with the criteria because this isn't a sector that has specific guidance for it from the Oregon Health Authority. She also mentioned earlier one of the arguments against the other options is that they don't have the authority under State law, she would like to hear a response to that.

Secretary Cornett reminded Council they are not required to take action and that they have rules for the amendment process. He explained that staff wouldn't be asking for Council to tell them to automatically process all requests as Type B because staff would still need to do the assessment. He stated Staff would be looking for general direction, and while they can't be pre-decisional about the process Type A or Type B or if it's going to be approved or not, Council would be directing staff to process their review quickly within the existing Rules.

Mr. Clark presented the second and third option.

Council Member Condon asked Mr. Clark to explain how Option 2 would work, if the certificate holder would be required to provide notice that they wouldn't meet their deadline, and how the deadline for compliance would be established.

Mr. Clark explained that under the division 29 rules, when the Certificate Holder becomes aware of a violation or potential violation, the Certificate Holder would need to provide a report to the Council with information of what the potential violation is and what steps they are going to remediate the violation. He explained that staff was proposing specifically for the report to be provided before the violation actually occurs. Council would then bring the Certificate Holder to a Council meeting in front of the public to present evidence to prove the failure was due to COVID-19 and provide the opportunity to provide some relief instead of proceeding to the automatic termination of the site certificate.

Council Member Condon stated she didn't understand the practical differences between options 1 and 2 because Staff and Council have the opportunity to provide an extension if a Certificate Holder comes forward proactively.

Mr. Clark responded that was partially true. He explained that under the current process if the Certificate Holder believes they will not meet their construction deadline they have to submit a request for an

amendment, and then expiration and termination is stayed pending until Council's review of that amendment. However, the amendment review process is somewhat lengthy, which also has uncertainty and costs involved.

Legal Counsel Patrick Rowe clarified that if a Certificate Holder believes they are not going to meet a construction deadline they have the ability to submit a request to the Council to extend that deadline. He explained that the certificate holder is allowed to do that all the way up until the day before the deadline is about to expire. He added that to justify temporary rulemaking the Council would have to find that there would be serious prejudice to either the public or interested party (Certificate Holder). The Council would have to find that the existing rules don't suffice to address the situation, nor would adopting a permanent rule, such that a temporary rule is needed to avoid serious prejudice.

Council Member Howe asked if serious prejudice is a requirement in order to amend a rule or to do a temporary rule?

Mr. Rowe replied yes, in order to adopt a temporary rule.

Council Member Howe stated he was having a hard time with what that would be on a case by case basis, but it seems pretty easy to make on a blanket basis with COVID-19 with how it's affected the global economy.

Mr. Rowe replied that in this instance because there is an existing process to request an existing site certificate amendment, he didn't see that serious prejudice would result because a party that has a site certificate can come to Council saying they aren't able to meet the deadline due to COVID-19, and likely Council would review the evidence proving it, and whether there is a need to extend and granting them the extension.

Council Member Winters asked if we had some evidence in the record, other than their general knowledge of the pandemic, that the process wouldn't work for certificate holders and there would be serious prejudice for some reason because the process wasn't adequate?

Mr. Rowe replied that he is not aware of any site certificate holders coming to the Department and saying the existing amendment process would not work because of the COVID-19 virus.

Council Member Winters added that there also was not certificate holders stating that a permanent rule process wouldn't suffice. She clarified that permanent rulemaking was another path that could be considered if the Council needed a longer term solution.

Mr. Rowe confirmed that was correct, and that it would give the Council the opportunity to establish what criteria should be provided to prove construction delay as a result of COVID-19.

- II. Public comment – The Council provided an opportunity for any members of the public to provide comments or advice.

JJ Jamieson, Perennial Power Holdings (Perennial Wind Chaser Gas Plant Project)

Thanked Council and Staff for their work. He raised some concerns with the options that involved rulemaking because they would create new processes which would be difficult for certificate holders to react to. Mr. Jamieson offered support for option 1 because it follows existing rules and processes that certificate holders are familiar with. He indicated that Perennial had contractors on board to complete required pre-construction surveys for the Perennial Wind Chase project in April, but COVID-19 prevented that from happening.

Matt Hutchinson, Avangrid Renewables (Golden Hills Wind Project)

Thanked staff for the proactive approach. He stated Avangrid supports all options, but would prefer option 1 as it's a process they are familiar with and is the most simple. He also stated the Council should not just consider taking action on beginning construction deadlines, but should consider ending construction dates as well since we don't know the long term impacts of the pandemic to vendors overseas and locally. He stated that Golden Hills would meet their pre-construction deadlines, as they were able to secure some contracts prior to the pandemic.

Steve Ostrowski, Pattern Renewables (Summit Ridge Wind Project)

Thanked Council and ODOE. He stated that Summit Ridge had to meet a deadline in mid-August. He stated that Summit Ridge prepared a scope of work that involved acquisition of equipment, but due to the pandemic the supplier was not able to meet the schedule. They support all options but prefer option 3. He stated that Option 1 with a limited submittal requirement would also be acceptable. He hoped that Council would move forward with an option that allowed them to begin construction.

Laura Miner, Invenergy (Boardman Solar Project)

Stated they are unable to meet their February 2021 construction deadline due to the economic downturn related to the pandemic. She recommended Council move forward with option 1.

Irene Gilbert

Asked why this topic is even being discussed by the Council and that any change to exempt a certificate holder from needing an amendment to change a deadline would be counter to the rules. She stated that the current process works for situations like this. She referenced Summit Ridge as an example. She felt there is no need for Council action if certificate holders follow the current rules and process. She felt these changes really need to go through the legislature. She added that changes that limit the amount of information, or the ability of public participation would cause serious prejudice to the public.

Dan Serres, Columbia Riverkeeper

Stated that the options discussed contained changes that were more significant than indicated by the Agenda. He stated that Columbia Riverkeeper is not in support of extending the deadlines for facilities that otherwise would not have met the deadline. He also cited the Governor's Executive Order as another reason not to provide relief for the Perennial Wind Chaser Facility. He recommended Council take no action.

Gail Carbiener

Stated he didn't need to make further comment, but he did submit comment in writing.

Mr. Clark confirmed, and that it was sent to Council.

Brian Walsh, Avangrid Renewables (Golden Hills Wind Project)

He stated that Avangrid has received notices of force majeure from several of their suppliers who are having a hard time supplying the materials needed to construct the facility due to COVID-19 related shutdowns. He stated that supply chain delays could result in condensed construction schedules and labor shortages as materials become available.

Friends of the Columbia River Gorge

Submitted written comments in opposition to rulemaking.

Chair Jenkins closed the public comment period and asked the Council members for their thoughts.

Council Member Condon asked for confirmation that option 1 results in no formal rule changes, that it's within the current rules and process.

Secretary Cornett confirmed that was correct.

Legal Counsel Patrick Rowe stated his concern was that option 1 was framed that Council direct staff to treat all such requests as Type B.

Secretary Cornett stated this is an opportunity to pull up the language to review it, and see if that is the direction Council can give staff or if the review needs to happen on an individual basis.

Legal Counsel Patrick Rowe replied if you look at the existing rule regarding amendment determination requests, the process allows the site certificate holder to request a Type B amendment. Staff would then review the request to determine if it qualifies for Type B.

Council Member Condon asked if they went with option 1, with the deletion of the Type B review process, it would then be consistent?

Legal Counsel Patrick Rowe replied that how he reads option 1 is that Council would be directing staff to automatically determine the request for Type B without conducting an analysis.

Council Member Condon stated that is how I understand it, but if they removed the “under Type B” process, then it would be consistent.

Legal Counsel Patrick Rowe stated it probably would, but he’d want to review how they have option 1 framed.

Council Member Winters agreed that Council likely could not mandate Type B, and that they need to follow their rules. What she felt they could say in the context of COVID-19 with lack of employees to conduct surveys is a valid reason for consideration. She didn’t agree they should automatically believe the stated reason, there should be good faith in submitting proof or evidence.

Chair Jenkins stated he believed that directing staff to automatically review as Type B would require them to change the rules, and that he didn’t believe that is what anyone was trying to do.

Council Member Howe stated that he was initially hoping for more of a blanket application to address issues related to COVID-19 and to avoid creating any additional work on the Department. He understands now that if the amendment process will pause any deadlines, that seems to be a way to go.

Council Member Winters stated she preferred option 1, and that option 2 wasn’t legally appropriate. If in the future they determine this isn’t adequate then they should look at permanent rulemaking.

Vice Chair Grail stated she agreed with Council Member Winters, but she is also not sure why the Council needed to take any action at this time.

Council Member Condon also stated she didn’t believe action was needed.

Council Member Truitt stated that with force majeure and the difficulty with contracts related to the COVID-19 pandemic, it’s putting people in difficult positions. Without a full picture of the affects of the COVID-19 pandemic, he was trying to make the best educated decision but it was a lot to process at the moment.

Council Member Howe asked Secretary Cornett if it would be of value to at least have the Council give some direction for expediting amendments applications that are related to COVID-19 over other applications?

Secretary Cornett replied that they weren’t seeking that, but that is something the Council could do. Without a vote it would be a consensus by the Council.

Chair Jenkins asked if there was general agreement that they did not have legal standing to direct staff to pursue Type B review in regards to these type of requests.

Council agreed.

Legal Counsel Patrick Rowe is concerned that the language in option 1 is directing staff to automatically review under the Type B process.

Council Member Winters stated that she believes Council is not intending to make a motion because the consensus is they would be directing staff to do something they don't have the authority to do. However, she is willing to say to Staff that she agreed with the testimony and that expediting and prioritizing requests due to COVID-19 during the pandemic is appropriate.

Chair Jenkins agreed, and asked Council if they had a consensus.

Council Member Winters asked Secretary Cornett to confirm, but as she understood it applicants can't use the COVID-19 excuse for other reasons that they were delayed or not in compliance. Staff would need to determine if it was truly COVID-19 related.

Secretary Cornett confirmed.

Chair Jenkins stated there were no further discussions, and that he believed staff has been provided with direction.

Secretary Cornett confirmed, and to be clear Council is taking no action and directing staff to process any COVID-19 extension requests done in a timely manner within the rules.

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

Public Comment Period (Continued) – Due to the issues with the meeting link Council is allowing for additional public comments during this time.

No additional public comments.

Meeting adjourned at 12:26 pm

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