



# Oregon

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**To:** Energy Facility Siting Council

**From:** Maxwell Woods, Senior Policy Advisor

**Date:** June 12, 2020

**Subject:** Agenda Item H (Action Item):  
Council Consideration of Need for Power for the Proposed Swan Lake North Pumped Storage Hydroelectric Project, subject to Oregon Water Resources Commission Jurisdiction, for the June 25-26 EFSC Meeting

**Attachments:** Attachment 1: Swan Lake North Pumped Hydroelectric Project Hearing Record

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**Summary:** Per Oregon Revised Statute 469.470(5), ORS 543.017(1)(e) and Oregon Administrative Rule 690-051-0280 (see below) the Energy Facility Siting Council shall consult with and make recommendations to the Water Resources Commission (WRC) regarding the need for power associated with hydroelectric projects with a nominal generating capacity of 25 MW or more, based solely on the hearing record of the WRC (Attachment 1).

A proposal has been submitted to the Oregon WRC and Oregon Water Resources Department for a pumped-storage hydroelectric power project in Klamath County, the Swan Lake North Pumped Storage Hydroelectric Project. The applicant is Swan Lake North Hydro, LLC, an independent power producer.

**Review:** Prior to the 1993 legislative session, hydroelectric power generating projects were either the sole jurisdiction of EFSC or EFSC had joint jurisdiction with WRC. In fact, between 1982 and 1988 EFSC reviewed three hydroelectric power projects. However, during the 1993 legislative session all EFSC jurisdiction over hydroelectric power projects was eliminated and hydroelectric power projects became the sole jurisdiction of WRC.

The statutory requirements for the WRC to consult with EFSC on the “need for power” is likely a legacy of the time when there was joint jurisdiction and EFSC had a “need for power” standard for all power generating facilities. However, EFSC has not had a “need for power” standard for power generating facilities since the 1990s. ORS 469.501(L) and ORS 469.310 both specifically preclude EFSC from establishing a “need for power” standard for power generating facilities, and, per ORS 469.310 “it is furthermore the policy of this state...that the need for new

generating facilities...is sufficiently addressed by reliance on competition in the market rather than by consideration of cost-effectiveness and shall not be a matter requiring determination by the Energy Facility Siting Council in the siting of a generating facility..."

For over 20 years, the need for power and consequently, the need for development of electricity generating facilities in Oregon has been determined by competition in the market. Oregon's electricity system is integrated across the Pacific Northwest and the western US, and Oregon is both an importer and an exporter of electricity. While EFSC and the Oregon Department of Energy have access to technical models that assess anticipated future need for electricity in Oregon, any specific region of Oregon, or the broader Pacific Northwest, neither EFSC nor the Department have the ability to determine whether any specific proposed project is "needed" or not. Neither the WRC statutes nor rules contain a definition of "need for power."

**Recommendation:** Considering the reasons presented here, the Department recommends that EFSC make "no recommendation" regarding the "need for power" for the Swan Lake North Pumped Storage Hydroelectric Project as requested by WRC and OWRD per ORS 543.017(1)(e) and ORS 469.470(5).

The Department notes that in accordance with ORS 543.017(1)(e), even with an EFSC "no recommendation" on the "need for power," the WRC may still continue its review and ultimately may determine to approve the facility, in accordance with the WRC criteria and process.

**For Reference: Applicable Oregon Revised Statutes and Oregon Administrative Rules:**

**ORS 543.017** - Minimum standards for development of hydroelectric power; public interest considerations; rules

*(1)(e) In determining whether it is in the public interest to allocate water for a proposed hydroelectric development, the commission shall consider present and future power needs and shall make a finding on the need for the power. For a hydroelectric project with a nominal electric generating capacity of 25 megawatts or more, the Water Resources Commission shall consider any recommendation by the Energy Facility Siting Council. The Energy Facility Siting Council's recommendation shall be based solely on information contained in the hearing record of the Water Resources Commission. The commission's order on the proposed hydroelectric development shall describe the Energy Facility Siting Council's recommendations on the need for the power. If the commission's decision on the need for power is contrary to the Energy Facility Siting Council's recommendation, the commission's order shall explain the commission's failure to follow the recommendation of the Energy Facility Siting Council. The commission also shall consult with the Energy Facility Siting Council on other matters within the expertise of the Energy Facility Siting Council.*

**ORS 469.470** – Powers and duties; rules. The Energy Facility Siting Council shall:

*(5) Consult with the Water Resources Commission on the need for power and other areas within the expertise of the council when the Water Resources Commission is determining whether to allocate water for hydroelectric development.*

**OAR 690-051-0280 - Need for Power**

*In order to approve an application, the Director, shall make a finding on the need for power. In making this finding the Director shall consider the present and future power needs, taking into consideration:*

*(1) Whether there is a need for project power based upon:*

- (a) Consultation with the Oregon Department of Energy on the most current regional power plan for an analysis of need for development of hydropower or renewable energy resources within the Columbia River region; or*
- (b) Evidence of a contract for the sale of power, and*
- (c) For projects greater than 25 MW, any recommendation by the Energy Facility Siting Council based on information contained in the hearing record for the application.*

*(2) Section (1) of this rule shall not apply to applications for the following types of projects:*

- (a) Small facilities intended to supply power for on site uses;*
- (b) Projects which primarily use existing storage, diversion or water conveyance facilities where the operation of the power project will foster reductions in water losses or increases in the efficiency of water use;*
- (c) Multiple purpose projects where the project is based primarily on other uses and in which power is a compatible project purpose; or*
- (d) Projects by public or municipal utilities which will serve only the applicant utility's customers.*

**ATTACHMENTS:**

- Attachment 1: Swan Lake North Pumped Hydroelectric Project Hearing Record
- a. OWRD Initial Hearing Record
  - b. Public Comments and Responses
  - c. Large Generator Interconnection Agreement
  - d. Project Vicinity Map
  - e. OWRD Draft Proposed Order