



# ENERGY FACILITY SITING COUNCIL

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

**Energy Facility Siting Council  
February 26, 2021  
Meeting Minutes  
Friday, February 26, 2021 at 8:30 a.m.  
Webex Teleconference Meeting**

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## Friday, February 26, 2021 – Webex Teleconference

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

**Call to Order:** The meeting was called to order at 8:30 a.m. on February 26, 2021 by Chair Grail.

**Roll Call:** Council Members Mary Winters, Jordan Truitt, Hanley Jenkins, Cynthia Condon, and Vice-Chair Kent Howe, and Chair Marcia Grail, were present.

Oregon Department of Energy representatives present were Assistant Director for Siting/Council Secretary, Todd Cornett, Senior Policy Advisor, Sarah Esterson, Government Relations Coordinator, Christy Splitt, Assistant Director for Nuclear Safety, Maxwell Woods, Nuclear Waste Remediation Specialist, Jeff Burrigh, Siting Policy Analyst and Rules Coordinator, Christopher Clark, Senior Siting Analyst, Chase McVeigh-Walker, Siting Analyst & Compliance Officer Duane Kilsdonk, and Operations Analyst, Wally Adams. EFSC Counsel Patrick Rowe of the Department of Justice was also present.

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

Consideration of Minutes

January 23, 2021 Meeting Minutes

*Secretary Cornett noted that scrivener corrections were offered from Council Member Condon and would be included in the final minutes.*

**Vice-Chair Howe motioned Council to approve the minutes of the January 23, 2021 meeting as presented.**

**Council Member Truitt seconded the motion.**

**Chair Grail called on the Secretary to call the roll.**

**Motion carried by unanimous consent.**

*Secretary Cornett proposed the following modifications to the meeting agenda: Postpone Agenda Item F: Council Review and Decision on the Amendment of the Wildlife Monitoring and Mitigation Plan for the Montague Wind Power Facility to a future meeting because input from Oregon Department of Fish and Wildlife has not yet been received; Move Agenda Item I: Legislative Updates, and Item J: Council Member appointment ahead of the timestamped Transfer Hearing for Agenda Item G<sup>1</sup>. Without objection from Council Members, Chair Grail concurred with the proposed modifications.*

Secretary Report

Secretary Cornett offered the following comments during his report to the Council.

Staffing/Council Updates

- The recruitment for the Administrative Assistant is underway, with second round interviews scheduled in the next week.

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<sup>1</sup> During the meeting, the only modification practiced was the removal of Agenda Item F. All other items were presented in the order noticed.

- Additional interviews are being scheduled for the Utility and Energy Analyst position formerly held by Sarah Esterson in the coming weeks.
- Council Member Condon is up for reappointment on March 2, upon completing her first term.
- Governor Brown has also appointed the Director of Culture and Heritage for the Klamath Tribes, Perry Chocktoot, to the Council to fill Barry Beyeler's vacant position. The Senate Rules Committee will be considering Senate appointments on March 2 with a full floor vote sometime after.
- There are not currently any appointees to replace Council Member Jenkins, who is term limited, however, the Senate Rules Committee will be considering appointments again on May 3 if necessary.

#### Contested Case Updates

- **Boardman to Hemingway Transmission Line**  
Hearing Officer Alison Green Webster, in accordance with OAR 345-015-0023(4) provided a status update of the contested case proceeding in your meeting materials for this project which is in the formal discovery phase. Questions regarding this case should be directed to Secretary Cornett, Patrick Rowe, or Sarah Esterson.
- **Obsidian Solar Center – Contested Case**  
On February 11, Hearing Officer Joe Allen sent notice of the Pre-Hearing Conference, the Pre-Hearing Conference Agenda and Case Management Matters and proposed Contested Case Schedule to all participants. In addition to the Department, seven parties were granted limited status on nine issues by the Hearing Officer. Unlike in the Boardman to Hemingway contested case, the Hearing officer's determination of issues and party status was not challenged and will not require council evaluation prior to the Pre-Hearing Conference scheduled for March 3, 2021. An additional update from the Hearing Officer is anticipated at the next Council meeting.

#### Climate Trust

- Sheldon Zakreski, the Executive Director of the Climate Trust is leaving and will be replaced by Kyler Sherry who will take over in the role of managing the CO2 standard and the relationship with EFSC. Council's next Climate Trust update is scheduled in June.

#### Future Meetings

- A Council meeting will not be held in March.
- Quorum availability for the next scheduled Council meeting April 22-23, 2021 was confirmed.

**B. Radioactive Material Enforcement Rulemaking, Council Review of Public Comments and Consideration of Permanent Rules (Action Item)<sup>2</sup>** – Christopher Clark, Siting Policy Analyst & Rules Coordinator. The Council reviewed public comments and considered the adoption of permanent rules on the proposed revisions to OAR chapter 345, division 029, related to enforcement of rules and laws governing the transport and disposal of radioactive materials and waste in Oregon. The written comment period for the proposed rules closed on February 10, 2021 at 5:00 pm.

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

Mr. Clark acknowledged that Maxwell Woods, Assistant Director of the Nuclear Safety Division, and Jeff Burrig, Nuclear Waste Remediation Specialist were in attendance and available to answer questions from the Council.

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<sup>2</sup> Audio for Agenda Item B = 00:16:20 – February 26, 2021

Mr. Clark provided an overview of the background and procedural history of the rulemaking, the proposed rules, staff's evaluation of the public comments and issues raised and recommended responses and revisions to the proposed rules based on those comments received.

*During the presentation the following discussion occurred:*

*Council Member Condon asked staff to provide an overview of how the recent transportation and disposal incidents that prompted the rulemaking would have been impacted by the proposed rules.*

*Regarding the transportation incident, Jeff Burrighrigh noted that transporters are not currently covered under the Division 50 rule structure or in the enabling statute. He went on to explain that this rulemaking, combined with Senate Bill 246, which recently passed out of committee, would expand responsibility to transporters if signed into law.*

*Regarding the disposal incident, Mr. Burrighrigh speculated the circumstances to be a violation of Division 50 and would be a Class One violation. He explained that while the severity determination did exceed the definition of radioactive waste, the circumstances of this particular waste and the mitigation factors in place at the disposal site did not present an active, tangible pathway for public exposure, therefore a moderate violation would likely apply in this case.*

*Council Member Condon asked Mr. Burrighrigh to confirm whether, under his assessment of a Class One Moderate Violation, if the proposed rules would require a five-thousand-dollar penalty per violation or per day.*

*Mr. Burrighrigh explained that under the proposed rules the Department would have discretion to make that determination. Mr. Clark further stated that ORS 469.525 has been interpreted in the rules to mean that illegal disposal would include waste that has been in a location for more than seven days, suggesting that daily penalties were contemplated. He noted the proposed rule does however grant discretion to the Director.*

*Council Member Winters noted that ambiguity in this section had been perceived by Columbia Riverkeeper and alternative language had been offered and she was interested in the response to their concerns.*

*Mr. Clark responded that the issue will be covered in more detail later in the presentation but offered that while the Department believes there may be some conflation of the issues in those comments, revisions have been made to create greater clarity.*

*Maxwell Woods pointed out that the penalty structure of the proposed rule has an economic benefit component built in. He explained that the cost savings that an entity may have realized by disposing of radioactive waste illegally can also be built into the penalties assessed for the violation. This methodology is consistent with the economic benefit utilized by the DEQ and EPA.*

*Council Member Condon expressed concern over a potential violator conducting a cost benefit calculation and risk assessment and deciding to dispose in Oregon because it is less expensive than disposing elsewhere and stated she believed that penalties should reflect that as well.*

*Mr. Woods agreed with her concerns and explained that economic benefit component is intended to add deterrence capabilities to the rules indicating to potential future violators that there is no gain to dump illegally in Oregon and pay a fee. He noted that the Oregon DEQ applied economic structure in their penalty assessment related to the incidents last year because they had that rule in place.*

Council Member Condon asked how this structure compares with other states.

Mr. Woods stated that the comparison could be evaluated further, and offered that we do have data on rules and disposal in other states and the data varies, noting the Department has also been tracking the State of Colorado as they re-write all of their rules related to radioactive waste disposal.

Mr. Burrigh added that there are relatively few examples available of enforcement actions. He provided an example from the State of Kentucky where a total of around eight million dollars in fines were levied against nearly a dozen entities that were involved with the disposal of radioactive waste in a municipal landfill.

Council Member Condon questioned whether the eight million dollars assessed under the example was consistent with the five million dollar maximum included in the bill language.

Mr. Burrigh explained that the comparison isn't necessarily equal, because the eight million dollars is a cumulative total of the assessments levied against multiple entities, vaguely recalling that the individual assessments were likely closer to one to one and a half million. He went on to assess that the proposed rules would make the penalties even more strict than those in the example.

Mr. Clark noted that a contributing disconnect is that statute prohibits operation of a radioactive waste disposal facility without an Energy Facility Site Certificate and places high limitations on when the Council could issue a site certificate for such facilities. He noted that the rules are not currently set up to regulate radioactive waste disposal in a preventative manner, which is what Senate Bill 246 will allow. The regulation of transporter disposal waste is state level implementation of federal transportation rules and regulations that don't align perfectly, and it is anticipated that upon passage of Senate Bill 246 additional rulemaking will occur to shore that up.

In response to comments received regarding dual administrative processes, Chair Grail asked Mr. Clark to ascertain whether commenters believed the rules would be confusing to stakeholders or the Department.

Mr. Clark recalled the concern was that it could be confusing for both and agreed that anytime two administrative processes administered by the same agency for similar issues exist it can be confusing for all parties. He noted in this case the Council would be implementing the Energy Facility Siting rules directly, and the Nuclear Safety and Energy Emergency Preparedness division would regulate the other set, minimizing internal confusion. However, external confusion still exists, which is what the proposed applicability language is attempting to address.

Chair Grail appreciated Mr. Clark's response and acknowledged the importance of the purposeful efforts undertaken by the cross divisional teams to provide clarity to the rules and process.

Council Member Winters clarified her understanding that, in the event a violator submits a report to the Department after the Department has received notice from a third party of a potential violation, the Department would not consider the violator's submittal as voluntary.

Mr. Clark affirmed her interpretation and reminded Council that the recent incidents that prompted the rulemaking were reported by a third party and subsequent cooperation would not be considered voluntary under this rule.

Chair Grail, in response to Mr. Clark's analysis of comments received regarding concern for potentially exorbitant fee assessments at the Director's discretion and the commenter's request for limits to be established, stressed the importance of this topic and invited Council Members to add their thoughts. She agreed with the Department's

assessment to allow the Director the discretion to assess penalties without limits and agreed that the penalties should be higher for those that willfully commit violations.

*Council Member Condon agreed that revisions to the proposed language are not needed. She stated concern over mitigating penalties and found it unlikely that a person would be disposing of radioactive waste without knowledge.*

*Council Member Jenkins agreed with staff's recommendation to not limit the number of days a penalty could be assessed, and provided that limits currently provided in statute for maximum penalty amounts "per day" indicate legislative intent to not limit the number of days penalties are applicable.*

*Council Member Winters agreed and stated that limiting the number of days would be unusual.*

*Vice-Chair Howe concurred.*

*Council Member Truitt concurred.*

Mr. Clark concluded his presentation reminding Council of their action options to adopt the rules permanently.

*Chair Grail acknowledged Mr. Clark's consistently thorough, informative presentations and opened the floor to Council discussion or possible motion.*

**Council Member Jenkins motioned that Council adopt the proposed rules as presented in the Notice of Proposed Rulemaking with revisions recommended by staff.**

**Vice-Chair Howe seconded the motion.**

**Chair Grail called on the Secretary to call the roll.**

**Motion carried by unanimous consent.**

**C. Shepherds Flat North – Council Review of Request for Amendment 3 to Transfer Certificate Holder Ownership.**

- 1. Transfer Hearing (Hearing)<sup>3</sup>: Chair Grail, acting as Hearing Officer.** The Council conducted a hearing on the request to transfer ownership of the Shepherds Flat North site certificate holder, North Hurlburt Wind, LLC, from Caithness Energy, LLC to BEP SF Holdings, LLC. Shepherds Flat North is an operational 265 MW wind power generation facility. The purpose of the transfer hearing is to provide the public an opportunity to provide oral comments on the transfer request and applicable Council standards (Organizational Expertise and Retirement and Financial Assurance) to Council.

Hearing Officer Grail opened the Hearing at 9:55 am and invited the new owner to provide testimony.

*Secretary Cornett reminded Council of their ability to ask questions throughout the comment period if they desired.*

- Mitch Davidson, CEO Brookfield Renewables  
Mr. Davidson described Brookfield Renewables' parent company, Brookfield Asset Management, as one of the worlds leading asset managers with a distinguished one hundred fifteen-year history of owning

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<sup>3</sup> Audio for Agenda Item C (Hearing) = 01:25:34 – February 26, 2021

and operating real assets. Brookfield Asset Management is comprised of five individual businesses (including Real Estate, Infrastructure, Private Equity, Credit, and Renewable Power) managing over five hundred and seventy-five billion dollars of assets, with over one hundred thirty thousand operating employees, and presence in thirty countries.

Mr. Davidson went on to provide that Brookfield Renewables, based in New York, is one of the largest owners, operators, and developers of renewable energy in the United States, operating over fifty-three hundred energy generation facilities with nineteen thousand megawatts of generating capacity in 15 countries. Their US portfolio, with seventy-three hundred megawatts of capacity spanning 34 states, consists of hydro, wind, solar, both battery and pump storage, and one of the country's largest distributed generation businesses. Their project development pipeline is solely focused on renewables.

Mr. Davidson explained Brookfield Renewables draws on decades of experience of safety and efficiency in operating their renewable portfolio and is a company that cares about their employees and strives to make a positive social and economic impacts in the communities they service.

Mr. Davidson concluded that Brookfield Renewables is an industry leading developer, owner and operator of world class renewable power facilities, investing millions each year to ensure the safe operation and, mitigation of impacts, of these assets.

- Richard Allan, Martin Law, LLP

Mr. Allan, Counsel for the applicant, appreciated staff's remarkable response to strict timelines in the review of the three transfer requests. He acknowledged that Tom Deedy, Chief Operating Officer, and Whitney Wilson, Vice President of Wind Operations, of Brookfield Renewables as well as representatives from Caithness (the current site certificate holder), and Tetrattech, were also in virtual attendance and available for Council's questions.

Mr. Allan clarified that the staff report indicates the applicant, BEP SF Holdings LLC, is wholly owned by Brookfield Renewables, but it is in fact owned by both Brookfield Renewable Corporation and a private equity fund, called Brookfield Infrastructure Fund Four. While the operation expertise will come from the Brookfield Renewables team, he explained the ownership structure is important because many companies are interested in investing in renewable energy and the equity fund provides a vehicle for those investments.

Hearing Officer Grail confirmed with Mr. Adams that additional persons were not waiting to comment and closed the transfer hearing at 10:06 am.

2. **Council Review and Decision on Request to Transfer Certificate Holder Ownership (Action Item)<sup>4</sup>: Chase McVeigh-Walker, Senior Siting Analyst, Sarah Esterson, Senior Policy Advisor.** Council received a presentation from staff on the transfer request and comments received on the record of the transfer request, and Council will take action to approve or deny the transfer request. If approved, Council will issue a third amended site certificate to reflect the new certificate holder owner.

Mr. McVeigh-Walker provided the procedural history of the project and Ms. Esterson provided analysis of the request against Council standards and recommended Council action. More information is located on the [Council Meetings website](#) for additional details pertaining to this [presentation](#).

*During the presentation the following discussion occurred:*

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<sup>4</sup> Audio for Agenda Item C (Action) = 01:36:00 – February 26, 2021

Chair Grail noted the compliance history of the applicant, which includes eight compliance incidents over the last decade, and inquired about the nature of the incidents.

*Mr. Esterson responded that the incidents were mostly environmental, related to eagle mortality rates, storm water management, blade failure, and sulfa-hexafluoride reporting. She informed Council that a summary of the compliance history is available on page 10 of attachment 2 of the Order, and that staff confirmed with affected agencies that the applicant does not currently have any unresolved compliance issues.*

Ms. Esterson concluded her presentation recommending that Council approve of the Transfer Request.

*Chair Grail opened the floor to Council discussion or possible motion.*

*Vice-Chair Howe appreciated the presentation and work of staff.*

**Vice-Chair Howe motioned for Council to approve the request to amend the Shepherds Flat North site certificate to reflect the transfer in ownership of the site certificate holder, North Hurlburt Wind LLC, from Caithness Energy LLC to BEP SF Holdings, LLC as presented by staff.**

**Council Member Jenkins seconded the motion.**

*Council Member Jenkins acknowledged the extraordinary efforts made to complete this transfer request in a month.*

*Secretary Cornett directed all acknowledgement to Ms. Esterson, who recognized the work of Mr. McVeigh-Walker and the team.*

*Council Member Condon echoed Council Member Jenkins praise, and questioned whether the financial assurance instrument for the new owner could be put in place immediately if needed.*

*Ms. Esterson confirmed that the comfort letter provided by the applicant provides that certainty.*

*Council Member Condon expressed her satisfaction with the comfort letter, and explained she was more curious about the process.*

*Chair Grail requested that Secretary Cornett research the procedural aspects and return at a future meeting with the present to the Council.*

*Secretary Cornett agreed to include that information as part of the upcoming review of the financial assurance template language.*

**Chair Grail called on the Secretary to call the roll.**

**Motion carried by unanimous consent.**

**D. Trojan ISFSI License Renewal Update and Initiation of Rulemaking (Action Item)<sup>5</sup> – Christopher Clark, Siting Policy Analyst & Rules Coordinator and Duane Kilsdonk, Siting Analyst & Compliance Officer.**  
The Council received an update on the renewed operating license for the Trojan Independent Spent Fuel

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<sup>5</sup> Audio for Agenda Item D = 02:10:25 – February 26, 2021



Storage Installation (ISFSI) issued by the US Nuclear Regulatory Commission and considered initiating a rulemaking project to update the Council's rules applicable to the ISFSI under OAR 345-026-0170 to 345-026-0390.

Mr. Kilsdonk provided the background of the Trojan site and Nuclear Regulatory Commission licensing renewal process and Mr. Clark covered staff's recommendation for the initiation of rulemaking to update Council's ISFSI specific rules. More information is located on the [Council Meetings website](#) for additional details pertaining to this [presentation](#).

*During the presentation the following discussion occurred:*

*Vice-Chair Howe questioned whether Trojan, while in operation at one thousand one hundred and thirty MW, was considered to be a small, average, or large nuclear facility.*

*Mr. Kilsdonk stated that Trojan was an average size facility, similar to the size of the operating Columbia Generating Station in Washington.*

*Council Member Jenkins commented that he appreciates that the rulemaking scope and objectives have been clearly identified in the staff report and stressed the importance of establishing side boards in the process.*

*Chair Grail asked Mr. Clark to restate the intention of the rulemaking.*

*Mr. Clark clarified the intent of the rulemaking is to incorporate changes needed to address the terms and conditions of the renewed ISFSI license; to incorporate changes from applicable federal laws or policies; to remove any unnecessary or outdated references; and to clarify or improve consistency of the rule language.*

**Council Member Jenkins motioned for Council to authorize the initiation of rulemaking as provide by staff to include the scope and objectives outlined by Mr. Clark.**

**Vice-Chair Howe seconded the motion.**

**Chair Grail called on the Secretary to call the roll.**

**Motion carried by unanimous consent.**

#### **E. Shepherds Flat South – Council Review of Request for Amendment 3 to Transfer Certificate Holder Ownership**

- 1. Transfer Hearing (Hearing)<sup>6</sup>: Chair Grail, acting as Hearing Officer.** The Council conducted a hearing on the request to transfer ownership of the Shepherds Flat South site certificate holder, Horseshoe Bend Wind, LLC, from Caithness Energy, LLC to BEP SF Holdings, LLC. Shepherds Flat South is an operational 290 MW wind power generation facility. The purpose of the transfer hearing is to provide the public an opportunity to provide oral comments on the transfer request and applicable Council standards (Organizational Expertise and Retirement and Financial Assurance) to Council.

Hearing Officer Grail opened the Hearing at 11:18 am and invited the new owner to provide testimony.

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<sup>6</sup> Audio for Agenda Item E (Hearing) = 02:37:48 – February 26, 2021

- Richard Allan, Martin Law, LLP

Mr. Allen, Counsel for the applicant, introduced himself again and reminded Council that representatives from Brookfield Renewables, Caithness Energy, and Tetrattech, were also in virtual attendance and available for Council's questions. He recognized that while Ms. Esterson characterized the review of these three transfer requests as a team effort, he praised Ms. Esterson for her extraordinary efforts as his single point of contact and stressed to Council the demands that are put on their staff.

Mr. Allan again clarified that the staff report indicates the applicant BEP SF Holdings LLC, is wholly owned by Brookfield Renewables, but it is in fact owned by both Brookfield Renewable Corporation and a private equity fund, called Brookfield Infrastructure Fund Four to facilitate investments in renewable energy.

Mr. Allan added, regarding the existing letter of credit for each of the Shepherds Flat Facilities, had been issued against a US Department loan facility, that are issued to project entities, and will be assuming the benefits of the current security. However, the bank letter has also been provided to the Council as an additional assurance of their ability to obtain a letter of credit from another institution acceptable to the Council.

*Council Member Condon thanked the applicant for the availability of representatives from all parties for Council questions.*

- Irene Gilbert, Citizen from Union County

Mr. Gilbert expressed her lack of surprise at how quickly the transfer requests had been processed, asserting that the Department determined that the public did not have an opportunity for a contested case or to provide input into the action of the Council. She went on to interpret Oregon Revised Statute 469.450, claiming that it prohibits a Council member from serving more than two terms.

*Hearing Officer, Chair Grail reminded Ms. Gilbert that public comments during this hearing are limited to the transfer request before the Council.*

Ms. Gilbert explained that her concern was whether the decisions made by the Council were valid or could be appealed and urged the site certificate holder to conduct legal research.

Hearing Officer Grail confirmed with Mr. Adams that additional persons were not waiting to comment and closed the transfer hearing at 11:27.

2. **Council Review and Decision on Request to Transfer Certificate Holder Ownership (Action Item)<sup>7</sup>: Chase McVeigh-Walker, Senior Siting Analyst, Sarah Esterson, Senior Policy Advisor.** Council received a presentation from staff on the transfer request, comments received on the record of the transfer request, and will take action to approve or deny the transfer request. If approved, Council will issue a third amended site certificate to reflect the new certificate holder owner.

Mr. McVeigh-Walker provided the procedural history of the project and Ms. Esterson provided analysis of the request against Council standards and recommended Council action. More information is located on the [Council Meetings website](#) for additional details pertaining to this [presentation](#).

Chair Grail opened the floor to Council discussion or possible motion.

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<sup>7</sup> Audio for Agenda Item E (Action) = 02:46:44 – February 26, 2021

Vice-Chair Howe motioned for Council to approve the request to amend the Shepherds Flat South site certificate to reflect the transfer in ownership of the site certificate holder, Horseshoe Bend Wind LLC, from Caithness Energy LLC to BEP SF Holdings, LLC as presented by staff.

Council Member Winters seconded the motion.

Chair Grail called on the Secretary to call the roll.

Motion carried by unanimous consent.

*(Agenda was modified to remove agenda item F, see page 2 of these minutes for details)*

**G. Shepherds Flat Central – Council Review of Request for Amendment 4 to Transfer Certificate Holder Ownership**

- 1. Transfer Hearing (Hearing)<sup>8</sup>: Chair Grail, acting as Hearing Officer.** The Council will conduct a hearing on the request to transfer ownership of the Shepherds Flat Central site certificate holder, South Hurlburt Wind, LLC, from Caithness Energy, LLC to BEP SF Holdings, LLC. Shepherds Flat South is an operational 290 MW wind power generation facility. The purpose of the transfer hearing is to provide the public an opportunity to provide oral comments on the transfer request and applicable Council standards (Organizational Expertise and Retirement and Financial Assurance) to Council.

Hearing Officer Grail opened the Hearing at 11:50 am and invited the new owner to provide testimony.

- Richard Allan, Martin Law, LLP  
Mr. Allen, Counsel for the applicant, introduced himself again.

Mr. Allan reiterated for the record that BEP SF Holdings LLC, is owned by both Brookfield Renewable Corporation and a private equity fund, called Brookfield Infrastructure Fund Four to facilitate investments in renewable energy.

Mr. Allan clarified again, regarding the existing letter of credit for each of the Shepherds Flat Facilities, they have been issued against a US Department loan facility, and the new owner will be assuming the benefits of the current security. He restated again that the bank letter has also been provided to the Council as an additional assurance of their ability to obtain a letter of credit from another institution acceptable to the Council.

Mr. Allan concluded in reminding Council of the various representatives available to field potential questions.

Hearing Officer Grail confirmed with Mr. Adams that additional persons were not waiting to comment and closed the transfer hearing at 11:55 am.

- 2. Shepherds Flat Central – Council Review and Decision on Request to Transfer Certificate Holder Ownership (Action Item)<sup>9</sup>: Chase McVeigh-Walker, Senior Siting Analyst, Sarah Esterson, Senior Policy Advisor.** Council received a presentation from staff on the transfer request, comments received on the record of the transfer request, and will take action to approve or deny the transfer request. If approved, Council will issue a third amended site certificate to reflect the new certificate holder owner.

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<sup>8</sup> Audio for Agenda Item G (Hearing) = 03:10:13 – February 26, 2021

<sup>9</sup> Audio for Agenda Item G (Action) = 03:14:56 – February 26, 2021

Mr. McVeigh-Walker provided the procedural history of the project and Ms. Esterson provided analysis of the request against Council standards and recommended Council action.

*During the presentation the following additional comments were provided:*

*Ms. Esterson noted the correction offered by Mr. Allan referencing the ownership of BEP SF Holdings, and informed Council that the correction would be incorporated into the final recommended order.*

*Ms. Esterson, in response to Ms. Gilbert's comments made during the previous transfer hearing regarding the lack of opportunity for a contested case or to provide public comments, reminded the Council that comments were not received during the twenty one day comment period, and described the procedures related to a transfer request, which do not include an opportunity for individuals to seek a contested case.*

*Ms. Esterson, in response to Council Member Condon's concerns raised in the previous hearing regarding the new owner's ability to obtain a letter of credit, explained the current notification requirements and the Department's process for ensuring that financial instruments remain current.*

Chair Grail opened the floor to Council discussion or possible motion.

**Vice-Chair Howe motioned for Council to approve the request to amend the Shepherds Flat Central site certificate to reflect the transfer in ownership of the site certificate holder, South Hurlburt Wind, LLC, from Caithness Energy LLC to BEP SF Holdings, LLC as presented by staff.**

**Council Member Jenkins seconded the motion.**

**Chair Grail called on the Secretary to call the roll.**

**Motion carried by unanimous consent.**

**H. Public Comment Period**<sup>10</sup> – This time is reserved for the public to address the Council regarding any item within Council jurisdiction that is not otherwise closed for comment, which includes the Boardman to Hemingway Transmission Line Proposed Order and the Obsidian Solar Center Proposed Order, both of which are in the contested case process.

- Irene Gilbert, Citizen, Union County

Ms. Gilbert stated that the amendment rule changes have severely limited the opportunity for public participation and has caused the public to be more dependent on the Council because they are unable to challenge what she characterized as “poor recommendations” offered to the Council from the Department. Ms. Gilbert recognized Council Member Winters and Council Member Condon and stated that the Members have garnered public respect for their evaluation of materials and appreciate their service to the Council. Ms. Gilbert reiterated her interpretation of Oregon Revised Statute ORS 469.450 and her belief that Council Members may not serve beyond term limits under any circumstances, claiming that any Council decisions made during the alleged violation are appealable. She demanded that Council Member Jenkins be removed from the Council unless Council will allow any private citizen the opportunity to serve in the same capacity on the Council.

There were no further public comments.

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<sup>10</sup> Audio for Agenda Item H = 03:35:42 – February 26, 2021

**I. Legislative Updates (Information Item)<sup>11</sup> – Todd Cornett, Council Secretary & Christy Splitt, Government Relations Coordinator.** The Council received an update on the legislative session and bills related to ODOE, EFSC, and state-level energy policy.

Secretary Cornett provided Council and update on legislation directly related to EFSC. More information is located on the [Council Meetings website](#) for additional details pertaining to this [presentation](#).

*During this portion of the presentation the following discussion occurred:*

*Regarding HB 2064, Council Member Jenkins asked whether changing the EFSC quorum requirement to 4 would require that all member vote in favor of a motion for approval.*

*Secretary Cornett relayed, according to Department of Justice Guidance, the simple majority requirement would remain in all cases, unless specifically designated in statute, such as the requirement of four affirmative votes for site certificate approval.*

*Council Member Condon inquired about public participation at the legislative hearings held on the bills presented by Secretary Cornett.*

*Secretary Cornett informed Council that comments or questions were not raised during the hearing for the standby generator bill (HB 2063). He went on to share that during the hearing for the Council quorum bill (HB 2064) Irene Gilbert expressed opposition, and two questions were raised from the committee regarding the mechanics of the bill.*

*Council Member Condon asked whether there was opportunity for Council to set standards for wildfire mitigation, such as buffer zones around transmission lines through legislation or otherwise.*

*Secretary Cornett replied that Council does have authority to complete rulemaking to address this issue, and the Department intends to evaluate the options to add value to the outcome of legislation currently being considered.*

*Chair Grail referred to the recent power outages experienced in the Salem area and stated that resiliency issues will become more apparent as the state moves towards its goal of achieving one hundred percent clean energy. She commented on HB 2063, suggesting that the bill could have impacts beyond data centers in Eastern Oregon due to other potentially forthcoming legislation that could create the potential for cities, such as Milwaukie, to explore similar options.*

*Ms. Splitt acknowledged the legislation referred to by Chair Grail had been introduced.*

Ms. Splitt provided an update on agency priorities and concepts, the Departments four priority bills, Strategic Plan, and proposed legislation impacting the Department as a whole, broad overview of the session. More information is located on the [Council Meetings website](#) for additional details pertaining to this portion of the [presentation](#).

*During this portion of the presentation the following discussion occurred:*

*Council Member Condon asked for comments on Congressman Simmons (Idaho) bill regarding the breaching of the lower Snake River Dam.*

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<sup>11</sup> Audio for Agenda Item I = 03:43:28 – February 26, 2021

*Ms. Splitt replied that she has not yet heard related conversations in the Capital.*

*Council Member Condon stated her curiosity regarding ties to resource adequacy.*

*Mr. Splitt assured Council Member Condon that subject matter experts at the Department were tracking the issue and committed to passing information along to Council Member Condon should she receive it in the future.*

**J. Council Member Appointment (Information Item)<sup>12</sup>– Patrick Rowe, Senior Assistant Attorney General.** The Council received a presentation pertaining to the Council term limits.

Based on an evaluation of the Oregon Constitution and relevant case law, Council members can continue to serve past their appointed terms until they are replaced. More information is located on the [Council Meetings website](#) for additional details pertaining to this [presentation](#).

*Vice-Chair Howe appreciated Mr. Rowe’s thorough presentation.*

*Chair Grail appreciated Mr. Rowe’s time in educating the Council of a thorough, well documented history, confirming Council’s compliance with ORS 469.450. She went on to thank Council Member Jenkins for his continued service and endurance to repeated attacks regarding his legitimacy as a board member.*

*Council Member Jenkins thanks Mr. Rowe for his work on the presentation.*

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## **Adjournment**

Chair Grail called for final questions or comments before adjourning the meeting.

*Secretary Cornett offered his availability to Council Members for interim questions they may have regarding the status of pending legislation.*

*Council Member Jenkins appreciated the offer and requested status updates be provided to Council via email.*

*Council Member Jenkins requested Council notification upon confirmation of the next Council meeting being held in Madras, Oregon.*

*Secretary Cornett explained that while the Department anticipates issuing the Order that would necessitate holding a DPO hearing in Madras, travel will be subject to COVID restrictions in place at that time. He assured Council notice would be provided as soon as available.*

*Council Member Condon questioned whether letters of support from Council Members are ever requested in connection with pending legislation.*

*Secretary Cornett explained his reluctance in requesting more time from Council Members, but appreciated and accepted Council Member Condon’s offer.*

Chair Grail adjourned the meeting at 1:35 pm.

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<sup>12</sup> Audio for Agenda Item J = 04:27:11 – February 26, 2021