



ENERGY FACILITY SITING COUNCIL

Marcia Grail, Chair ■ Kent Howe, Vice-Chair ■ Hanley Jenkins ■ Jordan Truitt ■ Cynthia Condon ■ Perry Chocktoot ■ Phil Stenbeck

Energy Facility Siting Council Meeting Minutes November 18-19, 2021

Thursday, November 18, 2021 5:30 p.m.
WebEx Teleconference

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The meeting materials presented to Council are available online at:

<https://www.oregon.gov/energy/facilities-safety/facilities/Pages/Council-Meetings.aspx>

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Thursday, November 18, 2021
WebEx Teleconference

Call to Order: The meeting was called to order on Thursday, November 18, 2021 at 5:31 p.m. by Vice Chair Howe.

Roll Call: Vice-Chair Kent Howe, Council Members Cynthia Condon, Hanley Jenkins, Perry Chocktoot, and Phil Stenbeck were present.

Oregon Department of Energy representatives present were Assistant Director for Siting/Council Secretary, Todd Cornett; Senior Policy Advisor, Sarah Esterson; Siting Policy Analyst and EFSC Rules Coordinator, Christopher Clark; Operations and Policy Analyst, Wally Adams; and Fiscal Analyst, Sisily Fleming. Oregon Department of Justice Senior Assistant Attorney General Patrick Rowe, counsel to EFSC, was also present.

Vice Chair Howe confirmed that agenda modifications were not proposed.

¹ Audio for Agenda Item A=00:00:50 - 2021-11-18-19-EFSC-Meeting-Audio Day 1

² Audio for Agenda Item B=00:10:06 - 2021-11-18-19-EFSC-Meeting-Audio Day 1

³ Audio for Agenda Item C=00:02:34 - 2021-11-18-19-EFSC-Meeting-Audio Day 2

⁴ Audio for Agenda Item D=00:23:04 - 2021-11-18-19-EFSC-Meeting-Audio Day 2

⁵ Audio for Agenda Item E=01:35:30 - 2021-11-18-19-EFSC-Meeting-Audio Day 2

⁶ Audio for Agenda Item F=01:53:23 - 2021-11-18-19-EFSC-Meeting-Audio Day 2

⁷ Audio for Agenda Item G=01:57:02 - 2021-11-18-19-EFSC-Meeting-Audio Day 2

Secretary Cornett introduced Phil Stenbeck as the newest Council Member, replacing Council Member Mary Winters. Council Member Stenbeck's appointment was confirmed November 17, 2021.

- A. HB 2064 Rulemaking Hearing (Hearing)⁸** – Christopher Clark, ODOE Siting Policy Analyst and EFSC Rules Coordinator. The Council conducted a rulemaking hearing to solicit testimony on a proposed amendment of OAR 345-011-005 related to the implementation of HB 2064 (2021) and the Council's quorum requirements.

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

During the presentation the following discussion occurred:

Council Member Jenkins noted that the quorum requirements in the proposed rules are similar to other Boards and Commissions in Oregon.

The Hearing was opened at 5:44 p.m. and no comments were offered. Mr. Clark explained that comments would be solicited again at the conclusion of the next agenda item.

- B. Trojan ISFSI Rulemaking Hearing (Hearing)⁹** – Christopher Clark, ODOE Siting Policy Analyst & EFSC Rules Coordinator. The Council conducted a rulemaking hearing to solicit testimony on proposed updates to the rule for the Trojan Independent Spent Fuel Storage Installation (ISFSI) under OAR 345-026-0170 to 345-026-0390 and OAR 345-070.

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

The Hearing was opened at 5:57 p.m. and the following appearance was made:

- [Rich George, Legal Counsel for Portland General Electric \(PGE\)](#)
Mr. George appeared at the hearing to inform the Council that to the extent PGE had comments, it would provide them in writing by the December 10, 2021 comment deadline.

Mr. Clark confirmed that there were no additional comments and closed the Trojan ISFSI Rulemaking Hearing at 6:01.

- A. HB 2064 Rulemaking Hearing (Hearing)¹⁰** – Christopher Clark, ODOE Siting Policy Analyst and EFSC Rules Coordinator. The Council continued rulemaking hearing to solicit testimony on a proposed amendment of OAR 345-011-005 related to the implementation of HB 2064 (2021) and the Council's quorum requirements.

Absent commenters for the HB 2064 Rulemaking, Mr. Clark closed the Hearing at 6:02 p.m.

Recess

Vice Chair Howe recessed the meeting at 6:02 pm to reconvene on Friday November 19, at 8:30 a.m.

⁸ Audio for Agenda Item A=00:00:50 - 2021-11-18-19-EFSC-Meeting-Audio Day 1

⁹ Audio for Agenda Item B=00:10:06 - 2021-11-18-19-EFSC-Meeting-Audio Day 1

¹⁰Audio for Agenda Item A=00:25:45 - 2021-11-18-19-EFSC-Meeting-Audio Day 1

Friday, November 19, 2021
WebEx Teleconference

Call to Order: The meeting was called to order on Friday November 19 at 8:30 a.m. by Chair Grail.

Roll Call: Chair Marcia Grail, Vice-Chair Kent Howe, Council Members, Cynthia Condon, Hanley Jenkins, Perry Chocktoot, and Phil Stenbeck were present.

Oregon Department of Energy representatives present were Assistant Director for Siting/Council Secretary, Todd Cornett; Senior Policy Advisor, Sarah Esterson; Senior Siting Analyst, Kellen Tardaewether; Siting Policy Analyst and EFSC Rules Coordinator, Christopher Clark; Operations and Policy Analyst, Wally Adams; and Fiscal Analyst, Sisily Fleming . Oregon Department of Justice Senior Assistant Attorney General Patrick Rowe, counsel to EFSC, was also present.

C. Consent Calendar (Action Item & Information Item)¹¹ – Approval of October 22, 2021 minutes; Council Secretary Report; and other routine Council business.

Consideration of the October 22, 2021 Meeting Minutes

Council Member Jenkins proposed the October meeting Minutes be held over for consideration at the Council's December 2021 meeting, to which Council did not object.

Council Secretary Report

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

Staffing / Council Appointment Updates

- Phil Stenbeck was welcomed to the Council, replacing the position formerly held by Mary Winters.
- Recruitment is underway for the Senior Siting Analyst position to replace Katie Ratcliffe (Clifford).
- Recruitment for the Administrative Assistant position is expected to be finalized in the coming weeks.

Project Updates

- **Stateline Wind Project**
The Draft Proposed Order Hearing for the Type A Request for Amendment 6 for the Stateline Wind Project is expected to be held during the Council's December meeting. Council's rules for Type A amendment requests require that a Draft Proposed Order Hearing be held in person within proximity of the project (OAR 345-027-0367). Due to ongoing health and safety concerns, Secretary Cornett requested Council exercise their ability to waive the requirement for in-person hearing under OAR 345-015-003 and hold the hearing remotely instead.

Council Member Jenkins noted the Council's ability to waive the requirement meets all three of the criteria listed in the rule, as it will be held virtually with multiple options to provide comments while protecting public health and safety, and suggested Council take a consensus to waive the requirement.

Chair Grail concurred that a virtual hearing was the best option and the Council agreed to waive the in-person hearing requirement for the Draft Proposed Order Hearing for the Stateline Wind Project Request for Type A Amendment, and hold the Hearing virtually.

¹¹ Audio for Agenda Item C=00:02:34 - 2021-11-18-19-EFSC-Meeting-Audio Day 2

- Golden Hills Construction Update (Senior Policy Advisor, Sarah Esterson)
As previously reported, September 1, 2021 the Department received a formal complaint from several tenant farmers regarding dust, wind, erosion, and topsoil management at the construction site. Since then the Department has been working with the Site Certificate holder, Avangrid Renewables, to implement and evaluate corrective measures such as an extensive increase in the placement of erosion control materials and onsite watering. Since the complaint, three site visits have been conducted by the Department, in consultation with an erosion control specialist. Another site visit is scheduled following this Council meeting to discuss and observe reclamation activities and erosion management. Site visits will occur at least every six weeks until construction is complete to ensure corrective measures are effective in addressing the complaints.

Council Member Jenkins asked if the erosion was due to the road construction or the pad construction and Ms. Esterson informed that the erosion is due to the construction of both.

- Rulemaking Schedule 2022
Staff intend to present the draft rulemaking schedule for 2022 at the Council's December 2021 or January 2022 meeting and offered Council the opportunity to provide suggestions ahead of the meeting to the Rules Coordinator, Christopher Clark, for inclusion in the draft.

Future Meetings

- The next Council meeting is scheduled to be held virtually on the 16th and 17th of December. Chair Grail indicated that her availability is tentative; all other Council members present confirmed their availability.
- 2022 proposed meeting dates were shared with Council and responses regarding availability were requested via email.

D. Bakeoven Solar Project: Review of the Proposed Order for the Request for Amendment 1 of the Site Certificate (Action Item)¹² – Kellen Tardaewether, ODOE Senior Siting Analyst. The Council reviewed the Proposed Order on the Request for Amendment 1 (RFA1) of the Site Certificate and may either approve, modify, or reject the Proposed Order as the Final Order.

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

During the presentation the following discussion occurred:

Council Member Jenkins asked whether there would be onsite construction housing for employees.

Ms. Esterson responded that she was unaware of any temporary housing elements currently onsite but acknowledged that the applicant has requested County review to include workforce housing as an option due to the lack of housing availability near the site.

Council Member Condon asked about the responsibilities a parent company of a Site Certificate holder has for a project through development and operation.

Ms. Esterson explained that the Site Certificate is a binding agreement with the certificate holder, and therefore it is the Site Certificate holders responsibility to meet the requirements and obligations of the Site Certificate.

¹² Audio for Agenda Item D=00:23:04 - 2021-11-18-19-EFSC-Meeting-Audio Day 2

Council Member Jenkins questioned whether General Standard Review Condition 7 in the Proposed Order for the Site Certificates would trigger an amendment for all three facilities if one of the facilities were to propose changes that would not impact any of the shared resources.

Ms. Tardaewether stated that in a scenario where one of the facilities proposed changes within their site boundary that did not impact shared facilities, an amendment would not be required for the other Site Certificates.

Council Member Jenkins asked whether the condition was clear enough in only addressing shared facilities.

Secretary Cornett explained that the intent of the condition language is to only address the shared facilities, and not intended to trigger an amendment at all three facilities if shared resources are not impacted.

Council Member Jenkins agreed that the language in subpart b of Condition 7 which states "If any of the certificate holders..... propose to substantially modify a shared facility" provides the clarity needed and was satisfied with staff's proposal.

Council Member Condon, regarding the Proposed Amended Facility Decommissioning Cost Estimate, questioned the methodology of allocating all the decommissioning costs of the shared transmission line to only one of the three facilities (Bakeoven).

Ms. Tardaewether explained that under a future scenario where the Bakeoven facility is decommissioning, and the Daybreak and Sunset Solar projects remain operational, the General Standard of Review Condition 7, in addition to other conditions related to decommissioning, would require Daybreak Solar and Sunset Solar to submit Amendment Determination Requests (ADR's) to the Department for review. Through the evaluation of these ADR's, the decommissioning costs for the remaining shared resources would be allocated between Daybreak and Sunset Solar. She explained that except for a few tasks being added for the estimate allotted to each facility, the cost estimate is the same as previously approved in the original Site Certificate and stressed the significance of capturing the total decommissioning costs of the combined facilities.

Council Member Condon confirmed her understanding of the current and future allocation of costs and expressed concern for Site Certificates that do not require financial security recognizing their share of the costs associated with decommissioning the transmission line.

Secretary Cornett explained that concern for issues such as orphaned facilities or facility components were contemplated and are captured in the conditions included in the proposed Site Certificate. He conveyed confidence in the conditions to trigger the amendment process to reallocate costs and ensure that decommissioning costs for all related and supporting facilities are captured.

Council Member Jenkins motioned the that the Council adopt the Proposed Order as presented by staff as Council's Final Order and issue an amended Site Certificate for the Bakeoven Solar Project and two new Site Certificates for the Daybreak Solar Project and the Sunset Solar Project.

Vice Chair Howe seconded the motion.

Motion carried unanimously.

- E. West End Solar Energy Project: Appointment of Umatilla Board of Commissioners as the Special Advisory Group (Action Item)**¹³ – Kellen Tardaewether, ODOE Senior Siting Analyst. Requested Council to appoint the Umatilla Board of County Commissioners as the Special Advisory Group under ORS 469.480(1) for EFSC proceedings related to the proposed West End Solar Energy Project.

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

Council had no comments or questions during the presentation.

Council Member Jenkins motioned that the Council appoint the Umatilla Board of County Commissioners as the Special Advisory Group to advise the Council in the proceedings related to the review of the Application for Site Certificate for the West End Solar Project.

Vice Chair Howe seconded the motion.

Motion carried unanimously.

- F. Public Comment Period (Information Item)**¹⁴ – This time is reserved for the public to address the Council regarding any item within Council jurisdiction that is not otherwise closed for comment.

No comments were offered, and comment period was closed at 10:26 a.m.

- G. Land Use Standard Overview Part II (Information Item)**¹⁵ - Todd Cornett, ODOE Siting Division Administrator & Council Secretary, provided part II of the Land Use Standard overview.

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

During the presentation the following discussion occurred:

Council Member Condon confirmed that land use standards are determined at the preliminary application stage and questioned whether a time limit exists between a preliminary Application for Site Certificate and an Application and expressed concern of fixed determination dates being relied on years later.

Secretary Cornett responded that while theoretically possible, he has not experienced an applicant doing so to intentionally avoid local government regulations.

Council Member Jenkins stated that if an applicant chooses a local government to complete the land use review, any appeals go through a different process rather than the EFSC appeals process and could result in a confusing bifurcated process.

Secretary Cornett informed that while it could still be confusing, a local land use appeal would get folded back into the EFSC process, either during the contested case or in the Supreme Court.

¹³ Audio for Agenda Item E=01:35:30 - 2021-11-18-19-EFSC-Meeting-Audio Day 2

¹⁴ Audio for Agenda Item F=01:53:23 - 2021-11-18-19-EFSC-Meeting-Audio Day 2

¹⁵ Audio for Agenda Item G=01:57:02 - 2021-11-18-19-EFSC-Meeting-Audio Day 2

Chair Grail asked about whether the definition of “public benefit” is different at the local level versus the State level.

Secretary Cornett responded that Council fundamentally exists to evaluate both the broader public good for large energy projects as well as the impacts. He explained that Council has different requirements than a local government and has more flexibility in some circumstances. The Council is charged with both evaluating potential impacts to avoid, minimize, or mitigate them, as well as evaluating the value, purpose and need for energy projects on a broader level to find balance.

Chair Grail appreciated the explanation of Council’s role and the importance of reiterating this responsibility when in communities receiving public comments.

Council Member Chocktoot inquired as to how the definition of “public benefit” relates to facilities that primarily sell their power outside of Oregon.

Secretary Cornett responded that the Legislature removed the Council’s Need Standard in the 1990’s, therefore removing Council’s ability to evaluate where the power is sold. He committed to organizing a presentation on Need and Public Value for energy generation facilities to provide the Council and Siting staff with a broader understanding on Oregon’s generation and consumption.

Council Member Stenbeck shared his experiences related to wheeling power, and the complex nature of where and when power is produced and consumed and supported a future presentation to Council and Staff.

Adjournment

Secretary Cornett reminded Council of their opportunity to respond to the survey regarding the meeting topics.

Chair Grail adjourned the meeting at 11:41 pm.