

Agenda Item B – Attachment 4

Scrivener Errors to Proposed Contested Case Order Filed by Parties

On February 2, 2022, Council's counsel Jesse Ratcliffe, Oregon Department of Justice's Senior Attorney General notified the parties and limited parties to the Obsidian Solar Center contested case proceeding of an opportunity to submit corrections of scrivener's errors to the Hearing Officer's Proposed Contested Case Order (PCCO) by February 10, 2022.

On February 10, 2022, correction of scrivener's errors were filed by Obsidian Solar Center LLC (applicant) and the Oregon Department of Energy, both parties to the contested case proceeding; none were filed by the limited parties.

The attached documents include:

- Applicant's Request for Correction of Scrivener's Errors to PCCO
- Department's Request for Correction of Scrivener's Errors to PCCO

IN THE MATTER OF

**THE APPLICATION FOR SITE
CERTIFICATE OF THE OBSIDIAN
SOLAR CENTER**

**APPLICANT'S REQUEST FOR
CORRECTIONS OF PRESUMED
SCRIVENER'S ERRORS IN
PROPOSED CONTESTED CASE
ORDER**

Pursuant to the direction from Council on February 1, 2022, Applicant submits the following requested corrections of presumed scrivener's errors to the Proposed Contested Case Order:

1. Proposed Contested Case Order at 5: Change "Laura Hutchinson" to "Laurie Hutchinson" in list of cross-examination witnesses.

Basis: correct spelling of witness name. See Applicant's Ex. A13.

2. Proposed Contested Case Order at 5: Change "Kevin Leehman" to "Kevin Leehmann" in list of cross-examination witnesses.

Basis: correct spelling of witness name. See Applicant's Ex. A9.

3. Proposed Contested Case Order at 5: Add "Aaron DeJoia" to the list of cross-examination witnesses.

Basis: correct list of cross-examination witnesses. See Transcript, Contested Case Exam Hearing 08-31-21 Day 2 PM Final.

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4. Proposed Contested Case Order at 89: Replace “contentious community partner” with “conscientious community partner”.

Basis: consistency with the context of the full paragraph. See Proposed Contested Case Order at 89:

The potential adverse impacts to the limited parties’ interests from an improperly managed and unmitigated construction project of the size proposed by Applicant cannot be gainsaid. Nonetheless, Applicant does not request and the Department does not propose Council grant a site certificate for unmanaged construction activities with sufficient mitigation. Instead, the record supports that both Applicant and the Department considered the limited parties’ concerns throughout this process and have continued to refine draft mitigation proposals designed to minimize or even eliminate the potential impacts from dust and sediment erosion, invasive and noxious weeds, and construction traffic on nearby agricultural lands. In addition, the evidence revealed Applicant has a complex set of BMPs woven into the draft mitigation plans that are designed to work in concert, allowing Applicant to adjust its approach to each concern and minimize potential adverse impacts in real-time. Moreover, the overwhelming weight of the evidence demonstrates that Applicant has constructed multiple solar projects in the area and, in each instance, has proven itself a **contentious community partner** ready, willing, and able to meet its obligations under the applicable site certificates.

DATED: February 10, 2022.

DAVIS WRIGHT TREMAINE LLP

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To: Energy Facility Siting Council
From: Todd Cornett, Assistant Director for Siting, Oregon Department of Energy
Date: February 10, 2022
Subject: Agenda Item B, Obsidian Solar Center - Requested Scrivener Error Changes to the Hearing Officer’s Proposed Contested Case Order

The Oregon Department of Energy (Department) reviewed the Hearing Officer’s Proposed Contested Case Order (PCCO) issued on December 29, 2021 for the Contested Case Proceeding on the Proposed Order of the Application for Site Certificate for the Obsidian Solar Center. While the Department did not identify any substantive changes that warranted filing exceptions, there were several non-substantive scrivener errors that were identified and the Department requests Council correct these in their adoption of the Final Order. These identified scrivener errors are presented in Table 1 below.

Table 1: ODOE List of Scrivener Errors for the PCCO

PCCO Reference	PCCO Language	Scrivener Error Description	Requested Correction, in Track Change
Page 2, Footnote #2	<i>Kellen Tardaewether, Todd Cornett, and Sara Esterson...</i>	Ms. Esterson’s first name is misspelled.	<i>Kellen Tardaewether, Todd Cornett, and Sarah Esterson...</i>
Page 19, Fact #36	<i>The LCPC determined Applicant properly inventoried accepted farming practices in the area surrounding the proposed facility site and identified potential impacts to those practices. The LCPC also determined that the ASC, as conditioned in the Department’s Proposed Order, adequately addresses potential impacts through proposed minimization and mitigation techniques. (Ex. A15 at 8.)</i>	The acronym LCPC refers to the Lake County Planning Commission. According to the Exhibit A15 at pages 3 & 4, Darwin Johnson, the County Planning Director, has been designated by the Lake County Board of Commissioners (LCBC) as the Contact person on their behalf in the EFSC process. There is no reference in Exhibit A15 to any meeting by the Planning Commission where they made the determination about the applicant having	<i>The LCPC LCBC determined Applicant properly inventoried accepted farming practices in the area surrounding the proposed facility site and identified potential impacts to those practices. The LCPC LCBC also determined that the ASC, as conditioned in the Department’s Proposed Order, adequately addresses potential impacts through proposed minimization and mitigation techniques. (Ex. A15 at 8.)</i>

Table 1: ODOE List of Scrivener Errors for the PCCO

PCCO Reference	PCCO Language	Scrivener Error Description	Requested Correction, in Track Change
		properly inventoried accepted farming practices. Therefore, the determination was made by Darwin Johnson on behalf of the Board of Commissioners.	
Page 86, second paragraph, first sentence	<i>According to the Director of the LCPC</i>	Darwin is the Director of the Planning Department (LCPD) and not the Lake County Planning Commission (LCPC).	<i>According to the Director of the LCPC<u>LCPD</u></i>
Page 89, second full paragraph, second sentence	<i>Nonetheless, Applicant does not request and the Department does not propose Council grant a site certificate for unmanaged construction activities with (emphasis added) sufficient mitigation.</i>	Based on the context of the sentence It appears the word “with” was intended to be “without.”	<i>Nonetheless, Applicant does not request and the Department does not propose Council grant a site certificate for unmanaged construction activities <u>with</u>out sufficient mitigation.</i>
Page 89, second full paragraph, last sentence	<i>Moreover, the overwhelming weight of the evidence demonstrates that Applicant has constructed multiple solar projects in the area and, in each instance, has proven itself a contentious (emphasis added) community partner ready, willing, and able to meet its obligations under the applicable site certificates.</i>	<ol style="list-style-type: none"> 1) Based on the context of the sentence It appears the word “contentious” was intended to be “conscientious.” 2) The sentence also, refers to other site certificates they have in the area. While the applicant has other local jurisdictional projects, this is their first EFSC jurisdictional project request. 	<i>Moreover, the overwhelming weight of the evidence demonstrates that Applicant has constructed multiple solar projects in the area and, in each instance, has proven itself a contentious <u>conscientious</u> community partner ready, willing, and able to meet its obligations under the applicable site-certificates <u>those approvals</u>.</i>
Page 97, third paragraph, second sentence	<i>Moreover, a preponderance of the evidence establishes Applicant’s ability and commitment to operating within the parameters of site certificates issued by Council, making it unlikely that the limited parties’ concerns will come to fruition, particularly as speculated.</i>	This sentence again other site certificates issued by Council to the applicant. While the applicant has other local jurisdictional projects, this is their first EFSC jurisdictional project request.	<i>Moreover, a preponderance of the evidence establishes Applicant’s ability and commitment to operating within the parameters of site certificates issued by Council <u>other approvals</u>, making it unlikely that the limited parties’ concerns will come to fruition, particularly as speculated.</i>