

Energy Facility Siting Council Meeting Minutes April 22, 2022, 8:30 a.m.

- A. Consent Calendar (Action Item & Information Item)¹
- B. Public Comments Portal Update (Information Item)²
- C. Protected Areas, Scenic Resources, and Recreation Standards Rulemaking (Action Item)³
- D. Public Comments Period⁴
- E. 2022 Carbon Dioxide Emissions Standards Rulemaking (Action Item)⁵
- F. Letter of Credit and Bond Claims Process and Bond Template Review (Action Item)⁶
- G. Industry Renewable Project Timelines (Information Item)⁷
- H. West End Solar Energy Project Hearing Officer Appointment (Action Item)⁸

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 on Friday April 22, 2022, at 8:30 by Chair Grail.

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

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

Agenda Modifications were not requested.

¹ Audio/Video for Agenda Item A=03:07-2022-04-22-EFSC-Meeting-Audio

² Audio/Video for Agenda Item B=00:29:28- 2022-04-22-EFSC-Meeting-Audio

³ Audio/Video for Agenda Item C=00:52:17-2022-04-22-EFSC-Meeting-Audio

⁴ Audio/Video for Agenda Item D=02:23:00-2022-04-22-EFSC-Meeting-Audio

⁵ Audio/Video for Agenda Item E=02:50:10-2022-04-22-EFSC-Meeting-Audio

⁶ Audio/Video for Agenda Item F = 04:18:46- 2022-04-22-EFSC-Meeting -Audio

⁷ Audio/Video for Agenda Item G= 04:32:11-2022-04-22-EFSC Meeting-Audio

⁸ Audio/Video for Agenda Item H=05:43:04-2022-04-22-EFSC- Meeting Audio

A. Consent Calendar (Action Item & Information Item)¹ – Approval of February 25, 2022 meeting minutes; Council Secretary Report; and other routine Council business.

Consideration of the February 25, 2022 Meeting Minutes

Council Member Jenkins motioned that the Council adopt the February 25, 2022, meeting minutes

Vice Chair Howe seconded the motion.

Motion carried unanimously.

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

Staff Updates

- Christopher Clark is the new Senior Siting Analyst. Mr. Clark has done an excellent job as EFSC Rules Coordinator, completing many projects. Mr. Clark is the appointed rulemaking coordinator and will continue as such while as Council and ODOE seek a replacement. Chris will continue to work on rulemaking project and be the Council appointed rules coordinator until a replacement is found.
- The Department is currently recruiting for a limited duration compliance officer position. Department had the ability to recruit for the position during the last 2 biennia but did not have the foreseeable work necessary to fill this position. As there are currently many projects in construction, the department has forecasted the need for an additional compliance officer position for at least the next 2 years.

Project Updates

- Port Westward Renewable Diesel Project

On April 22, 2022, a draft of a proposed order for public comments was issued and provided to Council. The applicant, Next Renewable Fuel, is seeking an exemption from the requirement of having to obtain an EFSC site certificate. The authority for this is allowed under Oregon statute 469.320 Revised Statute 469.320 and Oregon Administrative Rule 345-015-0350. Projects must meet 5 specific criteria to qualify for an exemption:

1. The source of the materials for conversion to Liquid Fuel
2. Received local land use approval
3. Project does not require a transmission line or pipeline
4. 90% of the fuel produced will be used with 1 mile of the site or transported from the site by rail or barge
5. A specific emission requirement has been met.

The Department issued a draft of the Proposed Order and concurrently opened a 21-day written comment period on April 20, 2022. The deadline for comments is May 11, 2022. Comments and

¹ Audio/Video for Agenda Item A=03:07-2022-04-22-EFSC-Meeting-Audio

updates to the Proposed Order will be included in the Council Packet on May 13, 2022. An overview of the project will be presented at the May 27, 2022 EFSC Council meeting. Wally Adams is the lead for this review.

- Nolin Hills Wind Power Station

The Draft Proposed Order (DPO) was issued on April 21, 2022. The DPO public hearing will occur at the next Council meeting on May 26, 2022 at the Red Lion Hotel in Pendleton. DPO was sent to Council and the application materials are available on EFSC website.

- Stateline Wind Project

Department received a Request for Amendment 7 as well as a request for Type B review. Council recently approved Amendment 6 to repower the Vansycle 2 unit and battery storage. The certificate holder, NextEra Energy Resources, has determined that changes are required related to the minimum above ground blade tip clearance and the hub height associated with the wind turbines that were approved for Amendment 6. Staff is beginning to evaluate the requests.

Information Updates

- On March 31, 2022, Oregon Public Utilities Commission (PUC) issued a notice of proposed rulemaking changes to rules regarding Certificates of Public Convenience and Necessity (CPCN) included in the Oregon Administrative Rule Chapter 860 Division 024. CPCN refers to an additional approval needed for the construction of an overhead transmission line that requires condemnation of land. If there are unwilling landowners in the easement process for a transmission line, the CPCN serves as evidence in a condemnation proceeding representing the transmission line is for public use and necessary to public convenience. Regarding the Council's role, the proposed rule change provides that the PUC will accept a CPCN petition while the Council is reviewing applications but will not take final action until site certificate is issued. The PUC will hold a special meeting on April 26, 2022, also a public hearing later in the day. There will be a second public hearing held on May 24, 2022. June 7, 2022 is the last day for comments on the rule change. More information could be provided at next meeting.

Council Member Condon clarified while the PUC process doesn't impact Council process, Council process impacts PUC process.

Secretary Cornett specified that is correct. Council has a need standard for transmission lines and pipelines with 2 Standards that must be met, the least cost plan rule and the system reliability rule. The least cost plan rule allows Council to rely upon the determination of PUC that a project is needed. So, there is some integration between the agencies.

Council Member Jenkins inquired if Council was being asked to evaluate the compliance with the statewide planning goals. Secretary Cornett responded no.

Council Members Condon and Jenkins expressed an interest in having an agenda item during the May Council meeting related to this rulemaking.

Future Meetings

- The next Council meeting will be a 2-day meeting, May 26-27, 2022. It will be a hybrid meeting in person (Red Lion Hotel in Pendleton) and via Webex virtually. Staff will be presenting the Nolin Hill DPO Public Hearing on Thursday May 26 at 5:30 P.M. The regular Council Meeting will begin at 8:30 A.M. on Friday May 27, 2022. Carpool is available, with a possible site visit along the way if any Council member is interested.

Council Members Condon and Jenkins expressed their interest in a site visit.

Secretary Cornett concluded that staff would contact site certificate holders to arrange site visits.

- B. Public Comments Portal Update (Information Item)²** – Wally Adams, ODOE Operations and Policy Analyst presented and showed a demo of the new web portal for submitting and viewing public comments on projects under the Council’s jurisdiction. The Public Comments Portal can be found [Here](#).

Secretary Cornett noted going forward, any time a notice is issued, a direct link to the specific projects’ comment portal will be provided.

Council Member Condon inquired whether a supporting document could be added to the comment portal along with comments.

Mr. Adams confirmed that is possible. Confirming with IT representative Jeremy Peterson, the upload capacity is 64 megabytes, which could accommodate a large document.

Secretary Cornett added the portal was designed as a forum for comments while being specific about Council Standards and information. The public may upload a document as their only comment if desired. There is no obligation or requirement to use the dropdown menus and elements, but they are available if needed.

Council Member Condon stated if the public includes a research report, does it become an additional educational piece of valuable information.

Secretary Cornett recognized the great effort put into creating this portal while noting staff expects to receive and welcomes comments regarding changes or alterations to make this better for the public. EFSC is listening and trying to make this a useful tool.

- C. Protected Areas, Scenic Resources, and Recreation Standards Rulemaking (Action Item)³** – Christopher M. Clark, ODOE Senior Siting Analyst and EFSC Rules Coordinator requested Council’s authorization to issue a Notice of Proposed Rulemaking and initiate formal proceedings to adopt proposed amendments to the Protected Areas, Scenic Resources, and Recreation Standards and associated rules.

² Audio/Video for Agenda Item B=00:29:28- 2022-04-22-EFSC-Meeting-Audio

³ Audio/Video for Agenda Item C=00:52:17-2022-04-22-EFSC-Meeting-Audio

Council Member Condon inquired for clarification regarding the Protected Areas Designations. With the amount of time involved for a site certificate issuance and possible amendments, there is a significant amount of time that a new Protected Area could be designated during the process.

Mr. Clark explained the initial completed application would include an evaluation of any protected area designated at that time. Council would make their decision based on the impacts on protected areas at that time. If the certificate holder requests to amend the certificate, Council would be required to make evaluations while including information on any new protected area designations at the time of the amendment request.

Council Member Jenkins, Vice Chair Howe, and Council Member Chocktoot confirmed their support for the staff recommendation of Protected Area Designations.

Council Member Chocktoot expressed concern there are no Native American cultural or religious sites included on the Protected Area Designations.

Mr. Clark explained that unless an historical, cultural, or religious site is designated as protected area such as a National Historical Site, it would not be evaluated under the Protected Area standard. Sites could still be protected potentially under the Historic, Cultural and Archaeological Resources Standards. There are no tribal properties included in Proposed Rulemaking as Council does not have jurisdiction over any tribal lands. As such, there is no impact evaluation of such lands. Historically tribal lands have not been included. Department is sending the proposed rulemaking to the Tribal Councils of all 9 Federally Recognized Tribes in Oregon requesting specific comments on whether resources should be included in proposed rulemaking.

Council Member Chocktoot noted before Oregon became a state it was all tribal land, thus there are tribal religious areas all over the state dating back thousands of years. When sites are discovered by archaeologists or an Indian tribe, such as in the form of a rock feature, they are automatically eligible for the Federal Register of Historic Places. He suggested adding an item S - Areas Protected by the Advisory Council on Historic Places (ACHP) to the Protected Areas Designations.

Council Member Condon expressed her support for Council review of Native Americans Religious and Cultural sites being included in Protected Area Designations.

Secretary Cornett clarified Council's options for the possibility of adding Native American Religious and Cultural sites to the list of Protected Areas.

Council Member Jenkins suggested Council put a placeholder for further discussion of a possible item S for a future meeting. This will allow for Staff to evaluate whether Tribal Historical Lands are adequately covered by the Historical and Cultural Resources Standards and until feedback and recommendations are received from Tribal Councils.

Vice Chair Howe, Council Members Condon, Jenkins and Chocktoot supported the placeholder for a future meeting.

Mr. Clark noted that making changes after issuing the NOPR can be complicated and recommended that if Council looking to expand the Protected Areas standard, may be appropriate to obtain input while still in informal stage.

Council Member Jenkins asked about whether expanding the list of Protected Areas was within scope of their intended revisions to these rules.

Mr. Clark enlisted advice from DOJ Patrick Rowe regarding Council's ability to add tribal Religious and Cultural Sites to the Protected Areas list. After reviewing and further discussion among Council members, Mr. Rowe recommended assessing whether adding Religious and Cultural Sites to the Protected Areas list would address areas not covered in the Council's Historical and Cultural Resources Standard and recommended obtaining stakeholder input about potentially expanding this rulemaking to address such areas.

Council Members chose to wait for information from the 9 Tribal Councils and from further staff research regarding any gaps in the resources covered by the Historical, Cultural and Archaeological Resources Standards prior to making decisions regarding the Protected Area Designations.

Council Member Condon inquired whether there are county designations for protected areas.

Mr. Clark responded local governments do not typically include protected areas unless the local government went through the state process of registering area as a State Natural Area. Local parks, recreation areas and scenic resources are addressed through the Scenic Resources and Recreation Standards.

Council Member Condon asked if any issues were received with respect to the public raising the issue of a protected area within a local government not being protected. Mr. Clark and Secretary Cornett confirmed they were not aware of local issues received under the Protected Areas Designations Standards.

D. Public Comments Period⁴ – This time was 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.

- **Mr. Daniel Serres**
Mr. Serres expressed his concerns regarding the Carbon Dioxide Standards Rulemaking. As the standards and legislation language is very clear- no emissions admitted for thermal generation. There is no wiggle room in the definition of a non-emitting resource. There is potential concern regarding the proposed order for the Next Renewable Energy exemption to renewable diesel facility in Port Westward, and the consistency between different state agencies in terms of assessing the greenhouse gas impact of the project.
- **Mr. Jim Kreider**
Mr. Kreider appreciated the deliberation of the Protected Areas Rulemaking. He noted an application for a site certificate is a long process as is the application process for a Protected Area. An application for a protected area could feasibly be in the process of being completed when a site

⁴ Audio/Video for Agenda Item D=02:23:00-2022-04-22-EFSC-Meeting-Audio

certificate is issued. There is a need for parity between the site certificate application and the application for the protected areas to be considered equally within the bureaucratic timeframe.

- Mr. Max Yoklic

Mr. Yoklic is in-house council for New Sun Energy and acknowledged support for the department's effort to assist renewable energy development to reach the State's clean energy targets under HB 2021. He noted appreciation for the discussion of the public comments for the Protected Area Rulemaking, including those submitted by industry stakeholders and the changes made to the proposed rulemaking providing additional clarification of the objectives. He noted additional changes that could be adopted to further clarify the rulemaking standards, expressing concern regarding the changing in the definition from Bureau of Land Management Plans to the Federal Land Management Plans as it is unclear which Federal Lands Management Plans would be implicated. He recommended removing the words Federal Land Management Plan and reverting it to Land Management Plan adopted by the Bureau of Land Management of the U.S. Forest Service.

- E. 2022 Carbon Dioxide Emissions Standards Rulemaking (Action Item)⁵** – Christopher M. Clark, ODOE Senior Siting and EFSC Rules Coordinator, requested Council's authorization to issue a Notice of Proposed Rulemaking and initiate formal rulemaking proceedings to implement the new standards for fossil-fueled power plants established by HB 2021 (2021 Session) and update the Council's existing carbon dioxide emissions standards and associated rules.

During Mr. Clark's presentation the following conversation occurred:

- **Issue 1 : Standard for New Fossil-Fueled Power Plants**

Council Member Condon questioned the difference between fossil fuels and renewable fuels.

Mr. Clark clarified fossil fuels are hydrocarbons that were once in the atmosphere and are currently sequestered underground. When they are pumped out of the ground and burned, it puts carbons back into the atmosphere. Renewable fuels are recycling carbons that are in the atmosphere currently.

- **Issue 2: Standard for Changes to Existing Fossil Fueled Power Plants**

Council Member Condon inquired if the incremental change in emissions of not more than 10% as noted in OAR 345-027-0353(1) interprets /clarifies what "significant" emissions means in the proposed language.

Mr. Clark responded emissions are a function of how much fuel is burned and the efficiency of the burn. Most site certificates have an allowance for incremental increases that result from operational or design changes. Council has previously determined that if a change would not increase the electrical generating capacity, the electrical generators or increase fuel consumption by more than 10%, no amendment is required, though additional offset funds would be required to offset additional emissions. The proposed rule says if sites make changes

⁵ Audio/Video for Agenda Item E=02:50:10-2022-04-22-EFSC-Meeting-Audio

that are not an incremental change allowed by the site certificate or, within the limits for OAR 345-027-0353(1) the changes would be considered "significant".

Council Member Jenkins added that this is a matter of whether a site certificate holder is required to pursue an amendment.

Mr. Clark agreed. The rule would state if a site certificate holder was required to get an amendment and said amendment involves an increase in emissions of carbons, the site certificate holder would need to remedy the increased emissions level above original approval. If the emissions increase was the result of a change that would not require an amendment to the site, it is not considered a significant increase.

Vice Chair Howe surmised if there are improvements on site that can be made through the generation which don't affect the number of generators, fuel type, increase in fuel consumption by more than 10% or enlarge the facility, sites can increase their generating capacity.

Mr. Clark confirmed, adding sites can also make changes to the facility that reduce the emissions. Questions regarding the changes to extend the operating life of a facility would need to be handled on a case-by-case basis by Council. The proposed rules are accommodating what changes can be made currently without getting a site certificate amendment. If an amendment is needed, sites can't increase the emissions at all.

Issue 3: Updates to the Co2 Emissions Standards

Council Member Jenkins expressed concern using the manufacturers data rather than Facility Specific Data. Manufacturers represent best case scenario on equipment versus numbers that are based on existing site conditions.

Chair Grail, Vice Chair Howe, Council Members Condon and Chocktoot were all in agreement with Council Member Jenkins.

Council Member Condon questioned whether there is similar equipment currently installed in Japan, with field test information.

Mr. Clark stated Japan uses a similar class of turbines, a 9H turbine with a slightly different configuration. GE provided test data for the certification process.

Vice Chair Howe requested whether the language "Standard to be based on commercially demonstrated operating facilities in the United States" prohibits Council from using the test information from Japan in their decisions.

Mr. Clark confirmed the criteria for the Standard, noting the facilities must be an operating facility not a testing facility for Council's reference. The statute does not specify how Council determines the emissions rate of said operating facilities in the same way statute determine the emissions rate of an actual facility proposed in Oregon.

- **Issue 4: Updates to Monetary Offset Rate**

Council Member Condon while noting her position as a representative on the Climate Trust, updated the last review of offset prices paid per ton was \$13.00. Offsets are getting harder to find and are expected to possibly reach \$20.00. Council Member Condon further commented that it is very clear that an increase in the monetary offset is needed because it currently is not adequate at the present rate.

Council Member Jenkins agreed adding monetary offsets are behind.

Mr. Clark responded Council is bound to the Statutory Limitations. Council can review and increase the offset by 50% every 2 years. In 10 years, offsets could be up to the current prices. Mr. Clark confirmed it is less currently than what is needed.

Vice Chair Howe motioned Council authorize staff to issue a Notice of Proposed Rulemaking and initiate formal proceeding to adopt rules implementing new statutory standards for fossil fuel power plants and updating the Councils existing carbon dioxide emission standards and associated rules as provided in attachment 2 of the staff report.

Council Member Jenkins seconded the motion.

Motion carried unanimously.

F. Letter of Credit and Bond Claims Process and Bond Template Review (Action Item)⁶ – Sisily Fleming, ODOE Fiscal Analyst provided Council with an overview of the processes for drawing on a Letter of Credit and claiming a Bond, and present proposed changes to the Bond Template for Council review.

Council Member Condon commented letters of credit are preferrable to surety bonds though both are allowed. As Council reviews this issue further, the risk associated with surety bonds may warrant more discussion.

Secretary Cornett indicated Council could include bonds and letters of credit on the Rulemaking Schedule for next year to ensure Council can have discussion during the Council's Annual Rulemaking Prioritization.

Council Member Jenkins anticipated Council could receive negative feedback if discussing the idea of eliminating bonds as a financial instrument.

Council Member Condon expressed concern that the surety bond represents more risk to the state as there is an opportunity for the bond to be denied. If bonds required a certified statement from the department stating the certificate holder did not comply with retirement requirements, the state would have less risk. Currently, the opportunity for the Surety to investigate and deny while a site is needing to be properly retired is a risk for the state.

Vice Chair Howe motioned the Council approve the proposed changes to the Bond Template for Site Certificate Holders use in obtaining financial assurances as presented by staff.

⁶ Audio/Video for Agenda Item F = 04:18:46- 2022-04-22-EFSC-Meeting -Audio

Council Member Condon seconded the motion.

The motion was carried unanimously.

G. Industry Renewable Project Timelines (Information Item)⁷ – Max Greene, Deputy Director, and Diane Brandt, Oregon Policy Manager with Renewable Northwest provided Council an overview of the steps, requirements and timelines associated with renewable energy projects outside of the EFSC process and how those align with the steps in the EFSC process.

Secretary Cornett presented a brief overview of the renewable energy projects timelines and market patterns in the state to provide Council context of EFSC projects prior to the presentation by Mr. Greene and Ms. Brandt.

Secretary Cornett inquired where in the application for site certificate process would the interconnection agreement be initiated.

Ms. Brandt responded with the uncertainty and cost implications, most likely after site certificate is issued.

Council Member Condon inquired whether Renewable Northwest has any communication with the public when RNW is looking for property to secure, noting EFSC Council receives public comments regarding development of new facilities.

Mr. Greene reported currently only through public engagements and talking with reporters. RNW recently hired a stakeholder outreach manager whose role is to connect with the effected stakeholders throughout the region before issues become contested cases. Ms. Brandt has been working on a consensus building exercise called the Oregon Smart Collaboration. RNW is trying to put more resources into stakeholder engagement.

Council Member Chooktoot expressed his opinion regarding Oregon needing to explore energy generation on the ocean. The multiple solar projects in Lane and Klamath counties can be seen from space. Wind energy is disruptive to animals and anything that flies. Little energy produced by those projects is utilized in Oregon, most of it travels to California. There is a need to explore other possibilities.

Council Member Condon commented, referring to her earlier question, without public outreach the property owners are without much information as to the timeline of projects and the competitive market before signing documents. There is limited space to do these projects and it has become increasingly competitive.

Mr. Greene noted while it is not something RNW has historically done, RNW recognizes the fundamental need for communication with communities to help the public understand how the process works as there are many new projects being developed.

⁷ Audio/Video for Agenda Item G= 04:32:11-2022-04-22-EFSC Meeting-Audio

Council Member Condon inquired how RNW members view EFSC's tight timeline and process fitting within RNW comprehensive timeline presented.

Ms. Brandt responded increasingly tight is an observation heard from members. Things are taking longer after certificate issuance. There are challenges such as material procurement, and labor and staffing that must be overcome in the 3 years before for start of construction.

Secretary Cornett clarified (in response to Council Member Chocktoot's comments) offshore projects are not EFSC jurisdictional. Currently there are ongoing evaluations between Oregon, California, and the federal government for significant offshore wind projects in the future. Beyond 3 miles offshore would be federal jurisdiction, within 3 miles would be state jurisdiction but with the Department of State Lands, not EFSC, being the regulatory authority. If there is a transmission line to carry energy to the power grid, that would most likely be EFSC jurisdiction. In the state's forecast to be as close to 100% renewable energy as possible, both onshore and offshore energy projects will likely be needed.

Patrick Rowe added Oregon State University will have a wave energy test facility 7 miles off the coast of Newport next year.

H. West End Solar Energy Project Hearing Officer Appointment (Action Item)⁸ – Chase McVeigh Walker, ODOE Senior Siting Analyst. Council considered appointment of Allison Greene Webster, Oregon Office of Administrative Hearings Senior Administrative Law Judge, in accordance with ORS 469.470, as the Hearing Officer for proceedings on the Application for Site Certificate for the West End Solar.

There were no questions or comments during this presentation.

Vice Chair Howe motioned for Council to appoint administrative Law Judge Allison Greene from the Office of Administrative Hearings as the Hearing Officer for West End Solar Facility Project Application as recommended by staff.

Council Member Jenkins seconded the motion.

Motion carried unanimously.

Additional Information

Secretary Cornett informed Council that there is a bond letter of credit rulemaking project on the list for a future EFSC meeting. Mr. Clark has made note of the questions received regarding allowing letters of credit and surety bonds. Staff will include items discussed in this meeting.

Council Member Condon stated there needs to be a review of the estimated cost for returning the site to a usable condition after closure.

Secretary Cornett mentioned current practice has been once a financial instrument has been submitted prior to the beginning of construction, Department only requires the instrument gets updated annually

⁸ Audio/Video for Agenda Item H=05:43:04-2022-04-22-EFSC- Meeting Audio

for inflation. Council may want to review the base costs on a frequent basis as a condition of approval.

Adjournment

Chair Grail adjourned the meeting at 2:55 p.m.