



# ENERGY FACILITY SITING COUNCIL

Marcy Grail~ Kent Howe~ Cynthia Condon~ Ann Beier~ Jordan Truitt~ Perry Chocktoot~  
Richard Devlin

**Energy Facility Siting Council  
Meeting Minutes  
January 19-20, 2023**

**Hotel Condon  
Conference Room  
202 S Main St.  
Condon, OR 97823**

- A. Consent Calendar (Action Item & Information Item)<sup>1</sup>
- B. Oregon Trail Solar Facility, Public Hearing on Draft Proposed Order on Request for Amendment 1 (Hearing)<sup>2</sup>
- C. Nolin Hills Contested Case Hearing Officer Replacement (Action Item)<sup>3</sup>
- D. Council Appointment to The Climate Trust's Oregon Offset Committee (Action Item)<sup>4</sup>
- E. Public Comment (Information Item)<sup>5</sup>
- F. Annual Financial Assurance Update (Action Item)<sup>6</sup>
- G. Alto Columbia, LLCs Request to Amend Port of Morrow Agreement to reflect Certificate Holder Name Change (Action Item)<sup>7</sup>
- H. Oregon Trail Solar Facility - Council Review of Draft Proposed Order on Request for Amendment 1 (Information Item)<sup>8</sup>

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 January 19, 2023 at 5:33 P.M. by Vice Chair Howe.

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<sup>1</sup> Audio/Video for Agenda Item A=02:26-2023-01-19-EFSC-Meeting-Audio

<sup>2</sup> Audio/Video for Agenda Item B=24:46-2023-01-19-EFSC-Meeting-Audio

<sup>3</sup> Audio/Video for Agenda Item C=06:17-2023-01-20-EFSC-Meeting-Audio

<sup>4</sup> Audio/Video for Agenda Item D=15:13-2023-01-20-EFSC-Meeting-Audio

<sup>5</sup> Audio/Video for Agenda Item E=22:36-2023-01-20-EFSC-Meeting- Audio

<sup>6</sup> Audio/Video for Agenda Item F=27:20-2023-01-20-EFSC-Meeting-Audio

<sup>7</sup> Audio/Video for Agenda Item G=38:36-2023-01-20-EFSC-Meeting-Audio

<sup>8</sup> Audio/Video for Agenda Item H=50:13-2023-01-20-EFSC-Meeting-Audio

**Roll Call:** Vice-Chair Kent Howe, Council Members Richard Devlin, Cynthia Condon, Ann Beier were present in person. Council Members Jordan Truitt and Perry Chocktoot were present virtually.

Oregon Department of Energy representatives present in person were Assistant Director for Siting/Council Secretary, Todd Cornett; Senior Policy Advisor, Sarah Esterson; Senior Siting Analyst, Kathleen Sloan; and Administrative Assistant, Nancy Hatch. Siting Fiscal Analyst, Sisily Fleming and Oregon Department of Justice Senior Assistant Attorney General Patrick Rowe, Counsel to EFSC were present virtually.

**A. Consent Calendar (Action Item & Information Item)<sup>9</sup>** – Approval of the December 16, 2022 meeting minutes; Council Secretary Report; and other routine Council business.

Approval of December 2022 meeting minutes:

Council Member Condon motioned to approve the December 16, 2022, meeting minutes with the scrivener error corrections.

Council Member Beier seconded the motion.

The motion was carried unanimously.

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

### **Council Updates**

Council Member Devlin is attending his first EFSC meeting. Secretary Cornett welcomed Mr. Devlin and thanked him for his continued public service.

### **Project Updates**

- Boardman to Hemingway Project - There are three appeals to the Oregon Supreme Court regarding the B2H project. On January 18, 2023, the Supreme Court heard oral arguments from the parties who are represented by attorneys. Pro se parties (not represented by an attorney) are not allowed to present oral arguments but must rely upon their written units. The Supreme Court has set a schedule to review and complete their decision within the six-month statutory timeframe. This is a good reminder of the complexity of the contested case process.

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<sup>9</sup> Audio/Video for Agenda Item A=02:26-2023-01-19-EFSC-Meeting-Audio

- Cascade Renewable Transmission Line - In December, the Department received the Notice of Intent for this project. Upon review of the NOI, Staff notified the applicant that the NOI was missing required information. While normally a public notice is posted and public information meeting scheduled after an NOI is submitted, the Department will wait to begin this process until the NOI is complete. This will allow the public to have all required information available for evaluation and comments during the public process.

*Vice Chair Howe asked what is the length of the buried cable for this project?*

*Secretary Cornett answered it is approximately 100 miles.*

### **Compliance Updates**

- Stateline Wind Project/Vansycle II- During a recent construction inspection, there was evidence of excessive runoff issues as the result of rainstorms. The runoff and the impacts of it appeared to be in violation of several conditions of approval. On January 19, 2023, the certificate holder was notified that they must submit a written report within 30 days in accordance with the required rules associated with the site certificate, demonstrating that all of the areas where the erosion has broken through the silt fences and traversed through the agricultural fields have been adequately addressed and repaired. There were significant runs of water and Staff is unsure if it went into the waters of the State. As such, this information was also provided to DEQ for review. Staff will work with the certificate holder to ensure that their proposal for corrective actions are consistent with agricultural practices as well as potentially Waters of the State if waters were impacted.
- Klondike Wind III - On January 6, 2023, there was a 120-gallon non-PCB mineral oil spill from a transformer failure. This incident was reported within the 72-hour reporting time period. The spill is in process of being cleaned up. There were no fires or injuries associated with the incident.
- Reed Research Reactor- On January 12, 2023, it was reported that the negative pressure fan failed which required a shutdown of the facility. A notification was provided to the Department as well as to the Nuclear Regulatory Commission. They are in the process of fixing the fan and then will restart the facility.

## Legislative Updates

Secretary Cornett presented slides and summaries regarding new legislative bills which are being evaluated by the Department that may or may not become relevant to the Siting division.

## Future Council Meeting Dates

- **February 23-24,2023 – This is tentatively scheduled.**
- **March 23-24,2023**

**B. Oregon Trail Solar Facility, Public Hearing on Draft Proposed Order on Request for Amendment 1 (Hearing)<sup>10</sup>** – A request to extend the beginning and completion construction dates by three years each and amend a cultural-resource construction monitoring condition for an approved, but not yet constructed energy facility. It may include any combination of wind and solar energy generation components not to exceed 41 megawatts (MW), including up to 16 wind turbines within an approximately 12,638 acre micrositing area or up to 400 acres of solar photovoltaic components within an approximately 1,228 micrositing area. Facility components would be located within an approved 13,866 acre site boundary. The certificate holder is Oregon Trail Solar, LLC, a wholly owned subsidiary of Avangrid Renewables, LLC, the U.S. division of parent company Iberdrola, S.A.

1. Proposed Facility Overview: Kathleen Sloan, Senior Siting Analyst, provided an overview of the siting process, proposed facility components and location.

During the presentation the following discussion occurred:

*Secretary Cornett clarified the contested case phase of the Amendment process is not a mandatory stage unless comments or requests for a contested case are received. Council would then evaluate whether a contested case is needed.*

*Ms. Sloan added only the persons who raise a relevant issue either in person at the public hearing or by submitting a comment prior to the deadline may participate in a contested case.*

2. Public Hearing Overview: Vice Chair Howe, acting as the Presiding Officer explained the legal requirements for providing comments on the record and facilitated the hearing.
3. Public Hearing: Interested individuals had an opportunity to provide oral testimony on Request for Amendment 1 and Draft Proposed Order. The Department accepted written comments through the close of the public hearing.

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<sup>10</sup> Audio/Video for Agenda Item B=24:46-2023-01-19-EFSC-Meeting-Audio

**The Hearing was called to order at 5:55 P.M.**

**Matt Hutchinson** representing Avangrid Renewables thanked Staff for the review of the application and preparation of the order. He noted Avangrid's support of Staff's recommendation. Avangrid submitted written comments with suggestions to improve the DPO (which were provided to Council). He also noted that Avangrid met with the Gilliam County Judge and Counselors to address their comment letter and reached an agreement on the communication type and duration.

*Council Member Beier thanked Avangrid and Gilliam County for their hard work to address the issue of economic development. She acknowledged Avangrid's comment letter addressing the issue of the five-year review of wildfire risk requirement. While the wildfire mitigation administrative rules are new and the five-year review requirement does seem to go beyond the administrative rules, EFSC understands that current wildfire issues raise the level of public health and safety. She noted her concern with requiring a specific review of five years as it is not represented in the administrative rules. She advised that Council should consider as it reviews the amendment process and reevaluates the administrative rules as there will be a better understanding of the science and risks, combined with the abilities of other state agencies to provide additional information at that time.*

*Council Member Devlin inquired if the reason for the delay in construction startup is supply chain based or labor based?*

Mr. Hutchinson reported that in Avangrid's application both supply chain and labor issues are referenced as reasons for the delay as well as the ability to secure a power purchase agreement for the project.

**Due to technical issues, some of the public testimony was inaudible. The following is a summary of statements captured:**

**Tim Holtz**, one of the landowners for the project area, stated his approval of the project, noting that the land involved is a very small portion of his farmland and a very small portion of wheat production for Gilliam County. He noted that the income from the project will aid in keeping the rest of the farm viable by offsetting costs associated with operating farmland.

**Mike Alritt**, representing Ironworkers Local 29, noted their approval of the proposed amendment. He stated that energy projects provide work opportunities for members in rural areas. It also provides the opportunity to bring apprentices to the trade, leading to living wage jobs and benefits for more families. These projects are good for the communities and the people who live there by providing opportunities for employment and revenue.

**Paul Philpott**, representing the Northwest Carpenter’s Union, expressed their approval of the proposed amendment. He agreed with Mr. Alritt’s comments, adding the projects also allows workers to get needed additional training.

**Elizabeth Farrar Campbell**, Gilliam County Judge noted her agreement with the comments from Mr. Hutchinson regarding the productive meeting between Avangrid and Gilliam County. Gilliam County has submitted comments outlining the specifics of the community donation. She asked that conditions in the Amendment that are related to the community donation reflect that an agreement was reached between the certificate holder and Gilliam County.

*Council Member Condon asked Mr. Hutchinson regarding the reasons for the delay and supply chain issues, are any of the supply issues related to allocation of resources to work on other projects by the parent company? She stated when Council issues a site certificate, they rely on the applicant for start and end of construction dates and that they are able to provide the resources necessary.*

Mr. Hutchinson stated the main issue for the delay is a lack of a power purchase agreement. Regarding the resources available from the parent company, he noted that Avangrid’s size and scale benefit them as they have global wide power that can strengthen their market share. No part of the delay has to do with lack of resources from Avangrid.

**Elaine Albright**- Attorney on behalf of the certificate holder, reiterated the opportunity for Council and the public to ask questions or make statements while the record is open for the hearing.

**The hearing was closed at 7:01 p.m.**

**The January 2023 EFSC meeting was recessed at 7:01 p.m.**

## **Day 2 of the January 2023 EFSC meeting**

**Call to Order:** The meeting was called back to order on Friday, January 20, 2023, at 10:30 a.m. by Chair Grail.

**Roll Call:** Chair Marcy Grail, Vice-Chair Kent Howe, Council Members Richard Devlin, Cynthia Condon and Ann Beier were present in person. Council Members Jordan Truitt and Perry Chocktoot were present virtually.

Oregon Department of Energy representatives present in person were Assistant Director for Siting/Council Secretary, Todd Cornett; Senior Policy Advisor, Sarah Esterson; Senior Siting Analyst, Kathleen Sloan; and Administrative Assistant, Nancy Hatch. Senior Siting Analyst, Kellen Tardaewether; Siting Fiscal Analyst, Sisily Fleming and Oregon Department of Justice Senior Assistant Attorney General Patrick Rowe, Counsel to EFSC, were present virtually.

- C. Nolin Hills Contested Case Hearing Officer Replacement (Action Item)<sup>11</sup>** – Sarah Esterson, Senior Policy Advisor. The Council considered replacing Kate Triana, Senior Administrative Law Judge with the Oregon Office of Administrative Hearings with Allison Greene Webster, Senior Administrative Law Judge with the Oregon Office of Administrative Hearings due to scheduling conflicts.

Vice Chair Howe motioned the Council appoint Administrative Law Judge Allison Greene Webster with the Oregon Office of Administrative Hearings to replace Kate Triana, Senior Administrative Law Judge with the Oregon Office of Administrative Hearings, as hearing officer for the proceedings of the Nolin Hills Wind Project.

Council Member Beier seconded the motion.

The motion carried unanimously.

- D. Council Appointment to The Climate Trust’s Oregon Offset Committee (Action Item)<sup>12</sup>** – Todd Cornett, Siting Division Administrator/Council Secretary. The Council considered appointing a new member to the Oregon Offset Committee, consistent with the requirements of ORS 469.503(2)(e)N(iii).

Vice Chair Howe motioned Council appoint Morgan Rider to the Oregon Offset Committee of the Climate Trust for a term starting January 20th 2023 and concluding on January 20th 2027, and Brad Hunter to the Oregon Offset Committee of the Climate Trust for a term starting on April 27th 2022 and concluding on April 27th 2026.

Council Member Beier seconded the motion.

The motion was passed unanimously.

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

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<sup>11</sup> Audio/Video for Agenda Item C=06:17-2023-01-20-EFSC-Meeting-Audio

<sup>12</sup>

closed for comment. Applications for Site Certificates which are closed for comment include the West End Solar Project and the Nolin Hills Wind Power Project.

Steve Allen from the Times Journal Newspaper asked questions regarding the Oregon Trail Solar Facility. Secretary Cornett noted the Public Comment Period for Oregon Trail Solar was officially closed at 7:02 p.m. January 19, 2023. Mr. Allen was invited to ask his questions to the applicant or to Staff after the end of the meeting.

**The public comment period was closed at 11:00 A.M.**

- F. Annual Financial Assurance Update (Action Item)** – Sisily Fleming, Fiscal Analyst. Council’s Retirement and Financial Assurance standard (OAR 345-022-0050) requires that certificate holders obtain a bond or letter of credit in a form and amount deemed satisfactory to Council. Council received a presentation on “form” options, including updates to the financial instrument templates and financial institutions staff recommends be considered satisfactory, proposed for the Council’s 2023 pre-approved template and financial institution list.

*Council Member Condon stated her ongoing concern regarding the language of the bond. As an example, if the surety gives the applicant 120 day notice of cancellation and the applicant does not provide a replacement security instrument within 90 days of the cancellation date, the bond is collectable. She questioned if there is a condition that requires the applicant to provide a replacement security instrument within the 90-day period.*

*Secretary Cornett noted his appreciation for Council Member Condon’s questions and concerns. The Department does not have much experience with the end time frames and decommissioning of projects. It is important to ensure the decommissioning is done correctly from the beginning. While he could not provide an answer at this time, he suggested adding the questions to the agenda or providing an update in the Secretary report at a future meeting.*

*Chair Grail and Council Members noted their agreement.*

*Council Member Beier asked if there is a count of bonds versus letter of credit used by site certificate holders? It will provide useful information for future EFSC to examine for which instrument best protects the State.*

*Ms. Fleming answered there are currently 17 bonds and 11 letters of credit.*

*Council Member Condon asked if there had been feedback from any surety with respect to the language on the security instrument if the certificate holder has not procured a replacement?*

*Ms. Fleming responded there has been no feedback.*

Vice Chair Howe motioned Council approve the recommended templates for financial instruments, and the recommended list of Council-approved financial institutions for use by site certificate holders in obtaining financial instruments, as presented and recommended by staff.

Council Member Chocktoot seconded the motion.

The motion passed unanimously.

**G. Alto Columbia, LLCs Request to Amend Port of Morrow Agreement to reflect Certificate Holder Name Change (Action Item)** – Sarah Esterson, Senior Policy Advisor provided a presentation on Columbia Ethanol Project’s request for Council approval to amend an agreement with Port of Morrow (required by Site Certificate Condition IV.C.13) to reflect within the agreement the certificate holder name change. The name change (from Pacific Ethanol Columbia, LLC to Alto Columbia, LLC) occurred in 2021 following an ownership restructure.

*Council Member Condon asked if Alto Ingredients, Inc is the same company as Alto Columbia?*

*Ms. Esterson clarified the parent company name was Pacific Ethanol LLC which changed to Alto Ingredients LLC. The certificate holder name was Pacific Ethanol Columbia LLC which changed to Alto Columbia LLC.*

Vice Chair Howe motioned the Council approve a change to the agreement between certificate holder and Port of Morrow required under the Columbia Ethanol Project Site Certificate, to update the name of the certificate that the Council approve a change to the agreement between certificate holder and Port of Morrow required under the Columbia Ethanol Project Site Certificate, to update the name of the certificate holder from Pacific Ethanol Columbia, LLC to Alto Columbia, LLC following a 2021 organizational restructure as presented and recommended by staff.

Council Member Devlin seconded the motion.

The motion was passed unanimously.

**H. Oregon Trail Solar Facility - Council Review of Draft Proposed Order on Request for Amendment 1 (Information Item)** – Kathleen Sloan, Senior Siting Analyst, and Kellen Tardaewether, Senior Siting Analyst, provided a presentation of the Draft Proposed Order on Request for Amendment 1 of the Site Certificate. The presentation included an overview of changes proposed in the amendment request, changes in fact or law from Council’s prior order approving the site certificate, and issues raised in comments received on the record of the Draft Proposed Order for Council review. Council had the opportunity to provide comments to the Department for consideration in the Proposed Order.

*Council Member Beier expressed her concern regarding the administrative rule and the five-year risk review period. She stressed that Council and Staff should include findings of fact for imposing the deadline of a five-year wildfire risk review period such as new data, new risks, changes in precipitation rates, and evolving science. She questioned if consistency is important in the Wildfire Risk Management, noting if a site is located in a higher fire risk area, it may need to be looked at more frequently. She stated her approval of the provision regarding checking with the local fire department for information and updates. She added Council needs to substantiate why timeframes are being included in the site certificate but have not been included in the administrative rules.*

*Secretary Cornett asked if Council Member Beier’s question is whether there is no legal way to put a timeframe on a site certificate based on the rules or whether the findings are not good enough to justify the timeframe?*

*Council Member Beier stated there is a notion of updates in the Administrative Rules. If Council is going to apply updated scenarios, the Council needs to define why. She referred to Patrick Rowe, Counsel to the Council, for directions regarding how much discretion the Council has and how specific Council needs to be. She further noted her appreciation for the applicant for pointing out this issue as this is a new rule being implemented.*

*Secretary Cornett confirmed his understanding of Council Member Beier’s question. If staff believes we should and can include a specific timeframe for risk review, we need to do more to justify it in order to not have arbitrary numbers. Staff will work on the language. Council, as well as the applicant, will have a chance to review in the final order.*

*Council Member Devlin noted his agreement with Council Member Beier’s comments adding if the standard is an arbitrary number that could be an issue. It is necessary to define why council wants the standard in place. While the PUC has a one-year review standard, that would be an arbitrary number for EFSC. Some facilities are more likely than others to have issues. Setting up a periodic review is reasonable.*

*Council Member Condon agreed with the concerns presented. She added EFSC rules require Council approve a wildfire mitigation plan prior to issuing the site certificate and construction begins. There may be a significant change in wildfire risk after a facility is constructed. Before operation of the facility begins would be an important time for a review and reevaluation of the wildfire risk mitigation plan, then adding a schedule related to the five-year review from there.*

*Chair Grail stated Council is being judicious with the wildfire mitigation plan as the public has communicated its concerns. Council is paying attention. Council understands that wildfires are going to continue to be a challenge. She noted her appreciation of Council Member Devlin's comments regarding the PUC. Technology is continually changing. The wildfire mitigation plans filed by the utilities are changed regularly. It is important for Council to be certain to keep wildfire mitigation plans at the forefront. She expressed her concern for the absence of specific language regarding communication with the public and how communication would be handled in case of a wildfire.*

*Ms. Tardaewether provided additional information for the five-year review. Staff refers to the rules for PUC and understands the utilities review wildfire mitigation plans yearly. One of the ways Staff applies balance to the wildfire mitigation plan is by including the level of wildfire risk for the site. Higher risk may require more frequent updates. A five-year risk review seems reasonable noting the availability of data, the data layers and the timeframe for data to be updated. The National Climate Assessment is updated every four years which provides an opportunity for data regarding mild to moderate wildfire risk areas. In response to Council's comments, Staff will add findings of fact and reasons to support the five-year risk review in the proposed order for Council to review.*

*In response to Council Member Condon's comments, Ms. Tardaewether clarified these are the provisions in the draft plan attached to the Draft Proposed Order which will be attached to the Proposed Order. These are the provisions required prior to operation. The operational plan would require final review. After the final plan for operation is applied, there would be a risk review every five years.*

*Vice Chair Howe asked for clarification of language in Condition 60 subsection c (ii):*

**c. During operation, the certificate holder shall:**

**i. Meet annually with local fire protection agency personnel to discuss emergency planning and shall invite local fire protection agency personnel to observe any emergency drill or tower rescue training conducted at the facility.**

**ii. Implement the measures in the WMP. Every 5 years after the first operational year, review and update the evaluation of wildfire risk under OAR 345-022-0115(1)(b) and**

submit the results in the annual report required under Condition 21 (OAR 345-026-0080), for that year.

*Secretary Cornett responded the applicant is required to submit an annual report. The additional five-year wildfire risk evaluation submission would align with submitting the annual report.*

*Council Member Condon asked if the Draft Wildfire Mitigation Plan (WMP) noted in subsection b is referring to the WMP Council must approve in order to issue the site certificate? The approval for the WMP is stated in the issuance of the site certificate but not for the operation of the facility.*

*After discussion, Secretary Cornett suggested Staff review and clarify any confusion in the order of sequencing.*

*Council Member Beier asked Staff to clarify the language in Condition 60 subsection c (ii) as noted by Vice Chair Howe, in order to make it abundantly clear that a WMP report is required every five years in addition to the applicant's required annual report.*

*Secretary Cornett confirmed that Staff would review language in Condition 60.*

*Ms. Tardaewether noted the applicants' position, as communicated in the first of their DPO comments, is that a periodic review is not required. Based on the comments from Council, Ms. Tardaewether surmised Council agrees that a periodic review is necessary for WMP.*

*Secretary Cornett added if Staff and Council are going to include a periodic review, it will need to have clear justification.*

*Council agreed unanimously.*

*Ms. Tardaewether stated, referring to the second part of the applicants' comments, the reporting of the five-year WMP risk review with the required annual applicants report is an attempt to streamline the submission process. In the third part of the applicant comments, applicants stated the periodic review in the standard would be open ended, unresolved and subject to interpretation every five years. It is intended to reevaluate the fire risk and allow the applicant to propose any new emerging technologies, the best management practices currently available or that are changing on the site in response to wildfire risks. It is not intended to reinterpret the standard and the requirements of the WMP but to be adaptive based on wildfire risks on the site in the future.*

*Council agreed unanimously.*

*Council Member Beier commented, as with the wildfire mitigation plans, EFSC is changing its procedural protocol with the changes in findings and facts. Earlier wind facilities were approved with different conditions. Council and the Department now have 30 years of experience. Based on that experience, EFSC is requiring more stringent and detailed inspections and monitoring. While Council does not want to duplicate other agencies, if the applicant is providing the information to another agency, the information is readily available for a report to EFSC. The changes in requirements are for the purposes of public health and safety. They are not intended to add additional burdens to the applicant, rather to protect the applicant, the State and the public.*

*Secretary Cornett agreed adding Staff will look at the findings to ensure that the 5 year risk review is justifiable and the language for the conditions proposed are clear.*

*Council Member Condon asked when was the Golden Hills site certificate approved with the condition?*

*Ms. Sloan did not have the specific date.*

Secretary Cornett noted an invitation from Mr. Steve Allen, who has offered Council a tour of Condon following the meeting.

**The January 19-20, 2023 EFSC meeting was adjourned at 1:45 P.M.**