



**Energy Facility Siting Council
Meeting Minutes
Thursday, June 1, 2023 8:30 a.m.
Virtual Only**

- A. Consent Calendar (Action Item & Information Item)¹
- B. Presentation of the Department of Land Conservation and Development's Farm and Forest Land Use Report (Information Item)²
- C. Public Comments Period (Information Item)³
- D. Overview of Council's Organizational Expertise and Financial Assurance Standard (Information Item)⁴
- E. Cascade Renewable Transmission System Special Advisory Group (Action Item)⁵
- F. Madras Solar Facility Financial Institution List Request (Action Item)⁶

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: Chair Grail called the meeting to order on Thursday, June 1, 2023 at 8:38 a.m.

Roll Call: Chair Marcy Grail, Vice-Chair Kent Howe, Council Members Cynthia Condon, Perry Chocktoot, and Ann Beier 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 Christopher Clark; Fiscal Analyst Sisily Fleming and Administrative Assistant 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 = 00:03:50 - 2023-6-01-EFSC-Meeting-Audio/Video

² Audio/Video for Agenda Item B = 00:22:03 - 2023-6-01-EFSC-Meeting-Audio/Video

³ Audio/Video for Agenda Item C = 01:12:22 - 2023-6-01-EFSC-Meeting-Audio/Video

⁴ Audio/Video for Agenda Item D = 01:27:25 - 2023-6-01-EFSC-Meeting-Audio/Video

⁵ Audio/Video for Agenda Item E = 02:54:31 - 2023-6-01-EFSC-Meeting-Audio/Video

⁶ Audio/Video for Agenda Item F = 03:14:14 - 2023-6-01-EFSC-Meeting-Audio/Video

- A. Consent Calendar (Action Item & Information Item)⁷** – Approval of March 24, 2023 meeting minutes; Council Secretary Report; and other routine Council business.

Consideration of the March 24, 2023 Meeting Minutes

Council Member Condon expressed her appreciation of Vice Chair Howe’s detailed reasons for the importance of the Goal 3 exception as provided in the minutes of the March 2023 EFSC meeting.

Vice Chair Howe motioned that the Council adopt the March 24, 2023 meeting minutes as presented.

Council Member Condon seconded the motion.

The motion carried unanimously.

Council Secretary Report

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

Project Updates

Amendment Determination Requests (ADR):

- Hermiston Power Project - The ADR was received on March 14, 2023. The request was whether the installation of a new potable water well would require an amendment to the site certificate. The Department agreed with the applicant that a site certificate amendment was not required. This information was sent to the Council on May 5, 2023 and is located on the project page.
- Montague Solar Facility - An ADR related to a change in local economic benefits realized from the project was received May 27, 2021. After staff evaluation and consultations with Gilliam County, it was determined on May 4, 2023 that a site certificate amendment was not required. This information was sent to the Council on May 5, 2023 and is located on the project page.
- Mist Natural Gas Facility - An ADR was received on May 2, 2023. The request was whether an amendment was needed for the installation of a 2,000 foot section to the existing Flora Well Pipeline as the certificate holder needs to relocate a portion of the pipeline. The information was sent to the Council on May 5, 2023. The Department has

⁷ Audio/Video for Agenda Item A = 00:03:50 - 2023-6-01-EFSC-Meeting-Audio/Video

requested additional information from Northwest Natural prior to determining whether or not a site certificate amendment is required.

Compliance Updates:

- Council was briefed on incidents reported at the following facilities:
 - Montague Solar Facility - failure to comply with erosion control requirements.
 - Stateline Wind Project - failure to comply with erosion control requirements.
 - South Mist Extension - failure to report verifiable fuel usage data.
 - Biglow Canyon Wind - failure to restrict Substation access via locked door.
 - Wheatridge Wind Energy Facility I - failure to restrict turbine tower access via locked tower door.

Legislative Update:

Due to the current Legislative walkouts, the necessary quorum requirements to conduct business has been limited. This puts the following unpassed bills in an uncertain position:

- HB3179 - This bill predominantly changes the jurisdictional thresholds for solar facilities. The bill is waiting to go to the Senate Floor for a Senate vote.
- HB3181 - This bill would require the Department of Energy and the Department of Land Conservation Development; to convene stakeholders to identify lower conflict areas for renewable energy and transmission siting; to identify ways to streamline and expedite the siting process and requires a report to the Legislature. The bill also requires ODOE to periodically update the ORESA mapping tool with new data layers. It authorizes grant funding for Counties for mapping processes related to renewable energy siting. ODOE would be given funds that EFSC could provide to public bodies, tribal governments, and community organizations to help with participation in the EFSC process. This bill is currently in the Joint Ways and Means Committee.

Council Member Condon asked how many existing EFSC site applications or projects would not be under EFSC jurisdiction under the proposed bill HB 3179.

Secretary Cornett responded that of the current applications, only one would possibly have met the change threshold. He added the bigger question is would any of the applicants have altered their project acreage to avoid EFSC jurisdiction.

Council Member Condon asked if the counties are supportive of the changes.

Secretary Cornett stated there were only a couple of counties who provided comments and were supportive of the bill.

Vice Chair Howe asked if there is data for the counties record on the appeals process for their siting applications.

Secretary Cornett answered that in 2019 House Bill 2329 increased the thresholds to the current requirements. The Department has received notification of 8 projects that have been through HB 2329 requirement process, 2 of which were appealed. The appeals are related to the implementation of the natural resource protection requirements and are still unresolved.

Future Meetings:

- June Meeting - This will be a Webex virtual meeting held on June 23, 2023 at 8:30 a.m.
- July B2H Public Hearings/EFSC Meeting - The first B2H Request for Amendment #1 Public Hearing will be held on July 17, 2023 at 5:30 p.m. in the Best Western Sunridge Conference Room in Baker City, Oregon. The second Public Hearing will be held on July 18, 2023 at 5:30 p.m. in the Oxford Suites Conference Room in Pendleton, Oregon, prior to the EFSC meeting the following morning, July 19, 2023 at 8:30 a.m.

B. Presentation of the Department of Land Conservation and Development's Farm and Forest Land Use Report (Information Item)⁸ - Hilary Foote, Department of Land and Development Farm and Forest Specialist, presented the 2020-2021 Farm and Forest Land Use Report.

During the presentation, the following discussion occurred:

Vice Chair Howe asked if DLCD is familiar with Agrivoltaics, the use of land under solar facilities for agricultural production.

Ms. Foote answered that there were provisions in DLCD rules that would allow developers to expand their project footprint if they had an approved Agrivoltaics plan with the County. No developers took advantage of the opportunity to submit a plan. The provision in DLCD rules has ended.

Council Member Beier complimented Ms. Foote's presentation, noting EFSC is not seeing any solar development in the Willamette Valley which suggests that the DLCD farmland protection programs are working. EFSC has different standards in the siting criteria than DLCD and the counties, yet most of the solar projects are on non-arable lands.

⁸ Audio/Video for Agenda Item B = 00:22:03 - 2023-6-01-EFSC-Meeting-Audio/Video

Secretary Cornett stated the Department has recently received a Notice of Intent (NOI) for a 199 megawatt solar facility in Linn County south of Brownsville, The Muddy Creek Energy Park. The proposed site will be on high value farmland in the Willamette Valley.

Council Member Condon asked how DLCD considered the implementation of House Bill 3179.

Ms. Foote answered DLCD will work with the framework the legislature provides. Staff are collaborating to be sure that programs are carried out in the intent of the law and policies that have been established.

Council Member Condon questioned how DLCD works with drought and water access as the Public and EFSC have seen it as an issue.

Ms. Foote stated the drought and water access impact the program in several ways. There is an integrated water resource strategy for 2023 that is currently being developed by Oregon Water Resources Department (OWRD). As for EFSC, water is implicated in the definition of high value farmland under the original definition of ORS 195.300 for the land use capability classification. Sufficiency of water should be evaluated when Council is looking at farm impacts. DLCD is conversing about how to implement more coordination between the planning program and OWRD's programs.

Council Member Condon questioned how DLCD reviews the land use for Urban Growth and Industrial Use versus Solar development.

Ms. Foote answered when agricultural lands are officially urbanized through zoning or an urban growth boundary expansion, they are no longer protected for rural resource uses. The lands are intended to be urbanized going forward. Before lands are removed from farm or forest zoning, an exception process is required to demonstrate unique reasons for the removal from farm production. A certain level of solar development is permissible even while the property is maintained under protected explicit farm use zoning because the counties have found that it is not going to impact agricultural operations in the surrounding area.

Chair Grail noted the tremendous wildfires Oregon has endured over the last few years. She asked how DLCD anticipates the wildfires impacting the lands and any potential effect on EFSC.

Ms. Foote responded there is a Goal 4 for forest lands that addresses the protection of timber stands from the introduction of risks that would increase the potential for wildfires. In the agricultural lands program, DLCD is addressing the restoration of agricultural lands post fire and introduction of mitigating hazards.

Council Member Chocktoot expressed concern that some counties circumvent guidelines for solar projects on high value farmlands.

- C. Public Comment Period (Information Item)⁹** - This time is reserved for the public to address the Council regarding any item within Council jurisdiction that is not otherwise closed for comment.

Angela Crowley-Koch, Executive Director of Oregon Solar plus Storage Industries Association (OSSIA)

In response to the Legislative Update, she stated that the Association of Oregon Counties has strongly supported HB 3179.

In response to the DLCDC report in Agenda Item B, she provided the following comments. 98% of Oregon agricultural lands remain protected. While Oregon is not in crisis regarding farmland, we are in a climate crisis. The climate crisis is exacerbating wildfires and droughts. With an increase in the negative impacts on the land due to the climate crisis, OSSIA believes in many cases, solar projects deserve an exception to some of the state goals. The land use law was created in Senate Bill 100 and did not take the current climate crisis into consideration. During these kinds of droughts, some high value farmlands are unable to be farmed. Solar projects are a great way to keep the land available for agriculture as solar is a temporary conversion and can easily be removed from the land. The DLCDC report also mentioned an exception for many projects is the proximity to transmission lines, which OSSIA believes should be a notable and worthwhile exception as solar projects need to be sited close to transmission. Oregon's land use goals did not anticipate there being a location driven need for the siting of renewable energy projects. It is becoming challenging to find perfect locations with soil, wildlife, and other concerns. If solar is prevented from being built on arable lands, the projects will be sited on marginal lands which is home to wildlife. One of the most promising pieces of solar projects is Agrivoltaics. Oregon State University, currently researching Agrivoltaics outside of Corvallis, is one of the leading Agrivoltaics research facilities in the country. The applicants for the Muddy Creek Solar project are looking into continuing grass seed farming and having sheep grazing under the solar panels. There are ways to keep the land active in agriculture while having solar panels operating. The DLCDC rule for Agrivoltaics required counties to pass ordinances regarding Agrivoltaics within 2 years, which no county was able to do. Developers would love to work with counties to have more robust Agrivoltaic ordinances. It is helpful to remember that every project has gone through a very diligent process either with EFSC or the county. Not all permitted projects will be developed. Developing solar projects and renewable energy projects is complicated and financially risky. Finding the space to interconnect to the grid and to be able to send power through the grids is a major

⁹ Audio/Video for Agenda Item C = 01:12:22 - 2023-6-01-EFSC-Meeting-Audio/Video

roadblock. It is deceptive to look at the permitted acres as that does not show what the future of the projects will be. OSSIA is addressing the climate crisis and protecting the uses of land in Oregon. While OSSIA would like to see as much solar built in Oregon as possible for economic development benefits, property tax benefits and job benefits, that will not happen. Solar is mainly being developed in other states as it is so challenging to develop in Oregon.

Council Member Chocktoot stated we want clean energy in Oregon, but we want to utilize the energy that is created in the state of Oregon. His concern is that energy produced in the state is being sent to California. The rate payers in Oregon should be paying minuscule bills as a benefit to the energy produced in Oregon.

Ms. Crowley-Koch responded California passed clean energy laws before Oregon, which is part of the reason some of Oregon's energy goes to California. With new Oregon laws, a stronger renewable energy standard, 100% clean electricity standard by 2040, OSSIA believes this will change, allowing more of energy produced in Oregon to stay in the state.

The Public Comment Period was closed at 10:04 a.m.

D. Overview of Council's Organizational Expertise and Retirement and Financial Assurance Standards (Information item)¹⁰ - Patrick Rowe, Oregon Department of Justice Senior Assistant Attorney General and Counsel to EFSC provided an overview of the Organizational Expertise and Retirement and Financial Assurance Standards.

During the presentation, the following discussion regarding Organizational Expertise Standards occurred:

Chair Grail inquired if a certificate has ever been revoked for non-compliance.

Secretary Cornett and Mr. Rowe confirmed not to their knowledge.

Council Member Condon asked what documentation is required of the parent company if an applicant is relying on the parent company's organizational expertise. The Department relies on detailed work from other agencies for information regarding other standards. With the Organizational Expertise review, staff is limited to the evidence presented by the applicant. While the standard states the applicant must have access to the Organizational Expertise of the parent company, that does not mean the information is available to them. If the Department is not doing a robust review of the parent company, her concern is the assessment of Organizational Expertise is not complete. The parent company needs to show the resources and

¹⁰ Audio/Video for Agenda Item D = 01:27:25 - 2023-6-01-EFSC-Meeting-Audio/Video

expertise AND an agreement or obligation with the applicant to provide the resources to develop the project as it presented to EFSC.

After further discussion, Mr. Rowe suggested that Council could consider imposing an additional condition that requires the single purpose LLC applicant to provide documentation from the parent company regarding its commitment to the applicant to provide the resources for the project.

Council Member Condon agreed, adding the parent company provides the foundation for the applicant to develop the project according to the commitment. She reiterated there should be a robust review of the parent company if an applicant is relying on their organizational expertise.

Secretary Cornett confirmed the Department does review the parent company. And he acknowledged Council Member Condon's concern for a more robust review.

Council Member Beier expressed her agreement that the linkage between the LLC and the parent company needs to be better established. In a recent application, the applicant provided a letter from the parent company attesting to their relationship with the LLC. A requirement for such a letter could be added as a condition of approval. She questioned the language "access to technical expertise" in the rule. Is there consideration in evaluating access to technical expertise for local expertise and who is on the applicant's team for technical expertise.

Mr. Rowe confirmed there is a condition which requires the applicant to demonstrate and provide information that shows their experts are qualified at each stage in the process of a site.

Council Member Condon questioned if there may be a parallel process that state agencies use when gathering information when processing grants that may be used by the department.

Mr. Rowe answered there might be, though grant processes are usually specific to the legislation which authorized the grant.

Council Member Condon expressed her concern regarding the timing of information throughout the siting process. EFSC's review and issuance of a certificate is at the beginning of the process before construction begins.

Mr. Rowe noted that under a condition Council recently imposed in certain site certificates, the certificate holders are required to demonstrate qualifications at each stage of the process: construction, operations, and retirement. Before each stage begins, the certificate holder must demonstrate their qualification to engage in that stage of the process.

Council Member Condon questioned what the Council's or the Department's response is if the conditions are not satisfactorily met.

Mr. Rowe stated if the conditions are not met, the enforcement mechanism would be utilized, such as possibly suspending the operations until the conditions are met.

During the presentation, the following discussion regarding Retirement and Financial Assurance Standards occurred:

Vice Chair Howe asked what the aggregate capacity means in reference to the issuance of a single bond.

Mr. Rowe stated he believes that refers to the amount of total credit available for all of the applicant's projects with the financial institution.

Council Member Condon questioned the review of the comfort letters and letters of credit during the life of the project. She expressed her understanding and concern that comfort letters are not updated until the security is required when the site is being retired. She suggested a requirement for a renewal or update of the comfort letter/letter of credit periodically through the project would give EFSC additional confirmation, given the current issues involving financial institutions.

Secretary Cornett provided scenarios in the siting process when EFSC requires updates or additional confirmation regarding comfort letters and letters of credit. He noted that adding a condition to the certificate that requires an update to the comfort letter/letter of credit could be done.

Council Member Beier asked between approval of the site certificate and beginning of construction, which could be several years, does EFSC do inflationary adjustments to the bond amount.

Secretary Cornett confirmed the letter of credit or bond would have to be updated for inflation.

Council Member Condon asked if a certificate holder ceases business and EFSC has the responsibility for returning the site to a useful condition, and the expenses run over the bond amount, is there access to the parent company for recovering the overage costs.

Mr. Rowe acknowledged there are risks involved in that scenario, as it is the certificate holder (not the parent company) that is obligated to comply with the certificate conditions.

But that is the reason for the protective measures built into the process - e.g., the inflation adjustments and contingencies in the site certificates.

Council Member Condon expressed her concern that many of the LLC's are organized in Delaware. The articles involved in the LLC would protect the parent company.

Mr. Rowe noted that the conditions in the certificate regarding Financial Assurance and Retirement are intended to protect the state. EFSC is taking as many precautions as possible to avoid a situation where the state has financial exposure and responsibility in decommissioning sites.

Mr. Rowe suggested a change in the language in one of the Retirement and Financial Assurance conditions to state EFSC reserves the right to adjust the amount of financial assurance necessary if it determines it is appropriate "to restore the site to a useful, nonhazardous condition" (rather than "to maintain health and safety of the public and environment").

Chair Grail agreed with Mr. Rowe's proposal, adding it is important for the Council to be consistent with language in its rules as it sets clear expectations to the applicants.

Mr. Rowe noted Council should obtain input from developers and other stakeholders before making the changes in the conditions discussed.

Council Member Condon reiterated her concern with the language "access to technical expertise" adding that the commitment of the parent company to provide the expertise needs to be included in the language.

Mr. Rowe suggested Council could consider adding a condition that, to the extent an applicant is relying on a parent company to meet any particular standards, requires the parent company to acknowledge it is responsible for compliance with those conditions.

Council Member Condon expressed her concern that EFSC is relying on the applicants representation that the parent company will be responsible without evidence. Adding a condition that provides signed documents stating the parent company's responsibility is providing concrete evidence.

Council Member Beier reiterated EFSC has provided good suggestions for being more explicit in our expectations.

Council Member Condon asked if Staff had information regarding private landowner's agreements with developers for decommissioning on their leased lands and returning the lands to a usable condition.

Mr. Rowe answered that information is a separate private contract between the developer and the landowners.

Council Member Condon asked if there have been any conversations with landowners regarding their reliance on the Department's Organizational Expertise Review.

Secretary Cornett stated the Department oversees the regulatory process. The information is included in the application which is available for the landowners to review. There have been no direct conversations with landowners.

Council Member Condon asked in the past 10 years, how many applicants are LLC's and where are they incorporated.

Secretary Cornett answered while there are investor owned utilities that have submitted projects, the majority have been independent power producers with single purpose LLCs filed in Delaware.

Secretary Cornett asked Council Members for their thoughts for the placement of prioritization in rulemaking for the Organizational Expertise and Retirement Financial Assurance Standard.

Council Member Condon answered the evidence of Organizational Expertise is an important issue before issuance of a site certificate. It is a high priority rulemaking item.

Vice Chair Howe agreed with Council Member Condon.

Council Member Beier noted her concern for the language of "access to technical expertise" being a broad term. There is a requirement to provide evidence at each stage of the siting process. While it is a critical piece of the site certificate, EFSC should think carefully about what additional evidence would be required, without the requirement being too burdensome in a changing environment.

Mr. Rowe stated the condition requiring an applicant to provide evidence of their qualifications at each stage of the siting process is a condition the Department has included in recent site certificates. He noted his understanding that Council Member Beier would like to include that condition in all future site certificates.

Council Member Beier agreed.

Council Member Condon stated her opinion that the financial resources are required to start a project. A site certificate has real value for the state of Oregon. Landowners and members of the public close to the project rely on information presented in the application. The

financial resources and financial assurance from the applicant is an important piece of the technical expertise condition.

Chair Grail expressed her approval of the condition being consistently applied. She suggested the Council and staff allow time to make the changes in the conditions as there will be significant interest from Stakeholders.

Secretary Cornett confirmed the changes in conditions would be addressed in the scheduled Phase 3 in Rulemaking which will not begin until 2024.

- E. Cascade Renewable Transmission System Special Advisory Group (SAG) Appointments (Action Item)¹¹**- Council appointed the governing body of each local government within whose jurisdiction the Cascade Renewable Transmission System is proposed to be located as a special advisory group under ORS 469.480(1) for EFSC proceedings related to the proposed facility.

The Council did not have any questions or comments during the presentation.

Vice Chair Howe motioned the Council appoint the Wasco County Board of Commissioners, the Hood River County Board of Commissioners, the Multnomah County Board of Commissioners, The Dalles City Council, the Mosier City Council, the Hood River City Council, the City of Cascade Locks City Council, the Fairview City Council, and the Portland City Council as special advisory groups for Council proceedings related to the proposed Cascade Renewable Transmission System Project.

Council Member Beier seconded the motion.

The motion was carried unanimously.

- F. Madras Solar Facility Financial Institution List Request (Action Item)¹²**- The Council will consider a request from Madras Solar Facility to add Arch Insurance Company to the list of financial institutions approved to act as issuers of financial instruments related to the Council's Retirement and Financial Assurance Standard.

The Council did not have any questions or comments during the presentation.

¹¹ Audio/Video for Agenda Item E = 02:54:31 - 2023-6-01-EFSC-Meeting-Audio/Video

¹² Audio/Video for Agenda Item F = 03:14:14 - 2023-6-01-EFSC-Meeting-Audio/Video

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

Council Member Condon seconded the motion.

Council Member Condon asked if there is a reevaluation of the approved financial institutions on an annual basis, and whether there is an opportunity to evaluate more frequently, if needed, given the current issues in the banking industry.

Ms. Fleming confirmed that the credit ratings of the approved financial institutions are reviewed annually, and could be reconsidered at anytime.

The motion was carried unanimously.

Adjournment

Chair Grail adjourned the meeting at 12:09 p.m.