



ENERGY FACILITY SITING COUNCIL

Energy Facility Siting Council Meeting Minutes July 22, 2022

ODOE Office
555 Capitol St. NE
Salem OR

- A. Consent Calendar (Action Item & Information Item)¹
- B. Wildfire Prevention and Response Rulemaking - Adoption of Permanent Rules (Action Item)²
- C. Protected Areas, Scenic Resources, and Recreation Standards Rulemaking - Adoption of Permanent Rules (Action Item)³
- D. Public Comment Period (Information Item)⁴
- E. Carty Generating Station, Proposed Order on Request for Amendment 7 of the Site Certificate (Action Item)⁵
- F. 2022 Carbon Dioxide Emissions Standards Rulemaking - Adoption of Permanent Rules (Action Item)⁶
- G. Boardman to Hemingway Transmission Line - Council Review of Proposed Order Standards, Proposed Facility, EFSC Review Process (Information Item)⁷

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 July 22, 2022, at 8:45 AM by Chair Grail.

Roll Call: Chair Marcy Grail, Vice-Chair Kent Howe, Council Members Hanley Jenkins, Cynthia Condon, Ann Beier and Jordan Truitt were present in person.

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; Senior Siting Analyst, Kellen Tardaewether; Senior Siting Analyst and Rules Coordinator, Christopher M. Clark; Senior Siting Analyst, Kate Sloan; and Administrative Specialist, Nancy Hatch. Oregon Department of Justice Senior Assistant Attorney General Patrick Rowe, counsel to EFSC, and Oregon Department of Justice Senior Assistant Attorney General, Jesse Ratcliffe counsel to EFSC on the Boardman to Hemingway Contested Case were also present.

¹ Audio/Video for Agenda Item A=02:16-2022-07-22-EFSC-Meeting-Audio

² Audio/Video for Agenda Item B=00:15:15- 2022-07-22-EFSC-Meeting-Audio

³ Audio/Video for Agenda Item C=00:56:50-2022-07-22-EFSC-Meeting-Audio

⁴ Audio/Video for Agenda Item D=01:30:37-2022-07-22-EFSC-Meeting-Audio

⁵ Audio/Video for Agenda Item E=01:43:19-2022-07-22-EFSC-Meeting-Audio

⁶ Audio/Video for Agenda Item F = 02:37:30- 2022-07-22-EFSC-Meeting -Audio

⁷ Audio/Video for Agenda Item G= 03:33:23-2022-07-22-EFSC Meeting-Audio

Agenda Modifications were not requested.

A. Consent Calendar (Action Item & Information Item)⁸ – Approval of May 2022 meeting minutes; Approval of June 2022 meeting minutes; Council Secretary Report; and other routine Council business.

Consideration of the May 26-27, 2022, Meeting Minutes

Council Member Jenkins motioned that the Council adopt the May 26-27, 2022, meeting minutes.

Vice Chair Howe seconded the motion.

Motion carried unanimously.

Consideration of the June 23-24, 2022, Meeting Minutes

Council's consideration of the June 2022 Meeting Minutes were deferred to the August 29-31, 2022 meeting.

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

Staff Updates

Blake Crowe has been hired to the position of EFSC Rules Coordinator replacing Christopher Clark, now the new Senior Siting Analyst. Blake will begin on August 22, 2022. Blake has a Master's degree in Urban and Regional Planning from the University of New Orleans and a Bachelor of Arts from the University of Alabama. Blake has most recently been the project manager and developer of utility scale solar and storage project in Denver Colorado. He was previously a senior associate planner for a consulting company in New Orleans where he was project manager and main contributor to projects such as updating the city's comprehensive plan, working on a state comprehensive outdoor recreation plan as well as city and regional bicycle and master plan. The department looks forward to Blake joining the staff.

Project Updates

Echo Solar Project is in the Notice of Intent phase. There will be a public information meeting held on July 27th, 2022, at 5:30 pm at the Port of Morrow Riverfront Conference Room in Boardman, Or. Council members are encouraged and welcome to attend either in person or virtually.

Future Meetings

August 29, 30 & 31, 2022 are the dates for the next EFSC meeting. It will be held at the Eastern Oregon University in the David E. Gilbert Center. This 3-day meeting will incorporate step 2 of the remaining steps before Council's final decision on the Boardman to Hemingway Transmission Line.

⁸ Audio/Video for Agenda Item A=03:07-2022-04-22-EFSC-Meeting-Audio

Step 2 is the review of the proposed order and the standards not implicated in contested case and the contested case order exceptions included in the exceptions hearing. The schedule is: Kellen Tardaewether will present standard by standard the portions unrelated to the contested case. Council will conduct a straw poll if any changes are wanted or needed. Jesse Ratcliffe, legal Counsel for the Council on Boardman to Hemingway contested case will present each of the contested case issues where exceptions were filed. For each of the exceptions, the hearing officer has submitted her conclusions on the issue in the Proposed Contested Case Order (“PCCO”). The public was given 30 days to file exceptions to the PCCO. Mr. Ratcliffe will review the exceptions and responses filed during the 30-day period. The meeting will then be opened for oral testimony for those parties or limited parties who filed exceptions to testify before the Council. Idaho Power and the Department will be given the opportunity to respond. Council will then conduct a straw poll on the presented issue.

The Department anticipates being able to complete step 2 during the August EFSC meeting. Staff will create a draft of the final order to include any material changes that occur in the July and August EFSC meetings and have prepared for the September EFSC meeting. The date of the September meeting will not be September 22-23. Staff will reach out to Council for availability for an anticipated 1-day meeting during the following week.

B. Wildfire Prevention and Response Rulemaking - Adoption of Permanent Rules (Action Item)⁹

Christopher Clark, EFSC Rules Coordinator presented a summary of public comments received on the Council’s proposed rules for the adoption of a new energy facility siting standard for Wildfire Prevention and Risk Mitigation and staff’s recommended responses. Comments must have been received by 5:00 pm on July 21, 2022, to be considered. After considering public comments, the Council considered the adoption of permanent rules.

During Mr. Clark’s presentation the following discussion occurred:

Council Member Condon explained that she had recused herself from discussions relating to this rulemaking at the Council’s May meeting out of an abundance of caution because she serves on the board of a Consumer-Owned Utility, and that after review of ethics and conflict of interest requirements and discussions with legal counsel, had determined that she did not have any conflicts of interest and intended to participate fully in the Council’s discussion and deliberation of this rulemaking.

Mr. Clark explained that a commenter had recommended that the Council delay rulemaking until after the Oregon Public Utility Commission had adopted final wildfire mitigation rules. He explained that staff recommended that the Council move forward with the adoption of permanent because the PUC had come to a fairly clear conclusion on the rulemaking related to the criteria for wildfire protection plans, which largely mirror statutory requirements.

Chair Grail asked if staff knew when the OPUC expected to issue final rules.

Mr. Clark answered that OPUC is currently accepting comments on the safety standards and that the comment period was ending soon but that the timeline for final action was not clear.

⁹ Audio/Video for Agenda Item B=00:15:15- 2022-07-22-EFSC-Meeting-Audio

Mr. Clark explained that a commenter recommended that the Council add language regarding the applicability of the new rules to proposed OAR 345-001-0010, OAR 345-020-0011, and OAR 345-021-0010. He explained that staff recommended that applicability provisions are not needed for the amended information requirements, definitions, and other non-substantive provisions of the rules because the rules would not apply retroactively and, based on applicability being dependent on the determination of completeness, these requirements would already have been satisfied. There was no further discussion from Council.

Mr. Clark explained that a joint comment from Investor-Owned Utilities recommended that the Council revise the proposed rules to provide for submittal of either an approved Wildfire Protection plan that addresses the specific site at issue, or an assessment that identifies how existing mitigation plans for comparable areas would be used to address potential risk at a site.

Chair Grail noted that the comment letter acknowledged EFSC's concern regarding issues regarding wildfire risk and public safety. She commented that EFSC needs to address these concerns and there's "no kicking the can down the road" with this issue.

Vice Chair Howe agreed with Chair Grail's comment, adding it would not be adequate to simply provide a mitigation plan for a comparable area which would likely not be adequate to meet the wildfire mitigation requirements as they are intended to address site specific conditions.

Council Member Beier agreed that the risk assessment in particular must be site specific. She explained that the mitigation measures will be similar across sites for similar types of facilities, but the risk assessment must go further to address health and safety issues that are specific to the site and the application.

Council Member Condon questioned why consumer owned utilities (COU) do not need to have their fire mitigation plan approved by EFSC or OPUC. Investor-owned utilities (IOU) must file their mitigation plan with the OPUC and that goes thru an approval process where it is reviewed through an independent reviewer. COU's submit their mitigation plan but there is no next step of approval.

Mr. Clark explained that the rules are written to have specific criteria in the risk analysis and the mitigation plan that must be satisfied and that the rules also provide that a utility or consumer owned utility can satisfy the rule by using an approved wildfire protection plan if the utility shows that the plan specifically addresses the site and the facility and characterizes the risks at that site and provide specific mitigation measures for that facility. The rules also states that the plan must be approved and in compliance with the OAR chapter 860. The PUC rules say that a plan needs to be approved by the PUC if it is an IOU plan, or by the governing body of the COU if it is a COU plan. Mr. Clark explained that this provision was intended to reflect SB 762, which provides the COU's with the ability to approve their own plans. Mr. Clark explained that COU's are not subject to the same criteria or approval process as the IOU plans, so it would be possible that those plans would be less detailed, but staff had not reviewed any of the COU plans that have been submitted. Staff included "Council may issue" in the rule to allow Council to retain the discretion to not provide the exception if it is not satisfied that the plan adequately characterizes and mitigates the risks. Council also has the discretion to require a site-specific plan if it doesn't find the IOU or COU plan is adequate.

Council Member Condon expressed concern over allowing the Council to rely on a plan that isn't evaluated or approved by an independent body such as the Public Utility Commission. She

suggested that the rule would be better if it ended with “approved by the Public Utility Commission.” She stated that Council’s approval obligation should be the same for any plan that is not approved by the PUC.

Mr. Clark noted that the rule is written to describe the allowance of the exception for both the IOU and COU plans and that the change Council Member Condon suggested would be a substantive change. He explained that procedurally, the Council can make a substantive change to the rule that is not brought up by a member of the public, but it would likely require a new public notice to allow for public comment.

Council Member Condon stated that a rule revision was not necessary as long as it is clear from the record that it is incumbent upon the Council to ensure that any plans proposed to be relied on to satisfy the standard by a COU are adequate, and that the significance of the word “may” is clear, as the IOU and the COU are different processes.

Secretary Cornett responded the value to Council’s conversations is that they are set in the rulemaking record. If there is an issue with language clarity in the rules, the Council can go back to the decision making process on record and utilize that information. The current language represents that this is not an automatic exception, but that Council “may” look at the specifics of the plan to make a determination that it meets the approved standards.

Vice Chair Howe added his view and approval that “may” in the rulemaking has the meaning of leaving it to the discretion of the Council.

Secretary Cornett reiterated the importance of the Council discussion and deliberations that are included on the record and included in the meeting minutes. Minutes characterize the dialogue that takes place during the Council’s decision making and it is important to reflect that correctly so Council can go back, if needed, to determine the intent of language in rulemaking at the point in time.

Council Member Beier commented the rule represents the Council “must” make finding on the site specific risks and in the consideration of the approved mitigation, rule states that the mitigation plan “may” be approved by Council. Wildfire risk analysis and mitigation is changing as Council receives more information. She expressed her agreement with the language as there needs to be some flexibility built into the rules. Council’s intention with the words “must” and “may” in the language of the rules is clear.

Council Member Jenkins asked Council Member Condon if her concern is that the consumer owned utilities preparation of their mitigation plan doesn’t have oversight of a third party as the investor-owned utilities have with the PUC. He noted that in the rules, Council has oversight for the consumer owned utilities.

Council Member Condon acknowledged that is her concern, adding that Council’s oversight is discretionary due to the word “may” in the language while the PUC is required to approve the investor-owned utilities plan.

Council Member Jenkins expressed his understanding of Council Member Condon’s position but noted his agreement with other Council members position that the record is clear that Council will provide the kind of evaluation of the consumer owned utilities plans that are necessary.

Mr. Clark summarized the Council discussion. If Council receives a plan, the question the council is interested in is whether the plan is sufficient. Plans are reviewed based on the content of the plan, not if it has been approved by third party.

Council Member Jenkins motioned the Council adopt the proposed rules as presented in the notice of proposed rulemaking.

Vice Chair Howe seconded the motion.

Council Member Beier proposed that the rules become effective upon filing following the vote.

The motion carried unanimously.

- C. Protected Areas, Scenic Resources, and Recreation Standards Rulemaking - Adoption of Permanent Rules (Action Item)¹⁰** – Christopher Clark, EFSC Rules Coordinator presented a summary of public comments received on the Council’s proposed rules for the amendment of the Protected Areas, Scenic Resources, and Recreation Standards and associated rules and staff’s recommended responses. Comments must have been received by 5:00 pm on July 21, 2022, to be considered. After considering public comments, the Council considered the adoption of permanent rules.

Mr. Clark reminded the Council that the comment period for the rulemaking closed on July 21, 2022, at 5:00pm. He explained that staff received a number of lengthy and substantive comments which require more consideration, and as such, staff would not have final recommendations for the adoption of permanent rules at this meeting but could review comments and recommended responses for some issues. Secretary Cornett recommended that the Council continue with the presentation for those issues and have staff present the remainder of the issues included in the newly received comments and its final recommendations at the September meeting. The Council agreed with Secretary Cornett’s recommendation.

During the presentation the following discussion occurred:

Mr. Clark explained that some commenters recommended that the Council delay this rulemaking until after the Council has concluded the Application Process Review Rulemaking. He explained that staff recommended that the Council move forward with the adoption of permanent rules. There was no further discussion by Council.

Mr. Clark explained that a commenter recommended that EFSC add language regarding the applicability of the new rules to proposed OAR 345-001-0010, OAR 345-020-0011, and OAR 345-021-0010. He explained that the staff recommends that applicability provisions are not needed for the amended information requirements, definitions, and other non-substantive provisions of the rules. Mr. Clark explained that the proposed procedural rules, information requirements, and definitions were not intended to apply retroactively. There was no further discussion by Council.

Mr. Clark explained that several commenters recommended that the Council remove the “goal post: language for the effective date of protected area designations. He explained that staff did not

¹⁰ Audio/Video for Agenda Item C=00:56:50-2022-07-22-EFSC-Meeting-Audio

recommend changes to the proposed rule as the Council proposed the goal post language to ensure fairness and consistency in the review process. He explained that the goal post does not relieve certificate holder of the requirement to abide by local ordinances and state law and the rules of the council in effect on the date the site certificate or amended site certificate is executed established by ORS 469.401(2). There was no further discussion by the Council.

Mr. Clark explained that several commenters recommended that the Council add private lands under conservation easement to the list of protected areas. He explained that staff did not recommend changes to the proposed rule because conservation easements are generally not intended to permanently restrict the development of private land.

Council Member Condon asked if land trusts are considered the same as Conservation easements?

Mr. Clark stated that he believed that most land trusts put their land under conservation easements under a state or federal program. He explained that there is also a state natural areas program where land trusts or private landowners can dedicate or register their land as a state natural area if it meets the conservation goals and state natural areas plan. State Natural Areas are protected areas.

Council Member Jenkins expressed his concern with the recognition of conservation easements as they can be in many forms and have a lot of different stipulations. He encouraged private landowners to utilize the state or local protection designation process so there is an assurance that they meet the standards for protected areas.

Mr. Clark explained that some commenters recommended that the Columbia River Gorge Commission be added to the list of "reviewing agencies. He explained that staff did not recommend changes to the proposed rule but noted that as part of this rulemaking, the Council has established a policy to provide any public notice on an application for site certificate or request for amendment to the state or federal agency or organization with jurisdiction over a protected area located within the analysis area for a project and that would include the Commission if a project was proposed in the vicinity of the Columbia Gorge Natural Scenic Area.

Chair Grail asked if commentors are expressing belief that they are not involved in the process.

Mr. Clark stated this comment was provided through the portal without much context. The Columbia River Gorge Commission wanted to be involved if there was a review of a facility that could impact the Gorge.

Mr. Clark explained that several commenters recommended that the Council remove the exception from the protected areas standard provided under OAR 345-022-0040(3) for transmission lines and pipelines sited in or adjacent to existing corridors. He explained that this was not discussed in the development of proposed rules, and that staff recommended the issue be considered further in future rulemaking.

Council Member Beier noted her agreement with staff's recommendation. There are multiple local provisions that support transmission siting in existing corridors.

Mr. Clark concluded his presentation by summarizing some of the remaining issues to be discussed at a future meeting.

- D. Public Comment Period (Information Item)¹¹** – This time is reserved for the public to address the Council regarding any item within Council jurisdiction that is not otherwise closed for comment. Items closed for comment include the Boardman to Hemingway Transmission Line Proposed Order and Proposed Contested Case Order, the Nolin Hills Wind Power Project Draft Proposed Order and Proposed Order, and the Carty Generating Station RFA3 Draft Proposed Order and Proposed Order.

During the Public Comment period the following comments were provided:

Irene Gilbert - Ms. Gilbert noted her observation that staff are involved with developers for long periods of time prior to the public's participation in a project. She believes developers and ODOE become a team in the development of proposed applications presented to the public, which results in the public being in an adversarial role with ODOE and the developer. She also feels it complicates ODOE's role as staff to the Council. Her belief is ODOE staff's focus is on the approval of developments as opposed to a balanced presentation of pros and cons, and the impact to people and resources.

Ms. Gilbert further commented her concern with the Supreme Court reliance on the Auer decision, that states the Supreme Court will give deference to agencies in the interpretation of their own rules. As a result, decisions were made in favor or whatever ODOE recommended and the Council approved. Two recent cases before the Supreme Court were not ruled fully in favor of the decision of the Council. Council's decisions have long lasting impacts on resources and people in the state and across the country. She asked that Council not just accept recommendations from the ODOE staff, but to examine the literal language of the statutes and rules. Council makes decisions whether the recommendations comply with the rules and statutes. She expressed her confidence that EFSC decisions are going to increasingly be challenged in courts as there are more environmental groups who are not agreeing with all the Councils decisions. She added EFSC will be judged by future generations for what Council has done to protect the environment and the people, not for building things for the sake building things in terms of energy.

Kathy Moyd suggested that Staff not schedule public hearings and deadlines for comments the day before Council is expected to accept the rules.

The Public Comment Period was closed at 10:29am.

- E. Carty Generating Station, Proposed Order on Request for Amendment 3 of the Site Certificate (Action Item)¹²** – Kathleen Sloan, Senior Siting Analyst. Council reviewed the Proposed Order on Request for Amendment 3 (RFA3) of the Carty Generating Station Site Certificate and will either adopt, modify, or reject the Proposed Order as the Final Order. RFA3 seeks Council approval for a three-year extension to both the construction commencement and completion deadlines of the Carty Solar Farm. This change would make the new construction commencement deadline February 4, 2025, and the new construction completion deadline February 4, 2028. No other changes are proposed in RFA3.

¹¹ Audio/Video for Agenda Item D=01:30:37-2022-07-22-EFSC-Meeting-Audio

¹² Audio/Video for Agenda Item E=01:43:19-2022-07-22-EFSC-Meeting-Audio

During the presentation the following discussion occurred:

Chair Grail offered her perspective and concern for continued extensions being allowed repeatedly for long periods of time. She urged Council to be mindful of the extensions.

Ms. Sloan clarified Staff did reinitiate consultation coordination with all of its reviewing agencies for the request of amendment 3 for Carty Generating Station.

Council Member Condon asked if the Boardman Coal plant was decommissioned sooner than expected.

Ms. Sloan responded the decommissioning is scheduled to be completed within this calendar year.

Secretary Cornett clarified The Boardman Coal Plant attempted to use torrefied biomass to the replace the burning of coal. At that time, they weren't sure if the facility would be decommissioned or transfer to a different type of source for burning.

Council Member Condon questioned when an application is approved with a commitment to a timeframe, does the applicant rely on the opportunity to make an amendment if there are changes or if there an awareness that the process could take longer. In this case, was there an understanding that Carty Solar may not be able to make the timeline?

Secretary Cornett noted there is nothing on the record that articulated that information. Council approved amendment 1 from the solar facility with the understanding of the beginning of construction date and end of construction date. This facility has the ability to request 2 amendments to extend the beginning construction dates.

Council Member Condon asked if the "special times aka Covid" are slowing down the bidding process.

Ms. Sloan stated there was not that level of detail in the comment received. It stated the next round of bidding based on their bidding schedule will be in 2024.

Vice Chair Howe added the decommissioning of the Boardman Coal Plant is a huge project with possible obstacles to overcome. There seems to be a lot of justification for the delay due to the decommission of the coal plant.

Chair Grail questioned whether the phrase "reasonable assurance" is standard with Retirement and Financial Assurance of the proposed order.

Ms. Sloan confirmed it is standard.

Council Member Condon questioned what is a desktop analysis?

Ms. Sloan explained it is an updated literature and record search of all the existing information sources to gather any updated information. It is part of a larger field effort. For the purposes of fish and wildlife habitat, all the standard required databases were consulted with by the ODFW to confirm they have updated literature searches and habitat data.

Secretary Cornett added if ODFW had identified something different that justifies an onsite survey, Staff would be notified. An onsite survey is not required in the Request for Amendment unless ODFW had justification for it. The desktop analysis was determined by ODFW to be the only analysis needed at this time.

Chair Grail confirmed with Ms. Sloan that the Staff's recommendation of no change to Condition 5.6 has been communicated to Oregon Department of Aviation and the certificate holder and there were no comments regarding the recommendation.

Council Member Condon asked for further clarification that the Amended Condition 5.6 is referring to the exhaust stack and is the only concern for the Department of Aviation.

Ms. Sloan confirmed that is correct.

Vice Chair Howe motioned Council adopt the proposed order as the final order and issue a 3rd amendment site certificate for the current regenerating station with the following changes:

reject changes to condition 5.6 as recommended by Staff and maintain the condition as it is currently written in the site certificate.

Council Member Jenkins seconded the motion.

The motion was passed unanimously.

- F. 2022 Carbon Dioxide Emissions Standards Rulemaking - Adoption of Permanent Rules (Action Item)¹³** – Christopher Clark, EFSC Rules Coordinator presented a summary of public comments on the Council's proposed rules for the implementation of HB 2021 (2021) and updates to carbon dioxide emissions standard and staff's recommended responses. Comments must have been received by 5:00 PM on July 11, 2022, to be considered. After considering public comments, the Council considered the adoption of permanent rules.

During the presentation the following discussion occurred:

Secretary Cornett clarified that this rulemaking does not include the Portland General Electric Beaver Plant near Clatskanie as it predates EFSC.

Vice Chair Howe asked, regarding the mention of non-generating facilities that emit carbon, what would those facilities be?

¹³ Audio/Video for Agenda Item F = 02:37:30- 2022-07-22-EFSC-Meeting -Audio

Mr. Clark responded it is typically a surface facility related to an underground gas storage reservoir or a pipeline compressor station.

Mr. Clark explained that a commenter recommended that a “discussion of methods” may not be adequate to ensure that projects adequately and durably refrain from emitting carbon dioxide or other greenhouse gases into the atmosphere. He stated that the proposed amendments to OAR 345-020-0010, 345-021-0011, and 345-021-0021 are intended to be information requirements and are not intended to authorize the use of technology that is not reasonably likely to meet the nonemitting electricity criteria of ORS 469.413.

Mr. Clark explained that several commenters raised concerns about the possibility for failure or leakages from carbon, capture, storage, and sequestration facilities and urged the Council to consider the unproven nature of the technology when it determines whether a facility emits climate changing pollution to the atmosphere. He explained that OAR 345-024-0500, as written, would likely require substantial evidence that any greenhouse gas emissions associated with electricity generation at a proposed facility would be captured and permanently stored, however, including specific criteria to support the findings required by ORS 469.413 may improve the clarity of the rule and may ensure that commenters’ concerns are addressed in any future proceedings involving a carbon capture, sequestration, and storage facility.

Council Member Condon questioned the rule language “in the permanent sequestration of the emissions from the atmosphere”. She asked if the concern was sequestration or no emissions into the atmosphere?

Council Member Beier noted it is incumbent that the Council make findings that are isolating the emissions permanently. She suggested changing the language to clarify the rulemaking by using the word permanent to sequestration.

Mr. Clark drafted new language “result in the permanent capture, sequestration and storage of greenhouse gasses that result from the generation of electricity at the facility” in OAR 345-024-0500 section 2.

Mr. Clark explained that, at its meeting on April 22, 2022, the Council directed staff to obtain facility specific field test data adjusted to ISO conditions, and to make recommendations on the appropriate carbon dioxide standard based on these data rather than on the manufacturer’s specifications.... this data was not available as of the date of this testimony. He explained that because field tested data for the two candidate facilities was not available, staff recommended that the Council rely upon the manufacturer’s specifications for the Dania Beach Clean Energy Center as the most efficient stand-alone combined cycle, combustion turbine, natural gas-fired energy facility that is commercially demonstrated and operating in the United States.

Council Member Jenkins recommended Council utilize the manufacturer's specification information for the field test data reference as other facilities data is unavailable at this time.

Council agreed with Council Member Jenkins recommendation.

Mr. Clark explained that staff recommended that the Council find that increasing in the monetary offset rate from \$2.85 to \$4.27, the full 50 percent increase allowed under ORS 469.503(2)(d), is

supported by empirical evidence of the costs of offsets and is economically achievable for various types of fossil fueled power plants [Note: the slide for this section of the presentation erroneously presented the recommended amount as \$4.79.] The Council expressed unanimous approval.

Mr. Clark explained that staff recommended that the Council find that resetting the carbon dioxide emissions standard for non-base load gas to a rate that is 17 percent below the most efficient natural gas-fired combined cycle combustion turbine plant that is currently operating in the U.S. will be consistent with the majority of the applicable principles articulated in ORS 469.503(2)(b) and will generally have no effect on the remaining applicable principles. The Council concurred without further discussion.

Mr. Clark explained that Commenters had mixed responses regarding what constitutes a “significant increase” in gross carbon dioxide emissions at an existing fossil fueled power plant. Some commenters supported staff’s “no net increase” proposal, some commenters supported further restrictions on incremental increases that are currently allowed without a site certificate amendment, and some commenters wanted additional flexibility to make facility modifications that may increase short term emissions while contributing to overall system reductions in greenhouse gas emissions. Mr. Clark explained that staff recommended that a middle ground approach is reasonable, and that the Council could specify that a change to a facility that results in a net increase of less than three percent is less than significant.

*Secretary Cornett offered clarification for the rule regarding a request for an amendment to a site certificate for a fossil-fueled power plant. Amendment changes can not result in an increase of gross carbon emissions **cumulatively** of more than 3%.*

Mr. Clark added the intent would be the latest estimate done prior to September 25, 2021, for the number of emissions facilities are locked into as their current state.

Council Member Beier expressed her support for the steps in the rulemaking to define “significantly increase” as the phrase can be bothersome to the public and applicants. Circling back to the definition in the statute is helpful. Incorporating into the record the background of how the 3% increase was weighed against the 10% and the Environmental Protection Agency standard is important. Noting there was a process to get to the 3% is helpful.

Council Member Condon agreed with Council Member Beier’s comment.

Council Member Jenkins requested language clarification be included to make clear the 3% increase is from the originally approved facility number of emissions not the amended facility number of emissions and to show there is not opportunity to add the 3% multiple times.

Mr. Clark and Mr. Rowe discussed changes to the language options. Mr. Rowe noted his preference that the language explicitly state the intention of the Council that the 3% increase in emissions specification is based on the originally approved site certificate, not the amended certificate.

Mr. Clark later returned to the meeting with the following updated language for the OAR 345-027- 0375(2)(d):

For a request of amendment to a site certificate for a fossil-fueled power plant, the proposed change will not increase the gross carbon dioxide emissions that are reasonably likely to result from the operation of the facility by more than three percent (3%) above the estimated gross carbon dioxide emissions used to determine compliance with the applicable carbon dioxide standard in the site certificate or amended site certificate most recently issued before September 25, 2021.

Council Member Truitt motioned the Council adopt the proposed rules as presented in the notice with the following changes to the language in proposed OAR 345 024 0500(2) as reflected on screen during staff presentation and changes to the language in OAR 345-027-0375(2)(d) as reflected on screen during staff presentation.

Council Member Jenkins seconded the motion.

The motion passed unanimously.

- G. Boardman to Hemingway Transmission Line - Council Review of Proposed Order Standards, Proposed Facility, EFSC Review Process (Information Item)**¹⁴– Kellen Tardaewether, Senior Siting Analyst presented Council with the review of the proposed facility and procedural history of the application for site certificate. Council also reviewed standards from the Proposed Order which were not part of the contested case and conducted straw polls to preliminarily determine whether any changes should be made to the Proposed Order with respect to these standards.

During the presentation the following discussion occurred:

General Standard of Review

Vice Chair requested clarification of existing roads- substantial modification, as related to the supporting facilities, and the difference between the 2 categories of “improved roads”.

Ms. Esterson explained the first category of 21-70% of a substantial modification is a 16-foot temporary disturbance with 14-foot permanent disturbance. The second category of 71-100% is 16–30-foot temporary disturbance with 14-foot permanent disturbance.

Ms. Tardaewether noted the location for this information in the proposed order is page 19 table PF-1, Site Boundaries Temporary/Permanent Disturbance Areas by Facility Component also under Related or Supporting Facilities for more detail.

Regarding the Construction Commencement and Deadline of 4 years, Council Member Condon inquired if there were amendments for extensions (subject to 2), would it then be 4 years for construction commencement, plus 4 years for construction completion, or 3 years for each extension?

¹⁴ Audio/Video for Agenda Item G= 03:33:23-2022-07-22-EFSC Meeting-Audio

Secretary Cornett clarified if site certificate is granted an amendment for extension, the construction commencement is 3 years and deadline for completion is 3 years.

Council Member Condon asked if “legal description” and “design” are interchangeable as used in the review of mandatory conditions required to modify the General Standard of Review Condition 5.

Ms. Tardaewether stated the mandatory condition states the legal description part of this rule needs a description of metes and bounds or description of the site by reference to a map and geographic data.

Vice Chair Howe added the legal description includes the outer boundaries that contain all parts of the facilities versus the layout of the facility for design.

Ms. Esterson explained the preamble to the condition recommends that Council modify the language of the mandatory condition with “final design” and adding the counties. She suggested striking the “final design” as it is inherent in the meets and bounds as well as in the legal description data.

Discussion occurred to determine the appropriate language to conduct the straw poll. Secretary Cornett read the adjusted preamble language for the General Standard Review of Condition 5 (page 57 of the Proposed Order).

The mandatory condition requires that the applicant submit a legal description of the facility to the department.

The department recommends the Council supplement General Standard Review of Condition 5 to require the applicant to submit the legal description to the department and to the planning departments of the 5 affected counties as per request.

Council Member Condon questioned the phrase “as soon as possible” in the language “If a certificate holder becomes aware of a significant environmental change or impact attributable to the facility, the cite certificate holder should as soon as possible submit a written report” of Condition 8 of the General Standard of review.

Ms. Tardaewether explained that is the exact language from the Mandatory Conditions.

Secretary Cornett confirmed it is from the Administrative Rule. He would recommend Council not make adjustments to language to Rule unless there is a clear direction.

Council Member Condon further questioned the language could lead to a judgment call of what as soon as possible means.

Secretary Cornett agreed while noting there is a 72-hour reporting requirement in compliance with Recommended Organizational Expertise Condition 6.

Council Member Beier added there would also be a difference depending on the type of impact or change.

Secretary Cornett conducted a straw poll on the Proposed Order of the General Standard of Review as written with the exception of specific changes that are reflected below.

The mandatory condition requires that the applicant submit a legal description of the facility to the Department. The Department recommends the Council ~~modify~~ supplement General Standard of Review Condition 5 below to require the applicant to submit final design information ~~the legal description~~ to the Department as well as to the Planning Departments from each of the five affected counties, as per their requests.

Straw Poll was passed unanimously.

Organizational Expertise Standard

Council Member Condon asked if 72.7 miles is the longest transmission line Idaho Power has constructed? In Staff's experience is there nothing significant in the organizational expertise regarding a 300-mile line versus a 72-mile line?

Ms. Tardaewether answered there is an 84-mile 345/500-kV line that was constructed to 500 kV standards, initially energized and currently operates at 345 kV; however, the transmission line has the capability to be energized at 500 kV. She noted the Council's standards have overlays. In the standards for transmission lines, the same engineering and regulatory requirements must be met, regardless of the length of the transmission line.

Council Member Condon recognizing there was a WECC audit in 2015, 2018 and 2021, is there any current information to augment information Council has? Is the WECC audit reported to Council?

Ms. Tardaewether responded there is not an updated audit in the record of the ASC. There is nothing in Rules that would require an additional WECC audit. Under the Organizational Expertise Condition 1, sites are required to submit inspections and reports with dates, issues identified, and any corrective action taken.

Secretary Cornett explained that a WECC audit is not required. The substantive information provided by the audit is required, whether it comes from an independent source or organization or the maintenance crew doing audits.

Ms. Tardaewether added WECC is a 3-year report that is done to maintain NERC standards. NERC establishes the standards. Council has its own mandatory condition in under siting standards for transmission lines that states sites must be constructed and operated to the NERC standards.

Secretary Cornett conducted a Council Straw Poll on Organization Expertise Standard.

The Straw Poll passed unanimously.

Waste Minimization Standard

Secretary conducted a Council Straw Poll on the Waste Minimization Standard.

The Straw Poll passed unanimously.

Council Member Beier asked if the waste minimization standard is also included as part of the plans for public services.

Ms. Tardaewether confirmed that it is part of the overlap in Council standards. Council has a public services standard that evaluates the impact to public and private service providers. Recommended Waste Minimization Condition 1 includes ordinances requested by Morrow County. The Public Services Standard focuses on the impact to the ability of sites to maintain and provide disposal sites for their ongoing operations. The Waste Minimization Standard focuses on the measures taken to reduce and recycle the waste.

Siting Standards for Transmission Lines

Secretary Cornett conducted a Council Straw Poll on Siting Standards for Transmission Lines.

The Straw Poll passed unanimously.

Removal Fill Law

Council discussed the type of presentation for B2H review.

Council Member Condon asked if council member have questions, is it preferred by Staff to be contacted prior to meetings?

Secretary Cornett confirmed Staff appreciates that as it enables staff to prepare report/response. While it is Staff's job is to be responsive to Council's questions, time to prepare a response is appreciated.

Council Member Beier inquired if new data comes in with more wetland removal fill than expected, who enforces the condition?

Ms. Tardaewether responded DSL and the Council would have dual enforcement authority.

Secretary Cornett conducted a Council Straw Poll on the Removal Fill Law.

The Straw Poll passed unanimously.

Water Rights Requirements

Secretary Cornett conducted a Council Straw Poll on Water Rights.

The Straw Poll passed unanimously.

Additional Information

Secretary Cornett provided information on the format for the August 2022 EFSC meeting. The department will work internally to make it the most accessible meeting and platform for people to participate.

The July 22, 2022, EFSC meeting was adjourned at 3:07 PM.