

Hearing Officer's Report to Agency on Rulemaking Hearing

To: Energy Facility Siting Council (EFSC)

From: Vijay A Satyal, Hearing Officer

Subject: Report on Public Hearing for amendment of OAR 345-001-0220

Hearing Date: March 3, 2010 and March 9 2010

Hearing Locations: The Oregon Department of Energy conducted two separate hearings on this proposed rule. The first took place on March 3, 2010 at the Umatilla County Justice Center, 4700 NW Pioneer Place, Pendleton, Oregon at 9:30 a.m. Five members of the public attended. The second hearing was held on March 9, 2010 at 9:30 a.m. in the Westerberg Room at the Oregon Department of Energy, 625, Marion St. NE, Salem, Oregon. No members of the public attended.

Title of proposed Rule: Amend OAR 345-001-0220 to eliminate the Umatilla County Wind Energy Generation Area.

Background: The Umatilla County Board of Commissioners filed a petition with the Energy Facility Siting Council (EFSC) on October 27, 2009 to amend OAR 345-001-0220 in order to eliminate the Umatilla County Wind Energy Generation Area (EGA). The petition was presented at the November 20, 2009 EFSC and the Council directed that a rulemaking be opened. Rulemaking notice was published in the January 1, 2010 Oregon Bulletin.

Umatilla County expressed concern about “the economic and financial disadvantage for development of wind within the EGA.” The Umatilla County Wind EGA is the only EGA that exists in Oregon. Within the EGA, any person who intends to construct or expand a small generating plant must submit a request for an exemption to the Oregon Department of Energy, as described in OAR 345-001-0210(2), so that the Energy Facility Siting Council (EFSC) can determine whether a site certificate is required. If the Umatilla County Wind EGA were eliminated, any person who intends to construct or expand a small generating plant would not need to request exemption or apply for a site certificate from the State of Oregon, so long as the proposed generating plant is not an energy facility that falls under EFSC jurisdiction, as defined by ORS 469.300. This procedure would then be consistent with other counties.

Summary of Oral Comments: On March 3, 2010, five members of the public were in attendance and three members provided oral testimony: Larry Given, Umatilla County Commissioner and Tamara Mabbott, Umatilla County. Planning Director and Richard Jolly.

Larry Givens – County Commissioner, Umatilla County:

Tamara Mabott – Planning Director:

Larry Given and Tamara Mabbott testified together with Larry Givens providing written testimony. Their testimony is on behalf of Umatilla County Commissions.

They were in support of the petition to eliminate the Wind Energy Generation Area (EGA) designated status. Larry Given and Tamara Mabott identified the existence of a “local process and land use planning” efforts that can be used. The EGA designation is the only such designation in the State of Oregon and as such puts the Umatilla County at a competitive disadvantage in the view of the petitioners. The County further feels the EGA takes away the local process for land use permitting. Umatilla County has a robust wind siting ordinance that addresses nearly all of the standards addressed in a State Site Certificate. As part of written testimony is a table comparing Umatilla County siting standards to those of the state. The County feels its standards and process are comprehensive and sufficiently address the impacts of a wind project 105 MW or smaller. Ms. Mabott not only expressed concern about the robustness of the State of Oregon’s standards, but also identified the need for EFSC to closely look at their own “cumulative” impact assessment standards regarding avian impacts, water quality and quantity, and other attributes.

Richard Jolly: Mr Jolly provided both written and oral comments. In addition to the zoning issues, Mr. Jolly commented that the EGA was part of the State’s attempts to zone wind generation and only later opened all EFU grounds to wind turbine facilities. Counties have various degrees of mitigating the problems associated with development impacts. He supports the State putting a moratorium on wind development and “siting” more zones for wind generation that would include exclusive farm use (EFU) zones and allow for project developers to also have a voice in project development. By doing so, the State could also help ensure increased inputs by the counties and help the counties with their studies and disbursement of permit fees. It is difficult for a county to do its work in terms of zoning, once it is finalized.

Written Comments

Morrow County Commissioners: A letter of support was received from Morrow County in support of Umatilla County’s petition to amend Oregon Administrative Rule OAR 345-001-0220. They agree that county and local government authority is hindered by the imposition of the EGA. Counties have the

authority and capacity to regulate land use and that this has been limited in Umatilla County by the EGA. Morrow County further states that numerous wind energy facilities been sited, both through the Energy Facility Siting Council (EFSC) and with the local conditional use permit process without the imposition of an EGA.