

**Minutes**  
**Energy Facility Siting Council Meeting**  
**Discovery Center**  
**5000 Discovery Drive**  
**The Dalles, OR 97058**  
**November 20, 2009**

**Energy Facility Siting Council**

Bob Shiprack, Chair  
Martha Dibblee, Vice Chair  
Lori Brogoitti  
Michael Haglund, (phone connection)  
Jake Polvi  
Bryan Wolfe

**Oregon Department of Energy:**

Tom Stoops, Council Secretary  
Adam Bless, Project Officer  
Sue Oliver, Hermiston Project Officer  
Vijay Satyal, Senior Policy Analyst, Renewables  
John White, Project Officer  
Meiko Kristiansen, Administrative Assistant

**Oregon Department of Justice:**

Janet L. Prewitt, Assistant Attorney General

**Others:**

Elaine Albrich, Stoel Rives  
Jill Barker  
Wendell Baskins  
Barry Beyeler, City of Boardman  
James Carney, NextEra Energy  
Lenna Cope  
Charles Davidson  
Jeff Davis  
Valerie Franklin, Horizon Wind  
Larry Givens, Umatilla County  
Glenn Harrison  
Tim Holz  
Suzanne Leta Liou

Chuck Little  
Tamra Mabbott, Umatilla County  
Loretta Mabinton, PGN  
Liz Nysson, ONDA  
Sara Parsons, Iberdrola  
Jerry Reitmann  
Victor Shestakov  
Linda Jo Smith  
Rick Stearns, BPA  
William Symms  
Rick Tetzloff, PGN  
Kara Warner, Golder Associates  
Mike Yutzie

Chair Bob Shiprack called the meeting to order at 9:35 a.m.

**I. Consent Calendar:**

**A. Announcements.**

Tom Stoops, Assistant Director of the Energy Facility Siting Council, stated that last year the Association of Oregon Counties (AOC) set up a task force to prepare a recommendation to all the county commissioners and planners about how they might improve their process on permitting a commercial-scale wind project. He reported that at their meeting November 19<sup>th</sup> guidelines were presented to the general membership, along with questions and answers. The recommendation will soon be approved by the Board and should be finalized soon. Mr. Stoops said that copies are available at the meeting today for anyone interested.

Bryan Wolfe thanked the Department and the Counties for working together to enable this process.

Roll call was taken by Meiko Kristiansen. Michael Haglund was present by phone connection.

**II. Action Items:**

**A. Approval of the July 31, 2009 Energy Facility Siting Council meeting minutes.**

Bryan Wolfe moved to approve the July 31 and September 11, 2009 Energy Facility Siting Council meeting minutes as written with scrivener changes; Lori Brogoitti seconded the motion and Council was polled:

|                 |     |              |     |
|-----------------|-----|--------------|-----|
| Lori Brogoitti  | Yes | Jacob Polvi  | Yes |
| Martha Dibblee  | Yes | Bob Shiprack | Yes |
| Michael Haglund | Yes | Bryan Wolfe  | Yes |

**B. Umatilla County Petition for Rulemaking to amend or repeal rules regarding Energy Generation Areas.**

Tom Stoops stated that Umatilla County submitted the petition requesting a rulemaking to the Council on October 27. He invited Larry Givens, Umatilla County Commissioner, to review the content of the petition, along with Jan Prewitt, Oregon Department of Justice, for information regarding Energy Generation Areas. Public comments will follow, along with John White, Oregon Department of Energy Facility Analyst, providing clarifying remarks. At that point a motion may be presented.

Chair Shiprack explained the commenting procedure for members of the public.

Larry Givens began his presentation and also introduced Tamra Mabbot, Umatilla County Planner. Mr. Givens referred to the petition, and stated the proposed amendment is to repeal OAR 345-001-0220, subsection (1), which refers to Energy Generation Areas (EGA), in particular, the Umatilla Wind Generation Area.

Umatilla County's request to repeal the Umatilla EGA is to remove the economic and financial disadvantage for development of wind within the EGA. The EGA requires that all wind energy facility development within the designated area be permitted by EFSC rather than by the county. Mr. Givens stated that the Umatilla EGA is the only EGA in the State of Oregon. The EGA creates a competitive disadvantage when compared to the other 35 counties in the state. He also stated this would give citizens a more direct route for the hearing process.

Mr. Givens stated he has a lot of faith in the staff of Umatilla County to process the applications and in following the criteria and standards required to make sure all of the critical, cumulative effect issues are addressed when siting a development.

Lori Brogoitti, Energy Facility Siting Council member, asked if Umatilla County has a cumulative effect study. Tamra Mabbott stated that nobody has a comprehensive cumulative effect study at this time.

Ms. Mabbott referred to a map of Umatilla County showing the EGA. She referred to the meeting of the Association of Oregon Counties (AOC) and the agreement concluded by 36 counties that all counties can handle the smaller projects.

Ms. Brogoitti asked what the financial impacts would be. Ms. Mabbott stated a number of developers have come to set up meetings interested in developing small projects but because of the more lengthy siting process they have gone elsewhere. Mr. Givens agreed and also stated the cost factor is also involved.

Martha Dibblee asked what the difference in costs for the developer. Ms. Mabbott said Umatilla County's permit process would cost approximately \$2,000, the Conditional Use application is \$1,000 and the developer would enter into an agreement with the County to cover some extra costs, possibly \$2,000. She stated the State's process could be upwards of \$200,000. Also, Umatilla County's process must be decided by statute within 150 days; the state's process is significantly longer.

Mr. Givens also brought up a few more topics discussed at the meeting of the AOC, one which is clarification and resolving how the county and state's relationship works together. Other issues to be worked out are decommissioning and bonding; provisions that allow the county to defer a project to the state when applicable; streamlining the process on both sides; noise safe havens and distances; regional or interstate transmission

considerations and the administration rule amendments for Goal 4. These issues are still being discussed.

Ms. Dibblee asked if the county has a matrix that shows the difference between the county review process and the EFSC review, as far as completeness is concerned. Ms. Mabbott said that is available. Mr. Stoops said the Department has a notebook of all 36 counties, and Umatilla County has one of the most detailed for this type of work.

Jan Prewitt, Oregon Department of Justice, reviewed some of the background regarding an Energy Generation Area, which definition is also included in the past meeting minutes. The Council has authority to adopt EGA but it is not addressed specifically in the statutes so the definition exists and the Council has authority to deal with it and determine how it will function.

Ms. Prewitt said out of the context of the petition today to grant or deny the request to undertake rulemaking, another step would be to take a look at the whole set of rules of the Energy Generation Area.

She also corrected that the result of an EGA is a review of applications to determine the cumulative impacts. It does not mean that every single time the Council is going to take jurisdiction over that facility. It is a review of that facility to determine whether its cumulative impacts are taken into account with other things in the area, resulting in impacts the same as a large facility. This is a point that needs clarification - it does not necessarily mean the Council is going to take jurisdiction; it does mean the Council will want to review whether it takes jurisdiction. A decision is not being asked for what to do today. This is something that has to be changed by rulemaking and the petition today is a request to undertake that rulemaking.

Liz Nysson, Oregon Natural Desert Association (ONDA), read comments from the ONDA and presented copies for Council members.

Chair Shiprack asked for comments. There were none.

Suzanne Leta Liou, Senior Policy Advocate at Renewable Northwest Project, introduced herself. She stated Renewable Northwest Project is a non-profit coalition of public interest organizations. They try to work with a variety of stakeholders, counties, developers, environmental and conservation organizations. With that in mind there are many ways to address cumulative impacts which she said Renewable Northwest Project would be happy to assist in and support.

John White, Oregon Department of Energy, reviewed the Umatilla County Petition and the steps to be taken. There is an Oregon statute that addresses what an agency needs to do having received a petition, which Mr. White read, "183.390 Petitions requesting adoption of rules. (1) An interested person" (which in this case is Umatilla County) "may petition an agency requesting the promulgation, amendment or repeal of a rule. The

Attorney General shall prescribe by rule the form for such petitions and the procedure for their submission, consideration and disposition.” (Mr. White said next is the key language) – “Not later than 90 days after the date of submission of a petition, the agency either shall deny the petition in writing or shall initiate rulemaking proceedings in accordance with ORS 183.335.” Mr. White stated that ORS 183.335 talks about notice and procedural steps to initiate rulemaking. He also stated that the deadline for formal publication of notice in the Secretary of State’s Bulletin is December 15<sup>th</sup> to get a notice in the January 1 Bulletin. This needs to include the announcement of a public hearing. Ms. Prewitt agreed about the process.

Mr. White said the statute goes on “(2) If a petition requesting the amendment or repeal of a rule is submitted to an agency under this section, the agency shall invite public comment upon the rule, and shall specifically request public comment on whether options exist for achieving the rule’s substantive goals in a way that reduces the negative economic impact on businesses.” Mr. White said in the meeting today public comment has been received. If the Council decides to proceed with rulemaking, a request will be made for public comment on these items.

Mr. White discussed the requirements of ORS 183.390(3) and the six items that the Council must consider in reviewing a petition for rulemaking for amendment or repeal of a rule. Mr. White stated there has been a lot of misunderstanding about what the EGA rule says. Mr. White referred to the briefing memo sent to the Council for the meeting, which notes that OAR 345-001-0220 is linked to other rules, specifically what occurs within an EGA. The definition of creation of an EGA is covered in OAR 345-001-0200. The next rule, OAR 345-001-0210, talks about the procedure. Finally, -0220 is where energy generation areas are defined, which is where you find the definition of the Umatilla County Wind EGA. The rule applies to small generating plants. That is a term in the statutory definition of an EGA which is ORS 469.300(12): “Energy generation area” means an area within which the effects of two or more small generating plants may accumulate so the small generating plants have effects of a magnitude similar to a single generating plant of 35 megawatts average electric generating capacity or more.” Mr. White stated the “35 megawatts or more” is a jurisdictional facility. So the statute gives us the language “small generating plant.” When the Council adopted this set of EGA rules the Council defined what a “small generating plant” is. It is defined under the current rule as “one or more electric power generating devices that have a combined nominal electric generating capacity of more than 3 megawatts and a combined average electric generating capacity of less than 35 megawatts.” It is the range in nominal terms from 3 megawatts to 105 megawatts – that is what a “small generating plant” is.

Mr. White discussed what the Council rule requires in an EGA for small generating plants. That is described in OAR 345-001-0210(2). The developer must submit an exemption request. Or, if the developer wants to expand a small generating plant to jurisdictional size, the developer must apply for a site certificate. For a smaller facility in an EGA, the Council does not automatically have jurisdiction. The developer must submit a request for exemption. There are rules in Division 15 for an exemption request.

It is a case by case decision. If there are multiple small generating plants, at what point do those small plants have an impact that is the same or greater than a jurisdictional facility? The rule sets out a number of factors in making that determination. This gives the Council flexibility to decide whether or not to take jurisdiction of a small generating facility. The issue is not the competence of the county to process permits and apply land use ordinances. The issue is when should the State energy facility siting standards apply? The county ordinances do not require findings on the siting standards.

We do not know how the Council might apply the EGA analysis, because in the ten years that have passed since this rule was adopted, no developer has ever filed a request for exemption. So, it is an untested rule.

The first factor that the Council must consider in deciding on the petition is the continued need for the rule. The county is asking for the removal of the Umatilla County Wind EGA. Do we still need an EGA in Umatilla County? The second factor is the nature of the complaints or comments received concerning the rule from the public. We have not received any comments except for the petition that is before us now. The assertion is that this EGA creates an economic disadvantage. The next factor is the complexity of the rule. The petition points out correctly that the rule is pretty simple, but the petition goes on to suggest that there is some mystery about the decision to establish an EGA in Umatilla County. There is really no mystery about why the EGA was established in Umatilla County. That is where wind development was occurring in 1999. The real question might be why hasn't the Council adopted wind EGAs in other counties where wind development has occurred in the last ten years? That question may be for a later day. Mr. White noted that the counties have become more experienced in siting wind development.

Mr. White continued with the statute, the next factor is "(d) the extent to which the rule overlaps, duplicates or conflicts with" other law. He stated that there is no overlap or duplication with regard to the EGA in Umatilla County.

The next factor is the degree to which technology, economic conditions or other factors have changed. The thing that really has changed is that wind energy development is more widespread in the state now than it was in 1999.

The last item is the statutory citation or legal basis for the rule. Jan has addressed this in an earlier meeting.

Mr. White pointed out that the EGA set of rules was adopted in 1999. In 2001, the legislature changed the jurisdictional threshold for the Council for wind energy. In 1999 the jurisdictional threshold was 25 megawatts nominal. The effect of the 2001 legislative change was to raise it from 25 effectively to 105 megawatts. This suggests a legislative decision that much larger wind energy projects than before should not have to meet the

state energy facility siting standards. The point is that the jurisdiction changed and that affects whether or not we should continue to have areas in the state such as the Umatilla EGA. That again, is a question for another day.

Mr. White asked if there were questions from Council members.

Jacob Polvi asked what the process would be to adopt other EGAs. Mr. White said it would be by rule. Mr. White stated that the Department is not recommending that this rulemaking get beyond the single issue of the Umatilla County EGA. In the course of public comment on that issue, other issues might be raised that could be considered further for rulemaking. Mr. Polvi said he is not asking if they are needed, only the process.

Ms. Prewitt stated that one of the things that will govern the rulemaking for any issue is the way that the rule is defined. If you are going to take a broad look at the issue, then you would identify the entire EGA rules to have people comment on and have the Staff provide amendments or whatever at the time you enter into rulemaking. The process is the same process that you would be doing if all you were going to look at is the repeal. You have to file with the Secretary of State a Notice of Proposed Rulemaking, which defines the rules that you are going to look at, invite comments on those rules and at the same time prepare a rule for people to “shoot at” that can be changed.

Ms. Dibblee asked about a “temporary rule”, an emergency action that would last about six months, and questioned whether that is still available. Mr. White stated this is available still. Ms. Dibblee asked that because of the deadlines with the state, would the temporary rule relieve some of the county’s anxieties and problems right now and allow the Siting Council to thoroughly review the EGA? There was discussion about the emergency rulemaking, and the option of filing for an exemption.

Ms. Prewitt said it is not easy to adopt a temporary rule and she didn’t feel a temporary rule could be justified. It would need to be specifically declared an immediate emergency to do that. Mr. White also stated that an emergency rulemaking delays or eliminates the public hearing. He stated he felt for this issue, it is important to have a public hearing, ask the county to give more detail on what the economic effect is and ask the county and others to comment on the rule and whether other options exist to achieve the substantive goals of the rule.

Bryan Wolfe said he felt in favor of granting Umatilla County’s request, going through the rulemaking and then the whole aspect of an EGA should be researched in the future.

Mr. Stoops said the Staff would like to make a recommendation to the Council that the Petition for Rulemaking by Umatilla County be granted. He further discussed what steps would need to be done.

Bryan Wolfe moved to grant Umatilla County's petition and authorize the initiation of rulemaking to modify the rules in OAR 345 related to the establishment of Energy Generation Areas; Martha Dibblee seconded the motion and Council was polled:

|                 |     |              |     |
|-----------------|-----|--------------|-----|
| Lori Brogoitti  | Yes | Jacob Polvi  | Yes |
| Martha Dibblee  | Yes | Bob Shiprack | Yes |
| Michael Haglund | Yes | Bryan Wolfe  | Yes |

**C. Council Decision on Proposed Amendment to CO2 Rule for Variable Power Generating Plants**

Adam Bless, Oregon Department of Energy, referred to the memo dated November 9, 2009 from him and the Hearing Officer's Report. Mr. Bless also referred to the Proposed Amendment to EFSC Carbon Dioxide Standard for non base load Power Plants and the comments from Columbia Riverkeeper dated October 8, 2009. The comments from Columbia Riverkeeper are summarized in the Hearing Officer's Report, but Council should read all comments in the letter.

Mr. Bless reviewed the rulemaking history, stating that Portland General Electric (PGE) petitioned EFSC for the proposed amendment on July 22, 2009. They requested a change to the way carbon dioxide offsets are assessed for non base load power plants. They pointed out that those types of power plants were originally thought to operate in an off/on mode. If it was on it was 100% on and if it was not on it was totally off. PGE pointed out that in order to integrate wind a new generation of variable power plants that may operate at full power or may operate at part power.

EFSC approved the petition for rulemaking at the July 31, 2009 meeting. A workshop was held in August, refined the proposed language, issued notice of the proposed amendment in the September 1, 2009 Secretary of State Bulletin and mailed out notice to the mailing list of interested persons. ODOE held a hearing on October 5, 2009 and requested written comment on the proposed amendment by October 8, 2009. The comments received October 8, 2009 from Columbia Riverkeepers described objections to the proposed rule.

To summarize, the Hearing Officer has recommended that the proposed rule be adopted as noticed out in the September 1<sup>st</sup> Bulletin. Since the public comment period has closed, Mr. Bless said he could not offer additional insight outside of what is already on the record.

Jacob Polvi moved to approve the proposed amendment to the CO2 standards for non base load power plants; Martha Dibblee seconded the motion and Council was polled:

|                 |     |              |     |
|-----------------|-----|--------------|-----|
| Lori Brogotti   | Yes | Jacob Polvi  | Yes |
| Martha Dibblee  | Yes | Bob Shiprack | Yes |
| Michael Haglund | Yes | Bryan Wolfe  | Yes |

**D. Request for authorization to initiate rulemaking to increase the CO2 Monetary Path Rate**

Adam Bless, ODOE, stated that the Department requests Council approval to initiate rulemaking to increase the monetary path rate for CO2 offsets that site certificate holders obtain through a qualified organization such as the Climate Trust. OAR 345-024-0580 originally set the rate at 57 cents/ton in June 1997 and provided that the Council must hold the rate for three years and then can raise it by up to 50 percent every two years thereafter. The Council could have raised it more than what has been done. Today it is at \$1.27/ton and Staff would like to increase the rate to \$1.91, which is still far short of the actual price.

Mr. Bless presented visual aids showing what the rate would have been if EFSC had raised the monetary path rate by the allowed amount. There are two items the statute says EFSC must consider when raising the rate: 1) the empirical evidence of CO2 offsets and 2) the finding that the standard is economically achievable with the rate for natural gas fired power plants. These would be considered in the actual rulemaking if the Council pursues the rulemaking process. Mr. Bless stated there would be a quick look today, and anything considered at this time would have to go on the record if rulemaking is pursued.

Actual Costs of CO2 Offsets

Mr. Bless presented a graph from The Climate Trust's Five-Year Report. This showed the EFSC monetary path rate and what The Climate Trust has paid for CO2 offsets in its portfolio. This also showed the Climate Trust's Oregon portfolio, which was listed as \$4.50 per metric ton in 2009. The \$1.91 quoted earlier was in terms of short tons, which would be equivalent to about \$2.10 in metric tons.. The average U.S. Market at the time was about \$6.00 per ton.

Carbon offsets are a commodity, just like an agricultural commodity and is actually a world market. The trend shows that the world market is going to dominate and where there is a world market and a U.S. market those two markets will align. The world market is listed in Euros.

If the Council authorizes rulemaking, the process includes a series of hearings and public comment periods. Stakeholders would have ample opportunity to present arguments on the issue. ODOE would issue public notice, invite public comments and hold at least one hearing. At the end of this process, the Council would decide on whatever proposed rule emerges from the hearing process, probably in early 2010.

Mr. Bless asked for comments and also noted that representatives from The Climate Trust are available for questions at this meeting. Martha Dibblee asked how much CO2 is being saved now by using all of the renewables. She stated that would impact the amount of payment if they are generating less CO2. Mr. Bless said there are many variable factors to consider. For example, the capacity factors, know what the backup is and how much of each is being used. He stated that question deserves answers but it cannot be answered in a single sentence; if rulemaking is undertaken that would be a good time to consider more details.

Chair Shiprack asked if there were more comments.

Jill Barker commented on the offsets and stated this information is very important to know and felt it should be mandatory before “renewable energy” is pursued.

Bryan Wolfe stated that he would like to see this addressed at a later date.

Jacob Polvi moved to approve the request for authorization to initiate rulemaking to increase the CO2 Monetary Path Rate; Lori Brogoitti seconded the motion.

Bryan Wolfe made a comment that he is not in favor of adding additional cost at this time due to the financial economy and his concerns as a business owner.

Council was polled on the motion:

|                 |     |              |     |
|-----------------|-----|--------------|-----|
| Lori Brogoitti  | Yes | Jacob Polvi  | Yes |
| Martha Dibblee  | Yes | Bob Shiprack | Yes |
| Michael Haglund | Yes | Bryan Wolfe  | No  |

**E. Leaning Juniper II – Council action on financial assurance for Leaning Juniper II**

John White, ODOE, stated that under the Site Certificate for Leaning Juniper Project IIA, financial assurance is required and the actual amount is determined when the final design of the project is known. There is consultation with the staff regarding components of the final design, the site restoration estimate that is in the Final Order, come up with a Financial Assurance amount and have it in place before construction can begin.

The Certificate Holder is eager to begin construction of Leaning Juniper IIA and Staff has determined the amount of financial assurance required. The estimate that produced this final amount is in the Proposed Order on Amendment 1. In advance of the meeting, a redlined markup was sent showing the Proposed Final Order and this will be referred to during the Amendment discussion. Mr. White stated that on page 14 of that markup is the site restoration cost for Leaning Juniper IIA in 4<sup>th</sup> Quarter 2009 dollars based on final design. The amount came to \$4.705 million. Staff has been discussing the form and

issuer of the bond with the certificate holder. The certificate holder proposed a Letter of Credit to be issued by JP Morgan Chase. This issuer has been approved by Jeff Keto, Assistant Director for Finance, ODOE. A copy of the proposed a letter of credit has been passed out to Council members.

Bryan Wolfe moved to approve the form, amount of financial insurance, as well as the issuer; Martha Dibblee seconded the motion.

Council was polled on the motion:

|                 |     |              |     |
|-----------------|-----|--------------|-----|
| Lori Brogoitti  | Yes | Jacob Polvi  | Yes |
| Martha Dibblee  | Yes | Bob Shiprack | Yes |
| Michael Haglund | Yes | Bryan Wolfe  | Yes |

**F. Leaning Juniper II – Council action on Request for Amendment #1**

John White, ODOE, passed out maps concerning Leaning Juniper II, and introduced Sara Parsons, Representative of Iberdrola Renewables. Ms. Parsons introduced other representatives of Iberdrola, including Elaine Albrich, legal representative from Stoel Rives.

Description

Mr. White stated Leaning Juniper II has requested Amendment #1 which would enlarge the facility site and allow placement of wind turbines and other components in the new area, but it would not increase the generating capacity or number of turbines at the facility.

Mr. White referred to the maps and the locations of projects, Leaning Juniper IIA and Leaning Juniper IIB. He also said for information purposes, there is a Leaning Juniper I, which is a sub-jurisdictional facility permitted by Gilliam County and operated by PacifiCorp.

In reference to the red-lined copy of the Final Order, Mr. White discussed the procedural history and referred to the comments received by the public and agencies, as noted on pages 1 – 3.

Retirement and Financial Assurance

On page 14, the Site Restoration Cost for LJIIA is listed; on page 17 is the Site Restoration Cost for LJIIB. Mr. White pointed out that the difference in the costs between the two - LJIIA is actual costs, and Table 2 is for LJIIB, showing a very conservative high cost estimate. LJIIB could be adjusted downward once the final design is known.

Land Use

The facility is located entirely in Gilliam County; the facility, including the proposed LJIIB area would not comply with Gilliam County Zoning Ordinance (GCZO) Section 4.020(D) (14) which limits the size of a commercial power-generating facility in an Exclusive Farm Use (EFU) zone. The facility would occupy more than 12 acres of high-value farmland and more than 20 acres of non high-value farmland. Because the facility does not comply with all applicable county criteria the Council must determine whether the facility complies with the applicable Statewide Planning Goal (Goal 3) and the implementing regulations. The discussion of Goal 3, Agricultural, begins on page 33 of the red-lined draft.

Mr. White said the Council and Staff have recently had discussions of the need to analyze both the old rules and the new rules regarding implementation of Goal 3. The old rules, LCDC rules, incorporate the same 12 and 20 acre limitations that the county ordinance has, therefore the facility would not comply and a Goal 3 Exception would be needed. Pages 36 through 38 discuss this Exception.

Under the new rules, Staff recommends a finding that the facility would comply with OAR 660-033-0130(37) for the reasons discussed at pages 39 through 45. Briefly, the ODOE recommends the Council find the certificate holder has considered reasonable alternatives to locating the wind facility components on high-value farmland.

#### Soil Protection Standard

This is discussed at page 46 in the red-lined Final Order. The construction and operation of the LJIIB components would involve the same types of potential soil impacts and mitigation as in the findings in the Final Order that the Council addressed for the LJIIA components. The Department is not recommending any new or changed site certificate conditions, except for incorporating an undated revegetation plan in Condition 74.

#### Protected Areas, Scenic Resources, and Recreation Standards

These standards are addressed at pages 47 through 56. Although the amendment would expand the site boundary, there are no new areas that were not previously addressed by the Council. Accordingly, the Council's findings with these standards would still apply if the amendment is approved.

Lori Brogoitti asked about a spot on the map outside the site boundary. Sara Parsons answered the question, stating that they have tried to reduce the boundaries to only areas that they need, and the area in question is a portion that is not needed just for construction.

#### Public Health and Safety Standards for Wind Energy Facilities

Mr. White referred to Condition 39 regarding the setback requirements. The site certificate holder proposes that the Council revise the setback requirements in Condition 39 to conform to setback distances that the Council has required for other wind energy facilities. Another change the Department recommends is modification to Condition 53 to require the submission of Notices of Proposed Construction or Alteration to the

Oregon Department of Aviation, as required under OAR 738-070-0080. In response to a Notice of Proposed Construction or Alteration, the Oregon Department of Aviation makes a determination whether the proposed construction would be a hazard to air navigation and whether further aeronautical study is necessary.

#### Cumulative Impacts and Transmission Line Standards

These standards are discussed at pages 56 through 62. The proposed amendment would reduce the total number of turbines at the facility. It would change the potential locations of wind turbines and other components. The amendment would add 21 maximum miles of access road and add additional above-ground transmission lines. This includes the two options for the inter-connection line from LJIIB to the BPA facility at Jones Canyon. Mr. White referred to Figure 2 of the maps he handed out.

Modification of Condition 83 is being recommended by the Department to require compliance with the 2006 rather than 1996 Avian Protection Practices recommended by the Avian Powerline Interaction Committee (APLIC). Also, there is a recommendation to change Condition 92 to allow “minimum lighting necessary for construction” and to require that such lighting be shielded or downward-directed to reduce glare.

#### Threatened and Endangered Species

Mr. White discussed one State-listed threatened plant species (Laurent’s milk-vetch), which will be protected with a change in Condition 84. Animals discussed were the Washington ground squirrel and the Bald Eagle.

#### Habitat Standard

This is discussed on pages 64 through 76, where there is also information about Washington ground squirrel habitat. The site certificate holder made substantial revisions to the layout to protect the Washington ground squirrel. As discussed on pages 71 through 73 ODFW modified its policy guidance on classification of Category 1 Habitat around Washington ground squirrel burrow areas.

Mr. White reviewed calculations for mitigation areas for LJIIA and LJIIB and what the LJF as a whole would need. A requirement for periodic Washington ground squirrel assessments in the IIB area has been added to the proposed Wildlife Monitoring Mitigation Plan incorporated in this amendment in Condition 87.

#### Structural, Cultural Resources, Public Services, Waste Minimization Standards

These are discussed on pages 76 through 80. There are no substantive changes are proposed but there are minor changes as needed to reference the new areas.

#### Noise, Removal-Fill, Ground Water Act, Public Health & Safety

The amendment does not result in any significant changes to conditions related to other applicable regulatory requirements, including noise, removal fill, ground water act, and public health & safety. This is discussed at pages 81 through 92.

In conclusion, Mr. White stated the Department recommends that the Council approve Amendment #1 and issue an amended site certificate for the Leaning Juniper II Wind Power Facility, with the specific revisions shown and explained on pages 94 through 111.

Martha Dibblee moved that the Council accept the Department's recommendation and approve Amendment #1 for the Leaning Juniper II Power Facility; Jacob Polvi seconded the motion. Council was polled on the motion:

|                 |     |              |     |
|-----------------|-----|--------------|-----|
| Lori Brogoitti  | Yes | Jacob Polvi  | Yes |
| Martha Dibblee  | Yes | Bob Shiprack | Yes |
| Michael Haglund | Yes | Bryan Wolfe  | Yes |

Chair Shiprack asked for public comments.

Glen Harrison, from Albany, introduced himself. He expressed his concerns of the cultural/historical aspect in regards to the Oregon Trail and the placement of towers, roads and transmission lines. Chair Shiprack said the Oregon Trail has been addressed in the Proposed Order and stated Mr. White could show him the reference.

Chair Shiprack and Mr. Stoops discussed changing the agenda in order to get all Action Items first, after lunch.

Chair Shiprack recessed for lunch.

### **III. Lunch**

#### **G. Stateline Wind Project – Council action on an Amendment of the Wildlife Monitoring and Mitigation Plan**

John White, Oregon Department of Energy, said the certificate holder for the Stateline Wind Project, FPL Energy Stateline II Inc, has requested a change in schedule for fatality monitoring on Stateline 3, from January 2010 to January 2011. This is to coincide with monitoring that will be done on the Washington portion of the Stateline project, so that there would be a better data set.

Mr. White said that, under the monitoring plan, the Department is empowered to agree to amendments of the Wildlife Monitoring Plan. The language has been worked out with the certificate holder; however, under Section 13, the Department must notify the Council of the amendment and the Council retains the authority to approve, reject or modify the amendment. The Department is requesting the Council approve the amendment.

Jacob Polvi made a motion to accept the Department's recommendation and approve the amendment for the Stateline Wind Project Wildlife Monitoring and Mitigation Plan; Martha Dibblee seconded the motion. Council was polled on the motion:

|                 |     |              |     |
|-----------------|-----|--------------|-----|
| Lori Brogoitti  | Yes | Jacob Polvi  | Yes |
| Martha Dibblee  | Yes | Bob Shiprack | Yes |
| Michael Haglund | Yes | Bryan Wolfe  | Yes |

**H. Montague Wind Power Facility, Shepherds Flat North, Shepherds Flat Central and Shepherds Flat South – Council action on appointment of Special Advisory Groups and Council appoint of Golder Associates, Inc to assist.**

John White, Senior Analyst for the Oregon Department of Energy, stated there are four facilities that need to have the Special Advisory Group appointed, which is discussed in ORS 469.480 (1).

Bryan Wolfe made a motion for special assistance and approval to use an independent contractor for Montague Wind Power Facility, Shepherds Flat North, Shepherds Flat Central and Shepherds Flat South; Lori Brogoitti seconded the motion. Chair Shiprack confirmed this would be Golder Associates, Inc. Council was polled on the motion:

|                 |     |              |     |
|-----------------|-----|--------------|-----|
| Lori Brogoitti  | Yes | Jacob Polvi  | Yes |
| Martha Dibblee  | Yes | Bob Shiprack | Yes |
| Michael Haglund | Yes | Bryan Wolfe  | Yes |

Bryan Wolfe made a motion to appoint the Gilliam County Court and Morrow County Court as Special Advisory Groups for the Montague Wind Power Facility, Shepherds Flat Central and Shepherds Flat South Facilities; Lori Brogoitti seconded the motion. Council was polled on the motion:

|                 |     |              |     |
|-----------------|-----|--------------|-----|
| Lori Brogoitti  | Yes | Jacob Polvi  | Yes |
| Martha Dibblee  | Yes | Bob Shiprack | Yes |
| Michael Haglund | Yes | Bryan Wolfe  | Yes |

Bryan Wolfe made a motion to appoint the Gilliam County Court as Special Advisory Groups for the Shepherds Flat North Facility and the Carty Generating Station; Lori Brogoitti seconded the motion. Council was polled on the motion:

|                 |     |              |     |
|-----------------|-----|--------------|-----|
| Lori Brogoitti  | Yes | Jacob Polvi  | Yes |
| Martha Dibblee  | Yes | Bob Shiprack | Yes |
| Michael Haglund | Yes | Bryan Wolfe  | Yes |

**I. Carty Generating Station – Appointment of Gilliam County as a Special Advisory Group**

Sue Oliver, Oregon Department of Energy, commented on the appointment of Gilliam County as a Special Advisory Group for the Carty Generating Station, as noted in the last motion approved. She stated that back in June of this year, Morrow County was appointed as the Special Advisory Group. When the Notice of Intent was received it was realized that the transmission line extended into Gilliam; therefore they are also appointed as a Special Advisory Group.

**IV. Information Items:**

**A. Briefing on Portland General Electric (PGE) Request for Amendment #7 to Port Westward Site Certificate**

Adam Bless, Oregon Department of Energy, provided information and an update on the Port Westward Power Plant. The plant was approved in 2002, began construction in 2005 and originally was designed as a 600 megawatt power plant (up to 650 if you count the power augmentation). For market reasons PGE only built the first 400 megawatts, which is operated as a central station baseload combined cycle unit. This is the reference plant for the carbon dioxide standard right now.

PGE has explained in their application what they're proposing to build is variable generating plants designed to go up and down in power to follow the varying level of power from wind. They have offered a couple of different configurations. They might build either two fairly large simple-cycle gas turbines, similar to jet engines; or they could accomplish the same power with a bund of modular reciprocating engines, or they can do some combination in between.

Mr. Bless said that if a Proposed Order is written and recommended, there would be conditions requiring them to tell us what final design they choose and adjust their conditions accordingly. He referred to a map showing the site area.

In reviewing procedures, Mr. Bless said the application was received on September 18, 2009. The Department issued notice to the public and reviewing agencies a few days later, with comments due October 21<sup>st</sup>. The Department received comments from Oregon Department of Fish and Wildlife (ODFW), comments from Columbia County and from the Columbia Riverkeepers (Non-Governmental). Based on those comments the Department requested additional information on October 30<sup>th</sup>. Rick Tetzloff with PGE has given a partial response to the request. Copies and information on comments have been prepared for Council members.

Mr. Bless discussed ODFW's comments and PGE's response and revisions to comply. Columbia County's main comment had to do with roads. They have been negotiating with PGE on who will pay for the impact on the roads. Columbia County has reported that these negotiations are going well. The Columbia Riverkeeper's comment is summarized by the concern that PGE may be buying its fuel from LNG terminals that are proposed. Mr. Bless stated those LNG terminals are under the Federal Energy

Regulatory Commission (FERC) jurisdiction. EFSC has no jurisdiction over the LNG terminals, and has no authority to tell PGE where it can buy fuel from. The comments are on the record and will be addressed in the Proposed Order.

Mr. Bless stated PGE had a contested case on the noise standard during the original licensing and with the construction of the second unit, additional sound will have to meet compliance with standards. Mr. Bless referred to a map showing three residences located close to the sites. Also on the map he referred to Crims Island, which is important to the Habitat Mitigation Standard because there is a bald eagle nest there.

Mr. Bless stated ODOE anticipates publishing a Proposed Order before the next Council meeting in January. He requested comments from Council members on any additional information needed. The public comment period, an opportunity to request a contested case, is fixed in rule to be 30 days, not more or less.

Chair Shiprack acknowledged there were no questions or comments.

Next, Mr. Stoops asked Adam Bless to introduce Victor Shestakov. Mr. Bless said Victor is a graduate student at Portland State University and a student of Mike Katz, a professor of Portland State, who in the 1990's was Chairman of the Public Utility Commission (PUC) and leader of the 1997 Task Force that eventually resulted in many changes to EFSC's statutes. Mr. Bless said Victor is from Russia.

Victor Shestakov said he is from Moscow, Russia, on a fellowship/scholarship, which is an exchange program between Russia and the United States.

Next, Mr. Stoops introduced Kara Warner, Golder Associates, Inc.

**B. Presentation of White Paper; Update on Electromagnetic Field Health Effect Studies**

Kara Warner, Golder Associates Inc., discussed the increase in transmission lines and the fact that electromagnetic fields are associated with transmission lines. She said there are an electric field and a magnetic field, which are two different things. Anytime there are charged electrons they have an electric field that they generate all in themselves. A magnetic field is caused when one of those particles moves; that causes a shift and a magnetic field forms. Even though electric and magnetic fields are distinct they go hand in hand. Ms. Warner discussed more on electromagnetic fields (EMF). There are many types of EMF, including the human body.

The high frequency EMF from the sun, gamma rays, x-rays mean that the electrons are moving back and forth very quickly. Ms. Warner discussed the scale of EMF, comparing vacuum cleaners, microwave ovens, digital clocks and transmission lines. She showed on a chart the difference in EMF at different distances.

She discussed how EMF has been used in beneficial ways. They has been used in FDA approved ways for the stimulation of bone growth, to the extent of salvaging limbs scheduled for amputation in patients with chronically un-united broken bones. Other treatments have been in osteoporosis, multiple sclerosis and also in treating cancer.

Ms. Warner talked about studies that have been done in regards to diseases and environmental factors. Epidemiological studies that are linking EMF can be shown to go both ways.

Many birds utilize electric power lines and this has been a reason of concern to examine their health effects from EMF. There is a great deal of uncertainty surrounding the findings on the effects of EMF exposure on birds, and birds appear to be diverse in their sensitivities to EMF exposure.

Ms. Warner discussed the US Federal Government and European Union Activities regulatory environment. In light of investigations conducted, it was decided the science was still too weak to make any regulatory action.

In 1991, the Energy Facility Siting Council convened a committee to look at the health effects. This was before the United States did it and before the International Council did it. In 1993 that committee presented its findings to the state legislature and gave three recommendations: 1) We need to continue to monitor the science of electromagnetic fields, 2) We encourage low-cost measures to reduce human exposures, 3) Science is not strong enough to set health-based limits at this time.

Since that time the United States and an international Panel have reviewed the information (in 1999 and also 2009) and their conclusions were similar to Oregon's in 1993.

Ms. Warner asked for questions or comments. Chair Shiprack asked if action needed to be taken by EFSC. Mr. Stoops said this information has been presented, along with Dr. Warner's EMF Report to see if the Electric and Magnetic Field Committee would need to be reconstituted for further studies.

Jan Prewitt, Oregon Department of Justice, stated that in looking at the statute the committee is still on the books and the Council has the authority to appoint a committee if they deem necessary.

### **C. Project Updates**

Adam Bless, Energy Facility Analyst, Oregon Department of Energy (ODOE) said the Boardman-Hemingway Transmission Line Project is continuing with the community advisory process. They are engaging the public to find a route and have had a lot of meetings. The Department is not pushing them for a certain date or route. When they

come up with the route they are comfortable applying for, they will contact the Department and continue. Mr. Bless stated all Council members are always welcome to attend any of the Idaho Power meetings.

Sue Oliver, Energy Facility Analyst, ODOE, said the Project Order for the Carty Generating Station was issued on November 3, 2009 and there is information for Council members to add to binders. PGE is anticipating a preliminary application probably by the end of the year, possibly early January.

Ms. Oliver also updated EFSC on the Antelope Ridge Wind Power Project, which is in Union County. A preliminary application was received on October 19<sup>th</sup> and is currently out for reviewing to agencies and comments are due December 2<sup>nd</sup>. A request for additional information has not yet been issued.

The Summit Ridge Wind Project in Wasco County was reviewed. Ms. Oliver said a preliminary application was received on September 30<sup>th</sup>, three comments were received. A request for additional information will be put together soon for that also.

Ms. Oliver asked the Council whether they are interested in receiving a disc with the preliminary information or would members rather wait until the application is complete. Chair Shiprack agreed with the completed application.

John White, Energy Facility Analyst, ODOE, began reviewing the Shepherds Flat Projects - North, Central and South have each done Amendment Requests. One item they are doing is proposed an alternate interconnection line between those projects and the Slatt Substation, a new substation BPA is building. They are asking to either use the previously approved route or a new route, which would apply to all three facilities.

In addition, Mr. White said those amendments affect the Central and South facilities move some of the land that was in South into Central, and they are adding additional acres to both South and Central that are outside any previously improved site boundary. It is land that was in the area that had been noticed for the Saddle Butte Project.

Mr. White also said in regards to Saddle Butte there is a Notice of Intent (NOI) and the Department is anticipating a Preliminary Application in January.

Mr. White discussed the Montague Wind Power Facility. This is an Iberdrola Project, next to Leaning Juniper IIA, and has an NOI. The current layout includes both Gilliam and Morrow Counties. A public information meeting will be held in Arlington on December 9<sup>th</sup> and the Department expects a Preliminary Application in January. Mr. White also said the correct pronunciation is "Mon- tag" (short a)

Bryan Wolfe asked about the upcoming meetings.

#### D. Briefing on Avoided Costs

Vijay Satyal, Policy Analyst for Renewable Energy, Oregon Department of Energy, introduced himself. He stated would be giving a presentation along with Jan Prewitt, Oregon Department of Justice, to give Council members some reality/market dynamics to keep aware of as projects are being studied to be approved, sited and managed.

Mr. Satyal discussed how the financial situation affects the renewables. He stated that we are at the present time, at the highest natural gas storage capacity. The reality is the recession.

Jan Prewitt referred to the Public Utilities Regulatory Policy Act (PURPA). This is a federal statute, adopted in 1978 and amended late 1980's which defines what a qualified facility is, also known as Qualified Facilities (QF). A Public Utility must purchase from a QF under certain circumstances at particularly described prices. There is also a government regulation governing how that utility sells the energy it gets from the facility. The QF is a facility that is a generator that uses as fuel renewable resources such as biomass waste, renewable resources, geothermal resources or a combination and their motive power must be 75% or more from those sources. Also the utility must be less than 80 megawatts.

Ms. Prewitt talked more on the history of PURPA. The whole idea was to promote more renewable energy from smaller facilities. She also referred to the FERC rules, Section 292.304 "...from a QF the rate has to be just and reasonable to the electric consumer of the electric utility and in the public interest and not discriminated against the qualifying co-generation and small power production facilities..." and "nothing in the requires any electric utility to pay more than the *avoided cost* for the purchaser." In other words, the price for purchase is determined by what the utility would avoid by buying it.

There are state laws also, but basically the Public Utility Commission's responsibility is to determine what the avoided cost is that the utility in that state pays for the QF and how it is determined. Ms. Prewitt said that is what the subject of UM1129 is about.

Martha Dibblee asked about power bills received by customers that have a charge for green power, and wondered if that is a part of this. Ms. Prewitt and Mr. Satyal said it does not concern the QF.

Mr. Satyal discussed PURPA, UM 1129 and how standard contracts for 29 MW or less are set with the option for the first 15 years at a fixed price and the last five years at market rate. With avoided costs, there are differing ways to assess this – the forward trading prices of natural gas and its relationship to electricity prices (off and on peak); based off only variable costs of operating generating facilities, whether resource sufficient/deficient, the cost of a "proxy" natural gas combined cycle combustion turbine, and if it is used as an alternative to the QF power.

Mr. Bless said that a lot of the wind facilities the Department looks at can and do write purchase power agreements to other states, including California. All of the transmission just becomes part of a regional grid that includes a lot of pass-through to other states including what is sold here. Mr. Bless asked how major an impact is this case taking into account whatever California may or may not be doing on the same subject on avoided costs.

Jan Prewitt discussed this in more detail. She stated that the market purchase price might not be used for renewables as the baseline for determining what it costs in Oregon.

Mr. Satyal said in the next three months the water costs dockets open right now. One is PGE and another PacifiCorp. There is talk about a complete investigation being potentially re-opened. He said this doesn't affect EFSC right now but has value in the future in terms of understanding the general landscape of financing issues affecting Renewables development.

Tom Stoops next discussed meeting schedules for 2010. Having a set schedule for every 7 weeks will work with the State's furlough days.

Chair Shiprack asked for public comments. There were none.

Chair Shiprack adjourned the meeting at 2:32 p.m.