



# ENERGY FACILITY SITING COUNCIL

■ Kent Howe, Chair ■ Cindy Condon, Vice-Chair ■ Marcy Grail ■ Perry Chocktoot ■ Ann Beier ■ Richard Devlin ■ Katie Imes

## Energy Facility Siting Council Meeting Minutes

May 30-31, 2024

Riverfront Center/ Riverfront Room  
2 Marine Dr.  
Boardman Oregon

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Thursday May 30, 2024, 5:30 PM

- A. Boardman to Hemingway Transmission Line Request for Amendment 2 Draft Proposed Order (Public Hearing)<sup>1</sup>
- B. Wagon Trail Solar Project Draft Proposed Order (Public Hearing)<sup>2</sup>

The meeting materials presented to Council are available online at:

<https://www.oregon.gov/energy/facilities-safety/facilities/Pages/Council-Meetings.aspx>

**Call to Order:** Chair Howe called the meeting to order at 5:30 p.m.

**Roll Call:** Chair Howe, Vice-Chair Cynthia Condon and Council Members Ann Beier, Richard Devlin and Katie Imes were present in person. Council Member Marcy Grail was present virtually.

Oregon Department of Energy representatives present were Assistant Director for Siting/Council Secretary Todd Cornett; Senior Policy Advisor Sarah Esterson; Senior Siting Analyst Kellen Tardaewether; Senior Siting Analyst Chase McVeigh- Walker; Senior Siting Analyst Christopher Clark; Rulemaking Coordinator Thomas Jackman; Administrative Assistant Nancy Hatch; and Compliance Officer Ash Woods. Oregon Department of Justice Senior Assistant Attorney General Patrick Rowe was also present.

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<sup>1</sup> Audio/Video for Agenda Item A =00:03:53 – 2024-05-30,31-EFSC-Meeting-Audio/Video

<sup>2</sup> Audio/Video for Agenda Item B = 01:03:32 – 2024-05-30,31-EFSC-Meeting-Audio/Video

**Agenda Modification:** There were no agenda modifications.

**A. Boardman to Hemingway Transmission Line Request for Amendment 2 Draft Proposed Order (Public Hearing)<sup>3</sup>** – The Boardman to Hemingway Transmission Line is an approved, not yet constructed, facility that includes an ASC approved route approximately 270.8-mile-long single-circuit 500-kV electric transmission line that crosses five counties in Oregon, Morrow, Umatilla, Union, Baker, and Malheur counties. The approved facility also includes eight alternative routes.

Request for Amendment 2 (RFA2) includes: expansion of the site boundary for most of the facility; the addition of micrositing areas to relocate the transmission line in 12 locations including approximately 40 miles of 500-kV transmission line alternatives and 0.6 mile of 230-kV transmission line alternatives; refining 58 miles of roads resulting from additional design and engineering review; proposed alternative temporary work areas; add a Midline Capacitor Substation; and widen the width of roads used for construction. The amendment also requests Council approval to amend language of site certificate condition(s). This agenda item included:

1. Facility and RFA2 Overview: Kellen Tardaewether, Senior Siting Analyst, provided an overview of the siting process, and of the amendment request.
2. Public Hearing Overview: Chair Kent Howe, acting as the Presiding Officer, explained the legal requirements for providing comments on the record and facilitated the hearing.
3. Public Hearing: Interested individuals had an opportunity to provide oral testimony on RFA2 and Draft Proposed Order on RFA2.

*During Ms. Tardaewether's presentation, Vice-Chair Condon clarified Council is evaluating the proposed route changes and if they meet the standards, not choosing a route.*

*Ms. Tardaewether confirmed that was correct.*

**Chair Howe, acting as the Presiding Officer, opened the Public Hearing at 6:14 p.m. He noted there would be a 5-minute time limit for each individual's public comment. He reminded the public that prior to the close of the record, members of the public may submit written testimony in a variety of ways; the comment portal, email, fax and handing in written comment during the current meeting. He suggested members of the public use their comment time to highlight what is submitted in writing.**

Ms. Irene Gilbert

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<sup>3</sup> Audio/Video for Agenda Item A= 00:03:40 – 2024-05-30-EFSC-Meeting-Audio/Video

Ms. Gilbert, representing herself, the Stop B2H coalition, and the public interest, noted she would be adopting by reference all the materials submitted under Fuji Kreider and Stop B2H as an organization. She expressed her concern for the site certificate condition that was changed to remove the requirement for EFSC and counties to review the blasting plan. As there is not going to be blasting on the site, she requested that the information about the blasting plan be either removed from the Proposed Order or that the condition be replaced to have a county review. She also noted that the requirement to include a road name when applicable has been removed. She stated that there's a state law that says that information is supposed to be presented by agencies in an understandable way for the public. Removing road names when they're available makes it difficult for the public to understand.

Ms. Gilbert continued, stating that the DPO states that the developers can ask for a review if they want to make changes within the approved site boundary and ask to add all kinds of siting corridors. ODOE allows the changes without a public hearing because it's within the site boundary. Her concern is there's been no public process, there's been no information, and there's been no opportunity for anybody in the public to agree or disagree. She believes that while the route may have been a thousand feet from a wetland, the new route may end up being two feet from a wetland but within the site boundary.

Mr. Sam Myers

Mr. Myers expressed his frustration with the proposed changes. He believes that the proposed expansion and its complexity demonstrates that Idaho Power doesn't have the operational organizational expertise to "pull this off". He believes this is a step because they couldn't figure it out earlier. There is now what appears to be a different amendment appeal process (type A) which he believes is easier to get siting approval for more amendments. Idaho Power, in his opinion, has a lack of interface with the landowners as they haven't talked to him. He believes they don't have the manpower or the dedication to deal with landowners in a real way. He is concerned and frustrated with the addition of roads and the increased road size in the new proposal and believes Idaho Power will put the weed control burden and responsibility on Morrow County. He stated he would like to call for a contested case and to reserve the right to talk about the OAR's or the ORS' at that time.

*Mr. Rowe reminded members of the public, in order to reserve the right to request a contested case, you need to make your comments before the close of the hearing today. If there are still issues that you want to raise that were not raised in writing, bring them up now during the public comment period. Pertaining to Mr. Myers request for a contested case, Council would need to know the specific OAR's or ORS' Mr. Meyers is alleging are potentially not being complied with before the close of the public hearing.*

Ms. Joann Harris Rode

Ms. Rode consented to Ms. Irene Gilbert providing testimony during her comment time. Ms. Gilbert stated the eagle surveys for the proposed area are not adequate as they are not in a

wide enough area. She provided Council with eagle surveys that were done through the Antelope Ridge and Elkhorn transmission sites. She stated these areas overlap with the B2H site area. Ms. Gilbert also commented on the cultural resource surveys. She stated that she believes that EFSC is planning on removing the requirement for cultural surveys that are required by Oregon's rules and statutes, which require not just the review of the federally listed protected sites. For Oregon, private property locations and objects, in addition to the registered historic properties are to be surveyed and reviewed. She is concerned that EFSC is not complying with original laws. The reliance on the federal rules and ignoring the state rules is a problem because the developer is only looking at where the transmission line is damaging things as opposed to the indirect impacts. When the transmission line goes directly over the whole Oregon Trail, it's not considered as a direct impact. She noted she has read that the Federal Department of Interior is going to review the B2H project, she believes, in terms of problems with their cultural surveys.

She further commented when Idaho Power changed from the site boundary to the micro-siting corridor, that's a big deal. There are also problems with getting specific details about what the mitigation plans are going to be. They're not requiring mitigation for avian fatalities that are not within the site boundary. They changed the historic properties management plan to rely on the federal plan. They are not notifying ODFW of their changes to the fish passage that occur within the site boundary. They are only looking at the micro-siting areas so there are no indirect impacts being reported. They're not requiring subsurface soil and geological conditions beyond the micro-siting area. She believes the rules specifically say that they're supposed to look beyond the siting area into the areas surrounding it. The wildlife surveys are being limited beyond what the rules say, which for habitat, is a half mile beyond the site boundary, not a half mile beyond the micro-siting area as proposed. Idaho Power is not doing pre-construction traffic studies on sage grouse which means they have nothing to compare with when they decide if there's traffic impacts to the sage grouse. They have also removed the pre-construction requirements for surveys of bats.

Ms. Fuji Kreider

Ms. Kreider, representing the Stop B2H coalition, noted her concurrence with Ms. Gilbert's verbal and written comments as the co-chair of the Stop B2H coalition. She stated that Idaho Power's latest amendment rendition is a wolf in sheep's clothing. An expansion of a site boundary from 24,000 acres to 96,000 acres, a 300 % increase, is striking. Stop B2H completely objects to the whole premise of this "land rev schema" created by Idaho power. It is filled with terminology without legal foundation. She believes the company is trying to strategically position themselves, even gaming the EFSC rules on amendments to either cut corners or violate landowners and the public to process rights for the future by using Amendment Determination Requests which she feels is a short cut process. The company is also gaming the public and public officials by not providing adequate maps from which the public could meaningfully participate and for landowners to even understand what's happening on their land. She believes all of this is to mask the fact that the request is massive. Stop B2H believes

that the intent is really to speed up sensitive negotiations with landowners to cut corners and cut the landowners out of the process. Stop B2h urges Council to either deny RFA 2 or remand RFA 2 back to Idaho Power to complete their landowner negotiations and engineering design changes and adopt the Stop B2H recommendations of conditions, provided in writing, which we believe will be more protective off the landowners and the public. This will allow Idaho Power to return with more realistic amendment requests that are specific to changes in parcels or facilities that are inside or outside already approved micro siting corridor as was done in RFA 1 while using the type A amendment process that demonstrates compliance with all the EFSC rules and standards.

Ms. Kreider formally requested, on the record, an extension for the people who have not been able to fully put their comments in writing to Council.

Mr. Jim Kreider

Mr. Kreider, representing himself, began by apologizing for his incorrect comment at the April 2024 EFSC meeting regarding ODOE staff having the same "KMZ" maps as Idaho Power had in the map sets for the project. One of the issues that is significantly brought up in Stop B2H filings is that the maps are not capable as currently presented of giving landowners adequate information to make informed decisions about the impacts of this transmission line on their land. He feels that developers now have a rush to build, and the agency is under pressure to improve and speed up the siting process. There was earlier mention of other agencies becoming more efficient to EFSC requests because of the Department's work to have people in the positions to do the work funded that's required by law. The problem is Stop B2H came in before those people were in their positions and believes some things that should have been done, did not get done. Landowners are not "NIMBY's," they are conservationists. The landowners that are pushing back truly care. He shared information he has been told by frustrated landowners about their interactions with Idaho Power, noting that Idaho Power suggests that landowners are in favor of the project but does not provide names of the landowners as it is "privileged information" between the company and the landowners. The information is out of EFSC's jurisdiction as told by ODOE staff and the Council. He feels Idaho Power is using "fancy footwork and bullying" and ODOE is doing the same by saying it is none of the Department's responsibility. His suggestion is if Council wants to represent the citizens of the state, they will deny this request and vote in favor of a process that is involving the public from the beginning.

Ms. Wendy King

Ms. King stated there are several site certificate conditions that she does not understand and how they will affect her family. She requested that the Council extend the public comment period for further study of the changes. While the RFA 2 transmission line alternatives have been requested and approved by landowners, Idaho Power would have us believe that the expansion of the ASC approved site boundary is an effort to streamline the landowner requests. Idaho Power states that they will make these changes only when landowners request them or

when necessary for engineering or construction purposes. Their language leaves the door wide open to make changes based only on Idaho Power's needs. Idaho Power has had their shot at engineering B2H for years and achieved their certificate. It seems unimaginable that they have further issues that weren't accounted for in the original approved route, especially the midline capacitor station. The correction to road widths is another reason to contemplate their ability to design and construct the transmission line facility. This very issue shows either the lack of accurate engineering or a total manipulation of the site certificate processed work.

Ms. King noted her concern about blasting as the plan may be amended to add blasting back. ODOE needs to reflect if EFSC would have approved the original site certificate had this amendment been a part of it. Her family asked for a reroute in April 2023 and feels that there was no consideration given to the request. Since that time, there have been no landowner compensations with her family. She also expressed her concern regarding the bald eagle passage of Little Butter Creek which B2H crosses. This is impacted by changes to the site certificate conditions. She is concerned that Idaho Power will use the Amendment Determination Request (ADR) to achieve their own refinements for engineering construction purposes alone, leaving landowners out of the process. She strongly suggested that EFSC require all ADR's be approved by the landowners and members of the public that will be impacted. Expanding the site boundary with the possibility of moving the transmission line over additional areas of her farm has the potential of adversely impacting her multi-generational families. The revised route may result in unacceptable noise levels at her homestead, lines may be strung over her high value crop plant, impacting the great horned owls residing in haysheds, and may justify carving additional roads through her home stead location. If this is allowed without adequate studies, it may impose significant changes to accepted practices and significantly increase the cost of aerial chemical application and movement of products from/to storage and market. By allowing the expanded site boundary, Idaho Power may justify moving the lines through yet more fields and disregard the usual constraints of sighting along the edges of the fields, existing roadways, or natural boundaries rather than circumventing through existing fields because they only have to show they did so generally. ORS 215.375 does not require the complete avoidance or elimination of impacts to accepted farm practices. Idaho Power can simply move its transmission line within another of her fields as they did in the original siting. She noted recourses as advocacy that includes land added to the condemnation trial. Concerning historical cultural and archaeological resources, the Bartholomew- Myers Farm is a historical resource. It was adopted into the Century Farm and Ranch program. The B2H approved route north of her homestead is already an eyesore in the view shed of her historical farm. If B2H were to be relocated closer to the home stead, she would contest it. She formally requested access to the confidential Attachment S-10, intensive level survey, the visual assessment of historical resources of the original B2H application as it includes her property, how it was studied and how the line relocation may impact the results.

Ms. King concluded her comments stating that Idaho Power is solely responsible for jeopardizing the hard work, engineering, and coordinating with landowners and the twelve transmission line alternatives by adding the request for an expanded site boundary at a late

stage of the RFA. Landowners would lose everything they've worked with Idaho Power to include in RFA 2.

*Council Member Beier thanked everyone for their comments, noting that this is a very complex project. She noted that Council reads all the written comments submitted.*

*Vice Chair Condon questioned Ms. Gilbert's comments regarding blasting. Council has considered blasting in the original site certificate. She does not see anything in the RFA that changes that.*

Ms. Gilbert stated the initial site certificate had the process for review of the blasting plan that included participation from the counties. She believes in RFA 1, the DPO stated that because ODOE did not feel that the counties had the expertise to make decisions about whether the blasting plan was appropriate, they were removing the reviewing requirement for the counties. Members of the public had been assured that there would be no blasting. Idaho Power is no longer saying there will be no blasting. She stated we're left with Idaho Power deciding what they're going to do with blasting, what their safety is going to be, who's going to do it without any influence or input from the counties or the special advisory groups or the Oregon Department of Energy. Idaho Power is just supposed to turn in the report after they're done.

*Council Member Devlin noting his background in energy issues, land use and siting issues, asked Idaho Power representatives if the changes in RFA2 are the result of a process where a possible corridor is selected and studied, then as you get close to selecting preferred corridor, the preliminary engineering is started. When approval of everything gets closer and a timeline for construction is being planned, you get to the final design and engineering.*

*Mr. Stipple representing Idaho Power confirmed it is. He stated Idaho Power has gone through final engineering and worked with individual landowners on some of those changes, which is why there are changes to where there are access roads.*

*Council Member Devlin stated his experience has been that parties don't go into the final engineering design until they're assured of what route they're going to have because that can impact what engineering must be done.*

*Council Member Imes noted that there were several comments about extending the public comment period. The comment period was 45 days. She questioned what is the expectation from the members of the public for the amount of time needed for the comment period.*

*Council Member Grail reiterated she has recused herself from any proceedings regarding the Boardman to Hemingway Transmission Line.*

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*In reference to the requests for extending the comment period, Mr. Rowe reminded Council that the standards to be applied on a request for extension of time are a good cause standard. Have the parties requesting the extension explained a good cause for providing such an extension?*

*Vice Chair Condon questioned if the time limit for oral comments at the public hearing created some confusion for people providing verbal comments.*

*Council Member Beier observed that sometimes during a public hearing, an individual will raise an issue and another individual will recognize that was an issue to them also or it may also lead them to think of another issue, just as Council is processing the new information they are receiving at the hearing. She agreed with Vice-Chair Condon's comment regarding the time limit, suggesting that for future meetings the possibility of a time limit for oral public comments should be noted in the agenda. She encouraged written comments as they can accurately capture their intent and are useful as Council Members can review as needed.*

The Council discussed the time limits for the public testimony and the requests for a time extension for comments. Council Members and Mr. Rowe agreed with Council Member Beier's suggestion for noting the possibility of an oral comment time limit be noted in the agenda for future hearings. Council Member Imes requested an explanation from the commenters regarding any good cause for the time extension.

*Ms. Gilbert provided there was over 800 pages of material to review. She stated we had to go back to the conditions in the original site certificate because RFA 2 refers to RFA 1 and the original certificate, making it very complicated to sort through the material. She also stated that the notice for the public hearing said that the public has an opportunity to provide their comments in writing or at the public hearing, without mention of a time limit. She would like to have the time to send her verbal comments to Council in writing so that they can understand the full scope of those comments.*

*Council Member Imes questioned if Ms. Gilbert has submitted comments in writing but would like additional time to submit additional comments.*

*Ms. Gilbert confirmed that is true, stating the additional comments would be the verbal comments she had planned to make at the public hearing but did not have the time.*

*Council Member Imes reminded the public that written comments are so valuable. Being in person is important but the written statements are what Council is going to review repeatedly. She stated she has not heard a good cause for extending the comment period as there has already been a 45-day time period provided for submitting comments.*



Chair Howe asked Ms. Kreider and Ms. King to provide good cause for the request for additional time for comments.

*Ms. Kreider stated while she has submitted the Stop B2H coalition's comments in writing, some of the members who provided verbal comments at the hearing would request more time to provide the specific specificity of OAR's and ORSs required in their written comments.*

*Ms. King stated it wasn't until she heard someone else speak about the site condition regarding fish and wildlife that she realized that it potentially impacted her farm. She realized she had not efficiently studied this. She would like additional time to review the condition.*

*Vice-Chair Condon thanked members of the public who testified and gave voice as that provides context and input to EFSC's work. She suggested Council extend the comment period until the end of tomorrow's Council meeting.*

*Council Member Beier agreed with Vice-Chair Condon adding that Council is concerned about setting a precedent of having rolling deadlines and that is not the intent. The intent is to give a very short window for people who have expressed an interest in submitting additional written information because there was a time constraint for verbal comments.*

After further discussion, Council acknowledged that an extension of the comment period until 5:00 pm on May 31, 2024 would be appropriate. The certificate holder will be given until Monday June 3, 2024 at 5:00 pm to provide responses to comments. If requested by the certificate holder, the Department is authorized to grant them additional time to respond.

Mr. Joe Stipple

Mr. Stipple, representing Idaho Power Corporation (IPC), stated there is a lot of confusion regarding what Idaho Power is trying to accomplish with the expanded site boundary. Proposing the expanded site boundary to be a quarter mile on either side of the centerline of the transmission line corridor is to facilitate negotiations with landowners. This change will allow IPC to work with landowners and accommodate change during the construction process. Boardman to Hemingway is a 300-mile transmission line. It's a key energy transmission line to bring renewable energy from the Northwest to Idaho and from Idaho to the Northwest. Things will come up during construction. The original site boundary is a micro-siting corridor, so IPC can move projects and features anywhere inside that area as final engineering is developed and IPC works with landowners. IPC is proposing to have an expanded site boundary by changing the original site boundary to become the micro-siting corridor. The expanded site boundary, which is a quarter mile from the center line of the transmission on either side, allows IPC, with landowner support, to move a project feature. While IPC is not going to move anything without an agreement from the landowner, there are required studies to be done which include

biological and cultural studies. Once IPC has a proposed move in the expanded site boundary, they would develop the Amendment Determination Request (ADR) and send that to ODOE to evaluate if they are minor enough for a change. An example would be if IPC is working with a landowner and they ask IPC to move an access road because it's better for their farm and it minimizes the impact. If IPC would have to go through an entire amendment process, that's a lengthy timeline. There may be many of those situations that might come up. What IPC is trying to do is if it's minor in nature, the studies are done and proven that it's similar impact, same habitat, and proven there are no resources that are impacted, then it just makes sense for the project and for the landowner. With this new process, IPC would be able to do an ADR showing that the changes have minimal impact and could move ahead with construction and keep the construction timeline. Mr. Stipple clarified that RFA2 allows IPC to continue to work with landowners' negotiations to gain easements. It doesn't grant IPC any sort of condemnation rights. It will allow IPC to keep construction on schedule as this is a vital project to the Northwest. It will allow IPC to minimize their impacts and minimize the burden of doing multiple amendments for minor changes. It does not allow IPC to build wherever they want in the site boundary without approval. IPC cannot avoid studies which determine any impacts of the project. It doesn't allow IPC to force changes on landowners. He believes the expanded site boundary is going to be mostly for access roads unless an agreement with the landowner is reached for it to change. The goal is to promote flexibility during construction on a very complex project.

Related to the comments regarding blasting, IPC does not intend to do any sort of foundation blasting based on our current construction plans. If blasting becomes necessary based on the soil encountered during construction, IPC would have to gain approval with the Department on a blasting plan.

Related to comments regarding landowner negotiations, IPC does not discuss publicly because they are complex and are between IPC and the landowners. The negotiations are outside the jurisdiction of ODOE and EFSC.

**Chair Howe closed the Boardman to Hemingway Transmission Line DPO RFA 2 Public Hearing at 7:38 p.m. on May 30, 2024, noting that the record will remain open until 5:00 p.m. on May 31, 2024.**

**B. Wagon Trail Solar Project Draft Proposed Order (Public Hearing)<sup>4</sup>** – The Wagon Trail Solar Project is a proposed solar photovoltaic energy generation facility with a generating capacity of approximately 500 megawatts. The facility would be located within an approximately 7,450-acre (11.64 sq. miles) site boundary. Other proposed components include a battery energy storage system (lithium-ion batteries); power collection system; up to two substations; operation and maintenance building; Generator Step Up (GSU)

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<sup>4</sup> Audio/Video for Agenda Item B = 02:08:05 – 2024-05-30-EFSC-Meeting-Audio/Video

transformer; 0.6 mile overhead 230 kV transmission line; perimeter fencing, access roads and staging areas.

1. Proposed Facility Overview: Chase McVeigh-Walker, Senior Siting Analyst, provided an overview of the siting process and the proposed facility.
2. Public Hearing Overview: Chair Kent Howe, acting as the Presiding Officer, explained the legal requirements for providing comments on the record and will facilitate the hearing.
3. Public Hearing: Interested individuals had an opportunity to provide oral testimony on Draft Proposed Order.

**Chair Howe, acting as the Presiding Officer, opened the Public Hearing at 8:02 p.m. He noted the 31-day record of the Public Hearing Comment Period on the Draft Proposed Order includes the hearing tonight and is scheduled to close next Friday June 7, 2024 at 5:00 P.M. He stated there would be a 5-minute time limit for each individual's public comment.**

Ms. Tamra Mabbott

Ms. Mabbott, the Planning Director for Morrow County, noted Morrow County's support for the Boardman to Hemingway project as stated in formal letters to Council and ODOE. While it is a "complicated conundrum with a Goal 3 exception", she believes that now is the time to set precedence and that the Staff analysis is correct. Staff referenced the Court of Appeals case which concluded that compliance with Goal 13 is not sufficient reason to justify Goal 3. Morrow County agrees with that decision. In her meetings with DLCD, there has been a lot of discussion about Goal 5, protection of other resources, and balancing that with Goal 3. She stated while recently the Oregon Supreme Court ruled in favor of the state and EFSC to not require implementation of local standards, this is a time when Council can see that there is an appropriate place for local government. Staff has done a good job recommending some mitigation to offset some of the impacts of removing farmland from production but she is unsure if it is the right formula. Morrow County Board of Commissioners will be submitting a formal written letter suggesting making mitigation plans more "formal instead of off the cuff". She referenced another solar developer in Morrow County who has taken great steps to quantify the impact and has worked very closely with county staff and elected officials. The County now has a formal agreement which gives the county the comfort that exact numbers of the mitigation plan are correct and not completely arbitrary. Morrow County believes there is so much to be considered by setting a precedent with Goal 3 and encourages EFSC to think about that and give some direction to staff and the developer to formalize the mitigation program.

Mr. Cameron Krebs

Mr. Krebs, owner of Krebs Solar Grazing, representing himself, requested that Council site solar farms with the highest environmental standards going forward. Since the dust bowl, our government has strived to incorporate organic matter and residual residue on our soils to

incorporate clean water infiltration, protect from erosion, as well as water runoff and discharge. The useful life of the solar farm is 50 years. He questioned what 50 years of continuous chemical use is going to do to our local challenges, including the current ground water issues we face. He stated we can site the solar farms on our landscape in the Columbia Basin that have the resilience, that provide habitat, that provide clean water infiltration into our planned watersheds and protect our local communities. One of his major concerns is that in the permit there is currently no talk about harvesting out any of the nitrates in the farmland. Although the noxious weed plan is addressed, he suggested that would be an excellent place to establish the soil profile for its long-term impacts before going into construction of solar farms. That would reduce the control and spread of noxious weeds, aid in the control of noxious weeds and reduce the opportunity for them to flourish on the landscape.

Mr. Krebs noted his concern with the post construction and operational plans. He stated this area has a very delicate ecosystem with a limited amount of rainfall. We need to collect every drop we can and ensure that it gets transferred into our watersheds cleanly.

Mr. Krebs stated in the fire provision plan of the operational phase there is a 5-foot minimum fire break. Referencing several regional wildfires in recent years, he stated a 5-foot fire break is not adequate. He encouraged Council to enlarge the minimum fire break. He also believes the design of these solar farms on a dry arid ecosystem can be changed to be more resilient to fire, to protect those who live on the edges and the infrastructure that's outside of the solar facilities.

In reference to the Goal 3 exception, he suggested that allocated offset to the Goal 3 earmarked for OSU dry wheatland research be changed to agrivoltaics research. The goal of Goal 3 is to keep agricultural land in agricultural production. This is a wonderful opportunity to study the opportunities that exist in agrivoltaics going forward into the future.

Mr. Krebs stated solar development in the Columbia Basin is relatively new. While some mistakes have been made in the past, he believes there's a wonderful opportunity to really build solar farms that are resilient, improve ecological systems, provide habitat for birds, and continue to keep vibrant agricultural communities alive.

*Vice Chair Condon questioned if Mr. Krebs was suggesting the allocated offset be totally earmarked for agrivoltaics research or a combination of dry land wheat and agrivoltaics research.*

*Mr. Krebs suggested allowing OSU to determine the best research interest for the future of the county, which might be dryland wheat research breeds for the land we do have left, but it also could be to support the emerging industry of agrivoltaics.*

*Secretary Cornett asked for a definition of nitrate harvesting.*

*Mr. Krebs stated his definition as the top foot of our agricultural ground which has been in production of dry land wheat, is checked and compared to our native rangeland. If there's a significant difference in nitrogen, then we should look at extracting that nitrogen from the soil to stabilize it prior to the operational years of the solar farm. His concern is that the mitigation protocols state the land be seeded with its previously established use. He expressed the need to "look at the big picture" and try to create an ecological system underneath the solar panels that is healthy for our land, our landscape and provide ecological benefit.*

Mr. Sam Myers

Mr. Myers noted his agreement with Mr. Krebs' concerns regarding groundwater contamination. He expressed his frustration regarding his unanswered questions to developers about what's going to be left on the ground if a fire occurs on a solar farm and if the ground is unproductive because it would be toxic. He stated if EFSC does not know the answer either, in his opinion, it is a dereliction of pursuit to put solar panels in central Morrow County as there is going to be a fire in the area at some point. It would be a responder's nightmare, so difficult to fight because there are panels everywhere.

Mr. Myers also expressed his frustration with subsidies he believes the developers are receiving to support something that produces a small amount of electricity and potentially can damage the soil. He further expressed his concern regarding stripping farmland from producing what the world needs and putting it in jeopardy of long-term soil destruction from contamination. While a solar farm would be beneficial financially, Mr. Myers stated he does not want to be the generation that puts something on our soil that damages it.

Mr. Chris Rauch

Mr. Rauch, representing North Lex Power and Land and Starvation farms, and as a landowner within the Wagon Trail Solar Farm, suggested landowners get involved with the developers. He noted that he and the developer have had discussions about issues brought up tonight and continue working on them all the time. In reference to fire danger, Mr. Rauch stated bare ground does not burn, but he has wheat fields around the solar farm that will burn. The developer has to worry more about fire from his farm than at the solar farm. He and the developers have had discussions regarding future wildfire prevention plans.

Mr. Rauch stated he is not opposed to having grass grown under the solar panels, noting that weeds will grow with the grass and there could be an increase in fire risks.

Ms. Kelly Hale

Ms. Hale expressed her support for the Wagon Trail Solar Project, stating NextEra have been extremely productive partners and incredible stewards of the land. NextEra has been good for Morrow County by providing additional jobs to the economy and sponsoring local events.

Mr. Chris Rauch clarified that the allocated offset to the Goal 3 exception goes to dry land wheat research due to the dry land wheat farming land being removed from agricultural production.

*Council Member Beier stated that she is interested to see the letter coming from Morrow County regarding the Goal 3 exception, adding ODOE Staff has been working hard to understand the best mitigation plans for loss of and change of use of farm grounds.*

*Council Member Imes expressed her concern regarding the wildfire mitigation plan being updated by the applicant every 5 years. She would like to see more frequent inspections and a more cohesive approach with the first responders in the area. As all the fire districts in the area are impacted by this project, knowledge of their capacity level and how they are able to respond to a fire would be beneficial.*

*She questioned why the comment period for this project was 30 days versus the 45 days for the B2H project.*

*Secretary Cornett stated the legal requirement for a comment period is 21 days. Staff believes that is normally not sufficient to review a complete application and a draft proposed order. The number of days is a Staff judgement call based on experience, the proposed project and location, and the amount of interest in a specific project.*

*Vice Chair Condon asked if there a was notification process for adjacent landowners included in the wildfire mitigation plan should there be an ignition on a project.*

*Ms. Esterson stated Staff is trying to ensure that be included in wildfire mitigation plans and there is an obligation to develop a process for working with emergency responders to notify local landowners, but that the obligation wouldn't be for the certificate holder or the facility personnel to do that notification.*

*Council Member Beier added that Council has added a condition to the Obsidian project to include coordination with the local responders, knowing that the local responders have better access to property records than the developer would and would have a system in place to notify those adjacent property owners. This will serve as a model for other developers. EFSC wants to be sure that the language reflects the expectation of coordination with emergency responders.*

*Vice Chair Condon added developers need to be thinking about what their responsibilities are for protecting the landowners in the area of a project.*

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*Council Member Devlin questioned if there are more proposals for projects with underground power lines compared to previous years.*

*Ms. Esterson noted while Staff has not dealt with high voltage proposals yet, NextEra has a policy for underground 34.5 KV lines.*

Mr. Ryan Hill

Mr. Hill, representing NextEra Energy Resources, stated the noxious weed mitigation plan and fire mitigation plan are “living documents” that are updated with any newly acquired information. All the lessons learned from projects are brought to new projects. He noted that he worked with the Morrow County Emergency Manager to gather his input on improvements at an operating facility and on the coordination with the local first responders, in addition to his input on coordination with the County during the construction phase. Regarding the noxious weed plan, NextEra is working with the Weed Superintendent for Morrow County and the landowners to be responsive and correct any issues that arise. They are gathering any lessons learned as well as new information, recommendations from County, staff or subject matter experts and using it in the mitigation plans.

Mr. Hill reviewed the reasons for the request for a Goal 3 exception. He explained how NextEra is trying to minimize the impacts on local farming practices by locating their projects near each other and having accessibility to transmission lines and interconnection rights. This is a benefit as there are less operation and maintenance buildings, less substations and less overhead transmission lines scattered throughout the county. Regarding the impact on agriculture, Mr. Hill stated the project is expected to impact 3700 acres of arable land, mostly dry land wheat farms, with no loss to irrigated lands. Landowners are being compensated via a solar lease agreement. NextEra is working with Morrow County and members of the public for additional ways to provide mitigation and directing money to the people who need it quickly. NextEra requested Staff make a preconstruction compliance condition to require mitigation payments prior to starting construction. This is a new idea; trying to be thoughtful and listen to the community’s ideas on the mitigation plan. The benefits to the local economy also include tax revenues and the addition of operational jobs. The proposed facility will have minimal impacts on environmental resources.

*Vice Chair Condon expressed her appreciation for the outreach and collaboration with the community, landowners, and the County.*

*Council Member Devlin, noting the significant amount of battery storage, asked if the battery storage was intended to serve more than the proposed solar facility.*

*Mr. Hill stated ideally it would be to serve the solar farm but as transmission in Eastern Oregon can be constrained, having large battery storage is a better option than not producing energy.*

Chair Howe closed the Wagon Trail Solar Project DPO Public Hearing at 9:01 p.m. on May 30, 2024, noting that the record will remain open until 5:00 p.m. on June 7, 2024.

**Chair Howe recessed the meeting at 9:02 p.m. until May 31, 2024 at 8:30 a.m.**

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### Friday May 31, 2024, 8:30 AM

- C. Consent Calendar (Action & Information Item)<sup>5</sup>
- D. Wheatridge Energy Facility East Request for Amendment 1 (Action Item)<sup>6</sup>
- E. Public Comment Period (Information Item)<sup>7</sup>
- F. Leaning Juniper IIA Council Decision (Action Item)<sup>8</sup>
- G. Contested Case Rulemaking (Action Item)<sup>9</sup>

The meeting materials presented to Council are available online at:

<https://www.oregon.gov/energy/facilities-safety/facilities/Pages/Council-Meetings.aspx>

#### **Roll Call, Opening Remarks, and Agenda Modifications**

**Call to Order:** Chair Howe called the meeting to order on May 31, 2024, at 8:31 a.m.

**Roll Call:** Chair Howe, Vice-Chair Cynthia Condon and Council Members Marcy Grail, Ann Beier, Richard Devlin and Katie Imes were present in person.

Oregon Department of Energy representatives present were Assistant Director for Siting/Council Secretary Todd Cornett; Operations & Policy Analyst Sarah Esterson; Senior Siting Analyst Chase McVeigh- Walker; Senior Siting Analyst Christopher Clark; Rulemaking Coordinator Thomas Jackman and Administrative Assistant Nancy Hatch. Oregon Department of Justice Senior Assistant Attorney General Patrick Rowe was also present.

**Agenda Modification:** There were no agenda modifications.

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<sup>5</sup> Audio/Video for Agenda Item C = 00:02:28 – 2024-05-31-EFSC-Meeting-Audio/Video

<sup>6</sup> Audio/Video for Agenda Item D= 00:17:25 – 2024-05-31-EFSC-Meeting-Audio/Video

<sup>7</sup> Audio/Video for Agenda Item E = 02:29:10 – 2024-05-31-EFSC-Meeting-Audio/Video

<sup>8</sup> Audio/Video for Agenda Item F = 02:36:48 – 2024-05-31-EFSC-Meeting-Audio/Video

<sup>9</sup> Audio/Video for Agenda Item G= 02:57:45 – 2024-05-31-EFSC-Meeting-Audio/Video



C. **Consent Calendar (Action Item & Information Item)**<sup>10</sup> – Approval of April 2024 meeting minutes; Council Secretary Report; and other routine Council business.

**Approval of the April 2024 meeting minutes** – The approval of the April meeting minutes was tabled until the June EFSC Meeting.

### **Council Secretary Report**

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

#### Project Updates

- Sunstone Solar Project – There will be a Public Informational Meeting on the complete application on June 5, 2024 at the Riverfront Center in Boardman beginning with a meet and greet period at 5:00 p.m. Chris Clark, lead analyst for the project, will begin the presentation at 5:30 p.m. Mr. Clark will also present an overview of the ORESIA mapping tool. Council Members are invited to attend.

#### Compliance Updates

Council was briefed on incidents reported at the following facility:

- Stateline Wind Project – On May 21, 2024 the Department received notice from the certificate holder of a fire that occurred in one of the turbines on the site. There were no injuries, and the fire was contained to the nacelle. The turbine can be repaired.

*Vice Chair Condon asked if there is an automatic process for notification of a fire on the site.*

*Secretary Cornett stated there is a sophisticated control room that monitors the details associated with each turbine.*

*Council Member Imes questioned if it was possible to locate the exact turbine on the ORESA mapping tool.*

*Secretary Cornett stated he was unsure, but the certificate holder has provided a map with the location of the turbine.*

#### Information Updates

- Presentation to the House Interim Committee on Climate, Energy and Environment- Secretary Cornett sent an email to Council with a description of the presentation and a link to the Committee page. ODOE Director Janine Benner, and Associate Director for Strategic Engagement Ruchi Sadhir provided an overview of energy in Oregon. Ms.

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<sup>10</sup> Audio/Video for Agenda Item C = 00:02:28 – 2024-05-31-EFSC-Meeting-Audio/Video

Esterson provided an overview of the EFSC process as well as a presentation on reviewing agencies' role in the siting process with Jeremy Thompson, the Department's liaison with ODFW, and Jon Jinings and Alexis Hammer from DLCDC.

### Future Meetings

- June 14<sup>th</sup> - EFSC meeting will be held in Salem at the ODOE office.
- July 18<sup>th</sup> and 19<sup>th</sup> – undetermined location at this time

**D. Wheatridge Energy Facility East Request for Amendment 1 – Council Review of Proposed Order, Decision on Any Submitted Requests for Contested Case, Possible Material Change Hearing and Public Notice of Hearing to Adopt Final Order (Action Item)<sup>11</sup>** – Christopher Clark, Senior Siting Analyst. Council was presented with an overview of the approved but not yet constructed 200 MW wind energy generation facility which includes up to 66 wind turbines, up to 32 miles of two overhead, parallel 230 kV transmission lines, and other related and supporting facilities to be located within an approximately 4,582-acre site boundary in Umatilla and Morrow Counties. The Request for Amendment 1 proposed to add 41 turbines, expand the micrositing corridor by approximately 10,000 acres, expand and increase the relating or supporting facilities and extend the construction completion deadline by 3 years.

During the presentation, the following discussion occurred:

*Vice Chair Condon asked for additional explanation of the crop loss payments for transmission line siting as noted in the public comments received.*

*Mr. Clark stated that the comment was intended to be broader than this project and had suggested the Council should include crop loss payments as a general practice. He explained that because the issue of financial payment to landowners and the general issue of property rights is outside of the Council's jurisdiction, it was not addressed in detail in the Proposed Order.*

*Vice-Chair Condon stated that as Council is not able to see the agreements between the developer and the property owners, there is no way to make a determination as suggested in the public comment.*

*Council Member Beier, in reference to no additional substantive changes to the Cumulative Effects Standard for Wind Energy Facilities, suggested, as Council has recently received comments regarding this standard, Staff needs to be sure the findings presented on this Standard are incorporated into the Proposed Order.*

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<sup>11</sup> Audio/Video for Agenda Item D = 00:17:25 – 2024-05-31-EFSC-Meeting-Audio/Video

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*Mr. Clark clarified that there are some explanatory remarks, but no subsequent changes. As the Department received a contested case request addressing this Standard, it will be further discussed in the context of the contested case request.*

*Council Member Imes asked who is responsible for weed maintenance at the site.*

*Mr. Clark stated that the county would be responsible for providing technical input into the plan. The counties also maintain the ability to enforce their own weed ordinances or weed laws. The certificate holder is responsible for implementing the plan, going out and getting the treatments done, reporting inspections, maintaining accurate and adequate monitoring. Both the Department and the county would share responsibility for monitoring and enforcement of the plan.*

*Council Member Grail encouraged people who have direct dealings with this to realize this a multi-approach that includes multiple agencies and advocates.*

*Council Member Imes expressed her concern about the cumulative effect of weed management. It will require coordination between the developer and the County Weed Supervisor. She is concerned as Morrow County has limited resources and only one Weed Supervisor.*

*Ms. Esterson provided an update on the weed management plan for Morrow County. Through the Department's consultant Haley and Aldridch, Bink Ramos, who was selected by Corey Sweeney, the Weed Manager at Morrow County, has been hired. Mr. Ramos has an enormous amount of experience and knowledge about the area. He has been hired to supplement the regulatory program over the noxious Weed plans for EFSC projects in Morrow County. This is not about implementing the requirements. It is monitoring if the requirements are being met and providing additional recommendations.*

*Vice-Chair Condon asked if a landowner has an agreement with the developer, is there anything in those agreements that there is a responsibility of the landowner to be involved in weed management.*

*Secretary Cornett clarified it is the certificate holder's legal obligation to manage weeds on the site. The Department wants to have the ability and the resources to have onsite inspections to evaluate the status of the weed management.*

Council Member Grail questioned if Council could “connect the dots” by asking for more specificity on the plan in the Organizational Expertise Standard for additional clarity.

Secretary Cornett stated Council makes the determination that the applicant or certificate holder has the organizational expertise to build, own, operate, manage, and ultimately decommission the facility. This is included in all the specific standards. The specifics with each the weed management plan get perfected over time based upon the project.

Mr. Clark acknowledged that there is limited availability of license specified applicators and they're in high demand with all the development in the area. Something new that is being proposed for this facility is an approach of requiring the pre-construction weed management plan and requiring implementation of that plan to ensure that both the personnel and the timing has been clearly thought out and arranged for before they start moving dirt around and opening up lands which could increase the likelihood of an infestation or an infestation spreading.

Vice-Chair Condon asked if the consultation and review of the emergency management plan by local emergency services personnel and local fire protections districts requires a formal sign off of approval.

Mr. Clark provided while there is not a formal signoff, it does require approval. Council can determine what level of evidence is needed to satisfy the local concerns that are being addressed. Staff would expect to receive a letter from the reviewing personnel verifying that they have been consulted and any recommendations they are providing.

Vice-Chair Condon stated her preference would be to incorporate a signoff to the consultation and review plan as it would provide evidence that someone with experience and expertise in the subject matter has approved the plan.

Secretary Cornett offered Staff will be careful to have good and adequate documentation that the service providers have evaluated and responded with the appropriate approval of the emergency plan. In a future EFSC meeting, there will be a review of the wildfire standard by Council for a direction to Staff on additional needs and ways for improvement within the Standard.

Council Member Beier agreed with Vice-Chair Condon's suggestion of a signoff to the review plan adding Council relies heavily on other reviewing agencies. Some sort of documentation of the consultation and agreement with the mitigation plan is warranted.

Council Member Imes questioned if the project is approved today, would Staff return to the Council with updates on the project.

Mr. Clark stated the condition as written does not require council approval. He added that if Council directed Staff to provide an update on anything regarding any site certificate, that would be provided at a future meeting.

Regarding Issue 2 in the Consideration of Contested Case requests, Council Member Beier expressed her concern for this issue as the Council recommendation requires the applicant to submit the Section 106 National Historic Preservation Act Documentation form prior to construction.

Mr. Clark clarified the condition as proposed wouldn't require the certificate holder to initiate the Section 106 process or initiate any federal review. There would not be additional mitigation expected afterwards. It is the recording of the properties, attributes, and the potential impacts.

Council Member Beier asked regarding Century Farms and the State Historic Preservation Office designations, is the submission of the Section 106 Documentation form by the applicant a standard practice for the Council.

Mr. Clark stated while he does not know if this condition has been specifically used for Century Farms, this type of condition has been used to address visual impacts to previously built environment resources.

Vice-Chair Condon stated she is troubled by the use of the term mitigation. She does not believe the Section 106 Documentation form mitigates anything, but it does provide historical records. She questioned if there has been discussion with Ms. King or others regarding what they view as appropriate mitigation.

Mr. Clark stated the requested mitigation is that the Council impose a condition removing or limiting the height of the turbines on the top of the Gleason Butte.

Council Member Devlin stated Staff is not recommending the applicant relocate the towers as that is impractical. He noted there was a mitigation suggestion that the lighting for the towers at night could be changed. He noted that option would not be in Council's jurisdiction as the lights are required by a federal entity or the Federal Aviation Administration (FAA).

Mr. Clark confirmed that the FAA does require minimum lighting. There is a set system which turbines must meet when they are above a certain height or above a certain elevation depending on proximity to air navigation resources.

Regarding the comments about the use of the term mitigation, Mr. Clark noted while the plan is not mitigating the visual impacts, it is mitigating the impacts on the historical record.

Council Member Imes asked how many turbines will be located in the area.

Mr. Clark stated the petitioner has specifically raised concerns with the three turbines on the very top of the butte which would be visible for the homestead site. There are approximately 19 locations for the turbines, though some of those may be alternate locations.

Mr. Rowe reminded Council that by statute Council cannot deny an application for a wind facility based on the historic cultural and archaeological resources standard. Statute does allow Council to look at the standard and, when Council deems it appropriate, impose a condition related to the standard. He urged Council to also consider what the precedential impacts would be with their decision.

Secretary Cornett added the Century Farm system is run by the Oregon Farm Bureau and people can simply request to be designated as a Century Farm. Currently there are 1,275 century farms and ranches in Oregon. Noting Mr. Rowe's comments regarding a precedent decision, there could be a lot of implications which are not yet understood.

Council Member Beier questioned if Council changes any of the conditions, would the application go to a material change hearing.

Mr. Rowe and Mr. Clark explained the processes that trigger a material change hearing. Mr. Clark added in this circumstance, if Council were to deny a contested case request based on the fact and impose a change of condition to settle the issue to Council's satisfaction, the rules say that the Department would have to reissue the Proposed Order and distribute it for comment to the petitioner and the certificate holder.

Vice-Chair Condon stated her understanding is that as a century farm may have historic protection but the view from the farm for the landscape is not necessarily protected. Gleason Butte is not a protected scenic view.

Mr. Clark confirmed that is correct, adding Gleason Butte is not a protected designated scenic resource in any of the local comprehensive plans or state plans. It is private property and a locally beloved landmark, but it doesn't have any special designation. He clarified that the designation as a century farm isn't the basis for eligibility for listing on the national register of historic places. He further explained the idea of the 106 Documentation form

*would be to record what the visual setting of the farm was historically, when it was being founded as a homestead and what things might have worked like then and how things have changed over the years.*

In reference to Issue 2- Compliance with the Historic, Cultural and Archaeological Resources Standard, Council Member Beier motioned the Council find that Ms. Wendy King properly raised the issue of Compliance with the Historic, Cultural and Archaeological Resources Standard on the record of the Draft Proposed Order public hearing with sufficient specificity to afford the Council, the Department, and the certificate holder an adequate opportunity to respond to the issue.

Council Member Beier further motioned the Council deny the request for Contested Case by Ms. Wendy King on the aforementioned issue because, as recommended in the staff report, while the issue is within the jurisdiction of the Council, it is not an issue of fact or law reasonably likely to affect the Council's determination whether the facility, with the changes proposed by the amendment, meets applicable laws and Council standards.

Council Member Devlin seconded the motion.

The motions carried unanimously.

In reference to Issue 1- Compliance with the Scenic Resources Standard, Vice-Chair Condon motioned the Council find that Ms. Wendy King properly raised the issue of Compliance with the Scenic Resources Standard on the record of the Draft Proposed Order public hearing with sufficient specificity to afford the Council, the Department, and the certificate holder an adequate opportunity to respond to the issue.

Vice-Chair Condon further motioned that the Council deny the request for Contested Case by Ms. Wendy King on the aforementioned issue because, as recommended in the staff report, while the issue is within the jurisdiction of the Council, it is not an issue of fact or law reasonably likely to affect the Council's determination whether the facility, with the changes proposed by the amendment, meets applicable laws and Council standards.

Council Member Beier seconded the motion.

The motions carried unanimously.

*In reference to Issue 3- Adequacy of the Wildfire Prevention and Risk Mitigation Plan, Council Member Imes asked if the National Weather Service zone's data source is used by the Department.*

*Mr. Clark stated not directly. The climate forecasting zones affect how the weather service issues red flag warnings and fire weather watch warnings. The conditions and the plan require the certificate holder to take certain actions when those warnings or fire weather watches are issued. While it is not incorporated in the data, it is incorporated for analysis.*

In reference to Issue 3- Adequacy of the Wildfire Prevention and Risk Mitigation Plan, Council Member Beier motioned the Council find that Ms. Wendy King properly raised the issue of Adequacy of the Wildfire Prevention and Risk Mitigation Plan on the record of the Draft Proposed Order public hearing with sufficient specificity to afford the Council, the Department, and the certificate holder an adequate opportunity to respond to the issue.

Council Member Beier motioned the Council deny the request for Contested Case by Ms. Wendy King on the aforementioned issue because, as recommended in the staff report, while the issue is within the jurisdiction of the Council it is not an issue of fact or law reasonably likely to affect the Council's determination whether the facility, with the changes proposed by the amendment, meets applicable laws and Council standards.

Council Member Grail seconded the motion.

The motions carried unanimously.

*Vice Chair Condon asked to review the photos of Gleason Butte and the existing turbines.*

*Mr. Clark and Secretary Cornett provided photos and information of Gleason Butte and the surrounding area.*

*Council Member Imes explained why she struggles with this cumulative effect standard and asked Council for their input. There are many existing facilities in this area. She feels like this standard doesn't give Council any action that can be taken, even though there is a cumulative effect and there is a visual impact.*

*After discussion the Council asked Secretary Cornett for guidance on what is a cumulative impact.*

*Secretary Cornett stated the difficulty with the standard is the thresholds are not defined. He referenced a cumulative impact standard for sage grouse as being successful as there was a baseline established and a threshold metric developed for the standard. Without a baseline and a metric, it is a difficult standard to implement.*

*Council Member Devlin suggested it might be possible to have a cumulative standard in other areas, but the turbines are already in the landscape in this area.*



In reference to Issue 4 - Compliance with the Cumulative Effects Standard for Wind Energy Facilities regarding reduction of adverse environmental effects and minimization of adverse visual features, Council Member Devlin motioned the Council find that Ms. Wendy King properly raised the issue of Compliance with the Cumulative Effects Standard for Wind Energy Facilities regarding reduction of adverse environmental effects and minimization of adverse visual features on the record of the Draft Proposed Order public hearing with sufficient specificity to afford the Council, the Department, and the certificate holder an adequate opportunity to respond to the issue.

Council Member Devlin further motioned the Council deny the request for Contested Case by Ms. Wendy King on the aforementioned issue because, as recommended in the staff report, while the issue is within the jurisdiction of the Council it is not an issue of fact or law reasonably likely to affect the Council's determination whether the facility, with the changes proposed by the amendment, meets applicable laws and Council standards.

Vice Chair Condon seconded the motion.

The motion carried unanimously.

In reference to Issue 5- Compliance with the Cumulative Effects Standard for Wind Energy Facilities regarding reduction of adverse environmental effects and minimization of adverse visual features, Council Member Imes motioned Council find that Ms. Wendy King properly raised the issue of Compliance with the Cumulative Effects Standard for Wind Energy Facilities regarding reduction of adverse environmental effects and minimization of adverse visual features on the record of the Draft Proposed Order public hearing with sufficient specificity to afford the Council, the Department, and the certificate holder an adequate opportunity to respond to the issue.

Council Member Imes further motioned the Council deny the request for Contested Case by Ms. Wendy King on the aforementioned issue because, as recommended in the staff report, while the issue is within the jurisdiction of the Council, it is not an issue of fact or law reasonably likely to affect the Council's determination whether the facility, with the changes proposed by the amendment, meets applicable laws and Council standards.

Council Member Grail seconded the motion.

The motion carried unanimously.

### **Motion to approve the Final Order**

Council Member Devlin motioned the Council adopt the Proposed Order as the Final Order and issue the 1st amended site certificate for Wheatridge East Amendment East as presented and recommended by staff.

Council Member Grail seconded the motion.

*Vice Chair Condon asked if the certificate holder is subject to two time extensions for construction completion.*

*Mr. Clark stated as the project is split, the approved area would be getting the first extension with this decision, leaving one possible extension. For the new section, there would be two extensions possible. When the rule changed in 2018, there's an applicability clause which is why there are two sets of construction completion deadlines.*

*Vice Chair Condon, noting that there will be more split projects in the future, she would like Council to have more discussion regarding these projects at a future meeting.*

The motion carried unanimously.

**E. Public Comments (Information Item)<sup>12</sup>** This time was reserved for the public to address the Council regarding any item within Council jurisdiction that is not otherwise closed for comment including the Wheatridge East Request for Amendment 1 Draft Proposed Order and the Leaning Juniper IIA Request for Amendment 3 Draft Proposed Order.

Ms. Irene Gilbert

Ms. Gilbert stated Division one of Council's rules does have a definition for significant. It encompasses cumulative impacts as it addresses duration, magnitude, intensity, and the significance of the impacts. She suggested Council utilize the definition when evaluating the cumulative impacts of projects. She also noted that in past draft proposed orders where Council has decided there is no significant impact, there is discussion regarding what is significant.

Ms. Gilbert noted there has been discussion and concern regarding Council decision's setting precedent. Council decisions are site specific. Because Council allows one thing to happen in one instance, does not automatically mean that future requests are going to end up with having the same result. Council justifies the decisions they make, and that doesn't mean that the decision is always the same. She believes the concern of setting precedent tends to move Council in the direction of denial when it may not necessarily be the right decision for the instance being evaluated.

Ms. Wendy King

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<sup>12</sup> Audio/Video for Agenda Item E = 02:29:10 – 2024-05-31-EFSC-Meeting-Audio/Video

Ms. King noted her appreciation of the careful deliberations about her requests for a contested case. She is disappointed that none of them made the threshold for a contested case. She was unaware that she had to present all her materials in this arena and was reserving materials to present in her contested case. She will be considering an Appeal of the decision.

Ms. King suggested when the certificate holder seeks local coordination with the weed person or the firefighters to also include the landowners adjacent to the facility so that they can provide more communication and response that will help. Landowners have valuable information to share.

Chair Howe closed the Public Comment period.

**F. Leaning Juniper IIA Council Decision on Any Submitted Requests for Contested Case, and Possible Material Change Hearing and Public Notice of Hearing to Adopt Final Order on Amendment 3 (Action Item)<sup>13</sup>** – Chase McVeigh-Walker, Senior Siting Analyst. Council was presented with an overview of the operational 90.3 MW wind energy generation facility consisting of 43 wind turbines, with a maximum blade tip height of 492 feet, and related and supporting facilities within a site boundary of 6,404 acres in Gilliam County. The Request for Amendment 3 includes repowering 36 wind turbines, decommissioning 2 wind turbines, temporarily disturbing 396 acres of high-value farmland, and adding new conditions.

*Vice Chair Condon questioned if the change of language from construction to design and operation was purposeful.*

*Mr. McVeigh-Walker explained the facility is constructed and is operational. The proposed changes would be repowering 36 of the existing turbines, which the Department has historically looked at as operational and maintenance.*

*Vice Chair Condon confirmed her understanding noting that once a facility is constructed, it presumes there will be no further construction without another amendment.*

Council Member Grail motioned the Council adopt the Proposed Order as the Final Order and issue the 3rd amended site certificate for Leaning Juniper IIA as presented and recommended by staff.

Council Member Beier seconded the motion.

The motion was carried unanimously.

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<sup>13</sup> Audio/Video for Agenda Item F = 02:36:48 – 2024-05-31-EFSC-Meeting-Audio/Video

**G. Contested Case Rulemaking (Action Item)<sup>14</sup>** – Thomas Jackman, Rules Coordinator presented for consideration by Council updated amended rules regarding the Contested Case rulemaking to be submitted as part of a new Notice of Proposed Rulemaking.

*Regarding Change #3- changes to OAR 345-015-0415(4)(b) and (c), Vice Chair Condon suggested adding clarity for comments being received after the public hearing needing to be submitted in writing.*

*Referring to Change #5- changes in OAR 345-015-0415, Council Member Grail asked for clarification that the written statements are to be written by the petitioner, not by Staff. She noted that there had been an issue raised by a member of the public regarding this issue.*

*Mr. Jackman stated that is correct, adding the change is related to each of the desired issues that a member of the public wants to participate in and they must be submitted in a separate statement for each issue.*

*Council Member Beier added Council just completed a contested case hearing and the petitioner did a good job of laying out the issues which allowed Mr. Clark to be responsive to each of those issues and made it much easier for Council to weigh those issues.*

*Vice-Chair Condon stated her belief was that the comment from the public on the statement issue was regarding the hearing officer's summarization of the submitted issues. She questioned if the hearing officer was getting the statement from Staff.*

*Mr. Jackman offered an explanation. Previously, people were submitting whatever they wanted to submit, and then the hearing officer would review the submission and identify the issues to be reviewed in the hearing. In order to do that, they had to rephrase the issue. There were some complaints about that process. This is all related to one issue, which is how this information is submitted.*

*Chair Howe questioned how the request to participate as a party or limited party would terminate the petitioner's ability to participate in a contested case.*

*Mr. Jackman explained a person cannot participate unless they have been granted party status, which is done by the hearing officer. He described a scenario in which the hearing officer could terminate the petitioner's ability to participate involving the submission of their issues due to a lack of specificity.*

*Vice Chair Condon asked if one issue is raised and is denied, is that appealable.*

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<sup>14</sup> Audio/Video for Agenda Item G = 02:57:45 – 2024-05-31-EFSC-Meeting-Audio/Video

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*Mr. Jackman confirmed that is correct. The purpose of the changes are to make people more judicious in how they want to participate by raising the issues that are important to them.*

*Council Member Grail suggested stating the goal is to resolve issues at the lowest possible level, the soonest possible level, might help the public understand the changes in the contested case rules. The end goal is not to have a contested case.*

*Vice-Chair Condon asked if Council hears an issue in the DPO hearing that is not specifically tied to a standard, can Council ask the petitioner to provide the standard to which their issue is applicable.*

*Mr. Jackman provided Staff is creating a template where if you are submitting a comment, it will be necessary to tie the comments to a standard.*

*Secretary Cornett stated for the Department, it begins with the Public Information Meeting for the Notice of Intent by preparing people with information regarding who EFSC is, what we do and how our process works. For someone who has a legitimate issue but doesn't understand how our process works and doesn't know how to convey it in the way that is needed for our process, we need to educate them.*

*Vice Chair Condon agreed, noting that Council is part of that education process as well, both receiving education and then providing it to the public.*

*In Reference to adding as OAR 345-0403(1): "A statement that persons requesting a contested case should state whether they are requesting to participate in the contested case proceeding as a party or limited party", Council Member Imes clarified her understanding that the hearing officer determines if a person requesting a contested case is a party or limited party for the contested case.*

*Mr. Jackman explained the person should identify that they intend to participate with respect to all issues, but then they need to submit the evidence that shows that they raised each of the issues that would be part of the contested case. The status would be determined by the issues raised.*

*Council Member Imes asked if there was a consequence if the petitioner has requested the incorrect status.*

*Mr. Jackman answered there are not any consequences outlined in the rules as they are currently drafted.*

*Mr. Rowe added this is sorted out at the prehearing conference. Most people request full party status and want to participate in every issue. The hearing officer will review and decide*

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*how many issues are in the case and how many issues the petitioner has raised with sufficient specificity and grant party status based on those findings.*

*Regarding the change modifying OAR 345-015-0415(6)(b) to indicate that parties and limited parties to a case should have their issue worded the way they wish it to be worded for the contested case proceedings, Mr. Rowe noted if the issue is raised in a way that can make sense, the parties wording would be used. If it is worded in a way that does not allow people to understand and present evidence and arguments about it, the hearing officer would have discretion. After the prehearing conference, the hearing officer will discuss the wording with the parties if there is an issue. He added that there is a template provided that specifies how the Department recommends submitting a petition for a contested case.*

*Council Member Beier asked if prehearing conferences were mandatory.*

*Mr. Jackman confirmed prehearing conferences are mandatory.*

*Council Member Grail stated Council reads all the public comments submitted and does not need additional time for review as suggested in a submitted concern regarding the Contested Case Rulemaking.*

*Mr. Jackman noted that if there are situations in which Council needs additional time for review, there is no issue with providing it and no rule change is needed.*

*Regarding the submitted concern that EFSC does not issue an order when it denies a request for contested case, Mr. Rowe offered the clarification that this a misunderstanding. Orders are issued at the conclusion of Contested Case proceedings.*

*Mr. Jackman explained that due to the nature of some of the comments received regarding the sufficiency of the notice of proposed rulemaking, in particular the description of the nature of the rulemaking, staff recommends that additional time be given for persons to provide comments, and that this extended comment period should be based on the updated draft language proposed, which would require issuing a new notice of proposed rulemaking.*

Vice Chair Condon motioned the Council, direct staff to issue the revised notice of proposed rulemaking with the Oregon Secretary of State with all proposed amendments to the contested case rules and providing an additional public comment period as presented and recommended by staff.

Council Member Beier seconded the motion.

The motion was carried unanimously.

Chair Howe adjourned the May EFSC Meeting at 1:06 p.m.

FINAL