



ENERGY FACILITY SITING COUNCIL

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

Energy Facility Siting Council Meeting Minutes

Friday October 25, 2024 8:30 AM
Webex Virtual Meeting

- A. Consent Calendar (Action Item & Information Item)¹
- B. Radioactive Material Transport Fee Rulemaking (Action Item)²
- C. Carbon Monetary Offset Permanent Rulemaking (Action Item)³
- D. Nuclear Research Reactor Permanent Rulemaking (Action Item)⁴
- E. Public Comment Period (Information Item)⁵
- F. Yellow Rosebush Energy Center Hearing Officer Appointment (Action Item)⁶
- G. Mist Natural Gas Underground Storage Facility, Council Review of the Draft Proposed Order for Amendment 13 (Information Item)⁷

The meeting materials presented to Council are available online at:

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

Call to Order: Chair Howe called the meeting to order on October 25, 2024, at 8:30 a.m.

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

Oregon Department of Energy representatives present were Assistant Director for Siting/Council Secretary Todd Cornett; Assistant Director for Nuclear Safety, Maxwell Woods; Senior Operations & Policy Analyst Sarah Esterson; Senior Siting Analyst Kathleen Sloan;

¹ Audio/Video for Agenda Item A = 00:03:42- 2024-10-25-EFSC-Meeting-Audio/Video

² Audio/Video for Agenda Item B = 00:17:02- 2024-10-25-EFSC-Meeting-Audio/Video

³ Audio/Video for Agenda Item C = 00:38:27- 2024-10-25-EFSC-Meeting-Audio/Video

⁴ Audio/Video for Agenda Item D = 00:45:32- 2024-10-25-EFSC-Meeting-Audio/Video

⁵ Audio/Video for Agenda Item E = 00:51:41- 2024-10-25-EFSC-Meeting-Audio/Video

⁶ Audio/Video for Agenda Item F = 00:56:41- 2024-10-25-EFSC-Meeting-Audio/Video

⁷ Audio/Video for Agenda Item G = 01:04:45- 2024-10-25-EFSC-Meeting-Audio/Video

Rulemaking Coordinator, Tom 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.

A. Consent Calendar (Action Item & Information Item)⁸ – Approval of August 22-23, 2024 minutes; Council Secretary Report; and other routine Council business.

- Meeting Minutes

Council Member Devlin motioned the Council approve the minutes of the August 22-23, 2024 meeting as presented and recommended by staff.

Council Member Beier seconded the motion.

The motion was carried unanimously.

- Council Secretary Report

Council Member Updates

Vice Chair Condon's first term on Council ends in December. She has submitted her information to be reappointed for a second term.

The Governor's office has expressed interest in replacing former Council Member Chocktoot with another tribal representative. The Department has reached out to the tribal governments of the nine federally recognized tribes for recruitment.

Project Updates

- Boardman to Hemingway Transmission Line - The Department received an Amendment Determination Request (ADR) on October 11, 2024 related to the relocation of the approved North Cap Reactor Station from the previously approved location to a different location within the approved micro siting corridor. Idaho Power Company asserts that an amendment would not be required.
- Daybreak Solar Project - The Department received an ADR on October 17, 2024 related to the sale of facility equipment that would be leased back. Avangrid Renewables asserts that neither a transfer of the site certificate or an amendment to the site certificate would be required.

⁸ Audio/Video for Agenda Item A = 00:03:42- 2024-10-25-EFSC-Meeting-Audio/Video

Future Agenda Item

Secretary Cornett has reached out to Bonneville Power Administration (BPA) for a possible presentation of an overview of their transmission system, an overview of the interconnection process and information on the National Environmental Policy Act permitting section during an upcoming EFSC meeting. Council can make further suggestions if they have any other items they would like presented.

Vice-Chair Condon thanked Secretary Cornett for pursuing this. She noted that she had attended BPA's transmission planning workshop. She stated that there was frustration from members of the public regarding the BPA's involvement at the early stages of planning. She suggested BPA could cover their engagement with the public on their planning process.

Council Member Devlin suggested a presentation on their plan to implement any changes in technology.

Upcoming EFSC Meetings

The November Meeting will be held on November 14, 2024 in Madras at the Inn at Cross Keys Station beginning at 4:00 pm.

The December Meeting is scheduled for December 12-13, 2024. It will most likely be a one day meeting on December 13th in Salem at the ODOE office.

The 2025 EFSC meeting dates have been sent to Council members for their review. Confirmation of the dates will be provided at the November Meeting.

- B. Radioactive Material Transport Fee Rulemaking (Action Item)⁹** – Maxwell Woods, Assistant Director for Nuclear Safety, presented Council with a proposal to begin the informal process to update the radioactive material transport fees outlined in OAR 345 Division 60, including the scope of the rulemaking and the makeup of a prospective Rulemaking Advisory Committee.

Council Member Grail noted there are not any environmental advocacy or social justice organizations included in the potential Rulemaking Advisory Council (RAC) Membership list.

Vice-Chair Condon agreed and stated that a representative from the rail transportation sector would be a good addition to the RAC. She noted that in the statutes there is reference to the highway transportation for consultation but not rail transportation and asks if the statute contemplates rail.

Mr. Woods stated Counselor Rowe and he reviewed the statutes but will review further prior to proceeding with the component.

⁹ Audio/Video for Agenda Item B = 00:17:00- 2024-10-25-EFSC-Meeting-Audio/Video

Council Member Imes noting the training of emergency response personnel on issues of radiation and transportation safety, asked what geographic areas would most likely be involved in an incident and would those areas be represented on the RAC.

Mr. Woods stated Umatilla County and Multnomah County would be the areas. He added the Department could communicate with the Association of Oregon Counties for their possible involvement in the RAC or if they have other recommendations for additional counties.

Council Member Beier asked if the haulers themselves are responsible for training their drivers.

Mr. Woods stated the truck drivers do have to be trained and are required to have a special license to handle radioactive material. They must go through their own set of training as well. The State does not provide training.

Council Member Devlin suggested the Union Pacific Railroad may be able to provide local contacts for possible members to the RAC.

Vice-Chair Condon suggested adding language to the fee rule that the fee must be reviewed regularly and adjusted for inflation at a minimum. She further noted her desire for the Department to require a periodic review of all fees required in rule, amending them as necessary.

Mr. Jackman confirmed his understanding and agreement with the suggestions. He stated that fees reflect a direct charge that is related to the cost of the services provided.

Secretary Cornett noted that the Department does have a fee schedule. It is mandated by statute to be updated every two years. However, the siting process is really fee for service. If the fees collected are not spent, they are returned, and if more fees are needed than what are estimated or collected, they are invoiced to the project.

Council Member Beier motioned the Council initiate the Radioactive Material Transport Fee Rulemaking, with the scope and objectives recommended by staff, and approve the creation of a rulemaking advisory committee, as presented in the staff report. She further moved that the Council delegate the authority to appoint specific members to the rulemaking advisory committee to the Department, but with the following changes from staff's recommendations in the staff report: Identify and include the following groups on the rulemaking advisory committee; Environmental or social justice group; and Rail representative.

Council Member Grail seconded the motion.

The motion was carried unanimously.

- C. Carbon Monetary Offset Permanent Rulemaking (Action item)¹⁰** – Tom Jackman, Rules Coordinator, presented for consideration by Council permanent rules related to the carbon monetary offset rate.

Vice-Chair Condon motioned the Council to adopt the proposed Carbon Monetary Offset rules as presented in the Staff Report.

Council Member Devlin seconded the motion.

The motion was carried unanimously.

- D. Nuclear Research Reactor Permanent Rulemaking (Action Item)¹¹** – Tom Jackman, Rules Coordinator, presented for consideration by Council permanent rules related to Council’s nuclear research reactor oversight.

Council Member Devlin motioned the Council adopt the proposed Nuclear Research Reactor rules as presented in Attachment 1 to the Staff Report.

Vice-Chair Condon seconded the motion.

The motion was carried unanimously.

- E. Public Comments (Information Item)¹²** – 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: 1) Mist Natural Gas Underground Storage Amendment 13 Draft Proposed Order; 2) Sunstone Solar Project Draft Proposed Order/Proposed Order; 3) Monetary Offset Rulemaking; and 4) Research Reactor Rulemaking.

There were no public comments. Chair Howe closed the public comment period.

- F. Yellow Rosebush Energy Center Hearing Officer Appointment (Action Item)¹³** – Todd Cornett, Assistant Director for Siting/Council Secretary. Council will consider appointment of Kate Triana, Oregon Office of Administrative Hearings Senior Administrative Law Judge, in accordance with ORS 469.470, as the Hearing Officer for all related EFSC proceedings associated with the Yellow Rosebush Energy Center.

¹⁰Audio/Video for Agenda Item C = 00:38:57- 2024-10-25-EFSC-Meeting-Audio/Video

¹¹ Audio/Video for Agenda Item D = 00:45:32- 2024-10-25-EFSC-Meeting-Audio/Video

¹² Audio/Video for Agenda Item E = 00:51:41- 2024-10-25-EFSC-Meeting-Audio/Video

¹³ Audio/Video for Agenda Item F = 00:56:41- 2024-10-25-EFSC-Meeting-Audio/Video

Council Member Grail motioned the Council appoint Administrative Law Judge Kate Triana from the Oregon Office of Administrative Hearings as the Hearing Officer for the Draft Proposed Order public hearing and contested case proceedings for the Yellow Rosebush Energy Center, as recommended by staff.

Vice-Chair Condon seconded the motion.

The motion was carried unanimously.

G. Mist Natural Gas Underground Storage Facility, Council Review of the Draft Proposed Order for Amendment 13 (Information Item)¹⁴ – Kathleen Sloan, Senior Siting Analyst, presented Council with an overview of the Draft Proposed Order (DPO), comments received on the record of the public hearing, and the Department’s preliminary evaluation of comments and issues raised at public hearing. During Council’s review, they may make comments and recommendations to the Department for changes to be included in the Proposed Order. The Mist Underground Natural Gas Storage Facility is located in Columbia County.

Council Member Devlin questioned the comments received requesting EFSC adopt a new ad hoc standard and then use the standard to deny Request for Amendment (RFA 13) as wanting EFSC to enforce a standard retroactively.

Ms. Sloan confirmed that is correct. She noted that the certificate holder response to the comments noted that this is a non-generating facility, and that house Bill 3630 allows ODOE to have the discretion to determine the best strategy for applying the house bill requirements and does not prohibit the expansion of the existing facilities.

Mr. Rowe advised that Council does have the authority to adopt a need standard for surface facilities related to underground gas storage facilities but has not. He agrees with Councilor Devlin that if Council were to adopt a need standard, they would essentially have to apply it retroactively to this project. He added Council is bound by statute. He is unaware of a statute that would allow Council to do this. However, anyone can petition the agency to adopt a rule. In a petition, they could articulate why they believe Council would have the authority to delay or deny this application pending the adoption of such a rule. He further stated that he is not aware of a clear legal avenue for Council to delay or deny this application pending adoption of such a rule, but the Department would be open to hearing any arguments were someone to petition Council to adopt such a rule.

Council Member Beier appreciated the clarification and noted legal counsel's advice that Council should not be applying rules retroactively.

¹⁴ Audio/Video for Agenda Item G = 01:04:45- 2024-10-25-EFSC-Meeting-Audio/Video

Vice-Chair Condon agreed adding as Council contemplates rulemaking in the future, Council should consider a needs standard for surface facilities.

Council Member Beier noted her appreciation for the Department's use of a consultant for reviewing the geologic hazards maps as it is an important issue and a back-up review and provides additional documentation.

Vice-Chair Condon asked for clarification for her understanding of the statute that underground reservoir wells are excluded from EFSC jurisdiction.

Mr. Rowe provided EFSC has jurisdiction over energy facilities as defined in ORS 469.300(11). Subsection (l) establishes EFSC has jurisdiction over a surface facility related to an underground gas storage reservoir but explicitly excludes from Council's jurisdiction the underground storage reservoir, the injection withdrawal or monitoring wells and individual wellhead equipment.

Council Member Beier, in reference to the wellhead concerns issue, asked if any written information has been submitted from the regulatory agencies regarding their findings or their monitoring of the particular wells.

Ms. Sloan stated in 2022 the Department received a complaint and took it very seriously. The Department initiated our own compliance investigation as a result of that complaint and coordinated with both Oregon DEQ and DOGAMI. They both responded in writing to the Department as part of that complaint. The result of following up on that complaint, including the responses received from DOGAMI and DEQ was that there was no evidence that the wells in question had ever been used by Northwest Natural. There was no evidence that the site certificate had been violated. After our review and coordination with those agencies, the complaint was closed in November of 2022. There is no evidence that Northwest Natural is associated with the allegations. There is no evidence that RFA 13 would change that outcome.

Council Member Imes questioned if the Oregon Health Authority has been involved with this issue.

Ms. Sloan stated not to her knowledge.

Council Member Imes stated as this is high level, she would like to know more about any reports that have been received by these regulatory agencies.

Council Member Beier agreed, adding that it would be helpful if there were other findings from the state regulatory agencies supporting the finding.

Ms. Sloan confirmed that DOGAMI is reviewing and will provide written comments. She will contact DEQ for written comments also.

Vice-Chair Condon, regarding fugitive emissions from facility pipelines, asked if there were reports from DEQ that demonstrate the process for eliminating the emissions. It would be interesting to know what the report requires.

Vice-Chair Condon provided the following comment:

Staff has provided us with information regarding the excess gas emissions which must be offset, and that is the metric tons. I see nothing in the evidence or findings of fact which tells us the actual emission offsets which can be purchased at the expected rate or at the rate we have set today of \$6.40. As we have discussed previously, the offset rate we have approved is well below the market rate for carbon offsets. I believe given the cost of carbon offsets today, this will result in the inability of The Climate Trust to purchase the number of carbon offset credits necessary to offset the projected greenhouse gas emissions from the project. It is difficult for me to believe that the legislature intended one of the pathways to be a relatively inexpensive way to purchase offsets which really do not offset the excess greenhouse gas emissions that the statute and rules are addressing in my opinion as I have read the material provided. Without further evidence to the contrary, the offset credit that is proposed for purchase for this project will not be sufficient to meet the carbon dioxide emissions standard or the intent of the statute or allow EFSC to make the determination we need to make.

Secretary Cornett stated that the estimates presented are what is allowable by statute and rule. Staff will review Vice-Chair Condon's comments carefully but the current assessment is what the Department has determined is legally authorized to require at this point.

Vice-Chair Condon quoted ORS 469 503(c)(C) which reads: the applicant or a 3rd party agrees to provide funds in an amount deemed sufficient to produce the reduction in greenhouse gas emissions necessary to meet the applicable carbon dioxide emission standard. She believes that represents a greenhouse gas emissions measurement, not a dollar cost.

Secretary Cornett stated that there are other statutes that have to be evaluated which create different pathways to develop the calculations for monetary offset rate. The language in ORS 469.503 references the implementation of all other statutes that get to the offset amount.

Council recessed briefly to review a memo received from Haley Aldrich regarding the review of the geological hazards maps. After the recess, the following discussion occurred:

Chair Howe summarized his understanding of the memo stating the two catalog maps do not impact the results from the seismic hazard point of view and there is validity in the seismic hazard estimates presented in exhibit H.

Council Member Devlin suggested that more background information regarding the inputs and outputs of the evaluation would be helpful in understanding the comments from Haley Aldrich.

Ms. Sloan stated the information provided is useful and supports the Department's evaluation. It is important to follow up with the Department's coordination with DOGAMI as well. They are the experts on seismic risk and their data is to be relied upon and utilized.

Council Member Beier noted her appreciation for the memo, stating that she is more comfortable knowing that every stone was unturned in terms of the seismic hazard data that is available.

Chair Howe adjourned the October 2024 EFSC meeting at 11:06 A.M