



ENERGY FACILITY SITING COUNCIL

Marcia Grail, Chair ■ Kent Howe, Vice-Chair ■ Hanley Jenkins ■ Mary Winters ■ Jordan Truitt ■ Cynthia Condon ■ Perry Chocktoot

**Energy Facility Siting Council
August 27, 2021
Meeting Minutes
Friday, August 27, 2021 8:30 a.m.
WebEx Teleconference**

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The meeting materials presented to Council are available online at:

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

Call to Order: The meeting was called to order at 8:31 a.m. on August 27, 2021 by Chair Grail.

Roll Call: Chair Marcia Grail, Vice-Chair Kent Howe, Council Members Hanley Jenkins, Jordan Truitt, Cynthia Condon were present. Council Member Perry Chocktoot joined during Agenda Item A. Council Member Winters was absent.

Oregon Department of Energy representatives present were: Assistant Director for Siting/Council Secretary, Todd Cornett; Senior Policy Advisor, Sarah Esterson; Senior Siting Analyst, Chase McVeigh-Walker; Siting Policy Analyst and Rules Coordinator, Christopher Clark; Operations Analyst, Wally Adams; and Administrative Assistant Dawnita Bruce. Oregon Department of Justice Senior Assistant Attorney General Patrick Rowe, counsel to EFSC and Oregon Department of Justice Senior Assistant Attorney General Jesse Ratcliffe, counsel to EFSC for the Boardman to Hemingway contested case were also present.

¹ Audio from Agenda Item A= 0:02:44 - 2021-08-27-EFSC-Meeting- Audio

² Audio from Agenda Item B= 00:23:10 - 2021-08-27-EFSC-Meeting- Audio

³ Audio from Agenda Item C= 1:22:06 - 2021-08-27-EFSC-Meeting- Audio

⁴ Audio from Agenda Item D= 2:16:26 - 2021-08-27-EFSC-Meeting- Audio

⁵ Audio from Agenda Item E= 3:09:01 - 2021-08-27-EFSC-Meeting- Audio

⁶ Audio from Agenda Item F = 3:14:04 - 2021-08-27-EFSC-Meeting- Audio

⁷ Audio from Agenda Item G=:05:52 - 2021-08-27-EFSC-Meeting- Audio

⁸ Audio from Agenda Item H=4:44:21 - 2021-08-27-EFSC-Meeting- Audio

⁹ Audio from Agenda Item I= 5:05:52 - 2021-08-27-EFSC-Meeting- Audio

¹⁰ Audio from Agenda Item I= 5:35:48 - 2021-08-27-EFSC-Meeting- Audio

Chair Grail confirmed that agenda modifications were not proposed.

A. Consent Calendar (Action Item)¹¹ – Approval of minutes, Council Secretary Report, and other routine Council business.

Consideration of the July 23, 2021 Meeting Minutes

Council Member Jenkins motioned to approve the minutes of the July 23, 2021 meeting as presented.

Vice-Chair Howe seconded the motion.

Council Member Condon referenced a comment she made during the July 23, 2021 meeting regarding the order of review of EFSC Standards as currently stated on page 3, “Council Member Condon expressed preference for standards where Council is relying on staff to provide the necessary information”. She stated that as it is presented it isn’t clear in the minutes that she was speaking about ODOE staff to provide the necessary information on EFSC standards.

Council Member Condon stated she would like the minutes to be revised to state, “Council Member Condon expressed preference for standards where Council is relying on Department of Energy staff to provide the necessary information”.

Council Member Jenkins motioned Council to approve the minutes of the July 23, 2021 meeting as amended.

Vice-Chair Howe seconded the motion.

Council Members Truitt and Chocktoot abstained.

Motion carried unanimously.

Secretary Report

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

Staffing/Council Updates

The next legislative days are on September 22, 23 and 24, 2021, which means Council Members Jenkins and Winters who have concluded their terms could be replaced. However, there is no definitive information about replacements at this time.

Project Updates

- Boardman to Hemingway Transmission Line – Hearing Officer submitted a contested case update which was included in your packet.
- Boardman Solar Energy Facility ADR – This is an approved 75 MW solar PV facility on approximately 798 acres (1.25 sq. miles) and located in northwestern Morrow County. The site certificate holder is seeking their first amendment to change their beginning and ending construction deadlines by three years. The amendment request does not include any substantive changes. As part of that amendment request they also requested Type B review. On August 12, 2021 the Department determined that Type B was justified. This justification was based on an evaluation of any changes in facts or law since the original Council

¹¹ Audio from Agenda Item A= 0:02:44 - 2021-08-27-EFSC-Meeting- Audio

approval in February of 2018 and the interest and concern about this project by reviewing agencies and the public in the original review, which was minimal.

Council was sent the Department Determination on August 12th as well.

- Bonanza Energy Facility – This is a proposed 150 – 300 MW solar photovoltaic energy generation facility with up to 1,100 MW of battery storage. The facility would be located on approximately 2,733 acres (4.2 sq. miles). It is located just outside the Town of Bonanza in Klamath County. This project is still in the Notice of Intent stage and we anticipate receiving the application later in this year.

There was a meeting by members of the public related to this project last Wednesday. Council was alerted to the meeting the week prior.

We have continued to receive intermittent comments from the public on this project, even though we are not in a public comment time frame, and several commenters have asked that those comments be sent to Council. We have continued to provide those comments to you when asked. The last one was received from Elizabeth Hubbard, which we included in your Round II packet for this meeting.

- Wildlife Monitoring and Mitigation Updates
 - Leaning Juniper Wind IIA and
 - Leaning Juniper Wind IIB

In June of 2021, Council was provided Wildlife Monitoring and Mitigation Plan updates for several wind facilities based on annual reports submitted to the Department. At the time, Avangrid Renewables, the certificate holder for both Leaning Juniper IIA and Leaning Juniper IIB reported that no 2020 surveys or monitoring, per the Wildlife Monitoring and Mitigation Plan requirements had been conducted due to Covid-19. These projects are located in Gilliam County. However, these surveys were rescheduled for 2021 and completed in the spring. The certificate holder submitted the reports and findings of the Washington Ground Squirrel and Raptor Nest surveys conducted in April and May of this year. There were no significant findings or changes reported from the 2021 inventories.

These reports and findings have been reviewed by the Department and have been uploaded to the webpages for the projects and are open for public comment until October 20, 2021.

- Biglow Canyon Windfarm – This is a 450 MW wind energy facility consisting of 217 wind turbines, located in Sherman County. On August 19th we received notice from the Certificate Holder, Portland General Electric that a hawk hit an overhead line which caused a spark and started a fire that grew to 26 acres and burned a dilapidated house and old farm equipment before it was put out. Like all site certificates, Biglow Canyon has a 72 hour incident notification condition. This condition requirement was met and we will be seeking more information from PGE about the incident.
- Golden Hills Wind – This is a 200 MW wind energy facility in Sherman County that has recently begun construction. We just received an inspection request from adjacent farmers who have expressed concerns that the construction is occurring in violation of several site certificate conditions related to fugitive dust, topsoil management, the size of disturbance areas and facility layout that will impact agricultural operations. Avangrid Renewables, the certificate holder is aware of these concerns and has submitted a response. We are currently evaluating the concerns and Avangrid's response. Duane Kilsdonk, our Compliance Officer will likely conduct a site visit next week in order to determine whether or not there is a violation of any conditions of approval.

September 24, 2021 Council Meeting

Council Member Jenkins indicated he could be available if he is needed for a quorum, and still on the Council. Council Member Winters also continues to be available, but only if a quorum is needed. All other Council members confirmed their availability for the next scheduled meeting.

Chair Grail stated as she has previously recused herself on all Boardman to Hemingway action items and handed over the running of the meeting for Agenda Items B and to Vice-Chair Howe.

B. Motion to Remove Boardman to Hemingway Contested Case Hearing Officer (Action Item)¹² – Jesse Ratcliffe, Oregon Department of Justice Senior Assistant Attorney General, will provide an overview of the request by limited parties Ms. Irene Gilbert to remove Oregon Office of Administrative Hearing Senior Administrative Law Judge Alison Greene Webster as the EFSC appointed Hearing Officer for the Boardman to Hemingway Transmission Line Contested Case proceeding pursuant to OAR 345-015-0023(7). Council will allow Ms. Gilbert and Idaho Power Corporation (applicant), the only party to respond to Ms. Gilbert’s motion, limited time to provide oral testimony.

More information about Mr. Ratcliffe’s presentation is in the attached Order on Gilbert Motion to Remove Hearing Officer sent to the Boardman to Hemingway Contested Case service list on September 21, 2021.

During the presentation the following discussion occurred:

Vice Chair Howe asked if Council would like to allow 2 or 3 minutes of oral testimony to both Ms. Gilbert and Idaho Power Company.

Council agreed unanimously to 3 minutes each to Ms. Gilbert and Idaho Power to provide oral testimony.

Council called on Ms. Irene Gilbert.

Ms. Gilbert had trouble joining the webinar so instead Council called on Idaho Power to provide testimony.

Lisa Rackner for Idaho Power Company stated that they provided written response to the motion to remove the Hearing Officer in this case arguing that there was no basis for the motion. They don’t want to add to that statement, although they would like to be able to respond in the event that Ms. Gilbert adds anything beyond what she put in her pleadings that they feel they need to respond to.

Council agreed to allow Idaho Power to respond to Ms. Gilbert’s testimony and once again called on Ms. Gilbert.

Ms. Gilbert continued to have difficulty joining the webinar.

Council Member Jenkins asked if while Council waited for Ms. Gilbert to access the meeting can the Council move forward and come back once Ms. Gilbert was able to join the webinar.

Mr. Ratcliffe confirmed the Council could move forward with the item and go back to allow Ms. Gilbert opportunity to provide testimony, and that if Council hears something that needs to be specifically addressed he can provide statement as needed and he was prepared to move forward.

¹² Audio from Agenda Item B= 00:23:10 - 2021-08-27-EFSC-Meeting- Audio

Council Member Jenkins stated he felt Council should reserve the right for Idaho Power to rebut or respond.

Council agreed to move forward with Agenda Item B, however, Ms. Gilbert successfully joined the meeting by telephone and Council called on her to provide oral testimony.

Ms. Gilbert provided Council with oral testimony explaining her motion to remove the Boardman to Hemingway Contested Case Hearing Officer.

Council called on Idaho Power Company to respond.

Lisa Rackner for Idaho Power Company responded that they rely on their written response, and stated they didn't feel Ms. Gilbert has provided legal argument to support her motion.

Mr. Ratcliffe stated that he has provided the Council with written legal advice before the meeting. His presentation is based on that advice. Advice he presents to Council is attorney client privilege, and he explained how that applies in this context and how those rights could be waived. After advising Council of this he asked the Council if there was consent to move forward.

Council Member Jenkins asked if they needed a motion to waive the attorney client privilege rights.

Mr. Ratcliffe responded that a motion was not needed.

Council agreed to waive attorney client privilege rights and move forward.

Mr. Ratcliffe provided Council explanation of the advice and recommendations given to Council regarding the motion submitted by Ms. Gilbert, and her assertions.

Council Member Jenkins motioned that the Council deny Ms. Gilberts motion to remove Ms. Webster as Hearing Officer in the Boardman to Hemingway Contested Case.

Council Member Chocktoot seconded the motion.

Council Member Condon asked about the bias standard issue, when referring to prejudice, how would someone know what the prejudice of a person is without being stated.

Mr. Ratcliffe stated that outright bias is difficult to show in a legal proceeding. He provided examples of bias, how it applies, and how establishing whether or not bias exists.

Council Member Condon stated that she did not read or hear anything in the hearings or in the past written document to suggested there was any outward show of animus or making a decision before the facts.

Motion carried unanimously.

- C. B2H - McAllister Interlocutory appeal (Action Item)¹³** – Jesse Ratcliffe, Oregon Department of Justice Senior Assistant Attorney General, will provide an overview of the interlocutory appeal filed by Mr. Michael McAllister, requesting the Council to reverse the Hearing Officer's Ruling and Order on Motions for Summary Determination of Contested Case Issues FW-13, R-2, and SP-2. Council will allow Mr. McAllister, and any party who files a proper and timely response to Mr. McAllister's appeal, limited time to provide oral argument.

¹³ Audio from Agenda Item C= 1:22:06 - 2021-08-27-EFSC-Meeting- Audio

More information about Mr. Ratcliffe's presentation is in the attached Order on McA Appeal sent to the Boardman to Hemingway Contested Case service list on September 17, 2021.

During the presentation the following discussion occurred:

Mr. Ratcliffe paused to allow Council to check if there were any oral arguments at this time.

Vice Chair Howe asked if Mr. McAllister, Idaho Power Company or Patrick Rowe on behalf of the Oregon Department of Energy wanted to provide oral arguments.

Mr. Michael McAllister was not present to provide oral argument.

Jocelyn Pease for Idaho Power Company stated that they had no oral argument and they would rest on the written response submitted but they remain available to answer Council questions.

Mr. Rowe stated that the Department waives it's oral argument but remains available to answer Council questions.

Council Member Jenkins suggested that Council waive attorney client privilege on Agenda Item C.

Vice-Chair Howe asked for the Council's position on waiving attorney client privilege for Agenda Item C.

Council agreed to waive attorney client privilege.

Mr. Ratcliffe provided Council explanation of the advice and recommendations given to Council regarding the appeal submitted by Mr. McAllister, requesting the Council to reverse the Hearing Officer's Ruling and Order on Motions for Summary Determination of Contested Case Issues FW-13, R-2, and SP-2.

Issue FW-12 - Council Member Jenkins motioned that because there do not appear to be any material issues of fact in dispute with respect to Issue FW-12 that Council affirm the Hearing Officer's ruling on Summary Determination dismissing this issue from Contested Case proceedings.

Council Member Truitt seconded the motion.

Motion carried unanimously.

Issue R-2 - Council Member Jenkins motioned that because there are material issues of fact pertaining to issue R-2, Council reverse the Hearing Officers ruling on Summary Determination of Issue R-2, and reinstate Mr. McAllister as a limited party and Issue R-2 in the Contested Case.

Council Member Condon seconded the motion.

Motion carried unanimously.

Issue SP-2 - Council Member Jenkins motioned that because there do not appear to be any material issues of fact in dispute with respect to Issue SP-2 that Council affirm the Hearing Officer's ruling on Summary Determination dismissing this issue from Contested Case proceedings.

Council Member Chocktoot seconded the motion.

Motion carried unanimously.

Vice-Chair Howe returned the running of the meeting back to Chair Grail.

D. Project Updates (Information Item)¹⁴ – ODOE project leads will provide brief updates on their active projects. More information is located on the [Council Meetings website](#) for additional details pertaining to this [presentation](#)¹⁵.

During the presentation the following discussion occurred:

Regarding the Nolin Hills Wind Project, Council Member Jenkins asked how much of the 600 megawatts is solar versus wind.

Ms. Clifford stated that solar is estimated at 260 megawatts and wind is about 340 megawatts, but the applicant seeks flexibility based on future market conditions to choose how much solar versus wind to develop.

Council Member Jenkins asked if there was battery storage proposed associated with the Nolin Hills project.

Ms. Clifford explained that yes there would be battery storage and it would be located near the solar component, being either distributed throughout the solar component or all grouped together at the northwest portion of the solar site and near the northern facility substation.

Council Member Jenkins asked what the capacity of the battery storage would be.

Ms. Clifford stated she would need to do research to provide a response. However, later, during Ms. Clifford's presentation, Mr. McVeigh-Walker stated the battery storage for Nolin Hills would be 120 megawatts.

Council Member Condon asked when there is a large amount of public engagement with a project, how is the Department of Energy incorporating the comments received into the draft of the proposed orders.

Ms. Clifford explained generally, that when there is not yet an application to review, then comments received are saved and considered, and provide an opportunity for the department to share information about the Siting process. When there are comments requested to be sent to Council, Secretary Cornett forwards those. Specifically, for Nolin Hills, as the department has gone through and reviewed the application and developed requests for additional information, the applicant added an additional transmission subroute to the BPA Stanfield route based on the comments and concerns coming into the department. Even if a project is not in an active public comment period all comments are considered. If people are interested in participating further in the later stages of the process, it is important to participate in the Draft Proposed Order phase.

Council Member Jenkins asked if there is a Preliminary Application for Nolin Hills.

Ms. Clifford confirmed that there is a Preliminary Application.

Council Member Jenkins followed up asking about the status of the project review reflected in the presentation.

¹⁴ Audio from Agenda Item D= 2:16:26 - 2021-08-27-EFSC-Meeting- Audio

¹⁵ [ppt. presentation](#)

Ms. Clifford stated that while the Department is still reviewing the application for completeness, she has already begun drafting the Draft Proposed Order for areas where there is sufficient information.

Council Member Jenkins asked if there is information related to the Preliminary Application for Nolin Hills available to the public.

Ms. Clifford stated that yes, and it can be found on the Department's website. For any project going through the standard review process for a new application there can be a meeting at the department's discretion at the completeness determination phase; where the department finds an application for a site certificate complete the public will be made aware of that. This happens before the Draft Proposed Order, and is an opportunity for the department to explain the next steps in the process, what is included in the application, and how the public can participate once the Draft Proposed Order is released.

Regarding the Eugene to Medford Transmission Line Amendment 4, Council Member Jenkins asked will the right of way be expanded between Grants Pass and Sams Valley.

Ms. Clifford confirmed that is correct, the right of way would need to be expanded to 135 feet, which is an expansion of 35 feet depending on the land ownership type, for most of the transmission line.

Council Member Jenkins asked if that is why there is a Cultural Resources evaluation.

Ms. Clifford answered yes, and also due to other elements such as the reconducted portion of the line running between proposed Sams Valley substation and the Whetstone substation. Another area is Lower Table Rocks which could see impacts from the Sams Valley substation. Based on the various features of the project, particularly the substation, there is additional work going on in the federal review process for Section 106-National Historic Preservation Act, that was triggered because the Bureau of Land Management would have to authorize the transmission line that goes through federal land. Under the National Environmental Policy Act the substation, even though on private land owned by PacificCorp, is treated as a connected action, so the whole project is included in government-to-government consultation in the Section 106 process. The department is waiting to see the outcome of the Section 106 negotiations to reach a Memorandum of Agreement.

Regarding the Wagon Tail Solar Project, Council Member Jenkins asked if the 8 mile transmission line is shared with the wind projects.

Mr. McVeigh-Walker stated he would have to research further to provide a response to Council. However, later, during Mr. McVeigh Walker's presentation, Ms. Clifford stated that the transmission line would connect to the existing Blue Ridge substation and not be shared with other wind projects.

Regarding Stateline Wind Amendment 5, Council Member Condon asked if the Department will be fully reviewing all of the options that the applicant is asking for, or does the department determine which is best option.

Mr. McVeigh-Walker stated that the department would review all three options and make findings on all three.

Council Member Jenkins asked where the battery storage would be, stating the reason he is asking is if the applicant has asked for a Type B evaluation, but if the battery storage is going to change the site boundary it is something Council should be made aware of.

Mr. McVeigh-Walker explained that the centrally located battery storage would be within the existing approved site boundary.

Council Member Jenkins followed up his question to his Stateline battery storage question asking if they would have to establish a foundation for the battery storage and possibly an access road.

Mr. McVeigh-Walker stated that battery containers and inverter skids would be placed on an engineered grade with poured concrete foundation or utilize steel piles depending on site conditions.

Council Member Jenkins asked if there has been a department evaluation on the Type B request.

Mr. McVeigh-Walker confirmed the Department has not yet issued a determination on the Type B request. The Department did determine that Preliminary Request for Amendment was incomplete, and the department has issued requests for additional information.

Ms. Esterson added that for requests for the Type B process, the department has been waiting closer to the issuance of the Draft Proposed Order to have a better handle on whether there are new or amended conditions and the significance of issues rather than issuing the Type B review determination before coordinating with the reviewing agencies and performing the initial analysis.

- E. Public Comment Period¹⁶** – This time is reserved for the public to address the Council regarding any item within Council jurisdiction that is not otherwise closed for comment, which includes the Boardman to Hemingway Transmission Line Proposed Order and the Obsidian Solar Center Proposed Order, both of which are in the contested case process.

During the presentation the following discussion occurred:

Irene Gilbert commented on the process for addressing appeals for Council decisions. She felt that 3 minutes was not a lot of time for anyone to present information. She continued to state that she is concerned when issues are addressed and they are broken up into isolated issues Council does not fully understand the cumulative effect of those decisions.

- F. Retirement and Financial Assurance Standard Overview (Information Item)¹⁷** – Sarah Esterson, ODOE Senior Policy Advisor, will provide an overview of the Retirement and Financial Assurance Standard.

More information is located on the [Council Meetings website](#) for additional details pertaining to this [presentation¹⁸](#).

During the presentation the following discussion occurred:

Council Member Jenkins questioned the term “useful” that is used in OAR 345-022-0050, is that a use that has to be authorized within the zone, is that implied with in the term “useful”.

Ms. Esterson stated that yes, historically that has been the interpretation, that it is consistent with allowable uses within the zone, consistent with the surrounding landscape, and consistent with whatever the land owner would be willing to maintain.

Secretary Cornett offered the example of underground pipelines and electrical lines as well as concrete foundations in Exclusive Farm Use zoned lands. In those areas infrastructure needs to be removed to 3 feet

¹⁶ Audio from Agenda Item E= 3:09:01 - 2021-08-27-EFSC-Meeting- Audio

¹⁷ Audio from Agenda Item F = 3:14:04 - 2021-08-27-EFSC-Meeting- Audio

¹⁸ [ppt. presentation](#)

below the ground and covered with topsoil to allow the area to be cropped and therefore useful. However, the Department and Council will look at each site individually in order to determine what is a useful non-hazardous state to each site.

Council Member Condon commented she is curious how the Department analyzes or assesses the submitted documentation to determine compliance within this standard for obtaining a bond.

Ms. Esterson stated the Department has to determine an applicant has a reasonable likelihood that the applicant can obtain a bond, offset by the fact that they are required to have a bond in order to begin construction. The standard does not require the applicant to give us a bond as part of the application. Ms. Esterson requested clarification of Council Member Condon's question, "is the evidence we are looking at sufficient to answer the question of whether they have a reasonable likelihood of obtaining a bond?"

Council Member Condon confirmed that is her question.

Ms. Esterson continued her explanation to go to the opinion of legal counsel and what weight that might have for a 30 year cycle. That question is answered with the fact that the legal opinion is no longer needed once they get approval.

Secretary Cornett offered clarification by reciting paragraph "A" from Exhibit M, information about applicant's financial capability.

An opinion or opinions from legal counsel stating that, to counsel's best knowledge, the applicant has the legal authority to construct and operate the facility without violating its bond indenture provisions, articles of incorporation, common stock covenants, or similar agreements;

Secretary Cornett state this is a legal assessment not based on whether the developer is a viable developer who is going to be able to build, own and operate the facility without a problem, rather it is a legal analysis of do they have the legal ability to obtain a bond or letter of credits, or is it in violation of any of the provisions, articles of incorporation, common stock, covenants, or similar agreements.

Mr. Rowe responded to a stated concern expressed about one of the legal opinion letters coming from one attorney of a firm representing the developer and specifically indicating it was the attorney's opinion and not that of the firm. Mr. Rowe stated that he doesn't find this problematic because the standard doesn't require that the opinion letter come from a firm. We would accept an opinion letter from a solo practitioner if they are qualified in that arena.

Mr. Clark stated that paragraph "A" was added when the standard was related to financial capability, which was really about does the applicant have the resources to successfully construct and retire the facility, and at that time there was not a bonding requirement. He suggested that may be part of the reason why the legal opinion letter does not provide the same information the department would need to determine that an applicant could get a bond or letter of credit.

G. Surety Bond Template Update (Action Item)¹⁹ – Christopher Clark, ODOE Siting Policy Analyst & EFSC Rules Coordinator will provide staff's recommended updates to the required form for surety bonds.

¹⁹ Audio from Agenda Item G=:05:52 - 2021-08-27-EFSC-Meeting- Audio

More information is located on the [Council Meetings website](#) for additional details pertaining to this [presentation](#)²⁰.

During the presentation the following discussion occurred:

Mr. Clark explained that the current bond template allows a bond to expire, and provides that the Surety can take action to cancel a bond mid-term by give 120 days' notice of intent to Cancel to the Principal and the Department. Mr. Clark explained that under the current bond template, if a notice of intent to cancel a bond is given and no replacement is provided by the Principal within 90 days, the remedy for the State is to take enforcement action as described in division 029 of the Council's rules. He explained that the enforcement process likely takes more than 30 days, and does not prevent a surety from cancelling a bond. Mr. Clark explained that the Department was proposing changes to the template to address this.

Council Member Jenkins asked if the language being proposed is that the Surety gives 120 days' notice of its intent to cancel the bond, the Principal has 90 days to replace the bond, and if they do not replace the bond within 90 days the Department requires that the Surety pay the State within the next 30 days?

Mr. Clark stated that was correct, and explained the requirements for Surety and Principal along with Department guidelines for enforcement timeline and procedures.

Council Member Jenkins was concerned about whether someone could run out the 120 clock and leave no bond in place, and that the state would need to take action before the bond is cancelled.

Mr. Clark explained that the proposed language allowed the Department to call on the bond between 90 and 120 days after the notice of intent to cancel the bond is given. He explained that this language was intended to give the surety reasonable assurance that they would not be liable after the bond is cancelled and the collateral is released. He further explained that once the state calls the bond, it would then be up to the Surety and the Principal to sort out responsibility.

Council Member Condon wanted to clarify that the Council is trying to incorporate language that doesn't allow for running out the clock.

Mr. Clark confirmed this was correct. He further explained that the current bond only performs when the Principal has failed to restore the site, and retire the facility and the Council must wait 2 years from the date that a certificate holder has permanently ceased operation of a facility before the Council can determine that a violation has occurred. He explained that if the bond was to expire or be cancelled within that 2-year grace period the state could be left without a remedy.

Council Member Condon asked Mr. Clark to define what the penal sum of a bond was.

Mr. Clark explained that the penal sum is the maximum amount the Surety will pay out, that is the amount adjusted by the inflation letters annually.

Council Member Condon expressed that the proposed language is an improvement.

Vice-Chair Howe asked about the timing of the violation process and if that would allow collections within 120 days of the notice of intent to cancel a bond by the Surety.

²⁰ [ppt. presentation](#)

Mr. Clark stated the default timeframe for parties to respond to a notice of violation is 30 days and explained conditions where the 30 days would not apply or be compressed.

Vice-Chair Howe asked if there was anything preventing the Department from issuing a notice of violation on day 60, to allow 60 days rather than 30 days to conclude the violation process and issue a penal sum.

Mr. Clark stated he would need to research the timeframes association with violations to determine if they could be compressed.

Secretary Cornett explained the current remedy is using enforcement procedures. However, the Department doesn't feel this is the right remedy. Partly because violation would likely be 6 to 9 months, even with compressing the process when possible. If the bond is cancelled the only alternative in going through enforcement procedures is collections. Should collections be used, funds collected go to the General Fund, not to decommissioning the site.

Mr. Clark stated civil penalties would be for the violation of failing to maintain adequate financial assurance. Mr. Clark confirmed that funds collected go into the General Fund. He then described what the rules described, guidelines and potential outcomes for Council using civil penalties.

Council Member Truitt commented the language currently is a little vague to describe the requirements how Surety should provide notice of intent to cancel, and that he felt that it should provide a required method of providing notice such as, the Surety should provide written notice of intent to cancel.

Mr. Clark stated he would need to research red line language for the bond template to provide a response.

Council Member Jenkins commented based on the language proposed once 90 days has expired and there is no replacement for the Surety the department doesn't run out that timeline, the Department calls the bond. The language proposed does not wait until the end of process, it waits for 90 days to expire. On the 91st day the Department calls the bond and the Surety will be obligated to pay.

Mr. Clark confirmed that that is the intent.

Secretary Cornett stated that not necessarily on the 91st day action will be taken, but certainly before the 120th day.

Council Member Jenkins stated that the opportunity to take action exists on the 91st day.

Secretary Cornett confirmed that is correct.

Mr. Clark provided response to Council Member Truitt's comment regarding language in the surety bond template. The current template describes the notice of intent to cancel should be provided in writing, and the current template states the notice must be provide to the Department. The Department has proposed amendments to require it also go to the Principal and the Obligee.

Council Member Truitt commented that the language used when describing requirements of process, the language should be consistent and clear.

Secretary Cornett stated generally that this doesn't have to be decided today and that this can be brought back to Council after Council has a chance to deliberate.

Mr. Rowe commented that in paragraph 6 the language could include written notice, to provide continuity between paragraph 5 and 6.

Chair Grail stated her individual position was to add the word written.

Council Member Jenkins motioned the Council amend the template for surety bonds for use for site certificate holders as recommend by staff with the following change (in bold) in paragraph 6:

“if the surety provides **written** notice to cancel...”

Vice Chair Howe seconded the motion.

Motion carried unanimously.

H. Initiation of Radioactive Waste Materials Rulemaking (Action Item)²¹ – Maxwell Woods, ODOE Assistant Director for Nuclear Safety and Emergency Preparedness, Jeff Burrigh, ODOE Nuclear Waste Remediation Specialist and Christopher Clark, ODOE Siting Policy Analyst & EFSC Rules Coordinator will request that Council initiate rulemaking to update rules in OAR chapter 345, division 050 defining radioactive wastes and implement SB 246 (2021). The presentation will include the Department’s recommendations for appointment of a Rulemaking Advisory Committee to assist in the development of proposed rules.

More information is located on the [Council Meetings website](#) for additional details pertaining to this [presentation²²](#).

During this presentation the following discussion occurred:

Vote #1 - Vice Chair Howe motioned the Council to initiate rulemaking to amend OAR Chapter 345 Division 050 and implement Senate Bill 246 and appoint the individuals and organizations identified by the Department to a rulemaking advisory committee to assist in the development of proposed rules.

Council Member Jenkins seconded the motion.

Council Member Condon asked about Columbia Riverkeeper not being on the list of suggested RAC members.

Mr. Clark stated that the Department reached out to Columbia Riverkeeper about serving on the RAC and they informed the Department that they do not have the capacity to serve on the RAC at this time.

Council Member Jenkins asked about Portland General Electric (PGE) not being on the list of suggested RAC members, as they are involved with the Trojan Independent Spent Fuel Storage Instillation (ISFSI).

Mr. Clark responded that PGE had reached out to the Department expressing interest in serving on the RAC, but the Department did not include PGE in recommendations for this RAC as the issues relating to the Trojan ISFSI are outside the scope of this rulemaking, however the decision of who serves on the RAC is the Council’s.

Motion carried unanimously.

Vote #2 - Vice Chair Howe motioned the Council approve the Department’s request to authorize them to appoint additional individuals or organizations to the RAC as needed.

²¹ Audio from Agenda Item H=4:44:21 - 2021-08-27-EFSC-Meeting- Audio

²² [ppt. presentation](#)

Council Member Jenkins seconded the motion.

Chair Grail stated that for the record that this is good opportunity to delegate as Council is aware of the issues involved and the Council should not have to convene to move the process on.

Motion carried unanimously.

- I. Application Process Review Rulemaking (Action Item)²³** – Christopher Clark, ODOE Rules Coordinator will request that Council initiate Phase 1 of the Application Process Review Rulemaking Project. Phase 1 is intended to reorganize rules in OAR chapter 345, divisions 015 to 026, to separate procedural and substantive provisions in rules and simplify or clarify procedural rules where practicable.

More information is located on the [Council Meetings website](#) for additional details pertaining to this [presentation](#)²⁴.

During this presentation the following discussion occurred:

Secretary Cornett commented that Phase 1 is an alignment exercise with no likely substantive changes. Phase 2 will be about determining what application requirements will be for each standard and that will involve some substantive changes. Phase 3 will involve evaluating and possibly changing specific standards which will certainly be substantive and likely involve multiple individual rulemakings.

Vice Chair Howe motioned that the Council initiate Phase 1 of the application process review rulemaking project as recommended by staff.

Council Member Truitt seconded the motion.

Council Member Jenkins asked Vice Chair Howe if his motion included the scoping Mr. Clark is proposing

Vice Chair Howe confirmed that was his intent as it is part of the proposal.

Motion carried unanimously

- J. PGE Update Boardman Coal Decommissioning (Information Item)²⁵** – Lenna Cope, Portland General Electric Senior Environmental Specialist will provide an overview of the plan and timeframe to decommission the Boardman Coal Plant and request termination of the site certificate.

More information is located on the [Council Meetings website](#) for additional details pertaining to this [presentation](#)²⁶.

Chair Grail appreciated Ms. Cope's presentation.

²³ Audio from Agenda Item I= 5:05:52 - 2021-08-27-EFSC-Meeting- Audio

²⁴ [ppt. presentation](#)

²⁵ Audio from Agenda Item I= 5:35:48 - 2021-08-27-EFSC-Meeting- Audio

²⁶ [ppt. presentation](#)

Adjournment

Chair Grail adjourned the meeting at 3:03 pm.

DRAFT