

Presentation to the Interim Siting Task Force
March 21, 1996

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At its first meeting, the Task Force asked the Council to make a presentation on our view of the issues, and how we arrived at the point we find ourselves. With me today are Terry Edvalson, Vice Chair of the Council from La Grande and Steve Schell, member of the Council from Portland. Terry and Steve asked me to be part of this panel in my capacity as Secretary of the Council. I will be providing a historical perspective in hopes of setting a context for the issues to be posed by Terry, Steve and later by John Savage.

I have also provided you with a draft guidelines document for site certificate applicants. There is more detail in this document than you will likely need to go in to. I have provided it in case you have specific questions about the current process.

The Beginning

As early as 1969, I have seen references to a "Nuclear Siting Task Force" established by Governor McCall. The purpose of the Task Force was to explore the possibility of siting a nuclear power plant in Oregon. The legislature's response to this Task Force was to create the Nuclear and Thermal Energy Council (NTEC) in 1971. This Council had a citizen chair, but was otherwise made up of representatives of several state agencies. The jurisdiction of this Council was limited to nuclear and coal plants with a capacity in excess of 200 megawatts (electric). They had an independent staff, and were organizationally in the Governor's office.

In 1975, Trojan was nearly complete, a coal plant was being planned, and Pebble Springs was about to be approved by NTEC. Projections from industry sources was for rapid growth in generation capacity. Around this time, other states had created Siting Councils. In response, the legislature created the Oregon Department of Energy and transformed NTEC into the current Energy Facility Siting Council (EFSC). Staff support would be provided by the new department. EFSC had a much expanded jurisdiction. Power plants from 25 megawatts (electric) as well as large transmission lines, gas pipelines and radioactive waste disposal sites were now subject to state siting review.

NTEC approved a site certificate for the Pebble Springs Nuclear Plants in April of 1975. The decision was appealed by Forelaws on Board, and in March of 1977, was reversed by the court and remanded to EFSC. On remand, the Council allowed PGE to withdraw its application with prejudice rather than deny the site certificate. The basis for the withdrawal was no demonstrated need for the facility based on the Council's "prudence" standard. In about 1979, staff proposed a "need" standard based on the department's energy forecast, cost analysis, and acquisition of conservation and renewable energy resources.

I remember being lectured by Sen. L.B. Day in 1985 as to the understandings incorporated into the EFSC statutes. His take on the process was a clear trade-off between:

- 1) a more thorough review process than other industrial facilities had to go through, and
- 2) an expedited, consolidated review and appeal process to assure a quick review.

In addition, the EFSC would have on-going oversight authority to make sure the agreements in the site certificate, a binding contract between the state and the applicant, were enforced.

Process and Standards

Siting standard decisions have been made by the legislature, the voters and by EFSC in Oregon. For example, Ballot measure 9, from 1984 established siting standards for radioactive waste disposal sites. House Bill 2990 from 1985 established very strict rules for hydroelectric facilities. EFSC has fourteen standards of general applicability, and some types of facilities have unique standards.

Early Council reviews incorporated all state approvals, including the air and water quality permits now delegated by EPA and not included in EFSC review. Council standards were organized by type of facility. So there were different sets of standards, reporting requirements and procedures for hydro, fossil fueled, wind, transmission lines, etc. In addition, the legislature required that the Council designate the entire state into areas found to be suitable and unsuitable for power plant development. Our experience was that this type of planning was very time intensive, and not detailed enough to be very useful in deciding whether or not to exclude a site. The details of an application are needed to make well informed siting decisions. In addition, excluding a power plant from one area may force a power line to be built instead. This trade-off is hard to make in the abstract of state-wide geographical planning.

In 1989, we realized the decade-long dearth of siting applications would soon end. We also realized the existing rules were inadequate to deal with new applications. We started over with a new organization of the rules, and served up an early version to the Council. Council member Steve Schell thought we needed to be more careful with delegating what he said was EFSC authority to make comprehensive siting decisions. A Nov. 4, 1991 Attorney General's opinion as to the Council's authority and responsibilities was the result. This opinion said:

- ◆ EFSC applies other agencies applicable standards to an energy facility.
- ◆ State and local agencies must issue their approvals, conditioned only on site certificate decisions by EFSC.
- ◆ EFSC itself must impose all conditions on approval, and may not delegate this approval to other agencies.
- ◆ Any appeal of another agencies permit or approval can be based solely on whether or not it is consistent with the site certificate.

This opinion solidified our notion of a strongly-coordinated review process. We crafted the next version of our draft rules accordingly. We put together a large group of interested parties to go through workshops and negotiations related to the wording of the rules. Staff proposed, and the Council adopted several new standards or provisions in the rules. Over the next year, we crafted the first complete overhaul of Council rules. A recreation standard was adopted for all facilities, not just hydro. The protected area standard was expanded as a better alternative to the suitable/unsuitable designations. A retirement standard was adopted, as was a rule requiring expiration dates on site certificates. Many existing standards, especially Need for Facility, were significantly modified. We introduced process changes, including Notices of Intent, Project Orders, Site Certificate amendment procedures and a raise it or waive it provision. We made most standards applicable to all facilities.

A group known as the industry group participated in these negotiations. This group asked to have introduced, a bill in the 1993 legislative session. SB 1016 would codify much of what was decided in the rule process, and in addition, take another shot some issues they could not convince the Council to adopt.

SB 1016 was the first major revision of Oregon's siting laws since 1975. Except for elimination of a state siting process, no part of EFSC's standards and process was left without discussion. The passage of this bill, after a negotiated re-drafting process crafted by the Senate Committee on Agriculture and Natural Resources, chaired by Sen. Cease, precipitated another major rule-making effort. These rules, adopted by the Council in November of 1994, made other significant changes to the review process, such as a contested case only on request. It established a new Division on Notices of Violation, Civil Penalties, Revocation and Suspension.

In 1995, the industry group requested introduction of SB 951. As initially drafted, this bill would have strictly delimited the Council's standard-setting authority, and eliminated authority for a need standard. Again, we negotiated toward a compromise, and a bill we thought we could live with. The amended bill made some changes to the review process in response to a protracted contested case on PGE's Coyote Springs application review, and still eliminated the Council's authority for a need standard. Near the end of the session, the Governor intervened, and authority for a need standard was put back in. As part of the compromise to get the bill to the floor, this task force was established, a 500 MW exemption from need was created for the interim and the Council may not adopt any new standards beyond those delineated areas in ORS 469.501.

OREGON ENERGY FACILITY SITING PROCESS

KEY

Entry point to EFSC



Significant Process Steps

