

Position Paper of the  
Energy Facility Siting Council

For the Governor's Task Force on  
The Public Interest in Energy Facility Siting

May 31, 1996

Council Members: Mel Ferguson, Terry Edvalson, Burke Hayes,  
Steven Schell, Bob Weil, Diana Bodker, Dr. Roslyn Elms-Sutherland

In response to the request of the Task Force, the Oregon Energy Facility Siting Council respectfully submits the following statements in an attempt to answer the four basic questions in the Governor's charge.

1. What is the appropriate scope of state siting authority?

It has been argued that:

- ◆ Without issues concerning need or global warming, there is no issue of statewide significance requiring a statewide approval process.
- ◆ Electric facilities are not substantially different from other industrial facilities, and approvals for electric facilities should not be treated differently than industrial facilities.

However, the Council is convinced that:

- A. Uniqueness of Energy Facilities Energy facilities are different from other industrial facilities. The cost, reliability, and adequacy of electricity as a product or service have statewide significance. Energy facilities, and electric facilities in particular, are different than other industrial facilities in several key respects. First, the generation and use of energy in the state has major environmental and economic consequences. Second, electricity is now a necessity of life. But unlike food, the electricity we use is a network of interconnected facilities operated in a synchronous alternating current system that must be instantly adaptable and available almost always. The reliability of the system is becoming more important as we become more dependent on electricity-using technology.
- Third, the major use of energy is usually remote from its generation. Transmission between generation and use is required. Consequently, the physical impacts of generation and transmission do not fall proportionately on the beneficiaries of the power. NIMBY (Not In My Backyard) issues are frequent, and real. Fourth, regarding electricity, we are in a transition from a regulatory framework of vertically integrated monopoly utilities to something else. Exactly what the new regulatory system will be is not now known. The transition between a system of rate-of-return monopoly regulation and whatever system we end up with may leave the economic assets and social objectives of the old system stranded. Siting of energy facilities may play a key role in the transition.
- B. Statewide Protection Resources of statewide significance require statewide protection and regulation. These include the CO<sub>2</sub> sink, air, water, scenic and wild rivers, refuges, and activities on federal lands.
- C. Size Justifies State Involvement There should be a process for activities of statewide significance. A power plant that can light 13,000 homes (e.g., 25 megawatts or more) is a facility that needs statewide review.

- D. Local-State Balance Local governments may favor local economic consideration at the expense of legitimate state interests. A recent example of this is the proposed Salt Caves hydro electric generation project which in part pitted local economic gain against the loss of significant regional white-water recreation resources.
- E. Global Climate Change. The United Nations Framework Convention on Climate Change (the Rio Treaty) is law by which we are bound. While it is clear that human-caused increases in CO<sub>2</sub> cause increases in global temperatures, the exact effects are not yet predictable with accuracy sufficient to require 100 percent emission offsets. Still, it is necessary to address this issue with proper processes and standards. Statewide siting that addresses this issue is worthwhile. If the issue is removed from EFSC hands (either by transfer to DEQ or by legislative elimination), then the justification for statewide siting is lessened dramatically.
- F. Flexibility to address rolling technical changes. Energy facility siting considerations have gone through at least seven sets of major technical evolutions. EFSC's predecessor, NTEC, started its life by considering nuclear power plants, obviously involving technical considerations of statewide significance.
- EFSC continues to deal with nuclear questions through rulemaking on such subjects as large component removal, decommissioning and on-site fuel storage pending finding a federal repository site.
  - A second major technical activity lies in the consideration of regulation and disposal of radioactive waste<sup>1</sup> generated by Teledyne Wah Chang, the Trojan Plant, Uranium Mills (Lakeview), and at the White King and Lucky Lass mines in Lake County.
  - A third set of technical considerations arose out of the siting of a 500 KV transmission between Eugene and Medford. The public's concern regarding health and safety impacts of electro-magnetic fields (EMF) required detailed scientific and engineering considerations with statewide implications.
  - The fourth area requiring technical monitoring and consideration lay in the impact of the new subduction earthquake theory on the siting and operation of energy facilities.
  - A fifth area of considerable technical expertise lies in keeping track of electrical energy marketing and regulatory changes and their impacts on the siting process.

---

<sup>1</sup> EFSC jurisdiction is limited to siting radioactive waste disposal sites, providing state disposal standards for a federal cleanup, transport requirements and defining radioactive waste in order to make clear what wastes are subject to the ban on disposal in Oregon. Regulation of radioactive waste from licensed users of radioactive material is by the Health Division as Oregon's radiation control agency.

- A sixth area lies in the technical nature of various kinds of generating facilities. Right now, most of the focus is on combustion turbine power plants. EFSC, however, sites geothermal generation facilities, like Cal Energy at Newberry Crater, wind farms, solar and biomass generation. Furthermore, EFSC sites synthetic fuel plants including facilities like a large ethanol plant proposed a few years ago, and any potential oil refineries.
- Seventh, the most recent group of technical considerations is the proper impact on the siting of energy facilities in Oregon arising out of the evolving science of global climate change.

To handle these and future technological developments a central authority with statewide rulemaking capability is necessary for siting and for oversight.

## 2. How should the decision to permit new facilities be made?

It has been argued that:

- ◆ Oregon has spent hundreds of millions of dollars and untold millions of citizen hours in the local land use planning process. Except for transmission, there is no compelling reason to provide supersiting or to disallow local government authority of the land use process. A statewide siting process undercuts the local nature of this land use process by allowing large energy facility developers to ignore the local process and encouraging state regulators to give more attention to state interests than to local interests.

However, the Council is convinced that:

- Allocation of Common Resources A state body can best address and allocate in a meaningful way, the resources held in common such as air and water. The state holds common resources in the public trust. The state has a fiduciary duty with regard to the resources held in the public trust. It should not give these resources away, but must be judicious when allocating common resources and should require justification for use of these resources and sufficient mitigation for their use or permanent loss. Where there are standards for impacts, there are often residual impacts. The state is responsible for assuring reasonable mitigation of any residual impacts.
- State and Local Issues Considered The current process works well because it considers both issues of state significance (e.g., global climate change and state wildlife considerations) and issues of local significance (e.g., land use standards) by using the substantive standards for the local plans and zoning. Under the existing EFSC process, the state and local interests are co-equal.
- State Board with Special Authority the Right Approach A state-appointed board can more effectively address issues of state concern than either a series of local decisions, or the Legislature. A state board can develop a greater depth of understanding of technical

issues than a biennial Legislature, and it is more timely. One example is the seriousness with which EFSC treats the requirement for making decisions on energy facilities within specific time periods. In addition, decisions are reviewed quickly by allowing only one appellate review, i.e., to the Supreme Court. Unlike other institutional organizations, a state board can be more flexible in responding to rapid changes made at the federal, regional and state level. For example, federal and regional regulation of electric utilities is in transition. The Energy Policy Act of 1992, the FERC Orders 888 and 889 on open transmission access, the Comprehensive Review of the Northwest Power System initiated by the four Northwest Governors and changes last year in federal legislation regarding BPA are contemporary examples of the tangled web of policies and venues that affect the way we generate, transmit and use electricity. State siting can be an effective tool in responding to these changes, and shaping them to the benefit of Oregonians. As an additional example, the legislature, in SB 951, authorized exemption from need for up to 500 MW, an exemption with a deadline, but the legislature did not specify a method of selection. EFSC, a state agency, worked out a best-of-batch approach, now being used. It is hard to conceive how separate and possibly competitive local entities could have developed standards and rules in equitable fashion or in a reasonable length of time. Using siting as such a policy tool however, requires more thorough and nimble attention than a biennial Legislature can provide and a broader view than is present at the local decision-making level.

- D. Resolution of Conflicts The existing state process provides an incentive to resolve conflicts of interest that is not present at the local level. When siting is done solely at the local level, it is easy to stop or delay projects because of the multiple agencies, jurisdictions and courts where decisions are made or appealed.<sup>2</sup> Further, there is no convenient venue for resolving conflicts or reaching compromise between the diversity of interests at the local level. In contrast, the existing EFSC process contains elements that provide an incentive to resolve conflicts. These include the project order process, the raise-it-or-waive-it provisions on issues in contested cases, the dual path land-use standard, the ability to take exceptions and the time lines for completion of the review.

3. **Should a determination of need be required before a facility can be built?**

**It has been argued that:**

- ◆ With the demise of the activity of the utilities bringing energy facilities into the rate base, there is less need for centralized decision making with regard to siting. Merchant plants produce the cheapest electricity. Merchant plants are not typically owned by utilities and, therefore, they are not rate-based by monopoly utilities. Hence, there is not the pressure to increase investment and thereby foist unnecessary costs onto captive ratepayers.

---

<sup>2</sup> Even the 120-day requirement for local permit decision backed up by the availability of a writ of mandamus proceeding, when applicable at the local level, is not nimble or timely compared to the existing EFSC time line and appeal process.

- ◆ Market forces will effectively determine what electrical production is needed and whether the proposer is financially able to build the facility. State regulation, which formally address these points, is not needed.

However, the Council is convinced that:

- A. The Public Interest in a Determination of Need Retention of the ability to consider need for facilities is paramount. There is continued public interest in assuring low-cost, reliable power supply, and prudent use and conservation of the common resources held in the public trust, developing conservation and renewable resources, addressing externalities, and ensuring a mixed portfolio of resources. Markets do not address these issues at all, or imperfectly because markets generally disregard the long-term social and environmental interests and because all costs are not reflected in market prices.
- B. Today's Conditions May Not Prevail While it is true that the Northwest is temporarily blessed with relatively abundant and relatively cheap energy, these conditions may not prevail. The availability of power from merchant plants has not yet eliminated the incentives of utilities to build and rate base new plants.<sup>3</sup> Nor is it certain the financial risks of unneeded plants will not fall on captive ratepayers through long-term contracts between utilities with captive customers and independent power producers. Although FERC is moving toward common carrier transmission, the states have not separated ownership of generation and monopoly retail distribution. In fact, the availability of low-cost power from merchant plants may allow the creation of stranded assets of some existing high-cost utility-owned plants.
- C. Response to a Changing World A need for facility standard can be an effective policy tool to influence the timing of new facilities, the type of facilities built, and the conditions under which they are built.<sup>4</sup> The Siting Council has effectively used its need standard to implement state policy as conditions change.<sup>5</sup> Continuing changes in electricity regulation

---

<sup>3</sup> At the EFSC meeting of May 10, 1996, Pacificorp, an investor owned utility, asked for permission to receive an assignment of one-half interest in the \$300 million combustion turbine plant approved by EFSC in 1994 and currently owned by Hermiston Generating Company L.C., an independent power producer. Inquiry by EFSC revealed the likelihood of a request to the Oregon Public Utilities Commission to bring this share into the Pacificorp rate base.

<sup>4</sup> It has been estimated that 6,000 megawatts of surplus summer generating capacity and 14,000 are available in winter, much of which is available at very low prices, on the Western system. While many of these plants are inefficient and there are limitations to how much of this electricity can be transmitted to Oregon, it is important to consider this fact in deciding whether Oregon's public trust resources should be used to increase the overall amount of generating capacity in Oregon.

<sup>5</sup> For example, when the OPUC adopted least-cost planning for investor-owned utilities (IOUs), the EFSC need standard was modified to incorporate and use the least-cost planning process and results. This link provides an important consistency and a substantive consequence

and policy desires of the state require the use of a need standard, or other appropriate standards as a policy tool to approve, deny or modify new facilities. We are far from finished with the transition from the old regulatory paradigm to a new one. No one knows what the future system will look like. But we do know that many state interests hang in the balance and may be effectively protected or enhanced through the ability to deny construction of new facilities, or condition construction to protect state interests or implement state policy.<sup>6</sup> Similarly, EFSC can decide there are no state interests that warrant a need determination for certain facilities or under certain conditions. In that case, the standard can be removed. EFSC has taken this approach, for example, in its adoption of an exemption from need for high-efficiency cogeneration facilities.

- D. Public Benefits Balance A need for facility standard provides a demonstration of public good or public benefit. Such demonstration is required before the state allocates common resources held in the public trust, or requires mitigation for those resources lost. A demonstration of public benefit is also required in connection with the state's ability to override local concerns if unwanted facilities are required for the greater public good.
- E. Power System Reliability A need standard can be used to ensure low cost reliability. Electric system reliability is becoming more of an issue of state concern. The physical complexity of our electric system, combined with an increasing tendency to build remote generation to serve major load centers and reduced hydro system flexibility, mean that we face new kinds of reliability problems. One example of this is the power system stability problem that developed in the Puget Sound area a few years ago either as a result of inadequate transmission or a lack of local generation capacity. One solution to such problems may require local generation be sited in major population centers over the objection of urban citizens. Or, construction of generation in response to other factors (e.g. availability of gas transmission or air shed) could be undesirable because it exacerbates the system stability problem. It is in the State's interest to assure that cost effective energy facilities can be sited in response to reliability problems. As we move to more competitive markets, electric system reliability could suffer as it has in similar transitions with telephones, savings and loans, and airlines.

---

for OPUC determinations on least-cost plans.

<sup>6</sup> For example, changes in the price of natural gas, implementation of FERC's open access transmission policies, potential retail competition, demands for repayment of the debt owed by Bonneville, failure of government policies such as the stranded asset PURPA contracts, or other events, could radically change EFSC's approach to the need for power to reflect state interests.

4. What should be the process to approve or deny requests to build new energy facilities?

It has been argued that:

- ◆ That government is best which is closest to the people affected by its decisions. Questions of proper fit with regard to land uses are normally handled best at the local level.
- ◆ The purpose of the LCDC goals is to set forth state policy. The LCDC process with amendments to Goal 13, can ensure that statewide interests are effectively considered at the local level. Local plans, incorporating state policy, can best address the proper siting of energy facilities currently being proposed.
- ◆ Location of large energy facilities requires technical expertise, but that expertise can be obtained through consulting contracts which, if ordinances are properly structured, can be paid for by applicants for local permits. Energy facilities can be reviewed with adequate sophistication and technical competence through use of proper consultants at the local level.
- ◆ Linear facilities can be handled either through a coordination mechanism set up under modifications to ORS 197.180 or 195.020, *et seq.*, or could be set up as part of statutory changes creating a siting authority for activities of statewide significance under DLCD.

However, the Council is convinced that:

- A. Technical Know-how Technical capability is needed in the siting of energy facilities in such areas as:
- nuclear safety,
  - radioactive waste disposal,
  - human health effects from electric and magnetic fields,
  - details of the transmission system,
  - seismic impacts on energy facilities,
  - renewable energy expertise, and
  - global warming.

This knowledge and more is more readily available at the state level than at the local level.

- B. Local Government Time and Effort Many local governments not only do not have the capacity of making decisions regarding energy facilities, they do not want to do the job. Developing this expertise at the local level is not impossible but would be potentially expensive to local jurisdictions and duplicative and may slow the siting process down as many jurisdictions are not now set up to do this.
- C. Jurisdictional Coordination Interjurisdictional facilities (i.e., linear facilities) require an approval process that is more than local in nature.

- D. A Mature Process The existing process provides a rational, timely and fair process for decision-making on energy facilities. The process has been significantly refined over the last five years through a conscious effort by the Legislature and EFSC to make it responsive and efficient and to protect the public interest of Oregonians. These revisions convey significant advantages to the developers of energy facilities and clear and direct ways to air concerns about development. They include, development of Project Orders to set forth relevant standards, one-stop permitting, raise-it-or-waive-it requirements, provisions for intervention, a timely process with a nine-month completion goal, one appeal at the Supreme Court, a dual path on land use, expedited review for some facilities and tailored exemptions from EFSC jurisdiction for certain high-efficiency facilities.
- E. Public Participation Through its process, EFSC offers ample opportunity for the public to question and to participate in the siting process.

### Conclusions

There is nothing which a state body such as EFSC, does that cannot be accomplished in some degree by allocating its functions to other state and local entities. But it is our considered opinion that the overriding state interest in siting needed facilities which do not adversely affect the public health and safety of the Oregon public can best be achieved by a state body such as EFSC which involves both public membership and state agency staff expertise.

First, it is doubtful that any agglomeration of state and local entities could or would set sufficiently comprehensive standards which encompass the entire environmental, health and safety requirements demanded by a statewide viewpoint.

Second, the centralized supersiting position of EFSC allows an applicant a clear and direct process and a timely decision.

Third, the wide variety of public interests have clear, direct and timely access to information and airing of their concerns.

Fourth, a trained and experienced staff with years of background and historic knowledge is in place. Energy facility siting is complex and costly. It is difficult to conceive of a multitude of agencies functioning without a centralized end-point, namely EFSC or some other body with similar powers.

Lastly, if it is not in the public interest to have the ability to adopt new standards, to ask whether facilities are needed, or to implement policy changes through siting, then there is no function for the state and EFSC ought to be discontinued.

We respectfully submit that the present system, while not perfect, does work. Witness the facilities sited using various paths over the last few years. The Legislature has twice recently made major corrections. It is time to let the process operate.