

NORTHWEST ENVIRONMENTAL ADVOCATES



May 31, 1996

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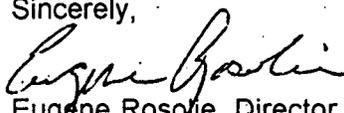
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Dear Mr. Larson:

Enclosed is the position paper of Northwest Environmental Advocates (NWEA) in response to the Energy Facility Siting Task Force.

Sincerely,


Eugene Rosoff, Director
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**NORTHWEST ENVIRONMENTAL ADVOCATES
ENERGY FACILITY SITING TASK FORCE
POSITION PAPER
MAY 31, 1996**

by
**Eugene Rosolie
Green Power Project**

The Energy Facility Siting Task Force (Task Force) has issued a call for position papers to "address any energy facility siting issue of concern." The Task Force also expressed a particular interest "in papers responsive to the governor's charge." Northwest Environmental Advocates (NWEA) appreciates the Task Force's interest in gathering a variety of views on these matters and takes this opportunity to respond to its request.

NWEA believes that, whether by chance or planning, the Task Force is in a unique and opportune position. It is unique in that we know of no other state that is currently looking at revamping its siting regulations to fit the new market situation. It is opportune because the Task Force's recommendations could be a standard by which others will follow in the future.

Oregon Senate Bill 951 established this Task Force to review the purposes, scope, and need for the Energy Facility Siting Council (EFSC). The Governor in his charge to the Task Force requested that four questions be addressed at a minimum. A critical first step is to define the "public interest" and establish its scope.

The "public interest" is more than a narrow focus on whether the energy from a prospective facility is needed by consumers in Oregon. EFSC has a public purpose requirement and an imperative to represent the interests of Oregon's citizens on a variety of issues. Most importantly, EFSC is to assure that the policies established by the State of Oregon are followed when it comes to energy facilities. There is no other state body or agency that deals specifically with energy, energy facilities, and their unique attributes. This role will become increasingly more important as we move into the era of deregulation and a more competitive industry.

It is also important for the Task Force to be aware of certain pitfalls, such as the tendency to believe that the "market" has the answers. As one economist pointed out:

Economists should remain mindful that markets do not define efficiency. Therefore, it is never true that a policy measure is efficient merely because 'it promotes market activity.'¹

This point is important because as this process proceeds the Task Force will hear a lot about what is efficient and likely will be told that whatever promotes market activity is the best policy. We must also know that there are many efficient economic states and therefore many efficient policies.²

With this changing industry we need to be mindful of the impact that this industry has, and will continue to have, on the environment. Electric utilities are the largest sources of pollution in the US. The burning of fossil fuels is recognized as being the leading cause of global warming. Even though the new gas plants are more efficient, one new 250 MW gas-fired power plant has CO2 emissions equivalent to over 180,000 cars each year.³ And over the last several years we have seen utilities, Clark County Public Utility District being one, and others leaving the Bonneville Power Administration for cheaper gas, in essence replacing hydro power with air pollution. So regardless of the extent and pace of deregulation, the environmental impacts will

¹ Griffin (1995) at p. 13.

² Id.

³ Calculation based on an average car and a new stand-alone plant using data from Oregon Office of Energy (OE), US Environmental Protection Agency, Energy Information Administration and General Electric Corporation.

remain and will likely worsen. Stripping away EFSC oversight effectively assures a loss for the environment.

Finally, energy projects have to fit into an existing system. EFSC and its proceedings play a key role in making sure that facilities operate to enhance the system and that new projects do not impose uncompensated costs on others.

With those points made we will now answer the four questions set out by the Governor in his charge to the Task Force.

Question 1

NWEA believes that all energy facilities, be they fossil fuel, nuclear, wind, solar, etc., should be subject to state siting authority. We also believe that state siting decisions should bind state agencies. However, we do not believe that a state siting authority should pre-empt other state agencies authority.

First, a state siting authority can not pre-empt a water quality decision made by the Environmental Quality Commission (EQC) which is bound by implementing regulations of the federal Clean Water Act (CWA). Second, it would more than likely mean that the state siting authority would need to duplicate what already exists at current agencies. An example of one way pre-emption works is in Washington State where the siting council, made up of various agencies, has the authority to issue both water quality and air quality permits. It has been our experience that this system does not work very well. The siting council does not have the expertise needed to do the work itself or even to oversee contractors. Better to leave the authority with the existing agencies.

Question 2

This question is difficult to answer because of uncertainty and change. On one hand you have an industry that is both changing and uncertain. On the other you have an environmental issue, global warming, with large areas of uncertainty. The answers we develop must recognize and address both of the issue of change and uncertainty because "[A]ny analysis that ignores these issues is at best incomplete, and at worst may be seriously misleading." ⁴

It seems almost every week there is a new twist to the changing energy market. The question is can any of us really predict what the industry will look like one year, two years, five years from now? The answer is that we will not know until it happens and then it may be too late. This dilemma is probably best handled by choosing regulatory strategies that are responsive to uncertainty and provide some built-in mechanisms for self-correction.⁵

As some of us found out in the recent 500 MW Exemption hearings, the global warming issue is filled with considerably uncertainty. In the words of one economist:

Estimating future benefits and costs associated with climate change is therefore virtually impossible. For these reasons, we will have to formulate policy given considerable uncertainty.⁶

At the same time most agree that this uncertainty does not mean we should not act but rather that our actions should be flexible and should address what we could do in

⁴ Nichols (1984) at p. 43.

⁵ Nichols (1984) at p. 51.

⁶ Lind (1995) at p. 385.

the short term. In other words:

The more tractable question is: given our concern, what should we be doing over the next ten years to position ourselves to act on new information and new technological developments?⁷

We also need to recognize the realities of today. Currently, and probably for the foreseeable future, the Oregon Public Utility Commission (OPUC) requires Oregon's investor-owned utilities to do least cost planning. As members of this Task Force know those utilities need to account for environmental externalities, including CO₂, in their plans. Independent Power Producers (IPPs) on the other hand have no requirements to perform such an analysis. As pointed out in the conclusion of a report for Resources For the Future on the issue of accounting for environmental externalities:

Another problem is that the use of social cost adders in the least-cost capacity planning process only for the utility system puts new plants at a competitive disadvantage relative to self-generation or purchasing power directly from an IPP [Independent Power Producer]. Some IPPs may find it advantageous to deal directly with customers rather than go through the PUC review process of bids to connect to the grid. This 'by pass' problem is a consequence of applying environmental cost only to utilities ... The solution to these problems is to develop a comprehensive system for internalizing environmental costs not only on utilities but on other sources of these emissions as well.⁸

In other words if we are interested in competition we must assure a level playing field for all.

The current system is one approach to regulation and use of market mechanisms is another. Market signals such as pricing, bidding or incentives can be incorporated into rules and standards. The 500 MW Exemption is an example of a

⁷ Id. at p. 388.

⁸ Burtraw et.al. (1992) at pp. 23-24.

combination of both approaches being used. With some more refinement, it has the potential to provide the foundation for a simple, direct, and enforceable solution to permitting. In the end whatever the regulatory approach it should both encourage and accelerate beneficial changes.⁹

Question 3

NWEA does not believe that need is any longer an overriding issue, there should be other paths open to those who wish to site energy facilities in the State of Oregon. We must recognize though that the "need standard" acted as a check and a protection. If we remove the determination of need it must be replaced with a new standard, a check, that continues to protect the public from overbuilding and abuse of market power. As pointed out previously we must account for the situation as it is not merely as we wish it to be. There may be a time when such standards or checks are not need but that time is not arrived.

Question 4

NWEA believes that public participation from the beginning to the end is important and should be maintained no matter the process. NWEA has participated in a variety of venues from contested case proceeding to simple agency hearings, we do not believe that contested case proceedings are significantly superior.

A recent case in point is the 500 MW Exemption proceeding. NWEA had recommended to EFSC more of an RFP process, we believe the record proves that

⁹ Nichols (1984) at p. 43.

method would have worked more efficiently. We believe that some hybrid can be developed. One thing the contested case process does very well is allow a full flow of information and with information we can all make better decisions.

Conclusion

The public interest is tightly woven into the issues of siting of energy facilities. By the nature of their impacts, size and longevity, energy facilities have a large and pervasive footprint. The State must play a key role in making sure the tradeoffs are worth it and impacts are fairly and equitably allocated. While true competition is developing, EFSC remains the last check on market power by the vertically integrated, franchise monopolies, the only place IPPs face real oversight, and the only place to assure a level playing field for internalizing environmental externalities. EFSC can also provide the oversight that can aid the development of a more open market.

NWEA believes, that the Task Force, and other participates in this process, should not get stuck into any one way of thinking. We have an opportunity to work together to forge innovative and creative ways of solving the problems before us. In doing so we lead the way for others to follow.

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