ENERGY FACILITY SITING TASK FORCE

POSITION PAPER
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I. EXECUTIVE SUMMARY

The Energy Facility Siting Task Force has been charged with clarifying what the state seeks to achieve from its energy facility siting process in light of the changes in the electricity and natural gas industries since the siting statutes were enacted in 1975. This paper addresses the four questions contained in the Governor's charge to the Task Force. It also explains why the siting process is an inappropriate vehicle for the promotion of certain state energy policies and explores other ways those policies can be advanced.

A. The Task Force must first distinguish between those energy policies that can be addressed in energy facility siting and those that cannot.

- The competitive wholesale market that now exists provides the price signals that identify which electric supply sources are most cost-effective and when new facilities can compete. Further, even though end users' direct access to this market is presently in transition, the rate impacts of utilities' resource commitments are appropriately dealt with in rate regulatory processes. Oregon ratepayers no longer derive any benefit from a "cost effectiveness" determination for a proposed facility in the siting process.

- The choice of energy facilities that will serve Oregon's electricity requirements is now made by purchasers through a market mechanism, not through the energy facility siting process. The siting process is therefore an ineffective tool to advance the state's energy policies concerning the mix of resources serving Oregon.

- The western United States is now an interconnected grid. A siting standard on greenhouse gas emissions that operates only in Oregon will not assure lower emissions from the western system and might, in fact, impede reductions of greenhouse gas emissions.

- The establishment by FERC of the high-voltage transmission system as a common carrier ensures that burdens placed on the transmission system by new energy facilities are not borne by other users in a discriminatory fashion. Also, the reliability of a

multi-state interconnected grid cannot be evaluated adequately in a siting proceeding for an individual energy facility.

B. **Question #1 (Scope of state siting authority.): A centralized state process for energy facility siting, overseen by EFSC, is still appropriate.**

- State-level siting allows coordination of the reviews of multi-jurisdictional linear facilities and resolution of potential conflicts between environmental permitting and local land use requirements.

- State-level siting prevents energy facilities in inappropriate locations and assures facilities will be built and operated by qualified entities.

- State-level siting allows consideration of the breadth of factors involved in an energy facility and ensures that issues do not "fall through the cracks" between individual agency reviews.

- Participation in the review of energy facilities by the state Office of Energy allows accumulation of a core of expertise that can enhance the quality of siting decisions.

C. **Question #2 (How should the permit decision be made?): EFSC's siting process should focus on the site-specific impacts of the proposed energy facility against clear, objective standards.**

- Impacts that are not related to a specific facility or site are not appropriate subjects for the siting review.

- Siting standards should be established through rulemaking proceedings, not the issuance of orders in individual energy facilities' contested cases.

- The siting of individual energy facilities is an adjudicatory process, and is an inappropriate forum for setting energy policy. For every policy the state seeks to implement through siting, it must be clear to the sponsor of a particular energy facility what the siting standard is and how the sponsor can meet it. This necessarily limits consideration in the siting process of policy issues that go beyond the energy facility in question.

D. **Question #3 (Should a determination of need be required?): A determination of "need" by EFSC in the energy facility siting process no longer serves any policy purpose.**

- In securing supplies for their customers, utilities have access to a vibrant wholesale market that clearly identifies the most cost-effective alternatives.

- Utilities are subject to competitive pressures that incent them to acquire the most cost-effective supplies.

- The presence of the wholesale market and competitive pressures on utilities effectively protect ratepayers from expensive, unwanted energy supplies.

- Costs of project failure are borne by private investors, not ratepayers.

- Due to technological advances, modern generating facilities are smaller and have less impacts than the large coal and nuclear facilities envisioned when the current need standard was formulated.

- With the extent of environmental regulation now embodied in the siting process, residual or external environmental impacts of modern generating facilities are largely internalized.

E. **Question #4 (What should the process be?): The present process for approving or denying requests to build new energy facilities strikes the right balance between the public's need for meaningful participation and an applicant's need for clarity.**

- The present siting process provides for a generous amount of public participation.

- Limiting appeal of the council's decision by parties to the case is appropriate.

- Timelines for the process in the statute are good policy and appropriate in length.

- The land use component of the current process is both necessary and workable.

F. **Recommendations concerning other elements of state policy:**

- Conservation should be dealt with in a manner that results in the delivery of cost-effective conservation and is consistent with the competitive market. A non-bypassable customer charge during the transition to a fully competitive energy market may be one equitable way to fund conservation.

- Renewable pilot projects will reduce the risks of future projects by providing a successful track record for alternative generation. Policies that help reduce the costs (sales tax exemption) along with methods of allowing some customers to pay more voluntarily (through green pricing) will help promote longer term use of renewables.

- CO2 is a global issue and cannot be dealt with effectively through state level action, especially through siting. The current regulatory framework for CO2 involves a national program to voluntarily find methods for reducing CO2 at low cost. Any effort to further regulate CO2 should build on the experience of this program and should rely on market mechanisms to address CO2.

G. **Conclusion.**

- The Task Force should recommend to the 1997 Legislative Assembly that Oregon's energy facility siting scheme be revamped so that the focus of energy facility siting cases is a review of the suitability of a particular applicant and project at a particular location against a clear set of standards.

II. THE TASK FORCE MUST FIRST DISTINGUISH BETWEEN THOSE ENERGY POLICIES THAT CAN BE ADDRESSED THROUGH SITING AND THOSE THAT CANNOT

A. "Cost-Effectiveness"; Post-1990 Changes in the Energy Supply Industry.

Oregon's energy policy requires that "cost-effectiveness be considered *** in all agency decision-making relating to energy facilities." ORS 469.010(2)(f). This policy was intended in large part to ensure that Oregon's ratepayers were not forced to pay for energy resources that were not cost-effective. The consideration of cost-effectiveness in the siting process made sense in the past but it does not make sense today.

In the period between 1975 and 1990, the electric utility industry was highly vertically integrated. A single entity controlled the customers, the supply resources, and the resource-selection process. Investor-owned utilities ("IOUs") were strongly incented by rate regulation to build power plants with their own investment dollars in order to serve the loads of captive customers. A utility relied on its own forecasts of load growth and selected the resource types it wanted to add to its generation base. All "prudently incurred" costs were included in the rates paid by the utility's captive customers. Because regulatory review of these costs occurred only after the plant was built, ratepayers had very limited protection against the economic consequences of an unfortunate resource choice.

During the same time period, publicly-owned utilities ("POUs") relied almost exclusively on BPA to make acquisition decisions. Their ratepayers had even less protection. Requiring a "need" evaluation by EFSC at the time of siting provided a marginally enhanced level of ratepayer protection against facilities that were not cost-effective.

Today these circumstances no longer exist. A utility's "build vs. buy" decisions are more closely examined by state public utility commissions. Boards of POUs in the region have been sensitized by the WPPSS debacle.

In addition to increased regulatory oversight, utilities are facing increased competition. Large customers are using the threat of self-generation to force utility suppliers to reduce their prices. Open retail competition, either real or *de facto*, looms as a possibility. A utility's incentive to add capacity is more than offset by the need to keep customer rates competitive.

Most importantly, though, utilities seeking electric supplies for their customers today have the benefit of an open, transparent wholesale market that offers supplies from independent power producers ("IPPs"), power marketers, and from other utilities with surplus capacity, against which they can evaluate their choices. Utilities, their customers and their regulators can easily determine whether a given project is more cost-effective than alternatives available in the marketplace. It is thus far less likely that a utility will recover from its customers the cost of a new facility that is above-market.

In today's environment, most utilities are disinclined to build to meet their load growth. Instead, they want to pass the risk of project development on to non-utility wholesale generators or IPPs. Of the five gas-fired generating projects either sited or in the siting process in Oregon, four have been sponsored by independent power producers, and only one by a regulated IOU. As a result, the sponsor of a project in a siting proceeding typically has *no* captive customers from whom recovery of "prudently-incurred" costs is assured.

In this market-driven environment, there is little risk of "over-siting" energy facilities. No matter how many combustion turbines (or, for that matter, wind, geothermal or solar generating facilities) developers seek to site, or are actually sited by EFSC, only those for which there is a market will actually be built. Independent power producers, and increasingly utilities as well, will require strong assurances that a facility is sufficiently competitive to earn revenues over its life that are adequate to recover its costs before they commit construction capital. Further, existing siting rules provide for protections against "dry hole" risk posed by market circumstances. If a facility is built but fails to operate, there are funds available to dismantle it.

Thus, the ratepayer consequences of unfortunate resource choices are dramatically reduced today. The cost-effectiveness of any supply alternative is established in a marketplace consisting of many buyers and sellers, rather than in the board room, reducing the chances of an unfortunate choice in the first place. Where utilities seek to recover the costs of resource commitments in customer prices, regulators closely scrutinize such requests with the benefit of these market signals. And in the case of projects sponsored by independent power producers, the risk of a project's failure to compete successfully is borne by the sponsor, not the ratepayers. The siting process therefore is not needed to ensure that only cost-effective facilities are built.

B. "Permanently Sustainable Resources": Resource Choice in the Current Market Environment.

Oregon's energy policy "encourages" the "development and use of a diverse array of permanently sustainable energy resources," using the private sector to the greatest extent

practicable. ORS 469.010(2)(a). Oregon's energy facility siting process can implement this policy only in the most indirect manner. Presumably, if enough non-renewable projects are defeated or otherwise stymied in the siting process, someone might develop more conservation or propose more renewable resources. However, refusing site certificates for otherwise acceptable projects will *not* result directly in the installation of a single kilowatt of windpower or solar power or a single kilowatt of conservation.

The *type* of energy facility built to meet market demand today is a product more of the market than of regulation. The market will pick specific facilities for a variety of reasons, with price generally dominating. Regulation of facility types through siting decisions is an extremely blunt instrument. Siting decisions can forbid, or limit the amount of, certain types of resources within a certain geographic boundary. A siting process can also insist that all facilities meet stringent environmental and public health and safety standards. However, except by providing tax benefits or other subsidies, regulation cannot encourage--much less force--the market to select certain types or a certain mix of resources.

Incentives favoring renewables have been in the siting regulations since 1992. EFSC has adopted exemptions from the Need Standard for significant quantities of solar, wind, geothermal and biomass projects. These incentives have borne precious little fruit. Only one geothermal project has taken advantage of these exemptions--and that was because its output had been purchased prior to the filing of a site certificate application.

Currently, a much more direct and appropriate policy tool for promoting conservation and renewables is through the least cost planning process that guides utility decision making. It is through this process that utilities and their regulators weigh the costs of alternative

generation, explore the price impacts of various resource mixes and develop appropriate guideposts for future resources.

While least cost planning may now be the best tool for affecting resource decisions, it too is limited by the competitive market and the new shape of the energy industry. With non-utility generators building power plants and potentially marketing power through an active wholesale market, utility least cost plans may soon have little relevance. Given these dramatic changes, policy makers must turn to other creative mechanisms for supporting conservation and encouraging renewables that do not rely on the blunt instrument of siting and that are consistent with the new competitive power market. Some of the policies for promoting conservation and renewables are explored in Section VII. Again, however, the siting process is not an effective way to advance state policy on permanently sustainable energy resources.

C. **Greenhouse Gas Emissions.**

Oregon does not have an energy policy that specifically addresses greenhouse gas emissions. There is, however, an Oregon benchmark that calls for the stabilization of the state's CO2 emissions at 1990 levels.

The increase in carbon dioxide (CO2) emissions and their potential effects on the earth's climate is of concern and deserves a continued policy response commensurate with our level of understanding. However, a siting standard that only impacts new plants built in Oregon is an ineffective way to advance greenhouse gas policy.

First, a siting standard for CO2 emissions is unlikely to reduce emissions from the western United States. It is now clear that the market for power is becoming broader

geographically. Power is bought and sold throughout the west from British Columbia to Northern Mexico. If there is a demand for power within this western system, it will be met somewhere within the system. If more generation is built than is necessary, the more expensive plants within the system will first reduce output and then eventually be shut down. The denial of a site certificate for a plant in Oregon will not mean that less generation will be built within this dynamic western system.

Indeed, the denial of a site certificate for a new, highly efficient thermal resource may mean that older, more expensive, less efficient generation stays in place within the western system for longer than is necessary. Because these plants are older and less efficient, they burn more fossil fuel to create a given amount of power. As a result, prices will rise for customers, more fuel will be burned than is necessary and, at the end of the day, CO2 emissions will increase.

This is not to say there is no appropriate policy response to CO2 emissions. We describe the current national and international method for regulation of CO2 emissions in section VII. The point is that CO2 emissions simply cannot be regulated effectively through siting decisions.

III. A CENTRALIZED STATE PROCESS FOR ENERGY FACILITY SITING, OVERSEEN BY EFSC, IS STILL APPROPRIATE

The Council's jurisdictional limits were debated at great length and revised in the 1993 legislative session. We believe the limits are generally appropriate.[1] We also believe that a centralized state process for energy facility siting is appropriate.

First, a coordinated state siting process with concrete (albeit nonbinding) timelines is simply good government. The current process ensures that the state's various environmental permitting regimes will not conflict with each other or with local land use processes. Its coordination of land use reviews is particularly appropriate for linear facilities (transmission lines and pipelines) that pass through multiple zoning districts and often multiple jurisdictions.

Second, the siting process helps to ensure that only properly qualified applicants receive site certificates. Council consideration of the expertise, experience and financial capability of energy facility developers helps to ensure that licensed facilities will be constructed and operated by qualified personnel and financially sound entities.

Third, the state siting process prevents the construction of energy facilities on and across inappropriate sites. EFSC jurisdiction over the various state permitting regimes ensures that a facility will be reviewed in a comprehensive fashion and that issues will not fall between the cracks of isolated individual agency reviews.

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[1] It is worth noting, however, that the threshold for Council jurisdiction over generating facilities is substantially lower than the thresholds for its counterparts in neighboring states. The Task Force therefore may wish to consider raising the mandatory jurisdictional threshold to 250 MW and making the EFSC process optional for facilities below that level. Similarly, the Task Force may wish to consider making the siting process optional for the renewable resources favored under state energy policy.

Finally, ODOE staff's high level of technical expertise almost certainly leads to more informed siting decisions.

Assuming the Task Force decides to retain a centralized, coordinated permitting process with the Council as decision-maker, the Council's decisions should bind the state agencies and local government bodies that would otherwise have permitting authority. There would be no point to a consolidated process--and the enhanced review the Council conducts under its own standards--if other agencies remained free to deny a facility or to impose additional, and potentially inconsistent, conditions on it.

IV. EFSC'S SITING PROCESS SHOULD BE LIMITED TO EVALUATION OF THE QUALIFICATIONS OF THE APPLICANT AND THE SITE SPECIFIC IMPACTS OF THE PROPOSED ENERGY FACILITY AGAINST CLEAR, OBJECTIVE STANDARDS

Many of the reasons for a state siting process are also reasons for the Council to have authority to adopt substantive standards appropriate to energy facilities. Those standards should be focused on the qualifications of the applicant and site-specific safety and environmental impacts of the facilities that apply for site certificates. They should also be clear and objective and in place prior to the adjudication on a particular project. By contrast, issues that are not related to a specific facility or site are not appropriate subjects for siting. State policy should not be set or litigated in permit proceedings for individual facilities.

First, siting policy should be set in legislative processes that occur outside of proceedings on specific permit applications. The policy choices should be reflected in clear, objective standards that are then applied to specific facilities.

The Clean Air Act example offered up by K.C. Golden in his testimony to the Task Force is instructive on this point. Congress, and then the EPA in its implementing

regulations, set standards governing the emission of specific pollutants. These standards were informed by the best available science and reflected policy decisions as to acceptable levels of pollution from various sources. Once the standards were adopted, the regulators turned to the markets to see that the emission standards were achieved.

One important facet of the air permit program merits note: Individual air permitting cases do *not* focus on whether some other project--one that will use up less of the airshed, or one that will use better emission control technology--should be built instead of the one for which the permit is sought. The Clean Air Act permitting process is focused instead on the specific question of whether the project in question complies with the applicable standards. Under this permitting regime, markets determine whether a project is "needed"--i.e. whether there is an economic demand for its product. Markets also determine how the air emission constraints on the project will be met--by buying emission credits, by installing technology or by some other mechanism. The underlying philosophy of the Clear Air Act and the correctness of the standards set by Congress and the EPA are *not* relitigated in the permitting case of a particular project.

By analogy, policy calls related to siting should not be made in the approval processes for specific facilities. Those policy calls should be made by either the legislature or by the Council, acting in a legislative capacity through rulemaking to set standards. The focus of the siting case for a specific project should be on whether the proposed project complies with the applicable standards. In every instance, it must be clear to an energy facility sponsor what the standard for siting is, and how it can be met. Much of our current problem is the

result of an unfortunate blurring between policy decisions and project evaluation. This Task Force can contribute to clarifying the situation.

Second, siting standards should pertain to the qualifications of the applicant and the site-specific impacts of proposed facilities. For all of the reasons set forth in our discussion of greenhouse gas emissions (Sections II.C and VII.C), global problems cannot be addressed effectively by one state's siting standards.

Finally, the Task Force should eliminate current confusion about whether substantive siting standards must be adopted by rule, and whether the Council can adopt new standards in the midst of a case and apply them for the first time to an unsuspecting applicant.

These questions were raised but not resolved in EFSC's recent case concerning Hermiston Power Partnership's ("HPP") Application for Site Certificate. In that case, intervenors raised numerous issues that were not relevant to any Council, local land use or other state siting standard. The intervenors argued that the Council should adopt new standards in the course of the HPP proceeding--either by order or by halting the case and conducting a rulemaking--and then apply those standards for the first time to HPP. The Council found the reasons for the adoption of new standards uncompelling and never decided whether it could adopt new standards if it wished, or what vehicle (rule or order) and process it would need to use. These questions are not easily answered by reference to either the statute in question (ORS 469.470) or relevant case law.[2]

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[2] Marbet v. PGE seems to suggest that the Council may adopt new standards by rule or order in the midst of contested cases. This discussion was based on the peculiar language of the statute in question and the Court's apparent concern about the type of facility that was the subject of the EFSC proceeding. As discussed below, today's facilities are very different from the large nuclear plant at issue in Marbet.

We believe the correct answers are as follows:

First, as noted above, standards should be set through rulemaking proceedings not the issuance of orders in contested cases. By statute, EFSC is required to act on applications within specified time periods. These time periods do not allow for the deliberative development of policy needed for the adoption of siting standards. More importantly, participation in a contested case is limited to the parties. The parties in a given case may, but usually will not, represent the range of interests that would wish to be heard on the adoption of a siting standard. Rulemaking procedures and timelines are far better suited to the adoption of standards and allow for participation by all interested parties.

Second, the standards that apply to a particular case should be those in effect, in Council rules, on the date an application is declared by the state to be complete. As the Supreme Court recognized:

> "The demand of ORS 469.470 for standards 'that applicants for site certificates must meet,' indicates that these standards will be available to applicants and to persons opposing applications in sufficiently meaningful terms to guide them in deciding whether and how to submit or oppose an application. The planning of energy facilities takes too much effort, time, and expense to be exposed to rejection under a standard which the applicant could not have known even in broad terms and which it might not have undertaken to meet." Marbet v. PGE, 277 Or 447, 460, 561 P2d 154 (1977). (Emphasis added.)

Moreover, we know of no other process where the permitting authority is free to change the rules in mid-proceeding. For example, state land use law clearly states that the land use standards applicable to a particular proposal are the ones in effect on the date a complete application is filed. See, e.g. ORS 215.428(3).

The chief reason for this is fairness. Site certificate applications cost hundreds of thousands of dollars and take at least a year to prepare. ODOE's process for declaring an application complete, based on existing standards, takes four to six months. To impose a wholly new standard on an applicant, after the expenditure of this kind of time and money, is unjust absent compelling circumstances. It is difficult to imagine that an impact compelling enough to justify a new standard would not have been thought of before.

The Task Force should eliminate needless confusion, fertile ground for litigation and potential unfairness by recommending that all standards be adopted as rules and that applicable standards be fixed as of the application filing.

V. A DETERMINATION OF "NEED" BY EFSC IN THE PROCESS FOR SITING AN ENERGY FACILITY NO LONGER SERVES ANY PUBLIC POLICY PURPOSE

A. The "Need for Facility" showing in the present siting rules no longer serves any purpose.

The chief original justification for a Need for Facility Standard ("Need Standard") in the siting process was to make sure that captive customers of utilities were not forced to pay for expensive, unwanted power. This justification made sense when the price of electricity was not readily known; when there was no transparent market allowing the trading of large blocks of capacity and energy; and when utilities served their captive customers by building generation themselves, demonstrating the prudency of their decisions, and then passing along costs to their captive customers.

That justification is no longer relevant to the electricity market. Private investors, not captive customers, take the risk that new generation will be needed and cost-effective. A vibrant, transparent wholesale market sets the price for new capacity. Traditional ratemaking

concepts such as "cost of service" have given way to "market-based rates." To the extent that electric utilities serving retail customers seek to recover the costs of new generation in rates, they do so only upon a determination that doing so meets or beats the price of other comparable sources of electricity. This determination is closely scrutinized by rate regulators having the benefit of the same market price signals. Under these circumstances, an administrative determination in the siting process that a particular new generating facility is or is not needed provides no additional ratepayer protection, and is anachronistic.

A second historical basis for the Need Standard was to allow Oregon to promote a certain mix of electric supply resources to serve its electric power demand. However, with the emergence of a competitive market for wholesale supply, electricity purchasers can acquire energy supplies from throughout the Western United States. The Need Standard does not assure that the supply resources selected by buyers and incorporated into the resource mix, even in Oregon, are the resources that receive site certificates in Oregon. Similarly, blocking the siting of a particular resource type in Oregon, through the Need Standard, will not promote reliance on any other type of resource in the interconnected West-wide energy market.

Finally, some contend that the Need Standard protects Oregon from the cumulative environmental impacts of energy facility development. This may have been a justification for the standard in the past, when utilities sought to meet load projections with high impact coal and nuclear plants and when environmental laws were in their infancy. Today's facilities are far smaller with lesser potential impacts. Moreoever, applicable permitting programs have matured. The present siting process includes standards that effectively reduce the direct

impacts of modern energy facilities on air, water, land and wildlife to below the point of significance. Moreover, EFSC has the ability to adopt even more stringent standards in the future to deal directly with these concerns. A need evaluation provides no additional regulatory protection.

B. **The "need for facility" standard in the present siting rules does not work.**

The existing system for showing that a particular facility is needed simply does not work, particularly for IPPs but also for utilities. Ironically, the current Need Standard may act as an impediment to the construction of inexpensive, clean new generation in Oregon.

The current system provides three paths to prove need when no exemption is available. In the first path, the sponsor can establish that the project is called for by an acknowledged least cost plan. The plan must meet specific criteria related to forecasting methods used, consideration of alternative resources and public involvement. A plan of an investor owned utility that is "acknowledged" by the OPUC is presumed to meet these criteria.

In the second path, the sponsor can establish that its project is called for by an unacknowledged least cost plan, regardless of who sponsors that plan.

In the third path, the applicant can prove that its project is for an Oregon POU that would otherwise purchase power from another source and that the project is economically prudent.

As a practical matter, these "paths" are impassable because of the changing market structure. An applicant attempting to site a plant in today's market environment will expect to sell its output to a mix of buyers that might include IOUs, POUs, direct served customers,

aggregators, marketers and others. Many of these buyers simply do not prepare least cost plans that an applicant could rely upon to show need in the siting process. Further, purchasers in today's market will not make long-term purchase commitments; the mix of buyers will change over the life of the project.

If a project sponsor wants to rely on either an acknowledged or unacknowledged least cost plan, EFSC's rules require that 50 percent of the plant's output must be sold to the entity that prepared the plan before construction can commence. Thus, an IPP must either: (a) have a buyer to commit to the project before siting has commenced; or (b) take a gamble that the utilities whose plans it relies upon will contract for the output after siting is concluded. In the current market, neither of these is a feasible course of action. There is no way for an applicant to satisfy the Need Standard.

Finally, it may appear to be possible for an IOU to satisfy the Need Standard because it can rely on its own least cost plan. Changes in least cost planning, however, make this a questionable point. In response to the changing industry, least cost plans are becoming less specific as the options for resource procurement become more diverse. In developing a short-term action plan, utilities must retain flexibility to accommodate possible changes in the marketplace. Thus, it is not as straightforward as it once was to match a specific project with an action item from a least cost plan. In addition, utilities are relying more and more on IPPs to site and construct their generation. The problems faced by IPPs in their effort to demonstrate need therefore also limit a utility's options for future resources.

It is worth noting (and not surprising) that *no* projects--whether sponsored by IOUs with least cost plans or by IPPs--have tried to run the "need for power" gauntlet since the rules were adopted.

VI. THE PRESENT PROCESS FOR APPROVING OR DENYING REQUESTS TO BUILD NEW ENERGY FACILITIES STRIKES THE RIGHT BALANCE BETWEEN THE PUBLIC'S NEED FOR MEANINGFUL PARTICIPATION AND APPLICANTS' NEED FOR CLARITY.

In both 1993 and 1995, the Oregon Department of Energy, members of the Legislature, and representatives of various interests spent a great deal of time and energy discussing refinements to the siting process. This hard work produced substantial amendments in both sessions.

The amended process has been tested through the processing of two applications. One, the Newberry Geothermal Plant Project, generated little interest during the siting process. It was concluded swiftly, three months after the application was determined to be complete. No one intervened. The second was HPP's, a natural gas-fired facility in Umatilla County. This project generated substantial interest at the local level and with statewide interest groups. The HPP process was labor intensive, extremely costly and took more than 11 months from the time the application was determined to be complete. These two examples demonstrate several points about the siting process.

First, the process allows for a generous amount of public participation. Proposed facilities are publicized through ODOE mailings to a list that incudes, among many others, public interest groups interested in energy issues. The law also requires individual notice to property owners near proposed energy facilities and along their transmission and pipeline routes. All are specifically invited to attend comment hearings, raise issues orally or in

writing and participate fully in the Council's contested case. ODOE accommodates local citizens by holdings proceedings near the facility site whenever possible. EFSC's case on the HPP application, which drew 14 intervenors, demonstrates the degree to which the statutory process not only allows for but invites public involvement.

Second, the current law, which allows appeal of the Council's decision only by parties to the contested case, is appropriate. Given the ample opportunities for public participation described above, no purpose would be served by allowing strangers to the case to appeal the Council's decision.

Third, the timelines in the statute are good policy and appropriate in length. Without timelines to serve as goals, siting cases, especially those with many parties, would likely drag on month after month, as contested cases conducted by other agencies often do. The timelines in the statute are on the ambitious side when there are project opponents and liberal when there are not. They do, however, prevent delays and make the process more efficient. Because the timelines currently in the statute are not true deadlines, they strike the right balance: they keep the process moving but do not force action solely to meet an arbitrary schedule.

Finally, the land use component of the current process works and is essential for projects that include linear facilities. The siting statute allows an applicant to secure its land use approvals through the normal local land use process. Alternatively, the applicant may ask the Council to make the land use determination itself based on the applicable local land use criteria or, in some instances, the statewide planning goals. Applicants often choose the second path, particularly if their projects include linear facilities that pass through multiple

zones or multiple cities and counties, each with its own land use authority. The reason is obvious. Multiple jurisdictions mean multiple processes, timelines and decision-makers, potentially inconsistent approval criteria and potentially conflicting decisions.

When the Council is the decision-maker, it looks first to the local criteria, solicits the input of the local governing body, and gives those views serious consideration. The process was carefully designed to apply local standards and incorporate the local governments' view, while avoiding multiple processes and inconsistencies.

In sum, the process, which was crafted with great care over the last two sessions, strikes the right balance between the public's need for meaningful participation in siting decisions and the applicants' need for clear processes and timelines.

VII. SUGGESTIONS FOR THE IMPLEMENTATION OF THE REMAINING BROADER ENERGY POLICY ISSUES

Three policy issues that have received significant attention in the Task Force process to date are the encouragement of energy conservation, the promotion of renewable resources and the reduction of greenhouse gas emissions. The first two are subjects of specific state energy policies set forth in ORS 469.010. We agree that these are significant issues. We are firmly convinced, however, that the siting process is an inappropriate mechanism for advancing these issues and that the state's goals can be better advanced through other policy initiatives.

A. **Energy Conservation.**

Energy conservation has great value to Oregon and to society. As part of the state policy of acquiring the least-cost resources, low-cost conservation should be pursued because

it keeps bills low for residents, businesses and industry and reduces overall environmental impacts.

The movement to a competitive market and the realization of lower prices for supply-side alternatives have changed the economics of conservation. Far less conservation is cost-effective than was previously assumed. Important new players--IPPs, power marketers, aggregators and energy services companies ("ESCOs")--have entered the market to provide services to customers, sometimes in cooperation and sometimes in competition with the local utility. Because many of the new actors do not prepare least cost plans, it is unrealistic to suggest that a least cost planning process will maintain and enforce the region's conservation targets.

In developing a conservation funding mechanism, we begin with the recognition that in the future there is almost no chance that there will be "captive customers" as we currently define them. States are moving ahead with retail access experiments and the federal government is engaged in immediate and serious discussions about opening up retail access in as little as a few short years. Given these facts, it is fruitless to design a regulatory system that depends on using only utilities to pass through high cost resources as a stable way to fund conservation.

Nonetheless, it is important to acknowledge that conservation and energy improvements have important long-term societal value. In the new competitive world, utilities will purchase the portion of conservation resources that costs less than the utility's marginal cost. However, it is very likely that there will be an additional amount of conservation that is viewed by society as valuable, but not viewed by the utility as a least

cost resource. It is society's challenge to determine the most efficient and equitable way to ensure that these conservation resources are captured.

Any conservation funding and delivery technique, in our view, must meet three criteria:

First, the mechanism must encourage meaningful levels of low cost conservation. The Northwest Power Planning Council has determined that the bulk of the remaining low cost conservation will be found through market transformation efforts (i.e., new appliance standards, motor standards, etc.) and not through the traditional installation of measures. For this reason, the funding mechanism should facilitate market transformation activities at a state or regional level.

Second, the mechanism must apply to all market participants. While there currently are captive customers, we believe we are in a transition period to a time where there are no such customers.[3] In a competitive world with no captive customers, it is not an equitable solution to foist the burden of acquiring higher cost resources on one sector of the market. Utilities should not bear the expense of conservation while, for example, power marketers and aggregators do not pay for those programs. This will cause prices to rise for one group of customers and will lead to unfair competitive pressures.

Finally, the funding mechanism should provide a transition to a fully competitive market. We believe that in a competitive market conservation services will be "unbundled"

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[3] There are a growing number of experiments in retail wheeling across the country (New Hampshire, Wisconsin, New York and Massachusetts) as well as restructuring investigations throughout the country. PacifiCorp recently called for federal legislation that would outline broad principles to require retail access for all customers by 2001. These principles would be implemented through separate legislation at the state level.

from the delivery of electricity. This will give rise to ESCOs that will compete in the energy marketplace to provide value-added services to customers. These services will be to improve customer productivity, efficiency and comfort, while lowering customer costs.

There may be several state-level or regional mechanisms that could fund the socially desirable level of conservation while meeting these objectives. The Oregon Working Group, an informal committee of NWPPC staff, regulators, utilities, environmental groups and customers, has been working to develop a mechanism to fund conservation in the competitive world. The group has not reached consensus but we are encouraged by one funding mechanism that has emerged. It works as follows:

- A fee is levied on each electric customer based on its customer class and capacity.
- These fees are gathered at the state level (or regionally) for use in market transformation activities.
- The fund is made available through some type of bidding arrangement to utilities, energy service companies and others, thus helping to develop a market for private niche players.
- The fee is designed to sunset after a period of ten years.

This mechanism may not be the perfect one for funding conservation, but it clearly is consistent with our view of the competitive world. All customers contribute to the socially desirable goal of increasing conservation. No energy provider is unfairly disadvantaged by requiring them to shoulder the cost of higher cost resources. And, if the competitive market

is shown to provide conservation services through the development of a vibrant profit-making niche for energy services, the fee will be discontinued at a future date.

This is a mechanism worth additional study as it equitably and efficiently addresses the need to fund conservation in a competitive world. Siting rules, which have an impact on only those entities that seek a site certificate, will not advance this goal.

B. **Renewable Resources.**

If renewables are available to be sited but do not have willing buyers, the generation will not be built. If the Council refuses to site anything but renewables, in an effort to promote their construction and purchase, entities will build plants elsewhere or purchase power from anywhere in the western grid.

Renewables are a high cost resource when compared to other supply-side (and most demand-side) resources. The public policy strategy for furthering renewable generation should concentrate on: (1) gaining experience with pilot efforts in order to reduce future risks associated with renewable resource development; (2) lowering costs where possible; and (3) exploring ways to fund renewables with those willing to pay an extra increment for that type of generation.

Gain experience: Part of the risk associated with renewable resource development derives from the lack of a track record to answer developer and financier questions such as: How long does it take for projects to be sited and permitted? How much do renewables really cost? How do renewable resources integrate into an existing system? If at all possible, existing commitments to renewable resource projects should be carried out consistent with the Bonneville Power Administration's target of developing pilot projects.

Continuation of these proposed projects will allow the region to build important capabilities with regard to future renewable resource development.

Lower the costs: It may be possible to encourage renewables through a continuing system of incentives that include tax credits and tax exemptions. These are standard ways society uses to lower the cost of expensive but socially desirable activities. For example, Washington State this year passed an exemption from the sales tax for renewable generation. The exemption lasts until 2005 recognizing that the relatively high cost of renewable generation makes it, for the most part, prohibitively expensive to build without an incentive. As development costs are expected to decline, these incentives may not be required in the future.

Locate those willing to pay extra: Policy makers and energy providers should explore a variety of methods to help promote niche players that will voluntarily provide renewables funded through "green pricing." A wholesale market for green power will aid in the development of renewables and has shown early signs of development (e.g, BPA's sale to Salem Electric). There also may be ways to advance green power sales at the retail level. There are a variety of green pricing experiments underway. These show that buyers seek out energy supplies based on both price and environmental attributes.

Competition will put new pressures on the development of renewable generation. As utilities, power marketers, IPPs, and aggregators all compete for what were once captive customers, these providers will be sensitive to the price of the power they have to offer. However, as will be true with conservation, the competitive market should result in the unbundling of services. This should give rise to specialized niche players who compete by

providing environmentally friendly power. Policy makers can aid the process by ensuring that renewable pilot projects are completed, reducing the price of renewables with incentives and opening up markets for green power.

C. **Climate Change.**

The increase in carbon dioxide (CO2) emissions and their potential effects on the earth's climate is of critical importance and deserves a continued policy response. For two important reasons, the proper policy response is continued national and international attention and is not a CO2 standard to be used when siting new plants in Oregon.

1. The global warming issue is truly a "global" issue and should be addressed as broadly as possible.

CO2 emissions are sometimes improperly grouped with other emissions from plants such as sulfur dioxide (SO2), oxides of nitrogen (NOx) and carbon monoxide (CO). Unlike these other air pollutants, CO2 does not have local impacts. It is of no importance to the environment whether CO2 emissions come from a plant sited in Oregon, or Washington, or for that matter from a plant in a developing country.

For this physical reason, it is important to address CO2 with a broad geographic scope. While an international treaty to address CO2 emissions is most appropriate, national action may be an important step in reaching international agreement.

Because the specific site of CO2 emissions is irrelevant, a state siting decision is particularly poorly suited as a venue for addressing these emissions.

2. There are federal and international programs in place to address CO2 emissions. If changes in the regulatory structure are required to regulate emissions, they should be made within the existing structure.

In response to the Rio Accord, the Clinton administration adopted the Climate Action Plan in October, 1993. The Plan includes more than 50 new and expanded initiatives to address emissions of all greenhouse gases (CO2, methane, nitrous oxide, etc.), emissions from all sectors of the economy (industry, transportation, utilities, forestry and agriculture) and emissions from locations across the nation.

The focus of the administration's effort is to make sure low-cost methods of reducing CO2 are done first. Given that the jury is still out on the magnitude and timing of any impact man-made CO2 emissions may have on the climate, it is certainly prudent to move first to low cost actions. Utilities are participating in the Climate Action Plan through the Climate Challenge, a voluntary agreement between utilities and the U.S. Department of Energy to address CO2 emissions.

The work at the national level feeds into the international effort on two levels. First, through the U.S. Initiative on Joint Implementation (USIJI), the U.S. promotes CO2 activities that are located in developing countries and funded by entities in the U.S. Through the USIJI program, the federal government can be assured that U.S. projects abroad meet certain criteria for offsetting emissions. USIJI projects also must be approved by their host countries. One of the first fully funded USIJI projects is a partnership between The Nature Conservancy, the Programme for Belize, PacifiCorp and three other utilities. The $600,000 project results in the purchase of 15,000 acres of endangered rain forest and the management

of another 105,000 acres in the country of Belize. Pilot efforts like these are the best way to test novel approaches to addressing CO2 and build the capability to expand this offset work in the future.

Besides the USIJI program, the federal government continues to negotiate with other countries internationally to determine the best and most equitable way to set goals for reducing CO2 emissions.

There is not a policy vacuum on the subject of CO2 emissions. There is an ongoing debate about the best way to reduce emissions and the targets and timetables that should be set for future reductions. The debate is occurring at the proper level of government, where all sectors and all emitters in the nation can be treated with an even hand.

It is not yet clear whether the current regulatory approach to CO2 is adequate. If policy makers determine it is not, we favor an expansion of the existing program rather than a wholesale redirection on CO2 regulation. The existing program recognizes we should concentrate on low cost techniques for offsetting emissions. We believe any future regulatory strategy on CO2 should be built around the successes of the SO2 allowance trading program and the voluntary CO2 program. These regulations promote strategies to reduce emissions using the lowest cost methods. They also employ a market approach that rewards ingenuity and is more consistent with the evolving competitive market than either a tax or more standard command and control regulation.