



Oregon

Kate Brown, Governor



550 Capitol St. NE

Salem, OR 97301

Phone: 503-378-4040

Toll Free: 1-800-221-8035

FAX: 503-373-7806

www.oregon.gov/energy

April 3, 2017

To: House Committee on Energy and Environment

From: Todd R. Cornett, Assistant Director for Siting

Subject: HB 2757 and HB 2757-1 - Energy Facility Siting Council Task Force and Cost Recovery Formula

INTRODUCTION

The Siting Division at the Oregon Department of Energy (ODOE) administers the state facility siting review, which consolidates state agency and local government regulatory review into a single consolidated process. Local governments, state agencies, federal agencies, Tribal Governments, and other entities identified in statute or rule that have regulatory or advisory responsibility, with respect to a proposed energy facility, participate throughout this consolidated review.

The Energy Facility Siting Council (EFSC) is a seven member board appointed by the Governor and confirmed by the Senate. EFSC has the ultimate responsibility to review and decide upon applications for site certificates for all state-jurisdictional energy facilities. ODOE Siting Division serves as staff to EFSC.

HB 2757 contains two main parts. One part would establish an Energy Facility Siting Task Force, charged with four main components: 1) propose changes to what constitutes an “energy facility” as that term is defined under ORS 469.300(11); 2) propose ways to improve public participation; 3) propose ways to expedite the review of projects; and 4) develop recommendations for defining or otherwise clarifying what constitutes a single energy facility. The second part of HB 2757 would amend ORS 469.421 to change the cost recovery formula for site certificate holders.

HB 2757 with the -1 amendment will make two changes to the Energy Facility Siting Task Force. It narrows the focus of the types of facilities evaluated by the task force to solar thermal, wind, solar photovoltaic, and geothermal under the “energy facility” component. It also adds solar photovoltaic facilities to the types of facilities being evaluated by the Task Force under the “single energy facility” component.

In this testimony, we first include a review of work conducted in recent years by ODOE and EFSC that relate to the issues raised in HB 2757, specifically issues that the bill directs the Energy Facility Siting Task Force to investigate. We then provide specific testimony related to the two main components of HB 2757, the establishment of the Task Force and changes to the cost recovery formula.

I. REVIEW OF WORK TO-DATE

In recent years ODOE and EFSC have engaged in multiple efforts to improve the state energy facility siting process. In 2012, ODOE employed a third party consultant, Demarche Group, to assist ODOE in

conducting an evaluation of process efficiency and efficacy with regard to public, state agency, local government and tribal government participation. This evaluation included interviews with ODOE staff members, EFSC members, applicants and the public and included a full process mapping exercise. The result was a series of identified process improvement projects and changes including:

- Website updates with consistent, timelier and easier to access project information
- Self-managed public email notification of any or all EFSC activities
- More timely and accurate adjacent property owner lists to ensure all applicable property owners receive notices
- Systematic update of all handouts that describe various aspects of the siting process for the benefit of the public
- Hearings to be conducted in front of EFSC instead of just the appointed Hearing Officer
- More proactive outreach to state agencies, local governments and Tribal governments throughout the review process
- Annual state agency, local government and tribal government training
- Allow applicant to submit draft application exhibits prior to formal application submittal to identify and resolve potential issues
- Consistent paper and digital document management amongst all staff
- Creation of template documents to be used by all staff

During the 2013 legislative session the Legislature enacted HB 2105, directing ODOE to review its energy facility siting procedures and make recommendations to the legislature on the following issues:

1. Means to encourage consistency between the standards for the siting of facilities of the federal government and local governments with those specified in ORS 469.300 to 469.563.
2. A mechanism to enhance the participation of local governments during the facility siting process when the standards for the siting of facilities of local governments are consistent with those specified in ORS 469.300 to 469.563.
3. Means to encourage public participation in the design and siting of facilities.
4. The definition of “energy facility” specified in ORS 469.300 and recommendations to clarify the definition for purposes of determining which public body, as defined in ORS 174.109, has authority relating to the siting of facilities.
5. Means to ensure constructive and effective participation by local governments, state agencies and federally recognized Indian tribes in the siting of facilities.
6. Means to ensure the efficient and cost-effective recovery of fees expended in the review of Site Certificates Applications.
7. Any other matters deemed relevant by the department.

The resulting report, which is attached to this testimony, was submitted to the Senate Committee on Environment and Natural Resources on October 30, 2013 and was presented in-person on November 20, 2013. In preparing the report, ODOE solicited input from 31 individuals representing public utilities, independent power producers, cooperatives and municipal utilities, counties, cities, state agencies and interested citizens. The report identified projects and changes related to these seven issues including:

- Investment in audio visual equipment to enhance remote participation in EFSC meetings, facilitating increased participation in the EFSC process
- Use of GIS to more thoroughly evaluate application materials as well as to spatially convey project information to the public

- Monthly reporting of a 90 day forecast to state and local government agencies and any other interested parties, describing the status of Siting Division projects. Current distribution list includes 65 individuals
- Consistent condition tracking documents for each approved facility
- Frequent time and financial status updates to applicants and justifications for variations of what was forecasted at the beginning of the project
- Preparation of the draft proposed order during completeness review to ensure a better application and to increase efficiencies
- More frequent rulemakings to ensure that state energy siting rules are current, clear, efficient and offer meaningful public participation
- Establish performance metrics based on time, cost, resources, scope, quality and actions
- Development of a site certificate applicant guide

The HB 2105 report also included the following legislative recommendations:

1. Following a consensus based work group process, a concept should be considered to revise the definition of “Energy Facility” in ORS 469.300(11) by adjusting the jurisdictional thresholds.

This is very similar to first mandate of the HB 2757 task force.

2. Following a consensus-based work group process a concept should be considered to create a definition of “Single Energy Facility” in ORS 469.300 to limit permitting of multiple small facilities that should be considered large-scale facilities.

This is very similar to the fourth mandate of the HB 2757 task force.

3. A concept should be considered to allow for reimbursement agreements with state agencies and local governments to cover expenses incurred prior to submittal by the applicant of the Notice of Intent and after approval and to explicitly allow for reimbursement of expenses by tribal governments participating in the state siting review process similar to state agencies and local governments.

This concept became SB 259 in the 2015 legislative session which was passed and signed into law. It included the following elements:

- Allow EFSC to reimburse state agencies and local governments when energy facility applicants request their assistance in evaluating issues before they submit their Notice of Intent to ODOE.
- Help maintain energy facility compliance with all conditions of approval by allowing reimbursement to state agencies and local governments whose expertise is needed to verify compliance.
- Recognize the important role of Tribal Governments in the EFSC process by allowing them to be reimbursed for their work in reviewing and commenting on Notice of Intent and site certificate application materials.

Of the 9 federally recognized tribes in Oregon, we now have reimbursement agreements with 2, and we are nearing completion of a third.

4. A concept should be considered to revise ORS 469.421 to establish financial mechanisms to ensure payment for incurred expenses in processing Site Certificate Applications.

5. A concept should be considered to clarify the timing for abiding by state law and local ordinances and to define the trigger for applying “later adopted” regulations.
6. A concept should be considered to clarify when an amendment must be evaluated against all Council standards and when it is subject only to certain Council standards.

The HB 2105 report was used as a foundation for the establishment of an annual Siting Division work plan which includes projects that benefit the various groups associated with the state energy facility siting process. The following high level goals were established to provide a framework with which to develop projects:

1. Applicant/Site Certificate Holders – Increase applicant/certificate holders' trust and perception of value of the state energy siting process by decreasing the siting process unknowns.
2. Public – Increase and enhance the public’s understanding, participation and trust in the state energy siting process.
3. Reviewing Agencies – Increase the quality and quantity of siting division's connections to local, state, federal and tribal agencies that participate in the state energy siting process.
4. Regulatory Clarity – Increase the efficiency, effectiveness, transparency, accountability and predictability of the site certificate process.
5. Process Improvement – Systematically evaluate underlying business processes to achieve greater efficiency.
6. Adaptability – Strengthen the ability of EFSC, and Energy Siting Division’s staff and processes, to adapt to changes in energy markets and environmental constraints, and the subsequent changes to applications for site certificates as well as department and division staffing and priorities.

The annual work plan projects are scoped, managed and implemented by the Operations Analyst, a position largely dedicated to this work. Examples of identified projects include:

- Records management database to consolidate all digital records
- Condition database that consolidates the conditions of all projects for the benefit of ODOE’s site certificate compliance officer
- Project management tool that includes all phases and tasks associated with a site certificate process to ensure consistent review approaches and create better schedule forecasting
- Public guide that makes the EFSC process more readily understood and highlights the opportunities for public involvement
- Stakeholder survey to consistently gather meaningful input from stakeholders
- Desk manuals for siting division staff
- EFSC new member guide
- Annual rulemaking prioritization by Council

In conjunction with the Operations Analyst’s projects are those which have been developed and implemented by the Siting Division Fiscal Analyst. These include:

- Time-tracking system that feeds into payroll and documents the type and amount of work spent by each Siting Division employee each day.
- Annual assessment based on forecasted compliance costs for individual facilities.
- Fee and costs tracking for better cost estimating.

II. HB 2757 – TASK FORCE

The proposed taskforce mandates include four areas of focus:

1. Review what constitutes an “energy facility,” as that term is defined in ORS 469.300, to “better align the jurisdiction of the council with the needs and interests of this state and local governments.” In the introduced version of the bill, the task force would be required to look at all types of energy facilities within the jurisdiction of EFSC. This includes 12 types of energy facilities, each with a specific EFSC-jurisdictional threshold.
 - Electrical Power Generating Plants (including Solar Thermal)
 - Wind
 - High Voltage Transmission Lines
 - Plants that Convert Biomass to a Gas, Liquid, or Solid
 - Pipelines
 - Solar PV
 - Geothermal
 - Surface Facility Related to an Underground Natural Gas Storage Reservoir
 - Nuclear Installation
 - Synthetic Fuel Plant
 - Liquefied Natural Gas Storage Facility
 - Uranium Mill or Mill Tailings Disposal Facility

The -1 amendment reduces the types of energy facilities evaluated to:

- Solar Thermal
- Wind
- Solar PV
- Geothermal

These select four energy facility types are those which have garnered the most public and stakeholder interest in recent years. EFSC has reviewed more wind energy facilities than any other type of energy technology, and, foresees an increasing number of solar energy facilities being proposed in Oregon. This amendment would allow the Task Force to focus its review and consideration on the four types of energy facilities where most jurisdictional questions have been raised in recent years.

2. Ways to improve public participation in the siting process.

Since 2012, ODOE and EFSC have pursued numerous projects and changes to enhance public participation in the state energy siting process. These projects and changes are further discussed in the “Review of Work to Date” section of this testimony. ODOE welcomes any new ideas as a result of this task force mandate that would further improve public participation.

3. Ways to expedite the process for receiving a site certificate.

Similar to the public participation mandate, ODOE and EFSC have pursued numerous projects and changes since 2012 to increase efficiencies in the state energy siting process. These projects and changes are discussed further in the “Review of Work to Date” section of this testimony. ODOE welcomes any new ideas as a result of this task force mandate that would further increase our review of applications.

4. Recommendations for defining or clarifying the term “single energy facility” specifically related to facilities that produce power from geothermal or wind energy.

What constitutes a single facility under state jurisdiction versus multiple smaller facilities that are in close proximity and have shared elements such as ownership, transmission tie-in to the grid, and operation and maintenance centers, among other elements, is an important issue to investigate. There has been a need to review this issue related to wind facilities for some time. We are now beginning to see the same jurisdictional questions arise with solar PV facilities and anticipate these questions will continue to arise in the coming years.

The -1 amendment adds solar PV to be evaluated under this task force mandate. This amendment will allow the Task Force to evaluate what is likely to be an increasingly important and frequently proposed energy facility type in Oregon, solar PV.

III. HB 2757 – COST RECOVERY FORMULA

The second major component of HB 2757 are proposed amendments to ORS 469.421 that would alter the annual cost liability of site certificate holders. Site certificate holders pay an annual assessment that is comprised of two components. The first is the full cost for all forecasted compliance activities associated with their facility. The second is for General costs incurred by EFSC and ODOE to ensure that all certificated facilities are being operated consistently with the terms and conditions of the site certificates, any orders issued by ODOE and any applicable health or safety standards that cannot be allocated to an individual, licensed facility. This second component can be no more than 35% of the total annual assessment.

HB 2757 proposes to eliminate this 35% formula in statute. It would be replaced by another formula which would be established in Oregon Administrator Rule, by the Director of the Department of Energy, with the statutory directive to “apportion the General costs of the Council and Department among holders of site certificates.