

Oregon Department of **ENERGY**

House Interim Committee on Climate, Energy, and the Environment

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State Energy Facility Siting
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OREGON DEPARTMENT OF ENERGY

Leading Oregon to a safe, equitable, clean, and sustainable energy future.

Our Mission

The Oregon Department of Energy helps Oregonians make informed decisions and maintain a resilient and affordable energy system. We advance solutions to shape an equitable clean energy transition, protect the environment and public health, and responsibly balance energy needs and impacts for current and future generations.

What We Do

On behalf of Oregonians across the state, the Oregon Department of Energy achieves its mission by providing:

- A Central Repository of Energy Data, Information, and Analysis
- A Venue for Problem-Solving Oregon's Energy Challenges
- Energy Education and Technical Assistance
- Regulation and Oversight
- Energy Programs and Activities

STATE ENERGY SITING STATUTORY POLICY

ORS 469.310

“...the siting, construction and operation of energy facilities shall be accomplished in a manner consistent with protection of the public health and safety and in compliance with the energy policy and air, water, solid waste, land use and other environmental protection policies of this state.”

EFSC AND NEPA COMPARISON

EFSC – The state energy siting process requires the Energy Facility Siting Council to determine that the preponderance of evidence on the record supports the conclusion that the facility:

- will not likely result in a significant adverse impact to the resources protected by the standards applicable to the facility; or
- the overall public benefits of the facility outweigh any adverse effects on a resource or interest protected by the applicable standards the facility does not meet.

NEPA – A full Environmental Impact State review under the National Environmental Policy Act process assesses the potential significant effects to the quality of the human environment. NEPA guidance requires federal agencies to avoid, minimize, and/or mitigate significant impacts but does not use a clear set of pass/fail standards (i.e., the federal agencies may approve the project despite significant effects).

EFSC AND NEPA COMPARISON

EFSC Process	NEPA EIS Process
Notice of Intent	Notice of Intent
Public Information Meetings and Comment Period	Public Scoping Meetings and Comment Period
Project Order	Scoping Report
Application for Site Certificate	Evaluation and Analysis of Issues and Alternatives
Agency Comment Period	Draft Environmental Impact Statement (EIS)
Draft Proposed Order	Public Meetings and Comment Period
Public Hearings	Final EIS
Proposed Order	Record of Decision
Contested Case	
Final Order	

NEPA DUPLICATION MINIMIZATION

CFR 1506.2 – Elimination of duplication with State, Tribal or local procedures

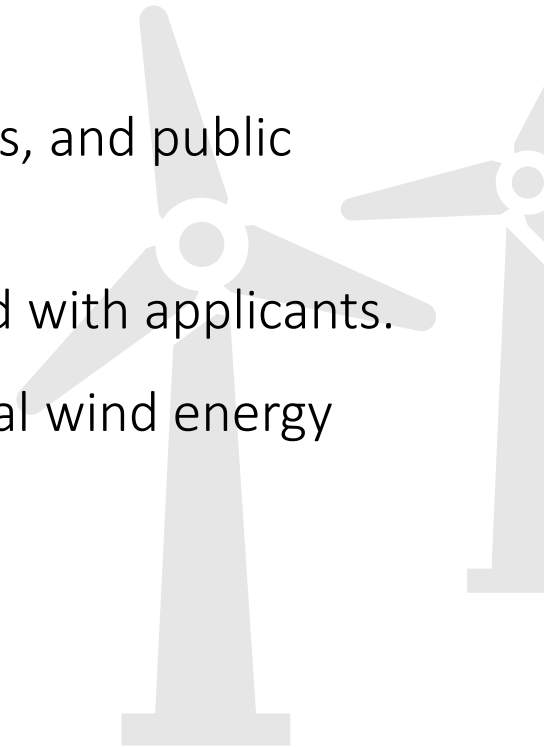
- To the fullest extent practicable unless specifically prohibited by law, agencies shall cooperate with State, Tribal, and local agencies to reduce duplication between NEPA and State, Tribal, and local requirements, including through use of studies, analysis, and decisions developed by State, Tribal, or local agencies.
- To better integrate environmental impact statements into State, Tribal, or local planning processes, environmental impact statements shall discuss any inconsistency of a proposed action with any approved State, Tribal, or local plan or law (whether or not federally sanctioned). Where an inconsistency exists, the statement should describe the extent to which the agency would reconcile its proposed action with the plan or law. While the statement should discuss any inconsistencies, NEPA does not require reconciliation.
- ODOE/EFSC can choose to be a cooperating agency in the Federal NEPA review.

EFSC DUPLICATION MINIMIZATION

- **ORS 469.370(13)** – *For a facility that is subject to and has been or will be reviewed by a federal agency under the National Environmental Policy Act, 42 U.S.C. Section 4321, et seq., the council shall conduct its site certificate review, to the maximum extent feasible, in a manner that is consistent with and does not duplicate the federal agency review.*
- **ORS 469.430(2)** – *The council shall avoid duplication of effort with site inspections and compliance reviews by other state and federal agencies and local governments that have issued permits or licenses for the facility.*
- **Per OAR 345-001-0010(27)** – for any federal land management agency with jurisdiction – if any part of the proposed is on federal land, is automatically a reviewing agency.

PROGRAMMATIC WIND MOU

- In 2009, ODOE and BLM executed a Memorandum of Understanding on reviewing joint state and federal jurisdictional wind energy projects.
 - Identifies steps where ODOE and BLM align for information sharing for application/environmental impact statement preparation, comment periods, and public hearings.
 - Identifies steps where ODOE and BLM information requirements are shared with applicants.
 - Since its execution, there has not been a joint state and federal jurisdictional wind energy project, so the MOU has never been exercised.
- May 15, 2024 meeting held to discuss an MOU for solar PV projects.



CASCADE CROSSING EXAMPLE

Project – May 2010, PGE proposed a 500 kV transmission line between Boardman and Salem

- **Why Dual Jurisdiction** – Proposed on private, state, federal, and tribal land requiring three separate reviews.
- **Duplication Minimization** – PGE hired a professional facilitator.
 - Coordinating team consisting of representatives from each of the reviewing authorities met frequently to coordinate, collaborate, and negotiate in order to expedite the respective reviews.
 - Subgroups were created related to specific resources.
 - Agency decision-makers were pulled in when critical decisions had to be made.
- **Lessons Learned** – The facilitator/coordinating team model was very successful, and it appeared their efforts would have resulted in minimizing duplication and expediting the review. PGE withdrew the project in 2013, so the model was not fully tested.

CASCADE RENEWABLE TRANSMISSION SYSTEM EXAMPLE

Project – Non-Investor-Owned Utility Proposed 320 kV line between The Dalles and Portland, primarily in the bed of the Columbia River

March 2023 Notice of Intent was submitted. Applicant has until March 2025 to submit preliminary application.

- **Why Dual Jurisdiction** – The US Army Corps of Engineers has authority for projects in the Columbia River. The project is also jurisdictional to the Washington Energy Facility Site Evaluation Council.
- **Duplication Minimization** – ODOE has participated on federal review calls and will be reviewing draft EFSC application exhibit reviews prior to submittal of the preliminary application.

BOARDMAN TO HEMINGWAY EXAMPLE

Project – Idaho Power Corporation approved 500 kV line from Hemingway, Idaho to Boardman, Oregon

- 1,085 towers up to 195 tall within right-of-way, up to 500 feet wide
- New substation
- 200 miles of new roads and 230 miles of existing road modifications
- Temporary construction laydown areas and helicopter fly yards
- Located in five counties and two cities in Oregon
- 17 different land use zones
- Proposed on more than 300 private properties
- Notification included 5,000 mailed property owner notices, 1,600 email notices, and 10 newspaper notices in the affected Oregon counties
- **Why Dual Jurisdiction** – Proposed on private, state, and federal land

BOARDMAN TO HEMINGWAY EXAMPLE

Duplication Minimization - Substantive

- **Historic, Cultural and Archeological Resources** – ODOE agreed to use the information from the Federal Section 106 of the National Historic Preservation Act process to meet EFSC’s Historic, Cultural and Archaeological Resources standard. IPC cannot move forward either on federal or non-federal land until it is concluded. Based on recent issues raised regarding the validity of the conducted surveys, the BLM is currently conducting spot surveys to ascertain whether all of the information submitted was accurate.
- **Threatened and Endangered Species** – Species surveys conducted for the federal process were used to satisfy EFSC survey requirements. While Oregon State and Federal Threatened and Endangered Species lists are largely the same, there are differences. Because Idaho Power did not remove the species that were on the Federal list but not on the Oregon State list, species not normally regulated by EFSC were introduced into the process creating jurisdictional questions and issues.

BOARDMAN TO HEMINGWAY EXAMPLE

Duplication Minimization - Procedural



August 2008 – Joint NOI filed with EFSC and BLM.

November 2008 – Idaho Power put both reviews on hold and initiated a Community Advisory Process to gather information from public to reevaluate proposed project route due to high volume of concerns expressed about initial proposal on productive agricultural lands.

July 2010 – Second Joint NOI filed with EFSC and BLM.

BOARDMAN TO HEMINGWAY EXAMPLE

EFSC Process

Application for Site Certificate

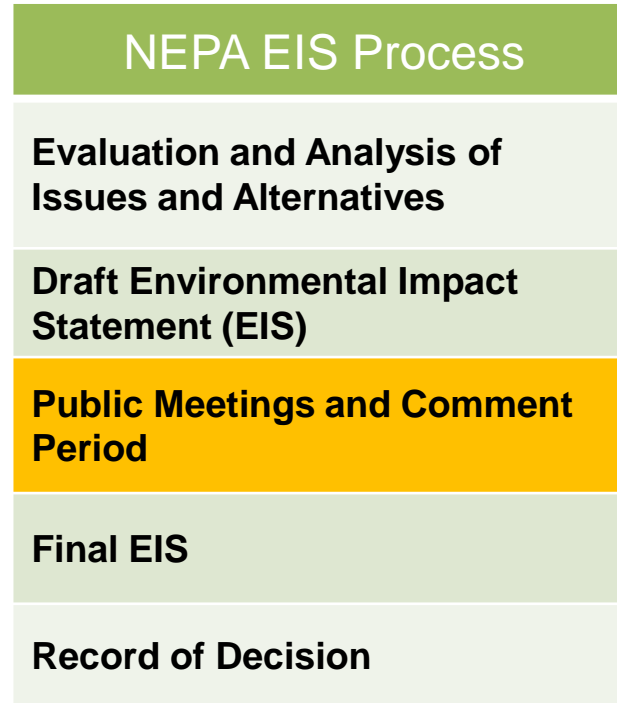
Agency Comment Period

NEPA EIS Process

**Evaluation and Analysis of
Issues and Alternatives**

February 2013 – Submittal of Preliminary Application for Site Certificate (pASC) to EFSC

BOARDMAN TO HEMINGWAY EXAMPLE



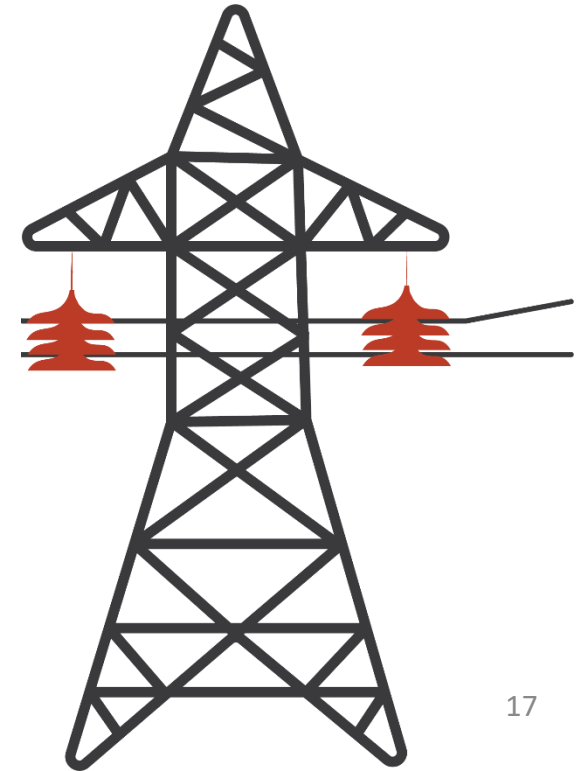
2013 – 2017 – EFSC process was put on hold by applicant to focus on Federal NEPA process due to the ability of the BLM to require Idaho Power to evaluate different route alternatives

BOARDMAN TO HEMINGWAY EXAMPLE

EFSC Process Step	Date	Details
Preliminary Application	July 2017	Reviewing for completeness with reviewing agencies
Complete Application	September 2018	Public Information Meetings in 5 counties
Draft Proposed Order	May 2019	<ul style="list-style-type: none"> • Public hearings in 5 counties • 92-day public comment period • 400 comments totaling 6,300 pages • 107-day response period for Idaho Power
Proposed Order	July 2020	Changes based on comments
Contested Case	August 2020	<ul style="list-style-type: none"> • 50 requests to participate • 36 of the 50 were granted party status with 78 specific issues
Final Order	September 2022	<ul style="list-style-type: none"> • 15 exceptions to Contested Case Order evaluated by EFSC • Material changes to Proposed Order and Contested Case Order
Supreme Court	March 2023	<ul style="list-style-type: none"> • Three petitioners with nine issues • Court upheld final order in total in four months

BOARDMAN TO HEMINGWAY STATUS

- **Preconstruction Conditions** – Currently being worked on.
- **Amendment 1** – Approved by EFSC in Sept. 2023. Denial of Contested Case appealed to Circuit Court.
- **Amendment 2** – Approved by EFSC in Aug. 2024. Appeal period is still open.
- **Eminent Domain** – Idaho Power is currently pursuing eminent domain on properties still unwilling to sell rights of way.



DUAL REVIEW LESSONS LEARNED

- There are opportunities to minimize duplication but that requires a lot of effort and coordination.
- The applicant is the ultimate driver of duplication minimization based on a concurrent or consecutive review and what they submit.
- Many NEPA resource reports and EFSC application exhibits require different or varied information.
- EFSC's reliance on NEPA review elements results in EFSC's review timing being linked to the NEPA timing.
- If the lead federal agency is likely to require evaluation of a different location than what was proposed, it may be better to run the processes consecutively with the NEPA process first.



OREGON
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QUESTIONS?

For more information:
www.oregon.gov/energy/facilities-safety

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