

SENATE COMMITTEE ON AGRICULTURE AND NATURAL RESOURCES DATE: June 3,  
1993 TAPES: 171 - 174 PLACE: Hearing Room C TIME: 6:00 PM  
MEMBERS PRESENT: Senator Ron Cease, Chair Senator Jim Bunn,  
Vice-Chair Senator Joyce Cohen Senator Bob Kintigh Senator Bob Shoemaker  
Senator Gordon Smith Senator Shirley Gold STAFF PRESENT: Chris  
Warner, Research Associate Kus Soumie, Committee Assistant Bhima Olrech,  
Committee Page MEASURES HEARD: SB 1016 - Work Session

TAPE 171, SIDE A 011 CHAIR CEASE: Calls the meeting to order at 6 00 p  
m - Opens hearing on SB 1016 There are five unresolved issues WORK  
SESSION ON SB 1016

WITNESSES: Christine Ervin, Director, Oregon Department of Energy  
Gail Achterman, Legal Counsel, PGE Mike Grainey, Oregon Dept. of Energy  
Paul Cosgrove, Andarko Dan Meek, Don't Waste Oregon Bob Hall, PGE John  
Savage, Oregon Dept. of Energy -- Lloyd Marbet, Don't Waste Oregon  
Meg Reeves, Dept. of Justice Libby Henry, Eugene Water & Electric  
Board/Public Power & Light

028 CHRISTINE ERVIN: Testifies regarding SB 1016 (EXHIBIT A) and  
urges rejection of the proposed 4A amendments (EXHIBIT B). 119 SEN.  
COHEN: Gail Achterman and Mike Grainey will review the bill and the -A4  
amendments to provide background for the members The five outstanding  
issues will then be briefly debated. - The first issue is whether we  
should allow exemptions for geothermals that have gone through a federal  
EIS process Senate Agriculture and Natural Resources June 3, 1993 Page 2

- The second issue regards the expansion of existing energy facilities.  
- The third issue is the public records exemption on the basis of public  
safety; should we move away from the current law? - The fourth item  
concerns the "need for power." - The last issue regards appeals and  
stays. - These five issues need to be decided by the committee, not the  
work group.

210 GAIL ACHTERMAN: Reviews background of bill, the -4A amendments  
(EXHIBIT B) and the workgroup efforts (EXHIBIT C). Thanks all those who  
participated in the workgroup. The references in the testimony to the  
bill are one number off throughout.

251 MIKE GRAINEY: The written statement of Christine Ervin do track  
the sections of the bill. The main difference between our statement and  
Ms. Achtermart's, is that we've provided background and the effect of  
the changes proposed. 261 ACHTERMAN: Continues with her review,  
beginning on page 2. 428 GRAINEY: The three exemptions that are  
covered by section 4, to some extent exist in current law, but have been  
confusing. It has been difficult for the department to interpret what is  
within the meaning of that exemption and what is not. - In subsection  
(6) there may be a drafting error. The intent was agreed to, and that is  
something that can be clarified. 450 ACHTERMAN: Continues with  
review, beginning with section 5. 468 GRAINEY: The term "filing"  
becomes a term of art now. Applicants will submit their application.  
Upon determination by the Council that the application is complete, the  
application is deemed "filed" and the timelines discussed later in the  
bill begin.

TAPE 172, SIDE A 034 SHOEMAKER: OJIN(?) has to shut down unless you  
have the certificate within a year; is that a problem? Could an  
extension be made?

038 ACHTERMAN: We do not believe that it would be a problem with that one year time frame, given that it is an existing facility and already has all of its permits. There aren't provisions for extensions, although the utilities would support that.

057 GRAINEY: Section 6 is different in that the 180-day waiting period between the filing the notice of intent and the filing of the application is eliminated. This is a good change, to expedite the process. 066 ACHTERMAN: Continues with overview, beginning with Section 7 (EXHIBIT C). Senate Agriculture and Natural Resources June 3, 1993 Page 3

148 GRAINEY: Another key feature of section 8(5) is that the Council must complete its review within six months after filing the site certificate application. The normal review time would be nine months.

154 ACHTERMAN: Continues with overview, beginning with Sections 10 and I 1 (EXHIBIT C). 210GRAINEY: Section 11 (2) is an important improvement; the reopener provision is more flexible but it is a precise standard. It is fair to all interests. Also, the provision in (4) regarding the scope of judicial review of other state agencies' decision that are corollary to the siting Council site certificate is to simplify judicial review. The judicial review that we get "into" in section 12 regarding the siting counsel's decision is the primary focus for judicial review. This helps streamline the process. 237 ACHTERMAN: Continues with overview, beginning with Section 12. Section (3) is an area that agreement has not been reached regarding stay of enforcement and bonds on appeal. 292GRAINEY: Current law is one end of the spectrum - an automatic stay after the decision and no bond is required. 302 ACHTERMAN: Continues with overview, beginning with Section 13.

TAPE 171, SIDE B

005 ACHTERMAN: Continues with overview, Section 22. 067 SEN. SHOEMAKER: Was LCDC one of the groups involved with Section 22? 068 ACHTERMAN: The department and its attorney general were very involved; the Commission hasn't seen it yet. This is a substantial change from current law. County land use provisions are completely preempted currently by the state energy facility siting process, but city land use provisions are not preempted. This change provides a process that treats cities and counties equally and assures the application of the substantive criteria of the local acknowledged land use plan. 082 GRAINEY: These changes implement the intent of the prior law, that the siting council will make the land use determinations but assure those are consist with land use goals. These changes in the -4A amendments fill in the procedural gaps to make that work. 092 ACHTERMAN: Continues review of provisions (EXHIBIT C).

110 GRAINEY: We support the addition of the emergency clause. Because we have applications pending and some that will be filed very soon, the department will not be able to re-write rules extensively to submit to the siting council. We will use existing rules as much as possible and do not anticipate the major re-writing of rules that we went through last year.

These minules contain materials which paraphrase and/or summarize statements made during this session. Only text enclosed in quotation marks repon a speaker s exact words. For complele conienis of the proceedings, please refer lo the tapes. Senate Agricullure and Naturai

128 ACHTERMAN: Concludes testimony; this is critical legislation to make the energy facility act work. 138 SEN. COHEN: The first issue to be debated is the geothermal exemption.

145 PAUL COSGROVE: Explains proposed amendments (EXHIBIT D). - The bill currently has a number of exemptions from the Energy Facility Siting Council (EFSC) process. The original bill raised the jurisdictional limit for all projects and that has not changed; the jurisdictional limit for FSEC is still 25 megawatts. - Ms. Achterman has already reviewed the three exemptions in Section 8 - enlarged facilities, interstate natural gas pipeline subject to FERC, and the "high efficiency/co-generation" exemption. - This would add a fourth exemption in that section. - This is not a wholesale exemption. There is no disagreement that small geothermal or other renewable energy projects shouldn't have to go through a through review to insure that all possible environmental impacts are determined. - We are dealing with a question of duplication and possible inconsistency. From the perspective of developers of renewable energy projects, all those prospects are located on federal land. Federal law requires a through environmental impact analysis. - Attached to the amendments are a description of these federal requirements (EXHIBIT D). The federal process is longer, more expensive, and more inclusive. - The essential difference is who gets to make the final decision. The federal government gets to make the final build/no build decision for projects on federal land. - Given the duplicative review and associated costs, it is difficult for small projects to be built. - We have proposed an exemption, given specific criteria (EXHIBIT D).

280 GRAINEY: Speaks in opposition to Anadarko amendments. - SB 1016 makes substantial changes to accommodate renewable resource facilities while still providing the needed state review. - The amendments divest the state of any regulatory authority in these matters. - SB 1016 provides an expedited review. - By relying exclusively on the NEPA process, the state relies on a federal agency and federal criteria that may or may not reflect state criteria. - When the state has no regulatory authority, the federal government can ignore state input, and often does. When the state has regulatory authority, the federal government must meet state standards. - Provides examples.

368 SEN. COHEN: Speaks in opposition to the proposed amendment. Last session much time was spent looking at geothermal siting law, and that work shouldn't be ignored. Without a state site certificate, there are no guarantees that the disengagement of a geothermal will be done without damaging the natural resources. The bill provides lots of facilitation to assist this process, and avoids duplication. - These minutes contain materials which paraphrase and/or summarize statements made during this session. Only text enclosed in quotation marks report a speaker's exact words. For complete contents of the proceedings, please refer to the tapes. Senate Agriculture and Natural Resources June 3, 1993 Page 5

435 MIKE GRAINEY: Current laws and rules allow the department to conduct joint reviews. We have used this in the past. As an example, Coyote Springs, a natural gas facility, the federal government will rely almost entirely on the state application. We are not required to coordinate with them. We would be willing to entertain language in the bill that states that we will coordinate with the federal government, "to the extent practical and possible." 463 SEN. SMITH: We should

reduce duplication whenever possible. 470  
state to have a say in these matters.

CHAIR CEASE: Prefers the

TAPE 172, SIDE B

031 CHRISTINE ERVINE: Such an amendment would be acceptable to the department. and we have proposed language (EXHIBIT E). 045 SEN. SMITH: Voices support of proposed amendment. 055 SEN. KINTIGH: Could the state process be occurring simultaneously with the federal process? Can they use the same study data? ~ 060 GRAINEY: We can use the same data, and we can schedule together. In general, the state process is shorter than the federal process. 091 COSGROVE: For the record, this would not preempt the state's jurisdiction from DEQ or to DOGAMI or any of the other state agencies. Requests postponing action on the amendment until he has a chance to examine it. A friendly amendment, in any case, is the insertion of the word, "exclusively" on the second line, to read "exclusively a wind, solar, or geothermal..."

MOTION: Sen. Cohen moves adoption of the proposed amendment (EXHIBIT E) with the addition of the word "exclusively" as earlier described.

VOTE: In a roll call the amendment is adopted, 7 - 0.

137 SEN. COHEN: The next item is the expansion of existing energy facilities. 139 GRAINEY: This deals with facilities that would have received a site certificate, had the Council been existence at the time the facilities were built. The issue is the how much can be done in terms of upgrade, without going through a site certificate process. The universe of eligible facilities is two or three at most. - The first test is that the facility does not increase in land area. - Secondly the facility must not use more than 200 million BTUs per hour in fuel than is used on the effective date of this Act. - If the facility fails to meet these tests, then the facility must go through a site certificate process.

These minutes contain materials which paraphrase and/or summarize slate nents made during this session. Only text enclosed in quotation marks report a speaker's exact words. For complete contents of the proceedings, please refer to the tapes. Senate Agriculture and Natural Resources June 3, 1993 Page 6

232 DAN MEEK: Opposes certain provisions in SB 1016 (EXHIBIT G). Currently, pending before the Energy Facility Siting Council now are applications from utilities to build over 4,000 megawatts of gas-fired combustion turbines. That would more than double the electrical generating capacity in Oregon today. - Allowing the exemption for expansion of existing, noncertificated facilities would not limit the size or type of facility to be added. It doesn't even have to use the same fuel as the existing facility. - The -4A amendments improve the bill, but there needs to be the opportunity tor a contested case process. - Without a contested case process, there is not a mandatory discovery process for obtaining information from the applicant. The decision does not have to be based on the formal evidentiary record, and an appeal is not appropriate on the basis that the conclusions aren't supported by a formal evidentiary record. - A contested case proceeding is important. There have only been two certificates appealed in the 17-18 years of the Council. In both cases the Supreme Court has reversed the Energy Facility Siting Council. Cites Pebble Springs example. The contested case process makes a difference. 368 CHAIR CEASE: Doesn't the addition have to be the same fuel type? 368 BOB HALL: In the

original bill, fuel type was included. We would have no objection to adding fuel type. 368 MEEK: My concern with this amendment is not as great as two other issues you will be discussing. - Under the "general need" determination in this bill, having a facility listed in the least cost plan of a utility that is approved by the Public Utilities Commission grants the applicant a rebuttable presumption of need. That would be appropriate here. Under this bill, if it is in the least cost plan, then there is no contested case process. 403 BOB HALL: PGE supports the -4A amendments. - All other state regulations and permits would be adhered to. 430CHAIR CEASE: Other than limiting it to the existing fuel type, are there other amendments recommended? 431 MEEK: On version 4A (EXHIBIT B), page 12A, in between lines 8 and 9, suggests inserting "pursuant to section 8 of this Act, " between "determines" and "that. " This would allow process. With this change, the amount "200 Btu per hour" could be increased by a factor of five. 474 SEN. SHOEMAKER: Will you need to amend page 13, lines 28 as well?

476 MEEK: A conforming amendment might be necessary there because if you are making the need determination pursuant to section 8, that then proceeds to tell you in sections 9, 10, 11, and 12

These minutes contain materials which paraphrase and/or summarize state lents made during this session. Only text enclosed in quotation marks report a speaker's exact words. For complete contents of the proceedings, please refer to the tapes. Senate Agriculture and Natural Resources June 3, 1993 Page 7

how to appeal the determination (directly to Supreme Court). - This bill places the Supreme Court in the position of reviewing an agency order as a noncontested case, which puts the Supreme Court in the position of a trial court.

TAPE 173, SIDE A

035 GRAINEY: Doesn't dispute the advantages to an intervener of a contested case hearing. However, we do have an existing facility, the site is already there, for the department the primary issue is one of economic prudence and need. The language in the 4A amendments adequately deals with that. - If you do have a contested case, because of the time involved, what you essentially have is a site certificate proceeding. One of the options discussed in the group was having an expedited site certificate process. However, we think existing facilities deserve special consideration. 058 ACHTERMAN: If you have a contested case proceeding for the exemptions, you might as well not have the exemption. We strenuously object to these revisions. - We have no objection to clarifying that the same fuel would be involved in the expansion. 094 SEN COHEN: The third issue is the public records exemption. section 26(4). 110 MEG REEVES: Explains existing law regarding public records and the Dept. of Energy and the Facility Siting Council. - Trade secrets are confidential unless public safety interests outweigh the need for confidentiality. Essentially this is a clarification of existing law. 140 LLOYD MARBET: Testifies in opposition to certain provisions of SB 1016 (EXHIBIT E;). 167 MEEK: This statute refers to any information obtained during the course of inspection, investigation, or activities under ORS 469.300-469.470. Few of those sites have anything to do with energy facility siting - they apply to Dept. of Transportation of radioactive waste transportation, waste disposal, nuclear safety regulation Discussion between Reeves, Achterman, Meek, and Cease regarding whether changing the wording in the public records law would change policy. 288 CHAIR CEASE: We will delete section 26.

291 SEN. COHEN: The next issue is "need for power" found in section 21. 282 JOHN SAVAGE: The Siting Council has used a need for facility standard since 1981 to judge if or when the output from a proposed facility will be needed. The standards vary by facility, but generally have two conditions. First, must the plant to be built to meet demand; secondly, it needs to be the cheapest alternative for meeting those needs. The 4A amendments allow the Council to adopt exemptions from the "need for power" if it is consistent with state energy policy

These minutes contain materials which paraphrase and/or summarize statements made during this session. Only text enclosed in quotation marks repon & speaker's exact words. For complete contents of the proceedings, please refer to the tapes. Senate Agriculture and Nalural Resources June 3, 1993 Page 8

to do so. - A second path an applicant could take to meet the "need for power" standard is if the power plant is identified in the short term plan of action of an energy resource plan that has certain characteristics (line 15-31, page 35; lines 1-2, page 36). There is an exception; acknowledged least cost plans would be deemed to have those characteristics, automatically. - If a facility meets these standards there is a rebuttable presumption that the facility is needed. A third path described in 4A is specific to municipal utilities, people's utilities districts, and electrical co-ops and relates to the situation of when they either built or buy the output of another facility to replace power they plan to buy. The test for that, if they desire, has two conditions: it must be shown to be economically prudent, and be consistent with state energy policy. - On a fourth path, if a facility doesn't fit into the first three paths, an applicant would have to show the need for power as they have set out in their current rules. They have to demonstrate that there will be unmet demand unless the power facility is built, and that it is a prudent investment in terms of "least cost." - A list of items that did not have consensus in the workgroup: should there be a requirement that some of the output of power plant built in Oregon serve Oregon's needs; should a PUC acknowledged plan be automatically deemed to have certain characteristics; should a plan developed by an electric cooperative be allowed by the Council, to trigger a rebuttable presumption that a facility is needed; and should the EFSC be allowed to grant waivers from the need for facility standards.

428 MEEK: A determination that there is a need for power doesn't mean that there is a need in Oregon - neigHB oring states could need it. The industry group even opposes that one percent of the "needed power" be used in Oregon. The pending applications are for energy to be exported and it is appropriate that some of the energy be used in-state. This is because Oregon has limited resources, such as its air shed. It will be difficult for Oregon to meet is carbon dioxide reduction goal if it is producing substantial amounts of power.

TAPE 174, SIDE A

040 MEEK: Electrical co-ops are not governmental entities and deference shouldn't he extended to them. In order for a plan to qualify for rebuttable presumption, FSEC needs to find that it was adopted, approved, or acknowledged after a full, fair open public participation and comment process. However, this process need not occur in Oregon. This might require Oregonians concerned about a facility being sited near them to travel half way across the country. 077 SEN. SMITH: Doesn't see that as a problem. Discussion on this point. 180 CHRIS

WARMER: Draws committee's attention to a letter from Angus Duncan (EXHIBIT H). 191LLOYD MARBET: Refers to his testimony on this point (EXHIBIT li).

These minutes contain materials which paraphrase and/or summarize statements made during this session. Only text enclosed in quotation marks report a speaker's exact words. For complete contents of the proceedings, please refer to the tapes. Senate Agriculture and Natural Resources June 3, 1993 Page 9

212 CHAIR CEASE: Reads letter from Angus Duncan into the record (EXHIBIT 11)

237 ACHTERMAN: We strongly oppose the proposed amendments. A need standard is not necessary because of the comprehensive least cost planning process. We continue to be concerned about duplication of effort with least cost planning and the rebuttable presumption; the 4A amendments do that. - Imposing native load requirements fails to recognize that we are part of a larger utility grid system. Oregon is a net importer now. We would oppose the bill with that requirement. - It is important to us that discussion regarding greenhouse effect be kept within the context of a greenhouse gas global warming strategy and that it not be made another standard that individual power plants are going to be measured against.

280 LIBBY HENRY: It is imperative that we have the flexibility to market the power like any other utility in the region. 339 MARBET: A combined cycle combustion turbine will add 3600 tons of carbon dioxide per year per average megawatt. A combustion turbine will add another 1000 tons beyond that (4300 tons CO2 per year per average megawatt). - We will be radically altering the way we are currently treating Oregon's airshed. - The legislature and the Benchmarks both value reduction of carbon dioxide in the air, but there is no way to implement those strategies under the current legislative scheme when it comes to proposing that additional energy facilities be built in Oregon.

379 SEN COHEN: We discussed this briefly in the work group; there are probably some other configurations that we can work on. 396 CHAIR CEASE: There is a carbon dioxide issue, and if amendments could be prepared by tomorrow the committee would look at them. 399 SEN. SMITH: Isn't there a federal clean air act that addresses this issue?

403 CHAIR CEASE: The Clean Air Act doesn't accomplish that.

416 MARBET: The proposed amendment does not mandate that EFSC adopt rules to address this, just that it consider it. 436 ACHTERMAN: Will work with Marbet on the amendment. 445 CHAIR CEASE: Will come back to this point tomorrow. 447SEN. COHEN: A remaining issue is the appeals, stays, and bonds pending appeal.

TAPE 173, SIDE B

These minutes contain materials which paraphrase and/or summarize statements made during this session. Only text enclosed in quotation marks report a speaker's exact words. For complete contents of the proceedings, please refer to the tapes. Senate Agriculture and Natural Resources June 3, 1993 Page 10

020 REEVES: Draws committee's attention to the options available (EXHIBIT I). Describes current law (option 1). 042 CHAIR CEASE: If we did not have such a provision, that halts construction until a final decision has been made, would construction go forward only to be torn

down later? 045 REEVES: The Administrative Procedures Act has a provision that applies to administrative decisions on review to the Court of Appeals; it provides that the agency that made the decision can issue a stay in its discretion. - That is the option the utilities are suggesting - option 5. 059 CHAIR CEASE: Option 3 is an automatic stay? 060

REEVES: Option 3 is a six-month automatic stay with a provision for extension beyond that period upon request. This is similar to the chemical mining provision. - The second option is a provision for automatic stay unless the applicant makes a showing that delay in construction would result in substantial economic injury to the applicant and that construction would not result in irreparable harm to resources. - The third option is the six-month automatic stay. - The fourth option is a different standard of showing by the petitioner, but it's a less onerous showing than the one required under the APA.

082 SEN. COHEN: Is that showing before the courts or EFEC?

083 REEVES: It would go first to the Council; if the stay was denied the Supreme Court could review the stay request. 094 MARBET: Reviews that portion of his testimony regarding an automatic stay during appeal (EXHIBIT F). This is a critical issue. - Does not believe the Council can be trusted to make the right decision. 152 MEEK: The automatic stay provision in current law has proven itself; in every instances after EFSC has granted a site certificate that has been appealed, the Supreme Court has reversed the decision. - Under option 4, the petitioner has to show irreparable harm to themselves or to resources; this is difficult. Under this option it would be difficult to stay construction during the appeal. - Refers to testimony on this topic (EXHIBIT J). 275 ACHTERMAN: The utility group strongly urges adoption of option 5, which is currently found in the 4A amendments. This would conform with the "tried and tested procedures" under the Administrative Procedures Act. There is no reason to apply a different standard to administrative procedural rule to energy facilities than is applied to any other kind of industrial facility. A petroleum refinery could be built in Oregon, which has major potential impacts, and the administrative appeals would be done under the APA.

These minutes contain materials which paraphrase and/or summarize statements made during this session. Only text enclosed in quotation marks report a speaker's exact words. For complete contents of the proceedings, please refer to the tapes. Senate Agriculture and Natural Resources June 3, 1993 Page I I

- Mr. Marbet argues that because the process has been expedited, an automatic stay should be allowed. An automatic stay could unnecessarily delay a needed facility and is unwarranted. - Under Mr. Marbet's proposals, even technical problems could result in a stay. - Opponents of a project could use delay to kill it. - If utilities proceeded with construction, Commissioner Eachus stated that the PUC would review the prudence of expenses, and, in any case, the expenses could not be allowed to be incorporated into the rate base until the facility goes into service. - Even if HB 2197 became law, only preconstruction expenses will be paid by ratepayers, not the construction costs themselves. - Stockholders, not ratepayers, will pay for a failed facility - In response to Sen. Shoemaker, she stated that the utility groups could live with option 4, but preferred option 5. 419 CHAIR CEASE: When we meet tomorrow, and have all seven members present. we will finish work on the bill, at least in concept. 430 Review of remaining issues to be decided.

TAPE 174, SIDE B

020 SEN. SMITH: What are Sen. Cohen's preferences? 022 SEN COHEN:  
I have grave concerns about facilities being built then torn down.  
regardless of who pays. I would vote for option 3. 038 MEEK: This is  
the issue that Sen. Kerans and Springer wish to testify on. 069 CHAIR  
CEASE: Adjourns meeting at 9:45 p.m.

EXHIBIT LOG:

A - testimony, SB 1016, Ervin, 19 pas. B - proposed amendments, SB 1016,  
staff, 43 pas. C - testimony, SB 1016, Acterman, 9 pas. D - proposed  
amendments, SB 1016, Cosgrove, 3 pas. E - proposed amendments, SB 1016,  
Ervine, 1 pg. F - testimony, SB 1016, Marbet, 4 pas. G - proposed  
amendments, SB 1016, Meek, 1 pg. H - testimony, SB 1016, Duncan, 3 pas.  
I - testimony, SB 1016, Reeves, 2 pas. J - testimony, SB 1016, Meek, 3  
pas.

Submitted by: Reviewed by:

These minutes contain materials which paraphrase and/or summarize  
statements made during this session. Only text enclosed in quotation  
marks report a speaker's exact words. For complete contents of the  
proceedings, please refer to the tapes. Senate Agriculture and Natural  
Resources June 3, 1993 Page 1' Kus Soumie Peter Green Assistant  
Administrator

These minutes contain materials which paraphrase and/or summarize statements made during this session. Only text enclosed in quotation marks repon a speaker's exact words. For complete contents of the proceedings, please refer to lhe tapes.