

## **Joint Interim Committee on Department of Energy Oversight Alternative Recommendations**

### **Introduction:**

The presiding officers have appointed the Joint Interim Committee on Department of Energy Oversight to conduct a thorough review of the Oregon department of Energy and to make recommendations to the Legislature for the 2017 session.

The Joint Interim Committee (JIC) shall focus its work on the following elements:

- Review the agency's charge, mission, and statutory responsibilities.
- Review the agency's organizational structure and funding streams
- Assessment of the current gaps and deficiencies in the agency's operational structure and personnel capacity to fulfill its mission and programs.
- Assessment of the agency's capacity to facilitate stakeholder relationships, both public and private, to fulfill its mission.
- Review the agency's ability to administer tax credit programs, but do not directly address tax credit policy issues.

### **Agency Structure and Background:**

**469.010 Policy.** The Legislative Assembly finds and declares that:

(1) Continued growth in demand for *all* energy forms poses a serious and immediate, as well as future, problem. It is essential that future generations not be left a legacy of vanished or depleted resources, resulting in massive environmental, social and financial impact.

(2) It is the goal of Oregon to promote the efficient use of energy resources and to develop permanently sustainable energy resources. The need exists for comprehensive state leadership in energy production, distribution, utilization and evaluation of Oregon's supply of affordable, sustainable and reliable energy. Consideration should be given to technological advances and climate benefits. It is, therefore, the policy of Oregon:

(a) That development and use of a diverse array of all energy resources be encouraged utilizing to the highest degree possible the private sector of our free enterprise system.

(b) That through state government example and other effective communications, energy conservation and elimination of wasteful and uneconomical uses of energy and materials be promoted. This conservation must include, but not be limited to, resource recovery and materials recycling.

(c) That the basic human needs of every citizen, present and future, shall be given priority in the allocation of energy resources, commensurate with perpetuation of a free and productive economy with special attention to the preservation and enhancement of environmental quality and affordability of all energy resources.

(d) That state government assist every citizen and industry in adjusting to new availability of technologies in energy.

(e) That energy-efficient modes of transportation for people and goods shall be encouraged, while energy-inefficient modes of transportation shall be discouraged.

(f) That cost-effectiveness be considered in state agency decision-making relating to energy sources, facilities or conservation, and that cost-effectiveness be considered in all agency decision-making relating to energy facilities.

(g) That state government shall provide a source of impartial and objective information in order that this energy policy may be enhanced. [1975 c.606 §1; 1979 c.723 §1]

And thus, began the **Oregon Department of Energy**.

The duties of the State Department of Energy are found in ORS 469.030

(2) The State Department of Energy shall:

(a) Be the central repository within the state government for the collection of data on energy resources;

(b) Endeavor to utilize all public and private sources to inform and educate the public about energy and ways in which the public can conserve energy resources;

(c) Seek out new technologies, but whenever possible, contract with appropriate public or private agencies and dispense funds for research projects and other services related to energy resources, except that the State Department of Energy shall endeavor to avoid duplication of research whether completed or in progress;

(d) Qualify for, accept and disburse or utilize any private or federal moneys or services available for the administration of ORS 176.820, 192.501 to 192.505, 192.690, 469.010 to 469.155, 469.300 to 469.563, 469.990, 757.710 and 757.720;

(e) Administer federal and state energy allocation and conservation programs and energy research and development programs and apply for and receive available funds therefor;

(f) Be a clearinghouse for energy research to which all agencies shall send information on all energy related research;

(g) Prepare contingent energy programs to include all forms of energy not otherwise provided pursuant to ORS 757.710 and 757.720, governed by cost-effectiveness to address the priority of human need;

(h) Maintain an inventory of energy research projects in Oregon and the results thereof;

(i) Collect, compile and analyze energy statistics, data and information;

(j) Contract with public and private agencies for energy activities consistent with ORS 469.010 and this section;

(k) Upon request of the governing body of any affected jurisdiction, coordinate a public review of a proposed transmission line per the provisions of ORS 469.442; and

(L) Advise the Governor on energy-related matters. [1975 c.606 §4; 1981 c.792 §2; 1987 c.200 §4; 1993 c.569 §2; 1995 c.551 §3; 1999 c.934 §5; 1999 c.1043 §9; 2003 c.186 §1; 2013 c.656 §7]

The agency is currently structured in the following four operating divisions and a supportive administrative/central services division:

- Nuclear Safety and Emergency Preparedness
- Energy Planning and Innovation
- Energy Development Services

- Energy facility Siting

There are currently 84 permanent (FTE) Department employees. The 2015-2017 operating budget is \$37.4M with revenue from program fees, federal dollars and \$13.1M addressed on energy suppliers. The Department receives no General Fund revenue.

The agency has been mired in controversy over the past several years, primarily due to *five* issues:

1. A few large, non-performing loans in the constitutional Small Energy Loan Program.
2. A legacy of problems emanating from the now defunct Business Energy Tax Credit (BETC) program.
3. Controversy over the energy supplier assessment (ESA), the Department's primary source of program revenue.
4. Controversy regarding perceived EFSC bias toward energy developers.
5. Failure of ODOE to consider cost effectiveness in facility siting decision making as required by ORS 469.010(2)(f)

The Small Energy Loan Program (SELP), a constitutionally mandated loan program, has run successfully for many years. The scope and goals are laid out in OAR 330-110-0005 in which the program should:

- Encourage diversity in projects
- Develop and maintain a loan portfolio that is reasonably balanced across market sectors and project and borrower types
- Fund energy projects that support the Department's goal for energy efficiency, generation, and security without regard to energy source.

OAR 330-110-0010 clearly defines the definitions regarding the applicability of the SELP. It appears from the loan defaults that some of the definitions were not strictly adhered to:

- **"Adequate security"** means the pledge of real or personal property given to secure a loan against loss or credit enhancement, guaranty or other security of value authorized by ORS 470.170, given the assurance that the loan will be paid.
- **"Creditworthy"** means, in regard to an applicant, able to repay its debts as they become due, as evidenced by a satisfactory credit history, sufficient financial resources or other indication of financial strength **as approved by the Department.**
- **"Delinquent account"** means a loan that has not been paid in accordance with the terms of the underlying loan documents.
- **"Department"** means the **Oregon Department of Energy**
- **"Financial feasibility"** means that:
  - The primary repayment source for the loan has been identified, the applicant is creditworthy and the project is financially viable.
  - Adequate security is offered to provide a secondary source of repayment.

- **“Primary repayment source”** means the business revenues produced by the borrower of a loan that is or will be used to pay the debt service on a loan.
- **“Security value”** means the value assigned by the Department, based upon an internal review or an appraisal by a qualified third party acceptable to the Department, to the project of security being offered as collateral for a loan.

#### **Recommendations for the SELP program:**

- A complete independent third party financial and forensic audit of all aspects of the SELP loan portfolio paid for by ODOE.
- Determine which loans are performing, the pay-off period, security value, the interest rate of the loan, and predicted income to the overall portfolio. Include any viability of default.
- Determine all loans that are **not** performing, interest rates, security value, the interest rate of the loan, and predicted loss from this loan minus security value
- Upon audit review, return SELP to its original mission and establish a cap on loan size.
- Transfer remaining SELP to the Oregon Business Development Department. ODOE to provide energy expertise to OBDD, but will not have authority to issue loans.
- OBDD to strengthen loan underwriting requirements
- Remove statutory authority for Governor to override ODOE and OBDD decisions on loan applications
- Repeal the Alternative Vehicle Fuel Revolving Loan Program and transfer remaining funds to the SELP program.
- Separate out nonperforming loans into new portfolio, and fund the shortfall to prevent default. Use performing loan returns for repayment.
- Reduce ODOE staff that oversees loan program.
- Require ODOE to provide estimated cost of ongoing SELP loan portfolio management for the next eight years
- Require ODOE to provide estimate of ongoing transaction costs within the SELP loan portfolio for the next eight years

#### **Recommendations for the Business Energy Tax Credit:**

- Full financial and forensic audit by independent third party of all BETC tax credits paid for from ODOE budget
- Provide a letter of recommendation to Oregon Department of Justice to enforce all performance agreements on outstanding BETC credits and claw back taxpayer funded credits from the BETC recipient where performance agreement have not been met, and to discontinue redemption of any outstanding nonperforming credits.

- Provide a letter of recommendation to the Oregon Department of Revenue to work with the Oregon Department of Justice to audit potential uncollected BETC related capital gains taxes.
- Provide a letter of recommendation to Oregon Department of Justice to investigate and prosecute all activities by any ODOE employee that may have violated fiduciary duties.
- Reduce all staff that worked on BETC projects.

The primary source of revenue for the Oregon Department of Energy programs is the Energy Supplier Assessment (ESA).

- “Energy resource supplier” means an electric utility, natural gas utility or petroleum supplier supplying, generating, transmitting or distributing electricity, natural gas or petroleum products in Oregon.
- -the director shall determine the projected aggregate amount of revenue to be collected from energy resource suppliers under this subsection that will be necessary to fund the programs and activities of the council and the department for each fiscal year of the upcoming biennium. After making that determination, the director shall convene a public meeting with representatives of energy resource suppliers and other interested parties for the purpose of providing energy resource suppliers with a full accounting of:
  - A) The projected revenue needed to fund each department program or activity; and
  - (B) The projected allocation of moneys derived from the assessment imposed under this subsection to each department program or activity.

#### **Recommendations for the Energy Suppliers Assessment:**

- Treat the ESA as a tax to suppliers capped, in statute, at the rate of .08% of gross revenues.
- Make certain that all assessments are paid per ORS 469.421, but also determine that fuel or energy is assessed only, and not other goods and services that maybe marketed by suppliers.:

#### **Recommendations for the Agency:**

- Establish a seven- member commission, appointed by the Governor and approved by the Senate, to oversee Oregon Department of Energy.
- The commission will oversee the operations and programs of the Department, including the preparation of a strategic energy plan for legislative consideration which balances the interests and accountability for the state’s energy policies according to the authority of the statutory provisions of ORS 469.010
- Individual membership requirements should be:
  - One member who is an economist
  - One member from an electric consumer-owned utility.
  - One member representing residential energy users

- *One member representing an investor-owned utility*
- One member representing industrial energy users
- One member representing the transportation sector
- One member representing a natural gas utility
- Additionally, the Commission shall have two ex-officio, non-voting members
  - An Oregon Member of the Northwest Power And Conservation Council
  - An Oregon PUC Commissioner
- The commission shall select a chair and co-chair by vote of the members
- The commission will receive reports as needed from the Energy Facility Siting Council and the Hanford Cleanup Board.
- Require Senate confirmation of commission members
- Require Senate confirmation of Governor appointed ODOE Director

#### **Recommendations for the operations of the Agency:**

- *Update mission statement to require the agency to focus on need, efficiency, return on investment and prioritizing the basic energy needs of all citizens. ODOE must determine affordability on a true, unsubsidized cost basis.*
- The agency should be restructured to focus on critical functions that support the clear meaning of ODOE's mission statement and statutory authority.
- Policies proposed by ODOE should incorporate federal energy policies and issues, including coordination with Bonneville Power Administration, the Northwest Power and Conservation Council, and independent and consumer owned utility organizations
- Create an **information and analysis section** that will collect, analyze, and disseminate Oregon energy information. It should research new technologies and resources. Clear metrics should be established to evaluate all forms of energy by using a non-biased, impartial technical analysis considering source, distribution, and cost or savings for Oregonians regarding all energy sources.
- Create a technical assistance section that would serve as a resource to the legislature, stakeholders, and other agencies. ODOE should create a tracking system for all energy resources including energy efficiencies, fossil fuel generation and any other potential source of affordable energy for Oregonians. It should identify and analyze energy efficient technologies and how these technologies can contribute to the state of Oregon energy system
- Create a **nuclear and emergency management** section that will continue to coordinate cleanup of radioactive sites. This section should also plan for radioactive or chemical accident emergencies by laying out concise plans for displacement of Oregonians in affected areas and clean-up of toxic materials. They should coordinate with all other necessary agencies including the Office of Emergency Management.

- Continue the **energy facility siting counsel**. Continue with the standards based approach that that should be amended to include state and/or regional need, prioritize efficiency and affordability, consider the unsubsidized cost of energy production, and to create standing for citizens to secure contested case to help enforce existing requirements such as meeting land use, environmental, and ESA regulations.
- The “one stop” siting process is appropriate considering the new resource, transmission, and distribution system needs that Oregon will face in future years. The siting division administrative hearings for contested cases should be transferred to the Department of Administrative services, Office of Administrative Hearing. This should provide a more balanced adjudication of contested cases by removing any bias that case hearings by EFSC have had in the past. It will give a clear and transparent process for those participants in the process, that the “deck is not stacked”. Where cases are settled and land is taken by eminent domain, there should be a fund for immediate compensation for loss of use. There should also be a fund established for a continuing payment caused by the additional distress of lost productivity of obtained resource. This fund would not impact utilities, as it could be passed on in rates. The commission or the administrative hearings officer could be the party to determine the value of this continuing remuneration, which should not exceed a 20-year time span.
- Administrative functions should continue to provide unbiased, quality technical assessments to the Governor’s office and to the Legislature. The Director should evaluate the various administrative functions within the agency to determine the most cost effective manner that the services can be delivered and report to the appropriate legislative committees no later than March 15, 2017; i.e. through DAS, contracting with other agencies, or in-house. If in-house, a cost analysis should be provided showing the cost savings.
- *If incentive programs are to be considered and implemented, they must have established baselines and metrics, to determine the success of the incentive, in order to be considered by the Legislative body.* ODOE shall provide all necessary data and technological expertise to the Legislature for these incentive programs. Programs should be administered by OBDD with technical support supplied by ODOE.

### **Guiding Principles:**

- Programs should have a statewide perspective
- The agency should have a balanced approach to developing baselines when evaluating programs.
- The programs and incentives developed by the agency should be technology neutral.
- ODOE should take a non-politicized, non-affiliated, and neutral approach to energy policy for the state.

- The Legislature should ask if programs or functions are duplicated elsewhere in state government.
- It is important to maintain a knowledgeable and expert agency to serve as Oregon's liaison with the United States Department of Energy.
- The Agency shall be transparent in all transactions and present results of programs to the appropriate Legislative Committees annually.

This draft report was made using information and direct verbiage from the following sources:

1. Joint Interim Committee on Department of Energy Oversight CO-Chair Draft – Committee Report and Recommendations Dated October 31,2016
2. Letter to the Joint Interim Committee from the NW Energy Coalition - Dated August 26, 2016
3. Letter to the Joint Interim Committee from Mr. Gary Bauer, Director, Government and Community Affairs, NW Natural