AGENDA
EFSEC STANDARDS DEVELOPMENT GROUP
Friday, January 11, 2002
8:30 a.m. – 12:30 a.m.
IBEW Local 76 Hall, Tacoma, Washington

1. Welcome, introductions, and purpose of meeting

2. Presentation: Oregon EFSEC Standards Overview and Observations
   Margaret Kirkpatrick, Partner, Stoel Rives, Portland, Oregon

2. Discussion: Comprehensive standards method as sole path or additional preservation of existing approach as alternative choice for applicant?

4. Discussion: Treatment for regulated v. non-regulated matters. Should group make proposals for addressing non-regulated matters in EFSEC process—for example, greenhouse gases?

5. Action Items:

   A. Identify those who wish to actively participate in work groups and those who wish to continue to receive information and attend meetings only
   B. Divide into following work groups and identify leads:

      1. Air
      2. Water
      3. Soils and seismicity
      4. Wetlands
      5. Fish and wildlife
      6. Noise
      7. Energy policy, including need for projects, power marketing, socio-economic impacts
      8. Mitigation
      9. EFSEC procedure, including interplay with SEPA

6. Timing and other process matters for large group, work product goals

7. Choose next meeting date

8. Adjourn

January 11, 2002
EFSEC Standards Development Group Meeting Minutes
Tacoma, Washington

Bud Krogh opened the meeting and attendees introduced themselves. Stephany Watson briefly summarized the group's discussion at its last meeting, on December 13, 2001.

Mr. Krogh introduced Margaret Kirkpatrick, a partner in the Portland law firm of Stoel Rives. Ms. Kirkpatrick has ten years' experience representing clients before Oregon's EFSC. She was involved in the comprehensive re-writing of Oregon's EFSC rules and related statutes in 1993 and 1995. The most important reason for the re-writing effort was to bring rules and statutes originally developed primarily for coal and nuclear plants into alignment with the increasingly more common development of gas-fired combustion turbines.

Ms. Kirkpatrick summarized Oregon's EFSC rules and procedures. In Oregon, a one-stop permitting process covers all of a project's needed state and local permits. In general, facilities of 25 MW and greater must go through EFSC's procedures. EFSC is a seven-member board of lay people, although historically many of them have had land use experience. They are appointed by Oregon's Governor to staggered four-year terms. One objective for board candidates is that they have no energy facility siting experience. EFSC has a very strong staff.

Oregon's EFSC applies standards from other bodies including land use regulations, local permits and so on. Where there is an applicable standard, EFSC steps into the shoes of those bodies. EFSC also has its own standards, which can be divided into the following example categories: applicant qualifications, financial assurance, seismic and soil standards and so forth. Most standards are aimed at resource protection, such as fish, wildlife, aesthetics, and decommissioning. A need standard existed in past iterations of Oregon's regulatory scheme, but it was difficult to demonstrate at the administrative level and was nearly always the basis for later litigation. Oregon's EFSC also has the power to impose other conditions on projects to protect public health and safety, but these are rarely imposed.

Oregon and Massachusetts are the only states with greenhouse gas mitigation requirements.

As a filter for its review, Ms. Kirkpatrick advised the group to continue to ask itself whether adopting particular standards will benefit Washington's EFSC process.

There were many questions from the group. Mechanically, how do Oregon's standards work?

Ms. Kirkpatrick explained that in a fairly recent case the Oregon Supreme Court found that EFSC's suspension of a proceeding, adoption of a new standard, and application of that standard to the subject of the suspended proceeding was not an abuse of discretion. The case dealt with the Hermiston Power Project.

The Oregon rules [Division 22] are not limited to numerical standards. Federal air and water standards (for NPDES permits) control, and the one-stop process is for state and local, not federal, permits. However, the state may have some review of water matters as they relate to fish habitat. An applicant must demonstrate his ability to get federal permits *to* EFSC, which is how federal and state requirements intersect.

Procedurally, EFSC issues a draft order. This is followed by a public hearing and comment period. The end of the comment period marks the last time public comment is allowed and EFSC staff makes is clear that this is the extent of the public process.

EFSC applicants must make a prima facie case in their applications, including environmental mitigation. The success of that showing is set forth in a proposed order. The burden of proof is on the applicant. There are no FERC-like ex parte rules in the EFSC process; parties and the public can telephone EFSC staff and the Oregon Attorney General's office to ask questions, application status, and so on. Fish, wildlife, and socio-economic mitigation showings are usually lengthy. The public can comment on whether applications are complete throughout the comment process but after a proposed order is issued, the comment period is complete. A public complaint cannot be based on standards that do not exist like EMF or property value devaluation. A commenter would have to couch such a complaint within an applicable standard, such as public safety, which is seldom used.

At this time, there are generally four months from the date an application is complete to the issuance of a permit. The Oregon statute states that permits shall be issued within nine months for standard gas plants, one year for other non-nuclear plants and two years for nuclear plants. Oregon's EFSC staff states that there are usually 18 months between an applicant's initial notice of intent and the issuance of a permit.

There is significant interplay with state land use determinations. All applicants must demonstrate compliance with statewide land use goals. Oregon has no SEPA. There are nineteen statewide planning goals, and local governments are responsible for implementing goals with standards.

EFSC can override local planning goals by issuing a finding that a proposed project meets statewide goals, and EFSC can allow exceptions from planning goals for good cause.

Part of EFSC's charge is to assure sufficient power supply and reliability.

Ms. Kirkpatrick described the adjudicatory process. The siting council appoints a hearing officer. If there are no intervenors, the process is pro forma. However, it can be very elaborate if there are intervenors. For example, with the Hermiston project there were two hearings: one addressing global warming and a second for local Hermiston issues. If an applicant goes through the "full EFSC process", there must be a hearing.

EFSC is not a federally delegated agency so it does not issue water and air quality permits. Oregon's Department of Environmental Quality has this responsibility. However, federal matters intersect with EFSC review in some areas, such as water quality, fish habitat, air emissions, and scenic standards (because pollution can interfere with views).

Oregon noise standards and carbon dioxide standards are objective. EFSC has no discretion to raise the standards. Carbon dioxide standards are being lowered based on improving plant technology.

Ken Canon explained his perspective on the three key differences between the Oregon and Washington processes. First, Oregon's seven-person lay body is focused. Second, Oregon's standards are good. Experience, accompanying good standards, provides guidance. Third, Oregon's land use process and EFSC procedures matured at the same time.

Mr. Canon stated that the Oregon process has predictability and certainty. Oregon realized some years ago that a process designed for coal and nuclear plants did not fit smaller gas plants with smaller footprints. In Washington an applicant always encounters the "n plus" factor; there is always something else to do.

Ms. Kirkpatrick said there is not a lot of case law; staff's thoughts are embodied in the report accompanying a proposed decision. State law requires state agencies to review their rules every three years. Yet EFSC rulemaking is happening all the time based on what the Council learns.

RCW 80.010 contains a need standard. Washington's EFSEC determines it. Oregon's statute does not contain a need standard.

Oregon standards are just that, absolutes, not a floor or ceiling. If an applicant meets a standard, EFSC issues the site certificate. A Governor's approval step does not exist. Appeals go directly to the state supreme court. Ms. Kirkpatrick advised that the group discuss whether adopted standards should be a floor or a ceiling. In the Oregon process, there is significant debate over whether standards are met, but there is no means to argue that special circumstances merit different standards. Once applications go beyond the notice of intent stage, proposed plants tend to go forward. Oregon has high fees for applications.

When asked her opinion of how Oregon's standards could be improved, Ms. Kirkpatrick responded that the current jurisdictional threshold for EFSC review is too low. She believed there should be an expedited process for 25-75 MW plants. The EFSC process is very lawyer intensive, which makes it expensive. There is a fairness comparability argument that other large industrial plants, such as pulp and paper mills, have no special state review process. Environmental groups seem to like the Oregon process because they have only a single process in which to contest siting and it contains plenty of room to argue whether standards have been met.

Developers from Oklahoma and Idaho cannot believe that Oregon's standards are so high. However, regional developers have grown accustomed to the time and process needed to obtain a permit. In Oregon there is no Counsel for the Environment, but there is counsel for EFSC. Oregon state agencies tend to not intervene in EFSC adjudications because they have so much input into the permitting process.

The group moved on to consider Mr. Carpenter's proposal for creating two processes for permit issuance—a standard procedure and one providing the incentive of faster issuance for developers who build cleaner plants. There was general interest in the idea, but there were many concerns about its viability without legislation and additional funding for more staff. The group also discussed providing tax incentives for cleaner plants.

Mr. Luce explained that after this stakeholder process, EFSEC will engage in a rulemaking procedure. The purpose of the stakeholder process now is to identify whether consensus can be reached on various issues to narrow or simplify the rulemaking process.

Many stakeholders are interested in having standards for greenhouse gas mitigation. Developers will want to discuss air, water, and soil quality as well as wetlands mitigation standards. One possibility is to preserve the existing procedure ("Door One") and create a second, more standards-intensive procedure ("Door Two"). Applicants could choose either door, or possibly, "Door One" would apply to certain kinds of procedures and "Door Two" to others.

The group then discussed work group organization. It rejected topical work groups, because many want to be involved in all topic discussions, and substantive topic organization does not fit exactly with standards development because of significant overlap between topics. The group discussed matters for which standards already exist versus those that do not have standards. There was consensus that while the group would not recommend re-inventing standards that are well developed, it would like to review the interplay between those standards and their applicability to a new EFSEC procedure.

There was general consensus that the first step should be to research what other laws and regulations apply to particular topics and to review and discuss those materials. Mr. Peeples suggested that the group could lift nearly the universe of such statutes and regulations from the Wallula project application. Since that project application is pending, there was concern about working with it directly, however.

The group agreed to organize meetings by topic and have volunteers present different issues and distribute materials. The group agreed to e-mail materials to each other ahead of the meetings. Ms. McGaffey agreed to take on the first topic and lead the discussion. The presentations will not be arguments for particular positions or advocacy pieces, but rather presentations of existing standards. The appropriate state staff members associated with each topic will be invited and since they are critical to the discussion, meetings will be organized with their availability as a high priority. The group agreed to keep meetings to one-half days and to try to cover more than one topic per meeting.

Mr. Parker suggested that there are three categories into which proposed standards could be grouped: matters for which there are no standards, matters for which there are many standards, and matters for which there are insufficient standards. He said that the group should not re-invent standards for the second category of matters, and to focus on the matters for which there are no standards.

There were the following volunteers for the following topics: Karen McGaffey (water), Brian Carpenter (socio-economics), Danielle Dixon and Donna Ewing (carbon dioxide), Liz Thomas (energy policy and need for projects), Mike Lufkin (air), Dave Bricklin (noise), Bill Frymire (fish and wildlife), and Chuck Blumenfeld (wetlands). Mr. Lufkin and Mr. Fiksdal will aid Mr. Frymire on fish and wildlife.

Mr. Luce explained that while EFSEC does not have a specific timetable for completing this stakeholder process, his expectation is that it will be completed by April, 2002.

The group agreed to have its next meeting in Olympia. Mr. Fiksdal will find a meeting room and arrange for lunch, although attendees will pay for it. The next meeting will be Thursday, January 31, 2002, from 11 a.m. to 4 p.m.

January 11, 2002
EFSEC Standards Development Group
Meeting
Attendance

Stuart Trefry	strefry@wpuda.org
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Jim Luce	jiml@ep.cted.wa.gov

Greenhouse Gas Emissions-other states

State	Date--when known	Actions
Wisconsin	1992	Center for clean air policy (CCAP) lead dialog on ozone pollution and global climate change.
	1989	Public Service Commission required the Wisconsin Utilities to a: assess the cost of using existing technologies to reduce CO2 en issions by 20% below 1985 levels.
www.legis.state.wi.us/1999/data/acts/99Act195.pdf	May 2000	Required Dept. of Natural Resources to establish a system to register reductions in ghg emissions. May also encompass other pollutants. Completed an action plan to reduce emissions of ghg.
		Several programs that encourage energy efficiency and use of r renewable energy that indirectly lower ghg emissions.
New Jersey	1989	NJ Executive Order seeks to reduce emissions through decreased energy consumption, energy conservation, public education and tree planting.
www.state.nj.us/dep/dsr/gcc/gcc.htm www.state.nj.us/dep/agm/ometp2ad.htm	March 1998	Dept. of Environmental Protection (NJ DEP) set voluntary goal to reduce ghg emissions by 3.5% below 1990 prior to 2005. Seven companies have signed and several more are considering the voluntary Covenant of Sustainability / NJ Greenhouse Gas Initiative, pledging to assist in achieving ghg reduction goal.
	1999	Signed agreement with the Netherlands to explore opportunities for emissions trading projects.
	June 2000	Ghg registry operational.
Massachusetts www.state.ma.us/dep/bwp/daqc/files/729reg.doc www.state.ma.us/dep/bwp/daqc/files/729tsd.doc		Open Market Emissions Trading (OMET) Rule established by the NJ DEP Energy Facilities Siting Board requires new generation projects offset 1% of annual CO2 emissions over 20 years, currently at a cost of $1.50 per ton. Before the first year of operation, the facility operators develop, in consultation with Siting Board staff, an approved project for expending the funds. This applies to all new plants with capacity of more than 100 MW.

Greenhouse Gas Emissions-other states

Massachusetts (continued)		Issued a proposed rule to establish an output-based CO2 emission standard on the dirtiest power plants in MA. The standard can be met by obtaining offsite reductions or sequestration of CO2. The rule also establishes emission standard for 3 other pollutants-NOx, SO2 and Mercury.
www.pewclimate.org/policyguide/state_activities.pdf		Recently capped CO2 emissions on 6 power plants that will require a 10% reduction over next several years. The average 2,000 lbs CO2/MWh will have to be reduced to 1800 lbs CO2/MWh by 2006 or 2008. Plants that fail to make adequate on-site reductions may meet the new standard by purchasing emissions credits.
		Examples of other MA. projects include promotion of renewable energy technology, energy-efficiency initiatives and transportation measures.
Oregon	1997	State law established a CO2 standard for emissions from new energy facilities. Applicants can meet standard by installing equipment that reduces direct emissions or through offset projects which avoid, sequester or displace emissions in one of two ways: through direct implementation or via third party or by paying an established amount per ton of CO2, currently $0.57/ton into a Climate Trust which purchases offsets. $0.85
www.energy.state.or.us/climate/climhme.htm www.climatetrust.org/		
		OR. businesses can receive tax credits for investment in systems that produce renewable energy or provide energy savings. OR. also has a residential tax credit for households that make energy efficiency improvements, including credit for energy-efficient appliances, solar water heating and alternative fuel vehicles.
www.energy.state.or.us/txcrdts.htm		
California	Jan. 1, 2001	Climate Action Registry went into effect. It provides technical assistance to help businesses become more energy efficient and also helps to quantify baseline emissions and emissions reductions by establishing consistent reporting procedures and independent verification.
www.pewclimate.org/policyguide/state_activities.pdf		
	Sept. 2000	A law establishing a voluntary ghg emissions registry. Also requires Energy Commission to update CA.'s inventory of ghg emissions.
www.leginfo.ca.gov/pub/bill/sen/sb_1751-1800/sb_1771_bill_20000930_chaptered.pdf		

Greenhouse Gas Emissions-other states

California (continued)	2000	Over $800 million to conservation initiatives and incentives with overall goals of reducing energy consumption by 10% and saving at least 5,000 megawatts during peak summer demand.
		$105 million for clean distributed generation projects. $95 million for commercial demand-response systems and lighting reduction measures. $90 million for electric load reduction and energy efficiency programs in agriculture and $75 million to augment existing rebates for consumers who replace their inefficient appliances.
www.pewclimate.org/policyguide/state_activities.pdf		Funds low-interest loans for energy efficient projects in schools and local jurisdictions, increased energy efficiency in state buildings, time-of-use meters, innovative peak load reduction programs and a media and classroom education campaign.
www.arb.ca.gov/msprog/zevprog/zevprog.htm#facts		By 2003, requires that 10% of new cars sold in CA. be zero-emission vehicles (ZEVs) as certified by CA; up to 6% can be met through partial credits for certain super low-emission vehicles (e.g. hybrids), the remaining 4% must be pure ZEVs (e.g. electric vehicles). Has similar regulation for transit buses, requiring certain transit agencies to demonstrate zero-emission buses (ZEB) in 2003 and to begin purchasing 15% ZEB for their fleets in 2008.
New Hampshire www.state.nh.us/gencourt/bills/99bills/sb0159.html	July 1999	Law requiring Dept. of Environmental Services to establish a voluntary ghg emissions reduction registry.
Center for Clean Air Policy: www.ccap.org US EPA, State and Local Climate Change Program		As part of its current state government energy contract for government energy purchases, required that at least 15% of the energy be generated by certified renewable sources.
Brockett, K. NH Dept. of Environmental Services. Air Resources Division. Personal communication by source.		Considering legislation to establish a Clean Power Strategy that would require the state's three fossil-fuel power plants to reduce their CO2 emissions to 7% below 1990 levels. Being debated but had not been passed in Oct. 2001.
Same as above		The NH Clean Power Strategy recommends annual emissions caps by 2006 to achieve proposed reductions. Plants may be required to meet reduced emissions targets by use of new technology or by purchasing credits.

Greenhouse Gas Emissions-other states

Connecticut		Issued a proposed rule to require each retail suplier of energy to meet an emission performance standard for CO2. The emission rate is calculated as the "weighted average emission rate of each retail electricity product offered by a retail supplier." The proposed rule also would set a similar output-based standard for NOx, SO2 and Mercury.
Vermont	1989	Policy calls for greenhouse gases to be reduced at least 15% below current levels by 2000; promotes measures to reduce per-capita nonrenewable energy use, increase alternative energy use and develop renewable energy sources.
		Enacted a statute that bans the sale of cleaning sprays, containers of CFCs smaller than 15 lbs and halon fire extinguishers for home use. The law prohibits the sale of cars with CFC-using air conditioners, beginning with model year 1993 and requires service stations that repair auto air conditioner to recycle CFCs.
www.pewclimate.org/policyguide/state_activities.pdf		The Methane Pilot Project promotes the use of methane recovery technology on dairy farms. While developed to help farmers deal with livestock waste, it has other benefits. Harnessing methane for energy prevents its escape to the atmosphere, where it acts as a ghg and displaces the need for other energy sources which may be derived from fossil fuels.

Thirty-three states and one U.S. territory have completed inventories of their greenhouse gas emissions. Two more are doing same.

Eighteen states have completed climate change action plans to assist in identifying and implementing policies and programs to reduce ghg emissions from sources within their states. Eight are in the process of developing plans. <http://yosemite.epa.gov/globalwarming/ghg.nsf/actions/StateActionPlans?Open>

One hundred and fifteen cities have made commitments to cut ghg emissions and currently have climate protection campaigns in place. This is being accomplished through membership in ICLEI (International Council for Local Environmental Initiatives). In our state these include: Burien, King Co., Olympia, Seattle and Spokane. In Oregon, they include: Corvallis, Multnomah Co. and Portland.

Seattle is an example of some of the activities: Seattle City Council passed its Earth Day Resolution on April 10, 2000. Resolution 30144 requires the City's electric utility, Seattle City Light, to produce zero net ghg emissions in meeting the electricity needs of its customers. **

** See attached.

The Seattle City Council has passed 3 primary resolutions on mitigating GHG emissions. The web sites are:

Resolution 30144
http://clerk.ci.seattle.wa.us/~scripts/nph-brs.exe?s1=&s2=&s3=30144&s4=&Sect4=AND&l=20&Sect1=IMAGE&Sect2=THESON&Sect3=PLURON&Sect5=RESN1&Sect6=HITOFF&d=RESN&p=1&u=/~public/resn1.htm&r=1&f=G

Resolution 30256
http://clerk.ci.seattle.wa.us/~scripts/nph-brs.exe?s1=&s2=&s3=30256&s4=&Sect4=AND&l=20&Sect1=IMAGE&Sect2=THESON&Sect3=PLURON&Sect5=RESN1&Sect6=HITOFF&d=RESN&p=1&u=/~public/resn1.htm&r=1&f=G

Resolution 30359
http://clerk.ci.seattle.wa.us/~scripts/nph-brs.exe?s1=&s2=&s3=30359&s4=&Sect4=AND&l=20&Sect1=IMAGE&Sect2=THESON&Sect3=PLURON&Sect5=RESN1&Sect6=HITOFF&d=RESN&p=1&u=/~public/resn1.htm&r=1&f=G

On April 10, 2000, the Seattle City Council passed Resolution 30144 (Earth Day Resolution) requiring the City's electric utility, Seattle City Light (SCL), to produce zero net greenhouse gas (GHG) emissions in meeting the electricity needs of its customers.

On October 30, 2000, the Council passed Resolution 30256 requiring SCL to fully mitigate for the GHG emissions associated with its power purchase contract from the Klamath Falls, Oregon natural gas combustion turbine (Klamath)

On January 29, 2001, in partnership with The Climate Trust, SCL issued a Request for Proposals (RFP) for 247,000 metric tons of GHG offsets for the emissions from the first year of power purchases from Klamath. SCL received 77 proposals and is in the final review of the 8 remaining Phase II proposals.

On July 23, 2001, the Council passed Resolution 30359 establishing the plan for implementing the Earth Day Resolution, which directed SCL to double the amount of offset purchases related to the Klamath Falls contract.

In January 2002, SCL will issue another RFP for 610,000 metric tons to fully satisfy the Earth Day Resolution and thereby produce zero net GHG emissions. Since the passage of the Earth Day Resolution, SCL has immersed itself in the business of GHG mitigation. SCL has learned much from its colleagues at The

Climate Trust and has extensively reviewed both the standards by which organizations establish their GHG "footprint" and the standards used for purchasing GHG offsets. In addition, SCL convened an advisory committee comprised of nationally recognized climate scientists and analysts, the director of the regional air quality agency, local business and non-profit representatives. This advisory committee provided guidance for establishing the footprint and offset purchases.