



# Oregon

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**To:** Energy Facility Siting Council

**From:** Kellen Tardaewether, Senior Siting Analyst

**Date:** May 16, 2024

**Subject:** Agenda Item A (Public Hearing): Boardman to Hemingway Transmission Line: Public Hearing on the Draft Proposed Order on Request for Site Certificate Amendment 2 for the May 30-31 2024 EFSC Meeting

**Attachments:** Attachment 1: [Draft Proposed Order on Request for Site Certificate](#) [hyperlink]  
Attachment 2: Comments Received on Draft Proposed Order on Request for Site Certificate Amendment 2\*  
(\*any comments received after the date of this staff report will be provided in Supplemental Council Packet Materials prior to the May 30, 2024 meeting)

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## STAFF RECOMMENDATION AND PUBLIC HEARING

The Oregon Department of Energy's (Department) Draft Proposed Order (DPO) on Request for Amendment 2 (RFA2) of the Boardman to Hemingway Transmission Line Site Certificate recommends the Energy Facility Siting Council (EFSC or Council) approve the requested site certificate amendment and grant issuance of a second amended site certificate, subject to compliance with existing and recommended amended site certificate conditions.

A public comment period is now open on the DPO and RFA2. The comment deadline for written comments to be submitted to the Department is May 30, 2024 at the close of the public hearing, scheduled for May 30, 2024 at 5:30 pm at the Riverfront Center/ Riverfront Room 2 Marine Dr. Boardman. The Department recommends the Council allow the record to remain open for the certificate holder to respond to public comments received until June 3, 2024 at 5:00 P.M., or later, if requested by the certificate holder.

## APPROVED FACILITY OVERVIEW

Final Order on the application for site certificate (ASC) consists of: 1) an approved route approximately 270.8-mile-long single-circuit 500-kV electric transmission line; 2) removal of 12 miles of existing 69-kV transmission line; 3) rebuilding of 0.9 mile of a 230-kV transmission line' rebuilding of 1.1 miles of an existing 138-kV transmission line into a new ROW; approval four alternative routes which represent approximately 33.3 miles of transmission line; and related or supporting facilities including the Longhorn Substation in Boardman, Oregon, communication stations, access roads, pulling and tensioning sites and construction laydown areas. Final Order

on Request for Amendment 1 (RFA1) approved four alternative 500-kV transmission line routes equaling approximately 8.8 miles.

### **CHANGES PROPOSED IN AMENDMENT 2 REQUEST**

RFA2 seeks Council approval to:

1. Redefine the site boundary and micrositing areas previously approved in the site certificate and first amended site certificate (“previously approved site boundary”) to expand the site boundary for most of the facility;<sup>1</sup>
2. Add micrositing areas to (See Table 1 below):
  - Relocate the transmission line in 12 locations based on certificate holder coordination and agreement with the affected landowners. This includes approximately 40 miles of 500-kV transmission line alternatives with two communication alternatives and 98.5 miles of associated access road modifications, and 0.6 mile of 230-kV transmission line alternatives;
  - Refine 58 miles of roads outside the proposed RFA2 transmission line alternatives resulting from additional design and engineering review;
  - Provide alternative temporary work areas;
3. Add a Midline Capacitor Substation, located on approximately 10 acres within the previously approved site boundary, and adjacent to an existing substation in Union County;
4. Widen the width of roads used for construction based on the slope of the terrain;
5. The amendment also requests Energy Facility Siting Council (EFSC or Council) approval to amend language of site certificate condition(s): GEN-GS-06, GEN-NC-01, PRE-RT-01, CON-TE-02, PRE-FW-03, PRE-FW-04, OPR-FW-03, OPR-FW-04 and OPR-RT-01.

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<sup>1</sup> In some locations, certificate holder is not requesting an expanded site boundary and will maintain the previously approved site boundary. See DPO, Section II.B.1 and in RFA2 Section 8.0.

**Table 1: RFA2 Proposed Transmission Line Route, Access Road, and Work Area Additions**

<b>Proposed Micrositing Area Additions<sup>1</sup></b>	<b>Length of Addition – Transmission Line (miles)</b>	<b>Length of Addition – Access Road (miles)</b>	<b>Work Areas (acres)</b>	<b>Micrositing Area (acres)</b>	<b>Description of Micrositing Area Addition</b>
<b>Morrow County</b>					
Boardman Junction alternative <sup>2</sup>	0.6	--	3.9	5.1	Slight design modification to west to span I-84
Bombing Range SE alternative <sup>3</sup>	1.0	0.4	0.8	5.7	Slight design modification to east to avoid impacts to pivot irrigation
West of Bombing Range Road Alternative 1 (ASC Approved Alternative)	--	--	1.8	--	Pulling-tensioning site adjustments
Ayers Canyon alternative <sup>4</sup>	8.7	24.2	63.6	893.9	Alignment shifted to southeast per landowner request
Other Access Road and Work Area Changes for ASC Approved Route	--	1.7	34.6	19.8	Road and pulling-tensioning site adjustments
<b>Morrow County – Total</b>	<b>10.3</b>	<b>25.4</b>	<b>75.4</b>	<b>924.5</b>	
<b>Umatilla County</b>					
Rugg Canyon alternative <sup>5</sup>	2.5	2.6	21.5	159.0	Alignment shifted to southern parcel boundary per landowner request
Sevenmile Creek alternative <sup>6</sup>	9.9	4.3	74.9	695.1	Alignment shifted northwest to adjacent ridge per landowner request
Other Access Road and Work Area Changes	--	8.6	67.6	241.4	Road, pulling-tensioning site, and MUA adjustments
<b>Umatilla County – Total</b>	<b>12.4</b>	<b>15.5</b>	<b>164.0</b>	<b>1,095.5</b>	
<b>Union County</b>					
Rock Creek 1 alternative <sup>7</sup>	1.4	2.1	10.8	49.3	Revised transition to Morgan Lake alternative to avoid isolated BLM parcel

**Table 1: RFA2 Proposed Transmission Line Route, Access Road, and Work Area Additions**

<b>Proposed Micrositing Area Additions<sup>1</sup></b>	<b>Length of Addition – Transmission Line (miles)</b>	<b>Length of Addition – Access Road (miles)</b>	<b>Work Areas (acres)</b>	<b>Micrositing Area (acres)</b>	<b>Description of Micrositing Area Addition</b>
Rock Creek 2 alternative <sup>8</sup>	1.5	0.7	5.4	33.4	Alternate transition to Morgan Lake alternative to avoid landowner
Morgan Lake Alternative (ASC Approved Alternative)	--	--	4.7	--	Pulling-tensioning site adjustments
Baldy alternative <sup>9</sup>	7.5	15.4	187.8	597.3	Alignment shifted to southwest per landowner requests
Wallowa Whitman NF H-Frames (ASC Approved Alternative)	--	--	8.8	--	Pulling-tensioning site adjustments
Other Access Road and Work Area Changes for ASC Approved Route	--	1.7	228.7	237.9	Road, pulling-tensioning site, and MUA adjustments
<b>Union County – Total</b>	<b>10.4</b>	<b>19.5</b>	<b>179.4</b>	<b>789.5</b>	
<b>Baker County</b>					
Hwy 203 Crossing alternative <sup>10</sup>	1.9	1.2	13.5	70.6	Alignment shifted east to avoid impacts to proposed pivot irrigation
ASC Approved Route (230-kV Rebuild) Revised Alternative <sup>11</sup>	0.6	0.1	0.6	10.2	Revised tie into existing 230-kV line
Other Access Road and Work Area Changes for ASC Approved Route	--	15.3	84.8	279.1	Road, pulling-tensioning site, and MUA adjustments
<b>Baker County – Total</b>	<b>2.5</b>	<b>16.64</b>	<b>98.9</b>	<b>359.9</b>	
<b>Malheur County</b>					
Willow Creek alternative <sup>12</sup>	1.4	1.1	10.2	32.8	Alignment shifted south to avoid impacts to pivot irrigation

**Table 1: RFA2 Proposed Transmission Line Route, Access Road, and Work Area Additions**

<b>Proposed Micrositing Area Additions<sup>1</sup></b>	<b>Length of Addition – Transmission Line (miles)</b>	<b>Length of Addition – Access Road (miles)</b>	<b>Work Areas (acres)</b>	<b>Micrositing Area (acres)</b>	<b>Description of Micrositing Area Addition</b>
Cottonwood Creek alternative <sup>13</sup>	3.2	5.1	22.9	239.7	Alignment shifted to southeast to avoid potential noise impacts
Other Access Road and Work Area Changes for ASC Approved Route	--	18.6	197.4	476.2	Road, pulling-tensioning site, and MUA adjustments
<b>Malheur County – Total</b>	<b>4.6</b>	<b>24.8</b>	<b>230.5</b>	<b>748.7</b>	
<b>Grand Total</b>	<b>40.1</b>	<b>156.5</b>	<b>1,341.4</b>	<b>3,918.1-4,142.3*</b>	

Notes:

<sup>1</sup> Table presents routes in order of north to south by county (Morrow, Umatilla, Union, Baker, Malheur counties and then north to south within the county and corresponding mapset). If RFA2 alternative routes are selected instead of ASC approved route(s), the total length of the transmission line would be reduced by approximately 0.4 miles.

<sup>2</sup> The Boardman Junction Transmission Line alternative would result in no change in the miles of transmission line compared to the ASC approved route.

<sup>3</sup> The Bombing Range SE Transmission Line alternative would result in no change in the miles of transmission line compared to the ASC approved route.

<sup>4</sup> The Ayers Canyon Transmission Line alternative would result in a decrease of 0.3 miles of transmission line compared to the ASC approved route.

<sup>5</sup> The Rugg Canyon Transmission Line alternative would result in an increase of 0.5 miles of transmission line compared to the ASC approved route.

<sup>6</sup> The Sevenmile Creek Transmission Line alternative would result in a decrease of 0.6 miles of transmission line compared to the ASC approved route.

<sup>7</sup> The Rock Creek 1 Transmission Line alternative would result in a decrease of 0.2 miles of transmission line compared to the ASC approved Morgan Lake alternative.

<sup>8</sup> The Rock Creek 2 Transmission Line alternative would result in a decrease of 0.1 miles of transmission line compared to the ASC approved Morgan Lake alternative.

<sup>9</sup> The Baldy Transmission Line alternative would result in no change in the miles of transmission line compared to the ASC approved route.

<sup>10</sup> The Hwy 203 Crossing Transmission Line alternative would result in no change in the miles of transmission line compared to the ASC approved route.

<sup>11</sup> ASC approved route (230-kV Rebuild) revised alternative.

<sup>12</sup> The Willow Creek Transmission Line alternative would result in no change in the miles of transmission line compared to the ASC approved route.

<sup>13</sup> The Cottonwood Creek Transmission Line alternative would result in a decrease of 0.4 miles of transmission line compared to the ASC approved route.

\* RFA2 Table 4.1-1 identifies total micrositing area acreage as 3,918.1, however elsewhere in the RFA2, the maximum acreage of the micrositing area additions is 4,142.3.

Source: B2HAMD2Doc2 RFA2 2024-04-11, Table 4.1-1.

## *Recommended Amended Site Certificate Condition Summary*

RFA2 Attachment 6-1 includes the certificate holder's proposed changes to the description of the site boundary, approved transmission line corridors and access roads; and amendments to site certificate conditions, and RFA2 Section 6.0 provides a basis for condition revisions.

Certificate holder requests Council approval to amend language of site certificate condition(s): GEN-GS-06, GEN-NC-01, PRE-RT-01, CON-TE-02, PRE-FW-03, PRE-FW-04, OPR-FW-03, OPR-FW-04 and OPR-RT-01.

As staff to the Council, the Department recommends Council further amend conditions not limited to the certificate holder's RFA2 proposal. Attachment 1 to the DPO, the draft Second Amended Site Certificate (in red-line), is the Department's recommendation for revisions to the site certificate, which includes many but not all of the certificate holder's proposed revisions to the site certificate and conditions. The Department recommends revisions to the following site certificate conditions:

- GEN-GS-06 (Cert holder)
- CON-TE-02 (Cert holder/Department)
- PRE-FW-03 (Cert holder)
- PRE-FW-04 (Cert holder)
- OPR-FW-03 (Cert holder)
- OPR-FW-04 (Cert holder)
- GEN-FW-06 (Department)
- GEN-LU-10 (Department)
- GEN-NC-01 (Cert holder)
- PRE-RT-01 (Cert holder/Department)
- OPR-RT-01 (Cert holder/Department)
- GEN-HC-02 (Department)

### **PROCEDURAL HISTORY FOR RFA2**

June 30, 2023 - Certificate holder submitted pRFA2. The Department reviewed pRFA2 to determine whether or not the request contained sufficient information for the Council to make findings.

July 13, 2023 - Department issued Public Notice that pRFA2 had been received as required by OAR 345-027-0360(2).

August 29, 2023 - Department notified the certificate holder that pRFA2 was incomplete and requested additional information.

December 7, 2023 - Certificate holder submitted a letter of intent to add additional requests to pRFA2, including to change the application of the definitions of site boundary and micro-siting area.

December 15, 2023 - Certificate holder submitted revised pRFA2.

December 20, 2023 - Department provided its written approval of revised analysis areas for the facility.<sup>2</sup>

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<sup>2</sup> The Council's procedural requirements for site certificate amendments (OAR 345-027-0360(3)) allow the Department to authorize modifications to analysis areas established in a Project Order, if warranted based on the scope of changes in the Request for Amendment. The July 26, 2018 Second Amended Project Order established the

April 9, 2024 - Following receipt and review of the additional information requested, the Department notified the certificate holder that pRFA2 was complete. Certificate holder filed the complete RFA2 on April 11, 2024.

April 16, 2024 - Department posted the complete RFA2 to its project webpage and issued a Public Notice of a comment period on the complete RFA and DPO.

### **SCOPE OF COUNCIL REVIEW (OAR 345-027-0375)**

For amendments to the site certificate that include site boundary expansion and other changes, such as new or amended conditions and adding facility components not previously approved (midline capacitor station), the Scope of Council Review under OAR 345-027-0375 requires that Council determine whether the preponderance of evidence on the record supports the following conclusions:

1. That the portion of the facility within the area added to the site boundary by the amendment complies with all laws and Council standards applicable to an original site certificate application;
2. The amount of the bond or letter of credit required under OAR 345-022-0050 is adequate; and,
3. The facility, with proposed RFA2 changes, complies with the applicable laws or Council standards that protect a resource or interest that could be affected by the proposed RFA2 changes.

### **STAFF EVALUATION OF AMENDMENT REQUEST AND SUMMARY OF DRAFT PROPOSED ORDER**

#### III.A. General Standard of Review: OAR 345-022-0000 p. 44-54

To issue an amended site certificate, the Council must determine that the evidence on the record, including information submitted to comply with Council-imposed site certificate conditions, demonstrates it is more probable than not that the certificate holder will comply with applicable standards for the changes proposed in RFA2. The facts and evidence in the record for RFA2, include the *Final Order on ASC* and *Final Order on RFA1*.

Section III.A.1.a discussed the RFA2 Proposed Site Boundary Expansion and Micrositing Area Definition:

- The expanded site boundary would expand the area evaluated for potential resources which could assist certificate holder in accommodating minor adjustments associated with requests from landowners or stakeholders, the need to avoid impacts to sensitive resources, or needed to address constructability issues in the field. General Standard of Review Condition 11, Site Certificate page 23: Adds the proposed alternative routes to condition.
- Under its own definition of site boundary, Council is obligated to review a facility within a proposed site boundary, as proposed by the applicant or certificate holder, and does

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analysis areas for the facility. As authorized under OAR 345-027-0360(3), following pre-amendment conferences on March 23 and June 12, 2023, the Department approved a modified analysis area for the facility with proposed changes based on the scope and extent of potential impacts associated with the proposed RFA2 changes.

not otherwise have criteria or requirements that would grant Council the legal ability to deny a proposed site boundary unless specifically related to compliance with a Council standard or other applicable law or regulation.

- The Council permits final siting flexibility within a micrositing corridor when a certificate holder demonstrates that requirements of all applicable standards have been satisfied by adequately evaluating the entire corridor and location of facility components anywhere within the micrositing area or corridor. This evaluation may be completed with a desktop evaluation and/or field surveys, whichever is determined applicable to the specific standard and resource.
- Certificate holder's request to separate the application of the definitions of site boundary and micrositing area (OAR 345-001-0010(31) and OAR 345-001-0010(21), respectively) does not have an associated Council standard or statute to be evaluated against. Rather, the certificate holder must demonstrate that it has submitted the necessary information to the record to support the redefinition for the evaluation under applicable Council standards, which are described in RFA2 and evaluated in the applicable sections of the DPO. Based on the Department's evaluation, we recommend Council approve this change for the reasons included in the applicable sections of DPO.

### III.B. Organizational Expertise: OAR 345-022-0010 p. 54-57

RFA2 includes a request to add a Midline Capacitor Station. The Midline Capacitor Station has series capacitor banks, which load the transmission line more efficiently and optimally by compensating for the impedance resulting from the line length. Certificate holder operates 11 capacitor banks within its service territory.

- Recommended Amended Organizational Expertise Condition 1: Updated to include the Midline Capacitor Station with maintenance and inspections reports.

### III.C. Structural Standard: OAR 345-022-0020 p. 57-74

The analysis area for the Structural Standard includes the area within the proposed RFA2 expanded 0.5 mile site boundary (0.25 miles or 1,320 feet on either side of the center line for transmission lines and roads) which includes the proposed micrositing area additions. The proposed micrositing area additions are approximately 4,142 acres extending across portions of Morrow, Umatilla, Union, Baker and Malheur counties. The proposed RFA2 micrositing area additions and areas of the expanded site boundary would be located in the same vicinity as the previously approved site boundary/micrositing area; therefore, the seismic and non-seismic geologic and soils hazards evaluated in the *Final Order on ASC* and *Final Order on RFA1* will not significantly differ for the proposed RFA2 micrositing area additions and expanded site boundary associated with ASC, RFA1, and RFA2. In the DPO, the Department recommends Council rely on its findings and conditions in the *Final Order on ASC*, which are incorporated and applied to the RFA2 analysis area as well as an analysis of the site-specific information in the areas proposed in RFA2.



Previously imposed numerous conditions designed to ensure compliance with the Structural Standard, which apply to RFA2 proposed changes:

- Structural Standard Condition 1 (Condition PRE-SS-01) requires that, prior to construction, the certificate holder conduct a site-specific, geotechnical investigation within all areas where facility structures would be located to further evaluate risks and hazards from geologic conditions, faults, slope instability/landslide hazards, liquefaction, soil expansion, groundwater, corrosive soils and flood risk.
- Structural Standard Condition 3 (Condition GEN-SS-02) requires that the facility be designed to avoid seismic hazards.
- Structural Standard Condition 4 (Condition GEN-SS-03) requires that, if site investigations or trenching identify foundation rocks that differ significantly from those described in the ASC, the certificate holder notify and consult with the Department and DOGAMI on appropriate corrective or mitigation actions.
- Structural Standard Condition 5 (Condition GEN-SS-04) requires that, if shear zones, artesian aquifers, deformations or clastic dikes are found at or in the vicinity of the site, the certificate holder notify and consult with the Department and DOGAMI on appropriate corrective or mitigation actions.
- Structural Standard Condition 2 (Condition GEN-SS-01) requires that the certificate holder design facility structures in accordance with the versions of the Oregon Structural Specialty Code, International Building Code, and local building codes in effect at the time of construction.

#### III.D. Soil Protection: OAR 345-022-0020 p. 74-82

The analysis area for the Soil Protection standard includes the area within the proposed amended site boundary (28,150 acres). Proposed RFA2 micrositing area additions include approximately 4,142 acres.

RFA2 proposes to increase temporary disturbance from new bladed and substantially modified roads, as presented in Table 16 in the DPO (page 77). Certificate holder indicates that wider widths would be necessary in areas where there is a steeper slope, so that the road width can accommodate construction equipment movement. Certificate holder indicates that in areas where the slope of the road is approximately 30 percent, the road may need to be widened to up to 120 feet, and then restored back to its operational width of 14 feet. Where road slopes may be up to 30 percent and need to be widened further would only occur in approximately 3 percent of all facility access roads (new and existing) fall into the category of greater than 30 percent cross slope.

Soil Protection Condition 1 (Condition GEN-SP-01), would apply to the proposed RFA2 changes, including the wider temporary roads, and require that the certificate holder:

- Submit a final Erosion Sediment Control Plan (ESCP), as included in the DEQ-issued 1200-C permit, to the Department, prior to construction;
- Based on the final ESCP, conduct all work in compliance with the 1200-C permit requirements and ESCP;
- Under the 1200-C permit, an ESCP can be revised throughout construction to address numerous changes. The Condition provides the Department the authority to require additional erosion controls or soil protection measures if the ESCP BMPs are not sufficient.

Other previously imposed conditions include:

- Soil Protection Condition 4 (Condition GEN-SP-04) requires that, prior to any planned blasting activity, the certificate holder finalize a Blasting Plan; and, during construction, as applicable to blasting activities, implement and adhere to the requirements of the final Blasting Plan.

### III.E. Land Use: OAR 345-022-0030 p. 82-134

The analysis area for the Land Use standard includes the area within ¼-mile from the proposed amended site boundary, as presented in RFA2 Figures 7-3 (Morrow County); 7-4 (Umatilla); 7-5, 7-6, 7-7 (Union); 7-5 (Map 46, City of North Powder), 7-8 (Baker), and 7-9 (Malheur). Within the analysis area, the proposed RFA2 micro-siting area additions include approximately 4,142 acres within Morrow, Umatilla, Union, Baker and Malheur counties and City of North Powder, in the following zones/overlay zones:

- Morrow County: Exclusive Farm Use (EFU), General Industrial (M-G), Port Industrial (PI), Flood Hazard Overlay Zone (Special Flood Hazard Zone A)
- Umatilla County: EFU; Grazing Farm (GF)
- Union County: EFU; Agricultural Grazing (A-2); Timber-Grazing (A-4)
- Baker County: EFU, Industrial (I)
- Malheur County: EFU and Exclusive Range Use (ERU) Zone
- City of North Powder: Industrial

#### *County Applicable Substantive Criteria:*

Under OAR 345-027-0375(3)(a), the changes proposed in RFA2 must comply with the applicable substantive criteria from the comprehensive plans and land use regulations of these counties and City in effect on the date preliminary Request for Amendment 2 (pRFA2) was submitted, June 30, 2023.

Section III.E., Land Use, in the DPO presents an evaluation of each type of facility components' compliance with each County's Applicable Substantive Criteria, and recommends that existing site certificate conditions continue to apply to the proposed RFA2 changes. Primarily, that because the proposed "use" associated with the RFA2 micro-siting area additions is the same as the "use" previously evaluated by Council, the Department recommends Council find that the

proposed RFA2 micro siting area additions is a permissible use under County Applicable Substantive Criteria/Zoning ordinances.

Recommended Amended Land Use Condition 13: Amended to clarify that MUA located in new zone crossed would obtain a Conditional Use Permit which includes a site plan.

*Goal 4 Forest Land Exception:*

The new location and impacts associated with approximately 25.8 acres does not significantly change the nature or extent of the use, or its impacts on forest lands. Therefore, the Department recommends that the Council continue to rely on its previous findings and find that an exception to Statewide Planning Goal 4 is justified for the proposed RFA2 site boundary located on Union County Forest lands.

III.F. Protected Areas: OAR 345-022-0040 p. 134-168

The *Final Order on ASC* identified 80 protected areas and RFA1 identified 8 additional protected areas that are within the analysis area; there are not any new protected areas within the analysis area for RFA2, therefore there is a total of 88 protected areas within the analysis areas for the ASC, RFA1 and RFA2. These are listed in Table 23 of the DPO, *Protected Areas within Analysis Area for ASC Approved Routes, Approved RFA1 Micro siting Area Additions, Proposed RFA2 Micro siting Area Additions*.

Table 25 of the DPO (page 153), provides the Visual Impact Summary for RFA2 Proposed Micro siting Areas within Analysis Area. Table 25 focuses on proposed RFA2 micro siting areas within 6 miles of protected areas. Visual impact assessment for RFA2 focus on permanent facility components proposed in RFA2 (transmission line towers) rather than temporary facilities (pulling and tensioning sites), because temporary facilities do not have a permanent visual impact they would be less than significant.

Department recommends that the design, construction and operation the facility in areas proposed in RFA2 are not likely to result in significant adverse impacts from noise, increased traffic, water use, wastewater disposal, visual impacts of facility structures or plumes, and visual impacts from air emissions to any protected area under OAR 345-022-0040 as defined in OAR 345-001-0010(26).

III.G. Retirement and Financial Assurance: OAR 345-022-0050 p. 168-178

OAR 345-027-0375(2)(e) designates the Scope of Council's Review for all amendments to the site certificate. It states that for all requests for amendment, the amount of the bond or letter of credit required under OAR 345-022-0050 is adequate. Therefore, the scope of the evaluation under OAR 345-022-0050 for RFA2 is an evaluation and recommendations limited to the proposed new facility components (midline capacitor station) and updated unit costs for facility components, tasks, and actions. Certificate holder also provides updated evidence of its ability to secure a bond or letter of credit that reflects the updated cost to restore the site to a useful, nonhazardous condition.

Council previously reviewed the cost estimate and confirmed that the site restoration tasks, unit costs, labor rates, and cost estimate assumptions constitute a reasonable site restoration cost for the facility. In the 2022 *Final Order on ASC*, Council previously found that \$140,779,000 (rounded to nearest \$1,000 and in Q3 2016 dollars) was adequate to restore the site to a useful non-hazardous condition. Because RFA2 proposes a new type of facility component, the Midline Capacitor Station, the certificate holder provides an updated cost estimate in RFA2, Attachment 7-20, which is attached to the DPO as Attachment W-1. As part of the review of RFA2, the Department provided the certificate holder with an updated table format for the cost estimate and certificate holder also updated the unit costs for other facility components so that all unit costs would be in the same Quarter and year (Q1 2024), which are directly referenced (related to adjusting for inflation) in Retirement and Financial Assurance Condition 4 and 5. As presented below in Table 26 of the DPO (page 172), the updated cost estimate to retire the facility, with proposed RFA2 changes, is \$170,276,273 (in Q1 2024 dollars).

- Recommended Amended Retirement and Financial Assurance Conditions 4 and 5: Applicable portions of conditions are amended to reflect the updated unit costs and total.

### III.H. Fish and Wildlife Habitat: OAR 345-022-0060 p. 178-195

The analysis area for the Fish and Wildlife Habitat standard includes the area within the proposed amended site boundary (28,150 acres). Proposed RFA2 microsite area additions include approximately 4,142 acres. Under this standard, RFA2 changes evaluated include temporary and permanent habitat impacts in new microsite areas, limited to lands under the same ownership as the approved site boundary; sage grouse habitat impacts; and proposed changes to sage-grouse conditions (Fish and Wildlife Condition 17, 19, 21 and 22 [PRE-FW-03, OPR-FW-03, PRE-FW-04, OPR-FW-04]).

Based on the mitigation ratios provided in the DPO (approved in *Final Order on ASC*), the RFA2 habitat mitigation obligation for approximately 880 impacted acres is approximately 1,016 acres. As allowed under Fish and Wildlife Condition 4 (GEN-FW-04), the certificate holder finalized its Habitat Mitigation Plan through selection of the option to use a mitigation bank. The mitigation bank is the Northern Great Basin Conservation Bank (NGBCB), sponsored by Three Creek LLC. The certificate holder secured mitigation credits for temporary and permanent habitat impacts for the facility, inclusive of proposed RFA2 impacts, through remittance of required funds to NGBCB with credits reviewed by ODFW. ODFW approved the mitigation credits on January 22, 2024. The mitigation credits secured to date cover 3,989 acres of Category 2 habitat; 508 acres of Category 3 habitat; 323 acres of Category 4 habitat and 21 acres of Category 5 habitat, more than double the amount needed to mitigate estimated impacts from the proposed RFA2 microsite addition areas.

Other conditions that continue to apply to the facility, with proposed RFA2 changes:

- Fish and Wildlife Condition 15 (PRE-FW-01) requires that, prior to construction of the facility, facility phase or segment, as applicable, surveys be conducted on any portion of the site boundary not previously surveyed for the following: Northern Goshawk, American Three-Toed Woodpecker, Great Gray Owl, TVES, wetlands and fish.
- Fish and Wildlife Condition 16 (PRE-FW-02) requires that, prior to construction of the facility, surveys be conducted on any portion of the site boundary not previously surveyed for the following: WAGS, raptor nests, and pygmy rabbits.
- Fish and Wildlife Condition 11 (CON-FW-01) limits ground-disturbing activities during the elk and mule deer winter range season.
- Fish and Wildlife Condition 12 (CON-FW-02) requires a minimization and avoidance plan in any locations identified during preconstruction surveys of pygmy rabbits or State-sensitive bat species.
- Fish and Wildlife Condition 13 (CON-FW-03) requires a minimization and avoidance plan for any locations identified during preconstruction surveys of ground-nesting bird species.
- Fish and Wildlife Condition 14 (CON-FW-04) requires a 300-foot to ½-mile avoidance buffer nearing the sensitive nesting season for occupied nests of raptors with suitable habitat within the analysis area.
- Threatened and Endangered Species Condition 1 (CON-TE-01) requires avoidance of ground-disturbance in Category 1 WAGs habitat (buffer of 785-from edge of colony), based on survey results no older than 3-years at the time of activity.

The Department recommends Council find that Policy 2 criteria (a)(B) and (b)(B) (*the proposed development is dependent on a unique or other physical feature(s) that cannot be found on other lands*) and Policy 2 criteria (d)(A) (*..how to best locate, construct, or operate the development action so as to avoid or minimize direct and indirect impacts on important sage-grouse habitat within the area of general habitat.*) are met for the proposed RFA2 micro-siting addition areas within Core Area and Low Density habitat for the reasons provided in the DPO.

The certificate holder secured mitigation credits for direct and indirect sage-grouse habitat impacts, as quantified by ODFW using the Habitat Quantification Tool. Credits have been secured for the facility, inclusive of proposed RFA2 impacts, through remittance of required funds to NGBCB with credits reviewed by ODFW. ODFW approved the mitigation credits on January 22, 2024. The mitigation credits secured to date cover 919 acres of sage-grouse habitat.

- Recommended Amended Fish and Wildlife Conditions 17 (PRE-FW-03), 21 (PRE-FW-04), 19 (OPR-FW-03), and 22 (OPR-FW-04): Department, in consultation with ODFW, concur and recommend Council amend the conditions as requested because the Habitat Quantification Tool (HQT) required for use in quantifying sage-grouse mitigation already accounts for direct and indirect impacts from new and substantially modified roads. For accounting purposes, the HQT is more conservative than a preconstruction survey, and the post-construction true-up of indirect impacts from new and substantially modified roads (21-100% modification) is still required to adjust the mitigation obligation of the certificate holder based on actual impacts.

### III.I. Threatened and Endangered Species: OAR 345-022-0070 p. 194-201

Under this standard, the Department consulted with ODFW and Oregon Department of Agriculture Native Plant Conservation Program (ODAg) throughout 2<sup>nd</sup>/3<sup>rd</sup> Quarter 2023 through 1<sup>st</sup> Quarter 2024 to evaluate temporary and permanent impacts to state-listed T&E species within the proposed microsite area additions and condition changes ((Fish and Wildlife Condition 7 [GEN-FW-06], Threatened and Endangered Species Condition 2 [CON-TE-02])).

WAGS surveys were conducted in April and May 2022 and 2023 in accordance with a protocol previously reviewed and approved during the ASC permitting phase. The survey area included all suitable habitat area within and extending 1,000-feet from the proposed RFA2 microsite area additions. Rare plant surveys were conducted on April 24, 2023 and concluded with later-blooming higher elevation species on July 31, 2023. The survey area includes 3,918 acres.

In RFA2 Attachment 6-1, the certificate holder requests to amend T&E Species Condition 2 (CON-TE-02) to allow use of matting *or* mitigation in the form of seed collection and long-term conservation storage, transplanting and seeding, and research/monitoring activities. A draft T&E Mitigation Plan was developed by the certificate holder and ODAg, and is attached to the DPO as Attachment 5.

- Recommended Amended Threatened and Endangered Species Condition 2 (CON-TE-02): The Department consulted with ODAg on the certificate holder’s proposed condition changes. Based on this consultation, the Department and ODAg recommend that the condition be amended to remove the previously allowed use of temporary placement of protective matting based on limited data supporting the adequacy of actual protection.
- Recommended Amended Fish and Wildlife Condition 7 (GEN-FW-06): the requirement to flag and avoid all “state protected plant species” may cause conflict with the above condition and is ambiguous in use of an undefined term (“state protected plant species”). To minimize condition conflict, the Department recommends Council amend Condition to allow for clear interpretation of requirements applicable to state-listed T&E plant species.

### III.J. Scenic Resources: OAR 345-022-0080 p. 201-206

In preparation of RFA2, certificate holder reviewed the 47 applicable federal and local land use management plans or development codes within the analysis area of the facility approved in the *Final Order on ASC* and *RFA1* to determine if there had been updates to these plans that may identify new scenic resources. Based on this review of applicable land use plans, there were not any updates to management plans since the review of RFA1, and plans did not identify any new significant or important scenic resources and values.

Table 30 of the DPO (page 203) identifies Scenic Resources within Analysis Area for ASC, RFA1, and RFA2 Transmission Line Routes. Previously imposed Scenic Resources Condition 1 (GEN-SR-01) would continue to apply to the RFA2 proposed alternative transmission line routes and

ensures that the certificate holder shall use dull-galvanized steel for lattice towers and non-specular conductors.

### III.K. Historic, Cultural, and Archaeological Resources: OAR 345-022-0090 p. 206-226

Section (1) of the Historic, Cultural and Archaeological Resources standard requires the Council to find that the facility, taking into account mitigation, is not likely to result in significant adverse impacts to identified historic, cultural, or archaeological resources. Mitigation means one or more of the following, in order of priority: avoidance; minimization; partial or complete restoration of affected resource; preservation and maintenance; partial or complete compensation for replacement or comparable substitute for the resource; or implementing other measures as approved by Council. In preparation of RFA2 and as part of the ongoing survey efforts as the certificate holder gains access to properties, the certificate holder evaluated and surveyed for cultural, historical, and archaeological resources with similar methods as was done for the ASC. Record searches were done to identify previously recorded archaeological and historic sites for all micro-siting area additions proposed in RFA2, and that might be encountered during the field surveys.

DPO Table 31 (page 211) includes RFA2 Inventory and Mitigation Summary for Potential Impacts to Historic, Cultural, Archeological Resources. The table lists resources and whether they are a new resource evaluated or previously evaluated, potential impacts to the resource, and the applicable portion of the FESC standard (sub a, b, or c). Table 31 identifies resources potentially protected under OAR 345-022-0090(1)(b) or OAR 345-022-0090(1)(c), the Department recommends that, taking into account the Section 106 surveys and recordation, impacts to these resources would be less than significant.

Historic Properties Management Plan (HPMP – Final Order Attachment S-9), imposed under Historic, Cultural, and Archaeological Resources Condition 2, serves as a framework how to address resource surveys, and how to evaluate impacts to resources, avoid, minimize, and mitigate impacts to resources protected under OAR 345-022-0090. During ongoing consultation via the Section 106 process, avoidance, mitigation, and monitoring for unavoidable impacts to various types of resources have been further developed and defined in Property-Specific Mitigation and Monitoring Plans (PSMMPs), which are required by the Section 106 HPMP. Though some PSMMPs may group similar resource types, the purpose of each PSMMP is to supplement the HPMP with site-specific information, including mitigation, treatment, and monitoring for unavoidable adverse effects to each historic property or potential historic property and resources. The mitigation and other measures proposed in the PSMMPs meets the generalized, resource-specific mitigation Council approved in the *Final Order on ASC* and RFA1, as designated in the HPMP, *Appendix A.1 Inventory Tables with Management under OAR 345-022-0090*. To reflect the work that has been ongoing via Section 106 consultation, including the PSMMPs, the Department has updated, in redline format, the HPMP Appendix A.1 Inventory Tables (included in the updated HPMP, Attachment S-9 to the DPO) to include that additional site-specific mitigation designated in resource specific PSMMPs may be relied upon to update mitigation and management designated in the HPMP Appendix A.1 Inventory Tables as part of pre-construction compliance, based on the outcomes of the Section 106 review. The

Department also, in redline format, added directions for the certificate to follow to update the HPMP and Appendix A1 tables as part of preconstruction compliance with Recommended Amended Historic, Cultural and Archeological Resources Condition 2 (GEN-HC-02).

- Recommended Amended Historic, Cultural and Archeological Resources Condition 2 (GEN-HC-02): The Department recommends changes reflect that a finalized Section 106 HPMP would be submitted to the Department, that the Appendix A.1 Tables would be updated based on the Section 106 outcomes, and that the site-specific and general mitigation measures designated in the PSMMP's may be relied up to meet the mitigation necessary under Council's standard.

### III.L. Recreation: OAR 345-022-0100 p. 226-232

The Recreation standard requires the Council to find that the design, construction and operation of a facility are not likely to result in significant adverse impacts to 'important' recreational opportunities. The analysis area for the Recreation standard includes the area within and extending 1.75-miles from the proposed amended site boundary. In the *Final Order on ASC and RFA1* Council evaluated whether the identified recreational opportunities are "important" using the factors listed in the sub-paragraphs of section (1) of the standard. The Council then evaluated whether the design, construction and operation of the facility and facility with proposed changes could adversely impact the identified important recreational opportunities. There are no new recreational opportunities within the analysis area for RFA2 or evidence that a previously evaluated recreational opportunity that was determined to be "not important," should now be considered "important" under the standard. Therefore, the proposed RFA2 micro-siting area transmission line route additions within the analysis area for RFA2 presented in DPO Table 32 (page 228) *Proximity of ASC, RFA1, and Proposed RFA2 Transmission Line Routes to Important Recreation Opportunities in Analysis Area*, rely on recreational opportunities that Council has already determined to be important. All of the proposed RFA2 transmission line routes are similar or further away than what Council previously evaluated and approved, therefore, for this reason and the reasons provided in the *Final Order on ASC and RFA1*, the Department recommends Council find that the operation of the facility, with proposed changes, would not have significant adverse impacts to important recreational opportunities.

### III.M. Public Services: OAR 345-022-0110 p. 232-239

Changes proposed in RFA2 include locational adjustments of previously approved infrastructure (transmission line, new and substantially modified roads) on lands under the same ownership as previously evaluated, and shifts and new locations of temporary work areas; and proposes construction and operation of a capacitor station. The impacts to providers of public and private services from the facility, with proposed RFA2 changes, would not differ from the impacts previously evaluated by Council in the *Final Order on ASC* and *Final Order on Request for Amendment 1 (RFA1)*.



The 40 miles of transmission line route alternatives and 156 miles of road additions and alternatives are “additive,” so that certificate holder has more options and flexibility to accommodate landowner preferences and final facility design needs. However, the final facility design will ultimately select one approved route, approved alternative route, or routes in RFA1, therefore, the actual facility components installed would not be additive. If RFA2 alternative routes are selected instead of ASC approved route(s), the total length of the transmission line would be reduced by approximately 0.4 miles. Therefore, it’s reasonable to assume that the previous assumptions about workers, water use, and potential impacts to public service providers would be similar to those previously evaluated.

### III.N. Wildfire Prevention and Risk Mitigation: OAR 345-022-0115 p. 239-245

In the *Final Order on RFA1* Council found that the facility is subject to a OPUC Rules requiring a Wildfire Protection Plan (WMP), and the certificate holder’s 2022 WMP was approved in compliance with OPUC rules, therefore subject to recommended site certificate conditions, the standard was met. Council previously imposed Wildfire Prevention and Risk Mitigation Conditions 1 and 2 (GEN-WMP-01; OPR-WMP-01) requiring that prior to and during operations, the certificate holder provide its OPUC-approved Wildfire Mitigation Plan, and that the annually updated plan be provided to the Department. RFA2 Attachment 7-18 includes the certificate holder’s 2023 WMP and the corresponding OPUC approval of the WMP. The methodologies, programs, and mitigation actions in the 2023 WMP will apply to the facility once it is constructed including the micrositing areas proposed in RFA2.

Under OAR 345-022-0115(2), the Department continues to recommend Council find that the Wildfire Prevention and Risk Mitigation standard is met for the facility, including changes proposed in RFA2, subject to existing site certificate conditions.

This DPO Section discussing the WMP applies to operation of the facility, however, construction-related fire is summarized in Section III.M.1.i, *Public Services – Fire Protection* of the DPO where under existing Public Services Condition 6, a Fire Prevention and Suppression Plan requires the certificate holder to finalize and implement fire prevention measures during construction.

### III.O. Waste Minimization: OAR 345-022-0120 p. 245-247

The proposed RFA2 micrositing area additions will not result in substantive changes to the type or amount of solid waste and wastewater generated during facility construction and operation. Therefore, the Department recommends Council rely on its findings and conditions in the *Final Order on ASC and RFA1*. Council previously imposed Waste Minimization Condition 1 (Condition GEN-WM-01) requiring that, prior to construction, the certificate holder develop a Construction Waste Management Plan that would implement waste reducing measures including training employees to segregate and recycle recyclable materials. This condition would continue to apply to the facility, with proposed RFA2 micrositing area additions.

### III.P. Need for a Facility: OAR 345-023-0005 p. 247-251

In the *Final Order on ASC*, the certificate holder and the Council agreed that the certificate holder demonstrated that the facility was needed under the least-cost plan rule (OAR 345-023-0020) and the system reliability rule for electric transmission lines (OAR 345-023-0030). Certificate holder maintains, and the Department recommends Council concur that the proposed RFA2 changes would not alter the findings Council relied upon in the *Final Order on ASC* for the Need Standard. The DPO provides a summary of findings in the *Final Order on ASC*.

### III.Q. Siting Standards for Transmission Lines: OAR 345-024-0090 p. 251-253

The proposed RFA2 micrositing area transmission line additions do not alter or change anything related to the previously approved facility components, other than potential final location. The changes proposed in RFA2 would therefore not impact the Council's findings of fact and conclusions of law as presented in the *Final Order on ASC*. The Department recommends Council continue to find that the facility, with proposed RFA2 micrositing area additions and changes, satisfies the requirements of this standard.

### III.R.1. Noise Control Regulations: OAR 340-035-0035 p. 253-269

Council has the authority to interpret and implement other state agency and Commission rules and statutes that are relevant to the siting of an energy facility,<sup>3</sup> including noise rules adopted by the Environmental Quality Commission and previously administered by the Department of Environmental Quality (DEQ).<sup>4, 5</sup>

Operational noise generated by a new industrial or commercial noise source to be located on a previously unused site must comply with two standards: the "maximum allowable noise standard" and the "ambient antidegradation standard." Under the ambient antidegradation standard, facility-generated noise must not increase the ambient hourly L10 or L50 noise levels at an appropriate measurement point by more than 10 dBA. For the proposed transmission line route additions that are the subject of RFA2, the certificate holder used these same methods, comparing baseline ambient sound levels to the modeled predicted future sound levels at potentially affected Noise Sensitive Receptors (NSRs). Within the proposed RFA2 micrositing area additions, there are 41 potential locations meeting the OAR 340-035-0015(38) definition of a NSR. Of the 41 NSRs, 27 NSRs are predicted to experience a potential increase of more than

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<sup>3</sup> See ORS 469.310 (stating that the legislative policy behind EFSC was to establish "a comprehensive system for the siting, monitoring and regulating of the location, construction and operation of all energy facilities in this state") and ORS 469.401(3) (giving EFSC the authority to bind other state agencies as to the approval of a facility).

<sup>4</sup> The Environmental Quality Commission and the DEQ suspended their own administration of the noise program because in 1991 the state legislature withdrew all funding for implementing and administering the program. A July 2003 DEQ Management Directive provides information on DEQ's former Noise Control Program and how DEQ staff should respond to noise inquiries and complaints. The Directive states (among other items) that the Energy Facility Siting Council (EFSC), under the Department of Energy, is authorized to approve the siting of large energy facilities in the State and that EFSC staff review applications to ensure that proposed facilities meet the State noise regulations.

<sup>5</sup> "We (the Oregon Supreme Court) conclude that EFSC had the authority to grant (1) an exception to the noise standards under OAR 340-035-0035(6)(a), and (2) a variance under OAR 340-035-0100 and ORS 467.060." B2HAPPDoc7 Supreme Court Decision Stop B2H Coalition v. Dept, of Energy 2023-03-09, pp 805-807.

10 dBA above the L<sub>50</sub> baseline noise levels, as presented in Table 34 of the DPO (page 260). Of the 27 NSRs, 7 NSR locations represent new NSR locations not previously evaluated by Council, and the remaining 20 NSR locations were previously evaluated and granted an exception/variance for the ambient antidegradation standard exceedances.

OAR 340-035-0035(6)(a) allows the Council to consider exceptions to the rule, if the owner of a noise source submits a written request for an exception meeting the criteria in the rules. Additionally, OAR 340-035-0100 allows specific variances from particular requirements of any rule, regulation, or order under certain circumstances as described in the DEQ noise rules. In RFA2, the certificate holder requests and the DPO recommends that Council continue to grant an exception to the ambient antidegradation standard (L50 ambient sound level) for unusual or infrequent events, as authorized under OAR 340-035-0035(6)(a), for the entirety of the facility, for the reasons provided in the DPO and on the record for the facility.

- Recommended Amended Noise Control Condition 1 (GEN-NC-01): Council previously imposed the Condition requiring that the certificate holder work with impacted NSRs to attempt to resolve concerns which includes avoiding, monitoring, and mitigating noise at NSRs caused by audible corona noise and potential exceedances. Based on the new NSR locations, the Department recommends Council amend the condition to include specific reference to newly potentially impacted NSRs.

Council previously imposed Noise Control Conditions 2 and 3 that ensure that all NSR locations receive mitigation for reducing noise-related impacts, that would continue to apply to the facility with proposed RFA2 changes:

- Noise Control Condition 2 (GEN-NC-02) establishes a system for the certificate holder to receive and respond to complaints associated with potential operational corona noise from landowners not identified in previous orders, as well as a dispute mechanism for NSR property owners identified with an exceedance in previous orders.
- Noise Control Condition 3 (CON-NC-01) requires the certificate holder to construct the proposed transmission line using materials to reduce corona noise such as the use of a triple bundled conductor configuration for 500 kV transmission lines, maintain tension on all insulator assemblies to ensure positive contact between insulators, maintain tension on all insulator assemblies to ensure positive contact between insulators, and to protect conductor surface to minimize scratching or nicking.

### III.R.2. Removal-Fill OAR 141-085-0500 through 141-085-0785 p. 269-273

Council previously found that a removal-fill permit is required for the facility because 50 cubic yards or more of material would be removed, filled or altered within waters of the state. The removal-fill permit is a state permit within the Council's jurisdiction. Pursuant to ORS 469.503(3) and ORS 469.401(3), the during Council's prior review of the ASC for this facility, Council approved issuance of a removal-fill permit. Wetlands and waters of the state potentially

impacted by the proposed RFA2 changes were evaluated through literature review and wetland field delineation surveys.

Estimated impact to field surveyed/delineated wetland features includes 0.10 acres of total permanent impacts and 1.36 acres of total temporary impacts. The estimated impact to field surveyed/delineated non-wetland WOS includes 0.07 acres of total permanent impacts and 0.97 acres of total temporary impacts. Temporary impacts to wetlands and WOS associated with the proposed RFA2 micro-siting area additions would be mitigated via a Site Rehabilitation Plan, reviewed and approved by the Department, in consultation with DSL (Removal-Fill Condition 2 [GEN-RF-01]).

Previously imposed conditions would continue to apply to the facility, with proposed RFA2 changes:

- Removal-Fill Condition 2 (GEN-RF-01): Temporary impacts to wetlands and WOS associated with the proposed RFA2 micro-siting area additions would be mitigated via a Site Rehabilitation Plan, reviewed and approved by the Department, in consultation with DSL.
- Removal-Fill Condition 4 (PRE-RF-02): requires that, prior to construction, the certificate holder submit an updated Joint Permit Application (JPA) to the Department.
- Removal-Fill Condition 3 (GEN-RF-02): Permanent wetland/WOS impacts will be mitigated by the Compensatory Wetland and Non-Wetland Mitigation Plan (CWNWMP).

### III.R.3. Water Rights p. 273-274

In the *Final Order on the ASC*, the Council found that the certificate holder had established that it can obtain adequate water for construction and operation of the facility from municipal water service providers in the vicinity of the facility, and would not need a groundwater permit, surface water permit, or water right transfer. The scope and extent of construction activities associated with facility components associated with the proposed RFA2 changes would not change the volume of water needed for construction or require a water permit.

### III.R.4. Fish Passage: OAR 635-412-0035 p. 241

Certificate holder indicates that they are not requesting that any new fish passage permits be governed by the site certificate under EFSC jurisdiction. Certificate holder states that they will coordinate directly with ODFW to obtain necessary fish passage/crossing permits.

## **DRAFT PROPOSED ORDER RECOMMENDATIONS**

Based on the recommended findings of fact and conclusions of law included in the DPO, under OAR 345-027-0375, the Department recommends Council find that the preponderance of evidence on the record, including RFA2, the record of the *Final Order on RFA1*, *Final Order on ASC* which includes the record of the contested case on Proposed Order on ASC, supports the following conclusions:

1. The proposed RFA2 changes comply with the applicable substantive criteria under the Council's Land Use standard, as described in OAR 345-022-0030, from the date RFA2 was submitted.
2. The proposed RFA2 changes comply with the requirements of the Energy Facility Siting Statutes ORS 469.300 to 469.520.
3. The proposed RFA2 changes comply with all applicable standards adopted by Council pursuant to ORS 469.501, in effect on the date Council issues its Final Order on RFA2.
4. The proposed RFA2 changes comply with all other Oregon statutes and administrative rules identified in effect on the date Council issues its Final Order on RFA2.
5. Taking into account the proposed RFA2 changes, the amount of the bond or letter of credit required under OAR 345-022-0050 is adequate.

Accordingly, the Department recommends Council find that the facility, with the proposed changes, complies with the General Standard of Review OAR 345-022-0000 and OAR 345-027-0375. The Department therefore recommends that the Council approve Request for Amendment 2 of the Site Certificate for the Boardman to Hemingway Transmission Line, and issue the 2<sup>nd</sup> Amended Site Certificate included as Attachment 1 to this order.

#### **PUBLIC COMMENT PERIOD AND NEXT STEPS**

The Public Notice of the DPO initiated a public comment period on RFA2 and the DPO. Oral and written comments will be accepted until the close of the public hearing on May 30, 2024. As explained in the Public Notice, failure to raise an issue in person or in writing prior to the close of the record of the public hearing with sufficient specificity to afford EFSC, the Department, and certificate holder an opportunity to respond to the issue precludes the Council from considering whether that issue justifies a contested case proceeding. To raise an issue with sufficient specificity, a person must present facts that support the person's position on the issue.

The Council may allow the record to remain open for the certificate holder to respond to public comments received. The Department recommends the Council direct the record to remain open for certificate holder responses until June 3, 2024 at 5:00 P.M., and authorize staff to allow further continuances if requested by the certificate holder.

Following the close of the record, the Council will review the DPO and any timely public comments received on the record of the hearing. No later than 30 days after the Council's review, the Department must issue a Proposed Order recommending approval, modification or denial of the request for amendment to the site certificate. The issuance of the Proposed Order will be accompanied by a public notice establishing a deadline for requests for a contested case proceeding. As stated above, only those persons who comment in person or in writing on the record of the public hearing may request a contested case proceeding on the Proposed Order for an amendment to the site certificate.

The Council may adopt, modify, or reject the Proposed Order. If the Proposed Order is adopted or adopted, with modifications, the Council will issue a Final Order granting issuance of an amended site certificate. If the Proposed Order is denied, the Council shall issue a Final Order denying issuance of the amended site certificate. The Final Order will be subject to judicial review by the Oregon Supreme Court as provided in ORS 469.403.