



Oregon

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To: Energy Facility Siting Council

From: Christopher M. Clark, Senior Siting Analyst

Date: May 17, 2024

Subject: Agenda Item D (Action Item):
Wheatridge Renewable Energy Facility East, Request for Amendment 1 –
Council Review of Proposed Order, Decision on Any Submitted Requests for
Contested Case, Possible Material Change Hearing and Public Notice of Hearing
to Adopt Final Order for the May 30-31 EFSC Meeting

Attachments: Attachment 1: Proposed Order
Attachment 2: Requests for Contested Case (To Be Provided)

STAFF RECOMMENDATION

1. Council Decision on Requests for Contested Case – Staff recommends Council consider any requests for contested case on the Department’s Proposed Order on Request for Amendment 1 submitted on or before May 27, 2024, at 5:00 p.m. Pacific Time; which is the deadline to submit requests. If one or more contested case requests are granted, staff recommends the Council refer the case to the Office of Administrative Hearings to initiate formal contested case proceedings.
2. Council Decision on Proposed Order – If no requests for contested case are received, or if the Council determines that no requests received identify a properly raised issue that justifies a contested case proceeding, staff recommends Council adopt the Proposed Order on Request for Amendment 1 as the Final Order, and issue an amended site certificate, subject to the findings, conclusions, and conditions of approval in the Proposed Order. If Council makes material changes from the Proposed Order to the Final Order, there will be a hearing on any material changes.

BACKGROUND

Wheatridge Renewable Energy Facility East (facility) is an approved, but not-yet-constructed, 200-megawatt (MW) wind energy generation facility. The site certificate authorizes the certificate holder to construct and operate up to 66 wind turbines with a maximum blade-tip height of 499.7 feet; up to 32 miles of two overhead, parallel 230 kilovolt (kV) transmission

lines; and other related or supporting facilities within an approximately 4,582-acre site boundary and micrositing corridor in Umatilla and Morrow counties.

On January 30, 2024, Wheatridge East Wind, LLC (certificate holder), a subsidiary of NextEra Energy Resources LLC, filed Request for Amendment 1 of the Site Certificate for the Wheatridge Renewable Energy Facility East (RFA1).

In RFA1, the certificate holder seeks authorization to:

- Construct up to 41 additional wind turbines, for a total of up to 107 wind turbines with a combined generating capacity of up to 300 MW.
- Expand the area of land within which construction of facility components may occur (referred to as micrositing corridor) by approximately 10,058 acres, to 14,640 acres.
- Expand the defined facility site perimeter (referred to as site boundary) to align with participating landowner's leased property boundary by approximately 74,403 acres, to 78,985 acres.
- Modify the electrical collection system to consist of approximately 95 miles of underground 34.5 kV line.
- Expand the Battery Energy Storage System capacity by 10 MW, for a total of 30 MW.
- Realign 230-kV transmission line along a newly proposed corridor.
- Construct an additional 56 miles of new permanent access roads, for a total of 76 miles.
- Expand facility substation to accommodate new generating capacity at one of two proposed sites.
- Add a new temporary construction yard with up to 60 acres of temporary disturbance area.
- Extend the construction completion deadline by 3 years, from May 24, 2023, to May 24, 2026.

Procedural History

On May 16, 2023, the certificate holder submitted its preliminary Request for Amendment 1 (pRFA1). The Department reviewed pRFA1 to determine whether or not the request contained sufficient information for the Council to make findings.

On May 22, 2023, the Department issued Public Notice that the preliminary Request had been received as required by OAR 345-027-0360(2). On July 14, 2023, the Department notified the certificate holder that the Request for Amendment was incomplete. The Department requested that the certificate holder provide additional information needed to determine compliance with several standards by August 11, 2023.

The certificate holder provided responses to the Requests for Additional Information on September 1, 2023, October 27, 2023, December 7, 2023, and December 21, 2023. The Department reviewed the responses and notified the certificate holder that RFA1 was Complete on January 26, 2024. In the notification letter, the Department informed the certificate holder that it anticipated that the DPO would be issued on or before February 16, 2024, to allow for in-person hearings to occur at the Council's March 21-22, 2024,

meeting. On February 16, 2024, the Department notified the certificate holder that additional time was needed to complete the DPO, but that it would be issued by February 29, 2024. The Department issued the Draft Proposed Order and the Public Notice of the Draft Proposed Order on February 29, 2024.

The Public Notice of the DPO initiated a public comment period on RFA1 and the DPO, extending from February 29 through April 4, 2024. Oral comments were accepted at a public hearing held on March 21, 2024, at the Oxford Suites in Hermiston. Council Vice-Chair Cindy Condon presided over the hearing. Four members of the public, as well as Council member Imes, provided testimony during the hearing. The certificate holder also appeared but did not provide substantive comments at the public hearing.

The Public Notice on the DPO established April 4, 2024, as the deadline for public comments. The Council agreed to leave the record open until April 8, 2024, to allow the certificate holder an additional opportunity to respond to comments received. The Department received 20 written comments before the April 4, 2024, deadline. The certificate holder provided responses to comments on April 8, 2024. The Council reviewed the DPO and the public comments received during the public comment period at its meeting on April 19, 2024 and provided additional guidance to the Department for changes in the Proposed Order.

On April 25, 2024, the Department issued its Proposed Order recommending the Council approve RFA1, with amended recommended findings of fact and conditions of approval based on the Department's consideration of timely comments on the Draft Proposed Order, comments provided by the Council at its April 19, 2024, and additional evidence received on the record. A Public Notice of the Proposed Order was issued on the same day.

STAFF EVALUATION OF AMENDMENT REQUEST AND SUMMARY OF MATERIAL CHANGES MADE IN PROPOSED ORDER

The Proposed Order recommends the Council find that a preponderance of evidence on the record supports the conclusions 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; the amount of the bond or letter of credit required under OAR 345-022-0050 is adequate; and, the facility, with the proposed RFA1 changes, complies with the applicable laws or Council standards that protect a resource or interest that could be affected by the proposed change, subject to recommended conditions; and that the Council approve RFA1, subject to existing and recommended new and amended conditions.

All changes from the DPO are shown in the Proposed Order in underline/strikethrough format. Material changes include substantive changes to conditions of approval, an action, or recommendation or a reversal of an action or recommendation. Material changes do not include updated or revised findings of fact unrelated to a change in a condition. The following actions recommended in the Proposed Order differ materially from the DPO:

Recommended Amended Site Certificate Conditions GEN-GS-01 and GEN-GS-02: The Department recommends the Council amend the conditions to add new construction commencement and completion deadlines for facility components that would be sited in areas proposed to be added to the site by RFA1 and extend the construction completion deadline for components in previously approved areas by three years, rather than two. (Section III.A.1.1. Page 41-44)

Recommended Amended Site Certificate Condition PRE-RF-02: The Department made additional edits to the recommended condition language to clarify the process for adjusting the initial retirement assurance amount to reflect final facility design configuration (Section III.G.1.4. Page 152)

Recommended Amended Site Certificate Condition PRE-LU-03: The Department proposes the Draft Noxious Weed Control Plan included as Attachment F of DPO be amended. Amendments to the plan include adding clarification of the scope of plan finalization and of the applicability of treatment and monitoring during construction activities. Amendments also include a requirement that, prior to construction, the certificate holder be obligated to prepare and submit a pre-construction treatment plan, for review and approval by the Department, in consultation with the appropriate County Weed supervisor; and that the certificate holder be obligated to implement the approved preconstruction treatment plan prior to any disturbance activities in areas identified within the plan. (Section III.H.1.3. Page 183-184)

Recommended Amended Site Certificate Condition CON-FW-02: The Department recommends the Council amend the condition to reduce the seasonal avoidance buffer for ferruginous hawk nests from 0.6 to 0.5 miles and allow restrictions to be lifted if a nest is determined to be unoccupied for the nesting season on or after May 31. (Section III.H.1.3. Page 137-139)

Recommended Amended Site Certificate Condition PRE-TE-02: The Department recommends the Council require the Wildlife Monitoring and Mitigation Plan be finalized prior to operations, rather than prior to construction. (Section III.I.1.2. Page 193-194)

Recommended Site Certificate Condition PRE-HC-04: The Department recommends the Council amend the condition to require the certificate holder to submit a complete a Section 106 Documentation Form for the Bartholomew-Myers Farm, an NRHP eligible property in the viewshed of the facility, prior to construction. (Section III.K.1.3. Page 212-213)

Recommended Amended Site Certificate Conditions PRE-PS-05: The Department recommends the Council amend the condition to require the Emergency Management Plan for the facility to include additional information regarding how fire suppression and response activities will be carried out at the site in the event of a fire, and to require additional consultation with local fire service districts and other emergency service providers prior to finalization of the plan. (Section III.M.1.11. Page 235-238)

Recommended Site Certificate Condition PRE-WP-01: The Department recommends the Council impose a new condition specifying the information and evaluation to be included in both the Construction and Operation and Maintenance (O&M) Wildfire Mitigation Plans (e.g., how fire suppression and response activities will be carried out at the site in the event of a fire). The Department recommends the Council also require that the draft plans be finalized, in part, based on consultation by the certificate holder with local fire service districts and other emergency service providers. (Section III.N.1.2. Page 247-255)

Recommended Amended Site Certificate Condition CON-WP-01: The Department recommends Council amend the condition to require that all onsite employees and contractors be required to implement and adhere to the Construction Wildfire Mitigation Plan, as finalized under Condition PRE-WP-01. (Section III.N.1.2. Page 247-255)

Recommended Amended Site Certificate Condition PRO-WP-01: The Department recommends Council amend the condition to specify that, prior to facility operations, the O&M Wildfire Mitigation Plan be updated based on as-built facility and wildfire risk at the site at the time. The Department recommends the Council also require that the O&M Wildfire Mitigation Plan be updated annually to reflect changes in wildfire risk at the site and of service capacity of local fire protection agencies to respond to the site, as applicable. (Section III.N.1.2. Page 247-255)

CONTESTED CASE REQUESTS AND POSSIBLE DECISION

Unlike an application for a site certificate (ASC), there is no requirement that an automatic contested case occur. For Type A amendment review, under OAR 345-027-0371, there is an opportunity to request a contested case proceeding. As established in the Public Notice on the Proposed Order, all requests for contested case must be received no later than May 27, 2024, at 5:00 p.m. PT to be considered. The Department will provide any timely received requests to the Council prior to the meeting.

Before considering whether an issue justifies a contested case proceeding, the Council must determine that the person requesting a contested case commented in person or in writing on the record of the public hearing and properly raised each issue included in the request as provided under OAR 345-027-0371(7). After identifying the issues properly raised the Council must determine whether any properly raised issue justifies a contested case proceeding on that issue. Under OAR 345-027-0371(9), to determine that an issue justifies a contested case proceeding, the Council must find that the request raises a significant issue of fact or law that is reasonably likely to affect the Council's determination whether the facility, with the change proposed by the amendment, meets the applicable laws and Council standards included in chapter 345 divisions 22, 23 and 24. If the Council does not have jurisdiction over the issue raised in the request, the Council must deny the request.

If the Council finds that the request identifies one or more properly raised issues that justify a contested case proceeding, the Council must conduct a contested case proceeding, unless the Council finds that one or more properly raised issues could be settled in a manner satisfactory to the Council by an amendment to the Proposed Order, in which case the Council may deny the request as to those issues and direct the Department to amend the Proposed Order and

issue a notice of the amended Proposed Order. If the Council finds that a request does not identify a properly raised issue that justifies a contested case proceeding, the Council must deny the request.

If no contested case requests are received, or if the Council determines that no requests identify a properly raised issue that justifies a contested case proceeding, the Council may adopt, modify, or reject the Proposed Order based on the considerations described in OAR 345-027-0375. If the Proposed Order is adopted or adopted, with modifications, the Council shall 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 Council's final order is subject to judicial review by the Oregon Supreme Court as provided in ORS 469.403.

RECOMMENDED COUNCIL ACTION

If no requests for contested case are received, or if the Council determines that no requests received identify a properly raised issue that justifies a contested case proceeding, staff recommends Council adopt the Proposed Order on Request for Amendment 1 as the Final Order, and issue an amended site certificate, subject to the findings, conclusions, and conditions of approval in the Proposed Order. If Council makes material changes from the Proposed Order to the Final Order, there will be a hearing on any material changes.