



Oregon

Tina Kotek, Governor



550 Capitol St. NE
Salem, OR 97301
Phone: 503-378-4040
Toll Free: 1-800-221-8035
FAX: 503-373-7806
www.oregon.gov/energy

To: Energy Facility Siting Council

From: Thomas Jackman, Rules Coordinator

Date: July 5, 2024

Subject: Agenda Item F (Action Item): DEQ Solar Noise Rulemaking Approval for the July 19, 2024 EFSC Meeting

Attachments: Attachment 1: Draft Redline of Proposed Rule

BACKGROUND

Since 2017, there has been a significant uptick in the number of solar PV energy projects seeking approval through the Energy Facility Siting Council (EFSC). Active stage projects in Oregon that fall under EFSC's jurisdiction ("jurisdictional projects") equate to 5,198 MW on 54,227 acres (84.72 sq. miles) of land. It is expected that the number of solar PV projects will continue to increase as one forecast shows that 10,550 MW of solar will be needed by 2050.¹ There are noise sources that are associated with these utility-scale solar PV energy projects (inverters, transformers, transmission lines, substations and battery storage units) and clear rules are needed to regulate them. The approval of state jurisdictional projects is handled by EFSC, but OAR 340 Division 35 on noise related matters falls under the authority of the Environmental Quality Commission (EQC) of the Department of Environmental Quality (DEQ).

Despite DEQ no longer implementing a noise control program, the Division 35 rules remain applicable to EFSC jurisdictional projects and the EQC has amended Division 35 multiple times since 1991. For example, the EQC amended Division 35 in 2004 to address noise associated with an increasing number of wind energy facilities. The goal of that rulemaking was to customize the noise regulations to the special characteristics of wind energy facilities while continuing to protect the public from unreasonable or harmful noise levels.

At this time, Oregon is facing an increasing number of solar PV energy projects. These projects have some similar characteristics to wind energy facilities, are generally sited in similar rural settings, and have some of the same noise sources. This rulemaking proposes to add language for solar PV energy projects in alignment with the existing regulations for wind energy projects. Several applications to EFSC for energy facility siting certificates have modeled exceedances of noise standards under Division 35 but have very little flexibility in how they can mitigate those

¹ See 2022 Oregon Department of Energy Biennial Energy Report, page 382; Original Study: Oregon Clean Energy Pathways - Evolved Energy Research
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impacts. Additional flexibility was added to Division 35 in the 2004 rulemaking for wind energy projects and those provisions were helpful in permitting those projects. By adding solar PV energy projects through this rulemaking, the additional flexibility could encourage the production of more renewable energy for Oregon.

While these are DEQ rules, ORS 469.520(2) requires EFSC to ensure other agency rules relating to siting comply with the implementation of the energy policy set forth in ORS 469.010 and 469.310.

RULE CHANGE OVERVIEW

The rule change is very straightforward – amend OAR 340-035-0035(1)(b) to allow solar energy generation facilities to demonstrate compliance with noise regulations in the same manner as allowed in 2004 for wind electrical generation facilities.

This means: 1) allowing for an assumed ambient background noise level of 26dBA; and 2) allowing a solar energy facility to increase the ambient statistical noise levels by more than 10 dBA (but not above the limits specified in Table 8), if affected landowners sign a waiver in the form of a legally effective easement or real covenant.

The assumed background noise level of 26dBA is extremely conservative, but if a solar developer wishes to save some money and is not concerned with this conservative value, the proposed rules give them the flexibility to opt to choose this assumed value.

The waiver provides much-needed flexibility and an opportunity for nearby landowners to benefit from potential solar development. Landowners are not obligated to sign a waiver, and – should they choose not to – solar developers are right back to the original rule requirements. This means mitigation to bring the increase in ambient noise levels below 10dBA or abandoning the project.

STAFF RECOMMENDATION

Staff recommends that the Council approve of the rule change put forth by DEQ and outlined in Attachment 1.