



Oregon

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To: Energy Facility Siting Council

From: Christopher M. Clark, Senior Siting Analyst

Date: August 9, 2024

Subject: Agenda Item A (Public Hearing): Sunstone Solar Project Application for Site Certificate Draft Proposed Order Public Hearing for the August 22-23, 2024, EFSC Meeting

Attachments: Attachment 1: Draft Proposed Order
Attachment 2: Public Comments

PUBLIC HEARING SUMMARY

On May 16, 2024, Sunstone Solar, LLC (applicant) submitted its Application for Site Certificate (ASC) for the Sunstone Solar Project. To issue a site certificate, the Energy Facility Siting Council (Council) must find that the preponderance of the evidence on the record demonstrates that the applicant can satisfy, or based on compliance with conditions can satisfy, each of the applicable standards set forth in Oregon Administrative Rule (OAR) 345 Divisions 22 through 24 as well as all other Oregon statutes and administrative rules identified in the Project Order as applicable to the siting of the proposed facility.

As staff to the Council, the Oregon Department of Energy (Department) reviewed the ASC, in consultation with state agencies, local governments and tribal governments. The Draft Proposed Order (DPO) contains the Department's initial analysis of the ASC and includes recommended site certificate conditions necessary to ensure compliance with applicable Council standards and other rules and statutes. The analysis and recommendations contained in the DPO are not a final determination.

A public comment period on the DPO and ASC is now open. A public hearing will be held before the Council at 5:30 p.m. on August 22, 2024, at the Maxwell Event Center in Hermiston, Oregon. Opportunities will be provided for the public to submit comments in person and via teleconference at the hearing. The Council will not consider any comments received after that deadline, unless extended by Council. Please note, interested persons must comment on the record, either at the public hearing or in writing during the comment period, in order to preserve their right to participate in the contested case hearing in this proceeding.

PROJECT OVERVIEW

The Sunstone Solar Project is a proposed 1,200 megawatt (MW) solar photovoltaic power generation. In addition to solar arrays, the proposed facility would include:

- Up to 7,200 MW hours of battery storage capacity
- An interconnection substation
- Up to six collector substations
- Up to four operations and maintenance buildings
- Up to 9.5 miles of 230-kilovolt (kV) overhead transmission lines
- Other structures including roads, perimeter fencing and gates.

The proposed facility would occupy up to 9,442 acres (14.75 sq. miles) within a 10,960-acre (17-sq. mile) proposed site boundary. The site consists entirely of private land zoned for Exclusive Farm Use in Morrow County, Oregon. The facility is proposed to be constructed and operated by Sunstone Solar, LLC (applicant), a wholly owned subsidiary of Pine Gate Renewables, LLC.

PROCEDURAL HISTORY

- August 8, 2023 - The Department received the preliminary application for site certificate (pASC)
- August 28, 2023 - The Department distributed the pASC to state and local government reviewing agencies and tribal governments.
- October 6, 2023 - The Department issued a determination that the pASC was incomplete and provided Requests for Additional Information (RAIs).
- December 6 and 15, 2023 - The applicant provided initial responses to the RAIs.
- December 15, 2023 - The Department issued a second set of RAIs.
- March 6, March 29, April 16, April 19, and April 24, 2024 - The applicant provided responses to the second set of RAIs, and responses to outstanding requests from the first set.
- May 10, 2024 - The Department determined that the pASC, with the revisions to exhibits included in the RAI responses, was complete.
- May 15, 2024 - The applicant filed the complete ASC
- May 21, 2024 - The Department mailed Public Notice of the Complete ASC to property owners within 500-feet of the property on which the proposed facility site boundary would be located and emailed it to all individuals signed up to receive email notices from regarding the proposed facility or all EFSC facilities. The Public Notice was also published in the Heppner Gazette and in the East Oregonian.
- May 22, 2024 - Pursuant to OAR 345-015-0200, the Department distributed electronic copies of the complete ASC to reviewing agencies, along with a request for agency reports on the complete ASC by June 21, 2024.
- June 5, 2024 - The Department held an in-person and remote public informational meeting on the complete ASC in Boardman.
- July 12, 2024 - The Department issued the DPO initiating a 41-day comment period. Public Notice of the DPO was issued on the same day.

Comments Received to Date

As of August 8, 2024, the Department had received 9 public comments on the Sunstone DPO or ASC. Exact copies of the comments are provided in Attachment 2.

All comments received to date express support for the project and the mitigation proposed to address potential impacts to the local agricultural economy (see land use discussion below).

EVALUATION OF COUNCIL STANDARDS

This section provides a summary of select issues addressed in the DPO.

GENERAL STANDARD OF REVIEW: OAR 345-022-0000 (DPO section IV.A., pg. 23-31)

The applicant seeks authorization to construct the proposed facility in six phases. Under the applicant's projected schedule, construction of each phase would take approximately 21 months. Up to two phases would commence per year, with up to four phases under construction at one time. To accommodate the phased approach, the applicant requests a deadline for construction completion of three years later than the deadline for beginning construction, or six years from issuance of the site certificate. The Department recommends the council impose General Standard Condition 2, which requires construction of the facility to begin within three years, construction of the final phase to begin within four years, and all construction to be completed within two years after construction of the final phase begins, for a maximum total of 6 years for completion.

SOIL PROTECTION: OAR 345-022-0022 (DPO Section IV.D., pg. 47-53)

Erosion, soil compaction, and fugitive dust impacts will result from construction activities, and most soils within the site boundary have a moderate to severe erosion hazard rating. Additionally, Morrow County has a semi-arid climate, leaving the fine silt and loam dominated soils within the facility site boundary dry for much of the year.

The applicant has represented that it will minimize soil impacts by limiting grading to areas where foundations will be installed or where the slope and gradient are outside of racking tolerances for the installation of solar arrays. The Department recommends Council impose Soil Protection Conditions 1 and 2 requiring that, prior to and during construction, the applicant be required to develop a Vegetation and Grading Plan that ensures grading activities are consistent with these representations.

LAND USE: OAR 345-022-0030 (DPO Section IV.E., pg. 54-123)

The proposed facility would occupy up to 9,442 acres of land zoned for Exclusive Farm Use, virtually all of which is currently used for dryland wheat production, as such the applicant has requested that the Council take an exception to Statewide Land Use Planning Goal 3. Based on the following reasons:

1. The facility is locationally dependent because of its proximity to existing energy infrastructure, the regional grid for interconnection, and major transportation corridors.
2. The facility is located on water-challenged land and therefore does not impact irrigated crops and imposes minimal direct impacts to high value agricultural soils due to lack of available irrigation water.

3. The facility preserves water supply in the Butter Creek Critical Ground Water Area for the benefit of other irrigators who rely on the same limited groundwater resource.
4. The facility creates local economic benefit and mitigates economic impacts to local agricultural economy.
5. The facility imposes minimal impacts to resources protected by Council standards.
6. The facility responds to important state and county goals and priorities.

In this case, the Department recommends that reasons that justify taking an exception to Goal 3 include:

- 1) The site of the facility is locationally dependent on existing transmission and transportation infrastructure and is collocated with other nearby energy facilities in a manner that allows for efficient use of existing infrastructure.
- 2) The site is water-challenged and would not impact irrigated crops.
- 3) Use of the site would result in minimal impacts to other resources protected by Council standards, and the lack of sensitive resources within the proposed energy facility footprint is unique for a site of its size.

The Department recommends the Council reject the other reasons provided by applicant to support their exception request.

The Department recommends the Council reject the preservation of water supply reason in part because, no water has been used for irrigation at the site since at least 2017 and there is no evidence on the record indicating that the landowners would pursue use of water for irrigation if the proposed facility was not approved.

The Department recommends the Council reject the local economic benefit reason, because the applicant has not demonstrated that the benefits that would be generated by the construction and operation of the proposed facility, including the creation of jobs, taxes, community service fees, and lease payments, would specifically benefit the local agricultural economy.

The applicant has acknowledged that the removal of up to 9,400 acres of dryland winter wheat farmland will indirectly impact the local agricultural economy and has proposed to mitigate these impacts by making monetary contributions to an agricultural mitigation fund administered by the County in the amount of \$1,179 per acre of farmland occupied by the facility, or up to approximately \$11.08 million for the maximum 9,400-acre energy facility footprint. The Department recommends the Council find that benefits to the agricultural economy that accrue from a compensatory mitigation scheme, rather than from the use itself, are not sufficient to justify an exception based on an economics benefit "reason" but may be considered in determining whether or not a facility's adverse impacts on the local agricultural economy would be sufficiently mitigated under ORS 469.502(2)(c)(B) and OAR 345-022-0030(4)(c)(B). To support such a finding, the Department recommends the Council impose Land Use Condition 11 and 12 to ensure that the mitigation plan is implemented as proposed.

The Department recommends the Council reject Reason 6, the “responds to important state and county goals and priorities” reason, to be consistent with the Council’s previous findings rejecting reliance on Statewide Planning Goal 13, the State’s Renewable Portfolio Standards, and Clean Energy Targets to support an exception to Statewide Planning Goal 3.

RETIREMENT AND FINANCIAL ASSURANCE: OAR 345-022-0050 (DPO Section IV.G, pg. 134-143)

The applicant estimates that the total cost of retirement and restoration of the facility would be approximately \$115.530 million. The estimate includes the costs of the labor and equipment needed for removal of facility components and restoration activities as well as site mobilization and demobilization, site support, contractor markups, and contingencies. The Department recommends the Council find that the applicant used reasonable methods and assumptions to develop the cost estimate, but recommends the Council add amounts needed for spare solar panel disposal and adjust applied contingencies for battery components to reflect the additional uncertainty and potential environmental hazards associated with battery technologies. With the adjustments, the Department recommends the Council find that the cost that would be incurred by the state if the applicant defaulted on its obligation to retire the facility and restore the site following the permanent cessation of construction or operation of the facility is estimated to be approximately \$117.945 million, in Q1 2023 dollars. The applicant has provided a comfort letter from MUFGBans, Ltd., stating that the bank would be comfortable with potentially providing a letter of credit to the applicant in the amount of up to \$120 million dollars. The Department has recommended conditions to require the bond to be provided prior to the beginning of construction and maintained for the life of the facility.

FISH AND WILDLIFE HABITAT: OAR 345-022-0060 (DPO Section IV.H., pg. 143-159)

The majority of the site consists of cultivated farmland, which is considered Category 6 habitat. The construction and operation of the proposed facility would result in the permanent disturbance of up to 36.5 acres and the temporary disturbance of an additional 5.4 acres of Category 2, 4, and 5 habitats. To mitigate these impacts the applicant has provided a draft Habitat Mitigation Plan which proposes to contribute funding to supplement ongoing conservation work being conducted by The Nature Conservancy at the Lindsay Prairie Preserve in Morrow County. The Department has recommended Fish and Wildlife Conditions 4, 5, and 6 to require finalization and implementation of the draft Habitat Mitigation Plan.

HISTORIC, CULTURAL, AND ARCHAEOLOGICAL RESOURCES: OAR 345-022-0090 (DPO Section IV.K., pg. 170-180)

Two Historic Places of Religious or Cultural Significance to Indian Tribes, particularly, to the Confederated Tribes of the Umatilla Indian Reservation (CTUIR), could be adversely affected by the construction and operation of the facility, however, the CTUIR provided a letter confirming that their concerns about potential impacts to these sites have been addressed and mitigated through the execution of a confidential mitigation agreement between the Tribe and the applicant.

PUBLIC SERVICES: OAR 345-022-0110 (DPO Section IV.M., pg. 187-197)

There would be an average of 682 workers on site each day, with up to 950 workers during peak construction periods when multiple phases overlap. If the Battery Energy Storage System is not constructed, the number of average daily workers would decrease to 542, with a

maximum of 670 during the peak months of construction. The Department recommends the Council find the influx of workers, and other construction related traffic, could potentially affect traffic safety and housing supply in the vicinity of the site. Recommended Public Services Conditions 1 and 2 require development and implementation of a Road Use Agreement with the County. Recommended Public Services Conditions 3 and 4 require the development and implementation of a temporary housing plan that identifies strategies to coordinate with contractors and local officials on housing options that minimize impacts to local housing supply.

WILDFIRE PREVENTION AND RISK MITIGATION: OAR 345-022-0115 (DPO Section IV.N., pg. 197-221)

The Department recommends the Council find the wildfire risk within the analysis area is low, except in areas where there are agricultural fields, residential structures, and transmission and transportation corridors, where the wildfire risk is moderate. The Department has recommended conditions requiring separate Wildfire Mitigation Plans to be developed and implemented during construction and operation of the proposed facility.

DRAFT PROPOSED ORDER RECOMMENDATIONS

The Draft Proposed Order recommends Council find that the proposed facility complies with the requirements of the Oregon Energy Facility Siting Statutes, ORS 469.300 to 469.520; with the standards adopted by the Council pursuant to ORS 469.501; and with all other Oregon statutes and administrative rules identified in the Project Order as applicable to the issuance of a site certificate for the facility.

PUBLIC COMMENT PERIOD AND NEXT STEPS

The Council will hold a public hearing on the DPO on August 22, 2024. During the hearing there will first be a brief overview by ODOE on the siting process and proposed facility, followed by an overview of the hearing format provided by the presiding officer and followed by an opportunity to provide oral comments on the ASC and the DPO. The duration of the time for individual commenters will be 7 minutes, but that may be lengthened or shortened based on the number of people who comment.

To raise an issue on the record of the DPO public hearing, a person must raise an issue either in person at the public hearing, or in a written comment submitted after the date of this notice and received by ODOE before the record closes at the close of the Public Hearing on August 22, 2024, unless extended by Council. A person's failure to raise an issue in person or in writing prior to the close of the record, with sufficient specificity to afford the decision maker an opportunity to respond to the issue, will preclude consideration of the issue by the Council in a contested case proceeding or by a court on judicial review of the Council's final decision. To raise an issue with sufficient specificity, a person must present facts that support the person's position on the issue.

Written or oral comments may be hand-delivered, submitted verbally via Webinar/teleconference or in-person at the public hearing, or via electronic methods previously described.

In order to be included on the record of the public hearing written comments **must be received by the close of the Public Hearing on August 22, 2024 (the comment deadline)**, unless otherwise extended by Council, submitted at the hearing, through the public comment portal described below or by mail, email or fax to the presiding officer/hearing officer, in care of:

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EFSC will not accept or consider any further public comments on the ASC or on the DPO after the close of the Public Hearing on August 22, 2024, which represents the close of the record on the DPO for the proposed facility, unless the comment deadline is extended.

Online Comment Portal

ODOE has an online portal for submitting comments on projects during an active comment period. The goal of the online comment portal is to provide members of the public with a convenient option to submit input on projects, and to provide additional resources that will enable meaningful participation in the Site Certificate Application process. The portal can be accessed via the link below:

<https://odoe.powerappsportals.us/SitingPublicComment/>

To get started, choose the Sunstone Solar Project from the drop-down menu. Click “Next” and follow the instructions on screen. You will receive an email confirmation after submitting your comment.

ODOE also has a docket system available which displays comments that have been submitted. Comments for this project will be posted to the docket and will normally be available to view within 3 business days of receipt. The docket can be accessed via the following link:

<https://odoe.powerappsportals.us/en-US/sitingdocket/>