



Oregon

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To: Energy Facility Siting Council

From: Christopher M. Clark, Senior Siting Analyst

Date: September 6, 2024

Subject: Agenda Item G (Information Item): Sunstone Solar Project – Council Review of the Draft Proposed Order for the September 19-20, 2024 EFSC Meeting

Attachments: 1. [Draft Proposed Order](#) (provided via hyperlink)¹
2. Draft Proposed Order Comments and Applicant Response

STAFF RECOMMENDATION

The Oregon Department of Energy's (Department) Draft Proposed Order (DPO) on the Application for Site Certificate (ASC) for the Sunstone Solar Project (proposed facility) recommends that the Energy Facility Siting Council (Council) find that Sunstone Solar, LLC (applicant), provided sufficient evidence in the ASC to demonstrate that the proposed facility, with recommended conditions, satisfies the requirements of applicable Council standards and other state statutes and local ordinance.

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:

- A 1,200 MW Battery Energy Storage System (BESS) with up to 6 hours of discharge 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. The facility is proposed to be constructed and operated by Sunstone Solar, LLC (applicant), a wholly owned subsidiary of Pine Gate Renewables, LLC.

¹ <https://www.oregon.gov/energy/facilities-safety/facilities/Pages/ESP>

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 issued Public Notice of the Complete ASC.
- May 22, 2024 - 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, Oregon.
- 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.
- August 23, 2024 - A Public Hearing on the DPO and ASC was held at the Council's meeting in Hermiston, Oregon. The public comment period ended at the close of the hearing, the applicant requested that the Council hold the record open for one week so it could respond.
- August 29, 2024 - The applicant provided responses to comments on the record.

DPO PUBLIC COMMENTS

The Department received 34 written comments before the close of the public comment period, including 6 written comments provided at the public hearing. Exact copies of all written comments are included in Attachment 2 to this staff report. In addition, 8 persons provided oral testimony at the public hearing, including:

- Ken Grieb (Grieb Farms Inc.)
- Representative Greg Smith
- Nick Edgmon (SOLV Energy)
- Brian Doherty (WM J. Doherty Ranch)
- Shane Matheny (Matheny Properties, LLC)
- Tamra Mabbott (Morrow County)
- Daisy Goebel (Morrow County)
- Irene Gilbert
- Rylan Grimes (IBEW Local 112)

Substantive issues raised in oral comments are discussed below; the contents of other comments are provided in the meeting minutes/audio recording for the August 22-23 EFSC Meeting.

STAFF EVALUATION OF DPO PUBLIC COMMENTS AND SUMMARY OF PRELIMINARY RECOMMENDATIONS TO BE MADE IN THE PROPOSED ORDER

Most comments received were supportive of the project; however, some comments raised substantive issues with the DPO or the ASC, including issues related to Statewide Land Use Planning Goal 3, housing, wildfire prevention and risk mitigation, and the safety of lithium-ion batteries. A summary of substantive issues raised in the written and oral comments, and staff's preliminary recommendations for how to address them, is provided below.

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

A commenter raised concerns about the potential use of lithium-ion battery technology for the proposed BESS. The commenters provided anecdotal evidence and citations regarding the flammability, toxicity, and recyclability of Lithium-ion BESS components and recommends that "...energy storage systems...that are non-flammable and do not pose the same risks of current lithium BESS technology...[should] take priority in the decision-making process for any proposed BESS facility under the Oregon Energy Facility Siting Council's jurisdiction."

The siting process requires an applicant to demonstrate that a proposed facility complies with the Council's standards and is not generally technology specific. The Department does not believe that the commenter has demonstrated that lithium-ion battery systems can not be designed and operated in a manner consistent with the Council's standards and the protection of public health and safety, and the commenter did not proposed specific conditions to ensure that a lithium-ion BESS would comply with Council Standards. Accordingly, the Department does not recommend any additional changes are needed to address these comments; however, the Department will continue to evaluate the specific safety concerns associated with Lithium-ion BESS technologies and may recommend additional changes to conditions if determined to be necessary to maintain compliance with applicable Standards.

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. Because the facility would use more arable land than allowed under the Land Conservation and Development Commission's land use standards and the implementing local ordinance, the applicant 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 reasons: 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; and 6) 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 DPO recommends the Council reject the other reasons provided by applicant to support their exception request.

Specifically, the DPO recommends the Council reject the local economic benefit reason, in part because the applicant has not sufficiently 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. In addition, the DPO recommends that the Council consider the contributions the applicant proposes to make to an agricultural mitigation fund administered by Morrow County as mitigation for potential adverse impacts on the local agricultural economy under ORS 469.502(2)(c)(B) and OAR 345-022-0030(4)(c)(B) rather than as an economic benefit of the proposed facility.

In its comments on the DPO, the applicant disagrees with the recommended denial of the economic benefits reason for two reasons: 1) the applicant argues that the facility will result in a net economic benefit, including a benefit to the local agricultural economy; and 2) that the findings recommended in the DPO are inconsistent with other Council decisions. In its written and oral comments, Morrow County made similar arguments. In addition, many other commenters specifically highlighted the economic benefits, including job creation, economic diversification, and tax revenue, they believed the construction and operation of the proposed facility would generate and offered support for the proposed agricultural mitigation fund.

The Department will present a detailed evaluation of the arguments presented in the comments and the rationale for the findings recommended in the DPO as part of its presentation to Council.

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

In the DPO, the Department recommends the Council find the anticipated influx of workers during construction could potentially affect housing supply in the vicinity of the site. 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.

In its written comments, Morrow County requests the Council consider an amendment to Recommended Public Services Condition 4 requiring that the applicant collect data on

workforce housing outcomes (i.e. location and housing type) and report the data back to the County. Morrow County believes the data will help inform future housing impacts analyses and evaluate the effectiveness of the applicant's housing plan and the actual impacts on housing in the County. In its responses, the applicant states that it is supportive of Morrow County's recommendation and, would support the proposed amendment to Recommended Public Services Condition 4, with the added condition that any data be reported in aggregate to protect worker privacy.

The Department notes that Recommended Public Services Condition 4 already requires the applicant to report, to the Department, the "outcome of coordination with construction contractors to identify housing options based on an ongoing evaluation of patterns of uses and potential shortages or housing demand." The Department recommends the condition language be modified to clarify that aggregate workforce housing outcomes must also be reported, as requested by Morrow County and agreed to by the applicant.

WILDFIRE PREVENTION AND RISK MITIGATION: OAR 345-022-0115 (DPO Section IV.N.2, pg. 197-221)

Recommended Wildfire Prevention and Risk Mitigation Conditions 1 to 4 would require the applicant to finalize and implements the Construction and Operational Wildfire Mitigation Plans included as Attachments L and M of the DPO.

In its written comments, Morrow County restated its previous recommendation to include a condition that requires the Wildfire Mitigation Plan to be approved by the County Emergency Manager and reiterated the importance of including the Emergency Manager in plan review.

In its written responses, the applicant agrees to collaborate with the County Emergency Manager on the review of the plan, but requests the Council not condition the Wildfire Mitigation Plans to final approval from the County Emergency Manager.

Both Wildfire Mitigation Plans require the applicant to contact local fire districts, as well as local emergency management agencies to request and incorporate any input about the location and types of temporary fire breaks needed in the event of a fire on or off site into the final plans and to develop procedures for providing emergency notifications to adjacent landowners.

The Department does not recommend the Council delegate final approval of the Wildfire Mitigation Plans to the County Emergency Manager as it is unclear the criteria or process the county seeks to apply to final review. Rather than deferring a potentially substantive review of the plans to occur after the Council's final decision, the Department is coordinating with the County Emergency Manager on review to determine if there are changes that should be incorporated into the plans prior to Proposed Order issuance. The Department understands the Emergency Manager will also coordinate feedback with local Rural Fire Protection Districts.

Morrow County also recommends the applicant be required to collaborate with the County in the update of the Community Wildfire Protection Plan (CWPP) to ensure that the location-specific wildfire risks of the facility can be assessed and addressed in the plan. In its responses,

the applicant states that it is willing to participate in Morrow County's CWPP update process and collaborate to the extent invited by the County.

The Department supports the participation of the applicant and other energy developers in the CWPP update but recommends that mandating participation in a Countywide planning process may exceed the Council's regulatory authority.

NEXT STEPS

Within 30-days of Council's review of the DPO, the Department must issue the Proposed Order taking into consideration the comments of the Council, any public comments made at a public hearing, written comments received before the close of the record of the public hearing, and agency consultation. In conjunction with the issuance of the Proposed Order, the Department will issue a Notice of Proposed Order, notifying eligible individuals of their opportunity to request party or limited party status in the contested case proceeding. Only those persons who commented in person or in writing on the record of the public hearing may request a contested case proceeding on the Proposed Order.