



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

July 19, 2024

Paul Szewczykowski
Madras Solar Energy Facility
Madras PV1, LLC c/o Fresh Air Power Development, LLC
600 Park Offices Dr, Ste. 285
Durham, NC 27709

Sent via email: pszewczykowski@ecoplexus.com

RE: Department Determination on Type B Review Amendment Determination Request (Type B Review ADR) for Madras Solar Energy Facility, Request for Site Certificate Amendment 1

Dear Mr. Szewczykowski,

The Oregon Department of Energy (ODOE or Department) concludes that the Type A Amendment review process will be maintained for the Madras Solar Energy Facility Request for Amendment 1 of the Site Certificate.

On June 25, 2024, the Department received preliminary Request for Amendment 1 to the Madras Solar Energy Facility Site Certificate (pRFA1) from Madras Solar PV, LLC (certificate holder). The certificate holder also submitted a Type B Review Amendment Determination Request (ADR). On July 3, 2024, the Department posted the pRFA1 to its website and commenced review as required by OAR 345-027-0357(5). The Department has reviewed the pRFA1 and the Type B Review request and provides its evaluation below.

The pRFA1 seeks Council approval for a three-year extension to both the construction commencement and completion deadlines. This change would make the new construction commencement deadline June 25, 2027, and new completion deadline of December 28, 2028. The pRFA1 also includes a request to change the parent company from Ecoplexus Inc., to Fresh Air Power Development, LLC. The certificate holder, Madras PV1, LLC, will remain unchanged.

Under OAR 345-027-0357(3), a certificate holder may submit a request for a written determination from the Department of whether a proposed site certificate amendment justifies the Type B review process described in OAR 345-027-0351(3). The Department may consider, but is not limited to, the factors identified in OAR 345-027-0357(8) when determining whether to process an amendment request under Type B review. The certificate holder provided an analysis of those factors in pRFA1 Section 1.1. A summary of that analysis, and the Department's evaluation is provided below.

(a) The complexity of the proposed change;

The certificate holder suggests that the proposed change is not complex because there will be no physical alterations to the previously approved facility, and that the construction and operation of the facility would occur in the same manner as previously approved. The certificate holder asserts that the requested amendment will not impact their ability to comply with all other existing site certificate conditions. Therefore, the change to extend the start date of construction and construction completion deadline for the facility is not complex and requires only minor revisions to the site certificate.

The Department does not dispute the certificate holder's representations that the proposed amendment does not include physical alteration to the facility. Nonetheless, the Department believes the evaluation of complexity should be based on the scope of the amendment request – whereas a request to extend construction deadlines is based on an evaluation of changes in fact or law applicable to the facility and whether those changes, if any, would impact Council previous findings of compliance (OAR 345-027-0375(2)(b)).

Changes in Factual Circumstances

Potential factual circumstances within the analysis areas that could result in complexity include: habitat changes; new State-sensitive or Threatened and Endangered Species; new protected areas, recreational opportunities, scenic resources, and historic, cultural and archeological resources; changes in the ability of the certificate holder to obtain a bond or letter of credit for facility decommissioning; and presence new sensitive noise receptors.

The certificate holder is requesting to change the parent company. The current parent company, Ecoplexus LLC, was relied upon heavily in the Application for Site Certificate (ASC) to satisfy and meet the EFSC standard for Organizational Expertise. The pRFA1 does not demonstrate or provide details on how the new parent company will meet this standard. For these reasons, the Department determines the proposed changes to be factually complex.

Changes in Law

Potential changes in law that could result in complexity include new or amended rules, statutes and ordinance provisions which are applicable to the facility. Based on the Department's review of pRFA1, the Jefferson County Comprehensive Plan (JCCP)¹ and Jefferson County Zoning Ordinance (JCZO)², there have been no updates to either since the facility was approved in June 2021 that would impact the facility.

A review of Council's current standards indicates that the EFSC Wildfire Prevention and Risk Mitigation standard (OAR 345-022-0115)³ was adopted since Council's approval of the Final Order on the ASC. This standard requires information not previously considered by Council and the adoption of a Wildfire Mitigation Plan for the facility. For this reason, the Department finds that there are changes in law that require additional evaluation of potential impacts or change

¹ Last Amended May 22, 2013

² Last Amended June 12, 2019

³ Effective July 29, 2022 Available at: <https://records.sos.state.or.us/ORSOSWebDrawer/Recordhtml/9316573>

Council's previous findings. For these reasons, the Department determines the proposed changes to be legally complex.

(b) The anticipated level of public interest in the proposed change;

The certificate holder suggests that the level of public interest should be anticipated as low because the ASC received only four public comments and because the change is not complex and seeks only to extend the construction commencement and completion deadlines and change the parent company. For these reasons, they assert that the anticipated level of public interest in this amendment request is low.

Following review of the certificate holder's Type B Review ADR, the Department assessed the quantity and scope of public comments received on the record of the proceedings for this facility, which is limited to the Final Order on the ASC.

As noted by the certificate holder, there was little public interest in the ASC. During the public comment period on the DPO, no members of the public commented. Comments received on the record of the DPO were received only from reviewing agencies, the SAG, and the applicant/parent company. There were also no requests for a contested case.

General public interest in amendments requesting approval to extend construction deadlines range from low to significant, depending on the type of energy facility combined with the number of deadline extensions for which the amendment request represents. Because this is the first deadline extension request for this facility, and the span of time from the original site certificate approval is relatively short (less than 5 years – approved on June 25, 2021), the Department does not anticipate a significant level of public interest, generally, in the amendment request. Similarly, the public interest in the request to change the parent company can range from low to high, depending on the public's interest in the proposed parent company.

Based on the evaluation presented above, the Department determines the level of public interest to remain low to moderate.

(c) The anticipated level of interest by reviewing agencies;

The certificate holder suggests that the level of reviewing agency interest should be anticipated to be low because no facility changes are proposed, and the requested changes will not result in any new or additional impacts not previously evaluated by Council. To support the anticipated low level of interest by reviewing agencies, the certificate holder explains that the combination of the proposed change in pRFA1, not physically changing the approved facility, reviewing agencies involvement in the ASC process, and because the facility was found to comply with varying regulations and standards, significant renewed interest by reviewing agencies is not expected.

Prior to submittal of the pRFA1, the certificate holder contacted the Jefferson County SAG/Planning Department, ODFW, and local service providers (Jefferson County Fire District 1 for fire service and the Jefferson County Sheriff's Office for emergency response) to identify the proposed amendment, seek input on the request, and answer any questions or concerns raised.

The certificate holder submitted copies of this coordination and correspondence in attachments to pRFA1. The certificate holder asserts that based on this coordination, the level of interest from reviewing agencies was likely to be low because the change is not complex and there is no change to resource impacts resulting from the extension to construction deadlines.

The Department reviewed the record of reviewing agency comments on the facility from the preliminary ASC through the Final Order on the ASC. These reviewing agency comments are summarized in the table below:

Index of Reviewing Agency Comments on Preliminary/Complete ASC/DPO

| Commenter Name | Reviewing Agency | Phase Submitted | Date Received |
|-----------------------|---|------------------------|----------------------|
| Jeff Rasmussen | Jefferson County Board of Commissioners/SAG | NOI | 08/23/2019 |
| Phil Stenbeck | Jefferson County Community Development Department | pASC | 12/16/2019 |
| Christian Nauer | Confederated Tribes of the Warm Springs Reservation of Oregon | pASC | 01/29/2020 |
| David Mills | Oregon Office of State Fire Marshall | pASC | 02/20/2020 |
| Greg Jackle | Oregon Department of Fish and Wildlife | ASC | 03/16/2020 |
| Greg Jackle | Oregon Department of Fish and Wildlife | A | 12/09/2020 |
| Seth Thompson | Oregon Department of Aviation | ASC | 12/09/2020 |
| John Pouley | State Historic Preservation Office | pASC | 02/25/2020 |
| Jason McLaughry | Oregon Department of Geology and Mineral Industries | ASC | 01/05/2021 |
| Jason McLaughry | Oregon Department of Geology and Mineral Industries | DPO | 4/19/2021 |
| Seth Thompson | Oregon Department of Aviation | DPO | 4/22/2021 |
| Phil Stenbeck | Phil Stenbeck Jefferson County, Community | DPO | 4/22/2021 |

The Department addressed comments received from reviewing agencies, tribes and the SAG on the pASC and the ASC in the Draft Proposed Order (DPO) on the ASC. The Department received comments on the record of the DPO from three reviewing agencies: the Oregon Department of Geology and Mineral Industries (DOGAMI), Oregon Department of Aviation (ODAv) and Jefferson County Community Development Department on behalf of the Jefferson County SAG. The Department addressed these comments in the Proposed Order.

Based on prior review and comments from reviewing agencies on the ASC, the Department determines the level of reviewing agency interest to be low.

(d) The likelihood of significant adverse impacts;

The certificate holder describes that, given the scope of RFA1, the likelihood of significant adverse impacts should be considered low. The Department’s evaluation of the likelihood of significant adverse impacts is based on changes in fact and law. As described above in the evaluation of the complexity of the proposed change, Council’s adoption of the Wildfire Prevention and Risk Mitigation standard requires the completion of an Exhibit V containing new information and additional evaluation, could result in a finding of potential significant adverse impact, and may require mitigation to prevent a significant impact. Therefore, the Department determines that because the wildfire standard requires additional evaluation not previously considered by Council that there is a potential likelihood of significant adverse impacts.

(e) The type and amount of mitigation, if any.

The certificate holder indicates that mitigation efforts described in the ASC, and conditions imposed by Council were approved in the site certificate, ensuring that the mitigation would be conducted with oversight and accountability over the lifetime of the approved facility and there is no additional mitigation required as a result of this amendment request.

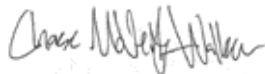
Council's adoption of the Wildfire Prevention and Risk Mitigation Standard requires the preparation, approval, adoption and implementation of a facility-specific Wildfire Mitigation Plan for construction and operations, and because none currently exists for the facility, there would be new wildfire mitigation required that was not previously evaluated.

In summary, based on the complexity of changes in fact and law since Council's last approval of the facility in the Final Order on the ASC, the potential for significant adverse impacts to be evaluated under Council's new Wildfire Prevention and Risk Mitigation Standard and new mitigation required under Wildfire Mitigation Plans, the Type A Review process will be maintained.

Per OAR 345-027-0357(7), at the request of the certificate holder the Department must refer its determination to the Council for concurrence, modification or rejection.

Please feel free to contact me with any questions or comments.

Respectfully,



Chase McVeigh-Walker, Senior Siting Analyst
Oregon Department of Energy
550 Capitol St N.E., 1st Floor
Salem, OR 97301
P: (971) 600-5323
E: Chase.McVeigh-Walker@energy.oregon.gov

cc via e-mail distribution:

Todd Cornett, Assistant Director of Siting, Oregon Department of Energy
Sarah Esterson, Senior Policy Advisor, Oregon Department of Energy
Patrick Rowe, Assistant Senior Attorney General, Oregon Department of Justice