



Oregon

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To: Energy Facility Siting Council

From: Kellen Tardaewether, Senior Siting Analyst

Date: August 19, 2022

Subject: Agenda Item B (Information Item): Boardman to Hemingway Transmission Line (B2H) – Council Review of Proposed Order; Proposed Contested Case Order (PCCO) Review/Exceptions Hearing for the Aug 29-31, 2022 EFSC Meeting

Attachments: Attachment A: [Proposed Order on ASC](#) (via hyperlink)
Attachment B: [Hearing Officer Proposed Contested Case Order with Bookmarks](#) (via hyperlink)
Attachment C: [Exceptions and Responses](#) (via hyperlink – see online PDFs for Day 1, Day 2 and Day 3)

AGENDA ITEM OVERVIEW

Agenda Item B of the August 29-31, 2022 Energy Facility Siting Council (Council) meeting relates to the Boardman to Hemingway Transmission Line, a proposed 500 kilovolt (kV), 300-mile transmission line extending from Boardman, Oregon to Idaho. The agenda item will generally include two steps:

- 1) Oregon Department of Energy (Department) staff presentation of Proposed Order on the Application for Site Certificate (continued from the July 22, 2022 meeting)
- 2) Oregon Department of Justice’s Assistant Attorney General presentation on Proposed Contested Case Order and Exceptions Hearing (per contested case issues where an exception was filed)

At its July 22, 2022 meeting, Council initiated its review of the Proposed Order for Council Standards not part of Contested Case Proceeding, including:

General Std. of Review ¹ (OAR 345-022-0000)	Siting Stds. for Transmission Lines (OAR 345-024-0090)	Removal Fill Law (OAR 141-085-0500 – 0785)
Organizational Expertise (OAR 345-022-0010)	Waste Minimization (OAR 345-022-0120)	Water Rights (OAR 690-310-0000; 690-380-0000)

¹ The Department provided an overview of the Council’s General Standard of Review (OAR 345-022-0000) and recommended conditions of approval as presented in the Proposed Order at the July EFSC Meeting. Council will continue to evaluate the General Standard of Review during its review of the Proposed Order, the PCCO and exceptions, and determine whether the preponderance of evidence on the record supports the conclusion that the facility complies with the requirements of the EFSC statutes, ORS 469.300 to 469.570 and 469.590 to 469.619, and the standards adopted by the Council pursuant to 469.501.

MATERIALS PROVIDED TO COUNCIL

In preparation for this August 2022 agenda item, Council has received the following documents:

Summary of Relevant Materials Provided to Council

Document Name	Date Provided
Proposed Order on ASC	7/02/20 (e-copy)
	6/28/22 (e-copy)
	7/08/22 (e-copy)
Proposed Contested Case Order (PCCO)	6/21/22 (e-copy) 7/09/22 (hard copy)
Contested Case Record – PCCO Appendix I and II	7/08/22 (e-copies)
PCCO Exceptions and Responses	7/15/22 (hard copy)
	8/12/22 (e-copies)

PROPOSED ORDER REVIEW

Council’s review of the Proposed Order will continue at the August 2022 meeting including an overview of the standard and key recommended findings of facts and conditions² for issues not specifically addressed in the contested case proceeding, as presented in this staff report. Council will then have the opportunity to discuss and conduct an unofficial vote (straw poll) of whether modifications to the Proposed Order must be adopted. If there are no modifications identified, Council will refrain from conducting a straw poll until they have reviewed the Proposed Contested Case Order and associated contested case issues.

Structural Standard: OAR 345-022-0020 (Proposed Order page 72)

The Proposed Order provides the following recommended findings of fact:

- Seismic hazard sources at the site include crustal faults in Morrow County, potential to produce 7.0 magnitude earthquake
- Seismic hazard risks include seismic shaking/ground motion; ground failure; landslides; liquefaction/lateral spreading; and subsidence
- More than 40 mapped landslides have the potential to impact the site
- Non-seismic hazards include mass-wasting and landslides, flooding and erosion
- Some proposed facility components would be located within the 100-year floodplain
- Soils that may be impacted by proposed facility construction/operation include a range of low to high wind and water erosion potential

The Proposed Order recommends Council impose conditions to avoid and/or minimize these potential impacts including:

- Structural Standard Condition 1 requires completion of a preconstruction, site

² This staff report and August 29-31 Proposed Order presentation represent specific facts related to environmental or natural resources and proposed conditions to minimize or avoid impacts to those resources. The staff report does not represent the entirety of the facts, analysis or recommended conditions addressed in the ASC or Proposed Order on the ASC. Staff/Council may address any other issues of the ASC and Proposed Order during the meeting.

specific geotechnical investigation prepared by a professional engineer or geologist licensed in Oregon, to be reviewed by the Department in consultation with DOGAMI. Results of the site specific investigation must then be relied upon in the design and location of facility components.

- Soil Protection Condition 1 requires implementation/monitoring of erosion protection measures and requirements of an Erosion and Sediment Control Plan, governed by a DEQ-issued NPDES 1200-C permit
- Structural Standard Condition 3 requires that the facility be designed, engineered and constructed to avoid seismic hazard dangers to public health and safety

Retirement and Financial Assurance Standard: OAR 345-022-0050 (Proposed Order Page 292)

The Proposed Order provides the following recommended findings of fact:

- The estimated cost to restore the site to a useful, nonhazardous condition is \$140 million (in 3rd Quarter 2016 dollars)
- Prior to construction, certificate holder will remit a bond or letter of credit to the Department representing 1/16th of \$140 million (to be adjusted for inflation based on present day value)
- During every quarter of construction, for four (4) years, the bond or letter of credit amount would increase by 1/16th of the \$140 million
- August 14, 2018 letter from Wells Fargo Bank, N.A. affirms its ability to arrange a syndicated letter of credit up to \$141 million for a period not to exceed 3 years

The Proposed Order recommends Council impose the following condition to ensure that a bond or letter of credit is in place prior to and during construction:

- Retirement and Financial Assurance Condition 4 requires that, prior to construction, the certificate holder submit to the Department, a bond or letter of credit equal to 1/16th of \$140 million (to be adjusted for inflation based on present day value); and requires that the bond or letter of credit be updated every quarter for a 4-year construction duration to equal the full amount

Threatened and Endangered Species Standard: OAR 345-022-0070 (Proposed Order Page 367)

The Proposed Order provides the following recommended findings of fact:

- There are three (3) state-listed Threatened and Endangered (T&E) species within the 5-mile analysis area would have the potential to be impacted by construction and operation of the proposed facility: Wolverine; Washington Ground Squirrel (WGS); Snake River/Summer Chinook Salmon
- Impacts to Wolverine and WGS could include direct mortality and loss of potentially suitable habitat
- Impacts to Snake River/Summer Chinook Salmon could include riparian vegetation removal, increased turbidity/sedimentation, barriers to fish, potential spills

The Proposed Order recommends Council impose conditions to avoid and/or minimize these potential impacts including:

- F&W Condition 16 requires preconstruction WGS surveys; buffering and avoiding identified colonies
- T&E Condition 1 requires evaluation of additional minimization and mitigation measures if WGS colonies not identified during preconstruction surveys are identified during construction
- F&W Condition 6 requires working training on biological resource identification, protection and stop work requirements (if sensitive resources are impacted) during construction
- F&W Condition 7 would require flagging and avoiding wetlands and waterways during construction

Soil Protection Standard: OAR 345-022-0022 (Proposed Order Page 92)

The Proposed Order provides the following recommended findings of fact:

- Site boundary includes over 20,000 acres: 133 acres are agriculture/developed; 107 acres are bare ground; 1,837 acres are cultivated cropland; 1,906 acres are forestland; 279 acres are pasture; 16,344 acres are scrub/grassland; and 134 acres are wetland
- Construction activities (clearing, grubbing, grading, backfilling and excavation) would result in approximately 4,348 acres of temporary soil impacts including wind/water erosion and compaction
- Siting of facility components would result in approximately 757 acres of permanent soil impacts

The Proposed Order recommends Council impose conditions to avoid and/or minimize these potential impacts including:

- Soil Protection Condition 1 requires implementation/monitoring of erosion protection measures and requirements of an Erosion and Sediment Control Plan, governed by a DEQ-issued NPDES 1200-C permit
- Soil Protection Condition 5 requires routine erosion inspection and repair during facility operations
- F&W Condition 1 requires mitigation of temporary habitat impacts through preconstruction vegetation assessment and selection of monitoring/control sites; and long-term seeding, treatment and monitoring to evaluate restoration success, ongoing adjustments and agency review; additional mitigation is required in the event of unsuccessful restoration

Need Standard: OAR 345-023-0005 (Proposed Order Page 593)

The Proposed Order describes the applicable regulatory requirements as follows:

- Need for a facility must be demonstrated by satisfying either the Least Cost Plan Rules or System Reliability Rule for Electric Transmission Lines
- Need for a facility may be demonstrated under the Least Cost Plan Rule if the capacity of the proposed facility is identified for acquisition in the short-term plan of action of an energy resource plan or combination of plans adopted by a utility district
- Need for a facility may be demonstrated under the System Reliability Rule for Electric Transmission Lines if it can be demonstrated that the facility is needed to enable the

transmission system of which it is to be a part to meet firm capacity demands for electricity or firm annual electricity sales

Public Services Standard: OAR 345-022-0110 (Proposed Order Page 537)

The Proposed Order provides the following recommended findings of fact:

- Construction Assumptions: 4 year duration; up to 243 temporary workers; 1,294 one-way trips (personal, light/heavy duty construction vehicles); and use of up to 54.8 million gallons of water
- Construction housing: There are 596 estimated RV parks and campsites within Morrow, Umatilla, Union and Baker counties; and 216 within Baker and Malheur counties
- Construction and operational fire: 44 miles within Morrow County, 5 miles within Baker County, and 7 miles in Malheur County are located outside of a designated service territory
- Construction and operational police coverage: Proposed site boundary is covered by both federal law enforcement and sheriff's departments within each of the 5-counties
- Construction and operational health care/emergency service coverage: Two medical facilities, three major hospitals (Grande Ronde Hospital in La Grande – Level IV; Saint Alphonsus Medical Center in Ontario; Saint Anthony Hospital in Pendleton – Level III)

The Proposed Order recommends Council impose conditions to avoid and/or minimize these potential impacts including:

- Public Services Condition 6 applies to construction related impacts to fire service providers. The condition require preconstruction finalization and agency approval of a Fire Prevention and Fire Suppression Plan, including documenting any service agreements with fire protection districts to provide coverage in areas where the proposed facility is not within an existing service territory
- Public Services Condition 2 applies to construction related traffic impacts and requires preconstruction finalization and agency approval of a Transportation and Traffic Plan, including identification of transportation, access and haul routes, and any necessary road improvements; securing all required transportation-related permits (including county-specific road use agreements); and identifying all necessary best management practices to reduce traffic congestion and safety issues. The final approved plan must then be implemented for the duration of construction, as applicable to the activity within each county
- Public Services Condition 5 applies to construction related impacts to police service providers. The condition requires preconstruction finalization and agency approval of an Environmental and Safety Training Plan. The final approved plan must include specific measures for securing multi-use areas; worker training; and emergency response procedures. The final approved plan must then be implemented for the duration of construction, as applicable to the activity within each county

Historic, Cultural and Archeological Resources Standard: OAR 345-022-0090 (Proposed Order Page 431)

The Proposed Order provides the following recommended findings of fact:

- Proposed facility would result in indirect (visual) impacts to Oregon Trail and National Historic Trail resources; 3 Historic Properties of Religious and Cultural Significance to Indian Tribes (HPRCSITs); archeological sites and objects

The Proposed Order recommends Council impose conditions to avoid and/or minimize these potential impacts including:

- HCA Condition 1 requires avoidance of direct impacts to Oregon Trail/National Historic Trail Resources
- HCA Condition 2 requires preconstruction finalization and agency approval of a Historic Properties Management Plan. The final approved plan must include specific mitigation plans for each or group of affected resources, based on final survey data and facility design/route selection, which then must be implemented during and post-construction.

Protected Areas Standard: OAR 345-022-0040 (Proposed Order Page 253)

The Proposed Order provides the following recommended findings of fact:

- There are 74 designated protected areas within the 20-mile analysis area (within Oregon)
- Two protected areas, Blue Mountain Forest State Scenic Corridor and Ladd Marsh Wildlife Management Area in Union County, would be crossed by the proposed facility
- Construction impacts would include temporary noise (79 dBA at 100 feet), traffic (up to 1,294 one-way trips per day) and visual (vegetation removal, dust and equipment) impacts
- Operational impacts would include corona noise (27 dBA at the edge of the right-of-way) and visual impacts (up to 200' Lattice steel structures, spaced up to 1,800' apart)

The Proposed Order recommends Council impose conditions to avoid and/or minimize these potential impacts including:

- Public Services Condition 2 requires finalization and implementation of an agency (Department and state/local agencies) approved County-Specific Traffic Management Plan. The plan(s) would include specific measures to minimize traffic flow/congestion and safety impacts
- Protected Areas Conditions 1 and 2 requires coordination with the Ladd Marsh Wildlife Area/Wildlife Area Manager during design and construction of the facility

Scenic Resources Standard: OAR 345-022-0080 (Proposed Order Page 382)

The Proposed Order provides the following recommended findings of fact:

- There are 33 important or significant scenic resources within the 10-mile analysis area
- Seven (7) important or significant scenic resource would be crossed by the proposed facility: Blue Mountain Forest Wayside (Union); OR Highway 86 (Baker); Interstate 84, Pleasant Valley Durkee Area (Baker); Hells Canyon Scenic Byway (Union, Wallowa and Baker); Burnt River Canyon (Baker); Lower Owyhee River (Malheur); VQO 2 (Union)
- Proposed facility operation would result in visual impacts from up to 200' Lattice steel structures, spaced up to 1,800' apart
- Potentially adverse visual impacts of the proposed facility would occur along the Grande Tour Route (where the line would cross the Ladd Marsh Wildlife Management Area) (Union); OR Highway 86 (Baker); Hells Canyon Scenic Byway (Union, Wallowa and

Baker); Straw Ranch ACEC (Baker); Straw Ranch Parcel 1 (Baker); Birch Creek ACEC (Malheur); Tub Mountain Parcel ACEC (Malheur)

The Proposed Order recommends Council impose conditions to avoid and/or minimize these potential impacts including:

- Scenic Resources Condition 2 requires Lattice frames with a Natina finish for a 5-mile segment where the proposed line would cross Ladd Marsh Wildlife Management Area and be visible from The Grande Tour Route (Union and Baker counties)
- Scenic Resources Condition 4 requires use of H-frame structures not to exceed 100' in height for a 2-mile segment in the vicinity of the Birch Creek ACEC
- HCA Condition 2 requires preconstruction finalization and agency approval of a Historic Properties Management Plan. The final approved plan must include specific mitigation consistent with Council definition of mitigation under OAR 345-001-0010(33) for OR Highway 86 (Baker); Hells Canyon Scenic Byway (Union, Wallowa and Baker); Straw Ranch ACEC (Baker); Straw Ranch Parcel 1 (Baker); Birch Creek ACEC (Malheur); Tub Mountain Parcel ACEC (Malheur) including purchasing a conservation easement, land acquisition; interpretive signage; or funding of public research

Recreation Standard: OAR 345-022-0100 (Proposed Order Page 508)

The Proposed Order provides the following recommended findings of fact:

- There are 21 important recreational opportunities within the 2-mile analysis area
- Three (3) important recreational opportunities would be crossed by the proposed facility: Blue Mountain Forest State Scenic Corridor, Burnt River Extensive Recreation Management Area, and the Ladd Marsh Wildlife Area
- Construction impacts would include temporary noise (79 dBA at 100 feet), traffic (up to 1,294 one-way trips per day) and visual impacts (vegetation removal, dust and equipment)
- Operational impacts would include corona noise (27 dBA at the edge of the right-of-way) and visual impacts (up to 200' Lattice steel structures, spaced up to 1,800' apart)

The Proposed Order recommends Council impose conditions to avoid and/or minimize these potential impacts including:

- Public Services Condition 2 requires finalization and implementation of an agency (Department and state/local agencies) approved County-Specific Traffic Management Plan. The plan(s) would include specific measures to minimize traffic flow/congestion and safety impacts
- Protected Areas Conditions 1 and 2 requires coordination with the Ladd Marsh Wildlife Area/Wildlife Area Manager during design and construction of the facility

Fish and Wildlife Habitat Standard: OAR 345-022-0060 (Proposed Order Page 305)

The Proposed Order provides the following recommended findings of fact:

- The proposed facility would result in temporary and permanent impacts of approximately 4,403 acres of Category 2, 3, 4 and 5 habitat
- Potentially impacted habitat type includes: shrub/grassland, riparian, bare ground, forest/woodland and open water/wetlands

The Proposed Order recommends Council impose conditions to avoid and/or minimize these potential impacts including:

- F&W Condition 1 requires mitigation of temporary habitat impacts through preconstruction assessment of vegetation quality and selection of monitoring/control sites; long-term seeding, treatment and monitoring to evaluate restoration success, ongoing adjustments and agency review; additional mitigation is required in the event of unsuccessful restoration
- F&W Condition 3 requires completion of preconstruction noxious weed surveys and selection of monitoring/reference sites; short-term treatment, long-term monitoring to evaluate success of noxious weed control/revegetation and restoration success
- F&W Condition 4 requires implementation of a Habitat Mitigation Plan, including selecting and securing habitat mitigation areas that meet the mitigation goal for each habitat type; implementation of long-term enhancement actions; and long-term monitoring and reporting on the success of enhancement actions to evaluate success of mitigation for permanent habitat impacts

Noise Control Regulation: OAR 345-035-0035 (Proposed Order Page 616)

The Proposed Order provides the following recommended findings of fact:

- The proposed facility would comply with the maximum allowable L50 sound level standard of 50 dBA.

(Note: all other findings of fact and recommended conditions are related to contested case issues NC-1, NC-2, NC-3, NC-4 and NC-6).

Land Use: OAR 345-022-0030 (Proposed Order Page 103)

The Proposed Order provides the following recommended findings of fact:

- In Morrow County, the following zones would be crossed: Exclusive Farm Use (EFU), General Industrial, Port Industrial, Rights-of-Way and Federal lands
- In Umatilla County, the following zones would be crossed: EFU, Grazing Farm, Light Industrial, Rural Tourist Commercial
- In Union County, the following zones would be crossed: EFU, Agricultural Grazing, Timber Grazing
- In Baker County, the following zones would be crossed: EFU and Rural Service Area
- In Malheur County, the following zones would be crossed: EFU, Exclusive Range Use and Heavy Industrial
- In City of North Powder, the following zone would be crossed: Commercial Interchange
- In City of Huntington, the following zones would be crossed: Commercial Industrial and Commercial Residential
- The proposed facility would comply with all applicable substantive criteria within Morrow, Umatilla, Union, Baker and Malheur counties; and cities of North Powder and Huntington, except for the 100-foot right of way limitation within forest zoned lands in Union and Umatilla counties
- OAR 660-006-0025(4)(q) establishes that new electric transmission lines with rights of way widths up to 100 feet are conditionally permissible uses within forest zoned land

- The transmission line would satisfy OAR 660-006-0025(4)(q); however, permanent access roads would not be located within the 100-foot right of way for which structures are allowable. Therefore, the applicant requests that Council take an exception to the Statewide Policy embodied in Goal 4, *Forest Lands*, in Umatilla and Union counties for access roads
 - The Department recommends Council find that the following “reasons” justify taking an exception: (1) proposed facility is sited within forest lands to interconnect to existing roads, avoid extreme topographical features, and utilize the designated utility corridor in the Wallowa-Whitman National Forest; however, additional access roads are needed to site the facility. The proposed facility cannot be built without proposed access roads within forest zoned lands; and, (2) the proposed facility would result minimal impacts to forest lands (530 out of 791,000 acres in Union County; 246 out 572,000 acres in Umatilla County)

The Proposed Order recommends Council impose conditions to avoid and/or minimize these potential impacts including:

- Land Use Condition 15 limits activities within the certificate holder’s 300-foot right-of-way within forest zoned to 100-feet for structures, and 100-feet on either side of centerline for vegetative maintenance only
- Land Use Condition 16 requires finalization and implementation of an agency approved Right of Way Clearing Assessment. The Right of Way Clearing Assessment would be finalized based on final impacts and would establish various best management practices to be implemented during construction activities within forest lands including flagging and marking; use of forest-specific herbicides; fire protection; erosion control; and protection/preservation of existing access roads

CONTESTED CASE PROCESS, NEXT STEPS, AND COUNCIL FINAL DECISION

Department staff will incorporate any Council directed modifications of the Proposed Order and Proposed Contested Case Order into a draft Final Order, which will be made available electronically at least two weeks in advance of a future Council meeting. Council will review the draft Final Order and will conduct a “material change” hearing, where parties and limited parties to the contested case may provide oral exception on the modifications. (ORS 469.370(7))

Following the “material change” hearing, the Council will issue a final order either approving or denying the ASC based upon the standards adopted under ORS 469.501, and any additional state statutes, rules, or local government regulations or ordinances determined to be applicable to the facility in the amended project order.

ATTACHMENTS

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