



Oregon

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To: Energy Facility Siting Council

From: Chase McVeigh-Walker, Senior Siting Analyst

Date: March 21, 2024

Subject: Agenda Item A (Public Hearing): Leaning Juniper IIA, Public Hearing on Draft Proposed Order on Request for Amendment 3 for the March 21-22, 2024 EFSC Meeting

Attachments:

1. Draft Proposed Order
2. Public Comments (No comments have been received as of the date of publication. Any comments received prior to March 14, 2024, will be provided to the Council as Supplemental Council Packet Materials. Comments received after March 14, 2024, will be provided to the Council at a future Council meeting. All comments received within the comment period will be added to the comment portal as they are submitted.)

STAFF RECOMMENDATION

The Oregon Department of Energy (Department) recommends the Energy Facility Siting Council (EFSC or Council) approve the requested site certificate amendment and grant issuance of a third amended site certificate, subject to compliance with existing, recommended amended, and recommended new site certificate conditions. As provided in the Public Notice issued concurrently with the Draft Proposed Order (DPO), the Council will accept oral comments on RFA3 and the DPO at a public hearing on March 21, 2024, and will accept written comments until March 29, 2024. The Department recommends the Council allow the record to remain open for the certificate holder to respond to public comments received until April 1, 2024 at 5:00 P.M., or later, if requested by the certificate holder.

BACKGROUND AND FACILITY OVERVIEW

On September 21, 2007, the Council issued the Site Certificate for the Leaning Juniper IIA Wind Power Facility, authorizing the construction and operation of a 279 MW wind power generation facility with up to 133 turbines, within an 8,565 acre site boundary. The facility was designed to be divided into two sections, “Leaning Juniper II North” (93 MW) and “Leaning Juniper II South” (186 MW). Since its initial approval, Council authorized two Site Certificate amendments, on November 20, 2009 and June 28, 2013.

The Final Order on Request for Amendment 1 authorized the construction and operation of up to 84 wind turbines (186 MW) and related or supporting facilities within 7,962 acres of new site boundary area, referred to as “Leaning Juniper IIB”. The previously approved facility components and site boundary became/were referred to as Leaning Juniper IIA.

The Final Order on Request for Amendment 2 authorized the division of the Leaning Juniper II Facility into two separate site certificates, the Leaning Juniper IIA Wind Power Facility and the Leaning Juniper IIB Wind Power Facility.

PROPOSED FACILITY MODIFICATIONS

On February 14, 2024, Leaning Juniper Wind Power II, LLC (certificate holder), filed Request for Amendment 3 of the Site Certificate for the Leaning Juniper IIA Wind Power Facility (RFA3). In RFA3, the certificate holder seeks authorization to:

- Repower 36 wind turbines (replacement of rotors, nacelles and generator; and foundation reinforcement); increase blade tip height from 404 to 453 feet.
- Temporarily disturb approximately 396.2 acres (roads, collector line, turbine pad, laydown and crane assembly areas) within a proposed micrositing corridor (herein referred to as “RFA3 repower corridor”)
- Install a new underground, 34.5 kilovolt (kV) collector line system
- Decommission two wind turbines
- New conditions (see RFA3 Attachment 1 Section VII)

STAFF EVALUATION OF AMENDMENT REQUEST AND SUMMARY OF DRAFT PROPOSED ORDER

In accordance with OAR 345-027-0365, the Department reviewed RFA3 and issued the DPO, and the Public Notice of the DPO on February 29, 2024. As presented in the DPO, the Department recommends that Council find that, subject to existing and recommended conditions of approval, the preponderance of evidence on the record supports the conclusion that the facility, with the changes proposed in RFA3, would comply with the Council’s general standards in OAR chapter 345, division 022, and with other applicable provisions of OAR chapter 345 and ORS chapter 469.

In the DPO, the Department recommends that the changes proposed in RFA3 would not necessitate new or amended site certificate conditions, and that to the extent applicable, previously imposed conditions would continue to minimize potential impacts under the following applicable standards/requirements:

- Structural Standard (DPO pg. 21-28)
- Land Use (DPO pg. 33-42)
- Protected Areas (DPO pg. 42-52)
- Scenic Resources (DPO pg. 70-76)
- Recreation (DPO pg. 82-86)
- Public Health and Safety Standards for Wind Energy Facilities (DPO pg. 101-103)
- Cumulative Effects Standard for Wind Energy Facilities (DPO pg. 103-105)
- Noise Control Regulations (DPO pg. 105-110)
- Water Rights (DPO pg. 114)

The DPO further recommends Council impose new or amended conditions for the following standards:

General Standard of Review

- Condition 27 - continue to require that the facility be designed and operate consistently with the dimensions currently under review but relieve the automatic amendment in the future if there were to be minor dimensional changes during final engineering (DPO pg. 15)
- Condition 117 - establish a repower commencement deadline within 2 years of execution of the amended site certificate, and a completion deadline three years following date commencement. (DPO pg. 16)

Organizational Expertise

- Condition 21 - require the certificate holder to submit progress reports on the status of compliance with the conditions applicable to the repower every 3-months, rather than every 6-months, to afford the Department the ability to more closely track compliance status (DPO pg. 18-19)
- Condition 106 - require the certificate holder to identify and obtain all necessary third-party permits in advance of the facility repower, as applicable to the action necessitating the permit. (DPO pg. 21)

Soil Protection

- Condition 106 - require the certificate holder, prior to repower disturbance, to obtain a National Pollutant Discharges Elimination System Construction Stormwater General Permit 1200-C (DPO pg. 32)
- Condition 120 - require the certificate holder, during facility repower, adhere to the requirements of a 1200-C/Erosion and Sediment Control Plan. (DPO pg. 32)
- Condition 107 - require the certificate holder to adhere to the requirements of the Soil Monitoring Plan prior to the facility repower. (DPO pg. 32)
- Condition 121 - require the certificate holder to adhere to the requirements of the Soil Monitoring Plan during the facility repower. (DPO pg. 32)

Retirement and Financial Assurance

- Condition 108 - require the certificate holder to submit to the Department a bond or letter of credit that address the decommissioning amount for the repowered facility. (DPO pg. 57- 58)
- Condition 122 - require the certificate holder to describe the status of the bond or letter of credit in the semi-annual report submitted to the Council under Condition 21(a). Additionally, Condition 122 clarifies that the Department and Council reserve the right to adjust the contingencies, as appropriate and necessary to ensure that costs to restore the site are adequate to maintain health and safety of the public and environment. (DPO pg. 58)
- Condition 30 - delineate the applicability of condition requirements based on phase of repower (preconstruction, construction, operation). (DPO pg. 58-59)

Fish and Wildlife Habitat

- Condition 109 - require the certificate holder to finalize the Repower Revegetation and Noxious Weed Control Plan, subject to approval by the Department in consultation with ODFW. (DPO pg. 66)
- Condition 123 - require that the Repower Revegetation and Noxious Weed Control Plan be implemented and adhered to during construction and the facility operational lifetime. (DPO pg. 66)
- Condition 110 - require the certificate holder to finalize the Repower Habitat Mitigation Plan subject to approval by the Department in consultation with ODFW. (DPO pg. 67-68)
- Condition 124 - require the certificate holder to adhere to and implement the Repower Habitat Mitigation Plan during construction and the facility operational lifetime. (DPO pg. 68)

Threatened and Endangered Species

- Condition 111 - require the certificate holder to perform Washington Ground Squirrel surveys (WGS) (non-protocol, spot check) and update maps and flagging in areas of ground disturbance within 1,000-feet of previously identified WGS colonies, prior to the facility repower. (DPO pg. 70)
- Condition 125 - require the certificate holder to install flagging/temporary fencing extending 150-feet from any WGS colonies identified during the pre-repower WGS spot check. (DPO pg. 70)

Historic, Cultural, and Archaeological Resources

- Condition 112 - require the certificate holder to install flagging extending 100-feet from the site boundaries of recorded sites 35GM373 and 35GM388, prior to disturbance within 200-feet of the recorded sites. (DPO pg. 81)
- Condition 126 - require the certificate holder to prohibit ground disturbance within 100-feet from the site boundaries of 35GM373 and 35GM388 during the facility repower. (DPO pg. 81)
- Condition 113 - require the certificate holder to review/update the contact information presented in Section 2.1.2 (No. 4) of the Inadvertent Discovery Plan (IDP), prior to the facility repower. (DPO pg. 81)
- Condition 118 - require the certificate holder and any onsite contractors, to adhere to the requirements of the Inadvertent Discovery Plan. (DPO pg. 81)

Public Services

- Condition 114 - require the certificate holder to notify local police services of the schedule and expected number of temporary workers and traffic volume to result from repower activities, prior to facility repower. (DPO pg. 89)
- Condition 115 - require the certificate holder to execute a Road Use Agreement with the Gilliam County Public Works Department, prior to facility repower. (DPO pg. 89)
- Condition 119 - require the certificate holder to adhere to the terms and conditions of the Road Use Agreement, during and post facility repower. (DPO pg. 89)

Wildfire Prevention and Risk Mitigation

- Condition 115 - require the certificate holder to submit a Final Repower Wildfire Mitigation Plan (WMP) to the Department for review and approval, prior to facility repower. (DPO pg. 95)
- Condition 119 - require the certificate holder to require onsite contractors and employees to adhere to the Repower WMP (updated as needed), during the facility repower. (DPO pg. 95)
- Condition 129 - require the certificate holder to adhere to the requirements of the WMP, report annually to the Department on the status of updates to BMPs and technologies. (DPO pg. 98)

Waste Minimization

- Condition 130 - require the certificate holder to submit copies of any agreements or contracts with contractors who will manage the recycling or reuse of wind turbine components. If there is no feasible recycling or reuse options for the wind turbines, then the condition requires the certificate holder to explain the reasons why it is not available and document the process and final disposal of the components. (DPO pg. 100)

Removal Fill

- Condition 128 - require the certificate holder to flag and avoid via 50-meter buffer impacts to Wetlands 1 and 2, and Streams 1 and 2, unless DSL concurrence is obtained and determines that Streams 1 and 2 are not jurisdictional (DPO pg. 113)

PUBLIC COMMENT PERIOD AND NEXT STEPS

The Public Notice of the DPO initiated a public comment period on RFA3 and the DPO. Oral comments will be accepted at the public hearing on March 21, 2024, and written comments will be accepted through March 29, 2024 at 5:00 P.M. As explained in the Public Notice, failure to raise an issue in person or in writing prior to the close of the record of the public hearing with sufficient specificity to afford EFSC, the Department, and certificate holder an opportunity to respond to the issue precludes the Council from considering whether that issue justifies a contested case proceeding. To raise an issue with sufficient specificity, a person must present facts that support the person's position on the issue. As of the issuance of this staff report, no comments on the DPO have been received.

To raise an issue on the record of the Draft Proposed Order, a person must raise the issue in a written comment submitted between the date of the Public Notice of the Draft Proposed Order and March 29, 2024 at 5:00 P.M., the written comment deadline established in the Public Notice. The Council will not accept or consider public comments on the Request or on the Draft Proposed Order received after the written comment deadline. The Council may allow the record to remain open for the certificate holder to respond to public comments received if requested. Because the public comment period will end between Council meetings, the Department recommends the Council direct the record to remain open for certificate holder responses until April 1, 2024 at 5:00 P.M., and authorize staff to allow further continuances if requested by the certificate holder.

Following the close of the record, the Council will review the DPO and any timely public comments received on the record of the hearing. No later than 30 days after the Council's review, the Department must issue a Proposed Order recommending approval, modification or denial of the request for amendment to the site certificate. The issuance of the Proposed Order will be accompanied by a public notice establishing a deadline for requests for a contested case proceeding. As stated above, only those persons who comment in person or in writing on the record of the public hearing may request a contested case proceeding on the Proposed Order for an amendment to the site certificate.

The Council may adopt, modify, or reject the Proposed Order. If the Proposed Order is adopted or adopted, with modifications, the Council will issue a Final Order granting issuance of an amended site certificate. If the Proposed Order is denied, the Council shall issue a Final Order denying issuance of the amended site certificate. The Final Order will be subject to judicial review by the Oregon Supreme Court as provided in ORS 469.403.