OREGON DEPARTMENT OF ENERGY

Regarding Statutes, Administrative Rules, and Other Requirements Applicable to the Proposed **Brush Canyon Wind Energy Project**

**PROJECT ORDER**

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BRUSH CANYON WIND ENERGY PROJECT
Project Order – January 5, 2012
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I. BACKGROUND

On October 21, 2011, E. ON Climate & Renewables North America Inc. and EC&R Development, LLC (E. ON or Applicant) submitted to the Oregon Department of Energy (DOE or the “Department”) a Notice of Intent (NOI) to file an application for a site certificate for a proposed wind energy facility. The proposed facility, identified as the Brush Canyon Wind Energy Project (Project), would be located entirely on private land within Wasco and Sherman Counties as described in the NOI. The Project will encompass approximately 85,000 acres and would have a peak generating capacity of up to 500 megawatts (MW). The facility will require a site certificate from the Oregon Energy Facility Siting Council (EFSC or the “Council”).

On October 21, 2011, E.ON also distributed the NOI to the reviewing agencies identified by the Department. In accordance with OAR 345-020-0040, the NOI was sent with a memorandum from the Department requesting comments from reviewing agencies no later than November 21, 2011. At the close of the comment period, the Department had received comments from Sherman County Planning Department, Oregon Department of Fish and Wildlife (ODFW), Oregon Public Utilities Commission (OPUC), and the Oregon Water Resources Department (OWRD). Comments from Wasco County Planning Department, Wheeler County Planning Department, Oregon Department of State Lands (DSL), and Oregon Department of Environmental Quality (ODEQ) were received between November 22, 2011 and December 6, 2011. Comments from reviewing agencies are presented in Section VIII (b).

On November 22, 2011, the Department issued a public notice of the NOI to the EFSC mailing list and to adjacent property owners as defined at Oregon Administrative Rule (OAR) 345-020-0011(1)(f). The Department also published the public notice on November 22, 2011 in The Dalles Chronicle newspaper. The public notice included announcement of a public information meeting to be held on December 8, 2011 in Shaniko, Oregon. In the public notice, the Department requested public comments on the NOI by 5:00 p.m. December 15, 2011. Approximately 60 individuals attended the December 8th public information meeting. At the close of the comment period on December 15, 2011 the Department received 9 written comments from members of the public. Public comments are presented in Section VIII (a).

The Department issues this Project Order in accordance with Oregon Administrative Rule (OAR) 345-015-0160, which requires the Department to specify the state statutes, administrative rules, as well as local, state, and tribal permitting requirements applicable to the construction and operation of the proposed facility (see Sections II through VI). This Project Order specifies the analysis areas for the proposed facility (Section VII). This Project Order also presents comments received from reviewing agencies and members of the public that apply to matters within the jurisdiction of the Council, for which the Applicant will need to consider and discuss in the application for a site certificate (Section VIII). The expiration date of the NOI is presented in Section IX, a discussion of Project Order amendments are discussed in Section IX, and the Applicant’s duty to comply with applicable requirements is presented in Section XI.

Oregon Revised Statute (ORS) 469.401(4) provides that a site certificate issued by the Council does not govern certain matters. Likewise, this Project Order does not consider matters outside the Council's jurisdiction. Such matters include design-specific construction or operating standards and practices that do not relate to siting, as well as matters relating to employee health
and safety, building code compliance, wage and hour or other labor regulations, or local government fees and charges. The Council may rely on the determinations of compliance and the conditions in the permits issued by other state agencies and local governments in deciding whether the facility meets other standards and requirements under its jurisdiction. The Applicant must comply with all federal, tribal, state, and local statutes, regulations, and local ordinances applicable to the proposed facility.

Pursuant to ORS 469.330(3) and OAR 345-015-0160(1), the Department issues this Project Order establishing the requirements for a site certificate application for the Brush Canyon Wind Energy Project. As provided in ORS 469.330(4), the Department or the Council may amend this Project Order at any time. The definitions in ORS 469.300 and OAR 345-001-0010 apply to the terms used in this Project Order, except where otherwise stated or where the context indicates otherwise.

II. Applicable State Statutes, Administrative Rules, and Related Permit Requirements

This section identifies the Oregon statutes and administrative rules and related state permits and approvals that E.ON must address in its application for site certificate.

(a) Energy Facility Siting Council

Statute and Rule References: Statutes pertaining to the regulation of energy facilities, starting at ORS 469.300, and administrative rules in OAR Chapter 345, including the general provisions of Division 1 and the requirements of Divisions 21, 22, 24, 26, and 27.

Permit: An energy facility site certificate is required before construction or operation.

Discussion: The following Divisions of OAR Chapter 345 will apply to the proposed Project.

OAR Chapter 345, Division 21 (Application for Site Certificate)

See Section VI of this Project Order for a discussion of specific information to be included in the application per the requirements of OAR 345-021-0010.

OAR Chapter 345, Division 22 (General Standards for Siting Facilities)

All general standards in OAR Chapter 345, Division 22, with the following exceptions, apply to the proposed facility.

For a wind energy facility, the Council is not required to make findings on the standards described in OAR 345-022-0020 (Structural), OAR 345-022-0090 (Historic, Cultural, and Archaeological Resources), OAR 345-022-0110 (Public Services), and OAR 345-022-0120 (Waste Minimization) to issue a site certificate. Nevertheless, E.ON should address these standards in the application, because the Council may apply the requirements of the standards to impose conditions on the site certificate.

OAR Chapter 345, Division 24 (Specific Standards for Siting Facilities)
Specific standards addressed in OAR Chapter 345, Division 24, apply to the proposed facility, including: Public Health and Safety Standards for Wind Energy Facilities (OAR 345-024-0010); Siting Standards for Wind Energy Facilities (OAR 345-024-0015); and Siting Standards for Transmission Lines (OAR 345-024-0090).

OAR Chapter 345, Division 26 (Construction and Operation Rules for Facilities)

If the Council issues a site certificate for the proposed facility, the certificate holder must implement a compliance plan, as described in OAR 345-026-0048, and periodically must submit reports as described in OAR 345-026-0080.

OAR Chapter 345, Division 27 (Site Certificate Conditions)

The site certificate will contain the mandatory conditions, applicable site-specific conditions, and monitoring conditions described in OAR 345-027-0020, -0023 and -0028.

(b) Oregon Department of Agriculture, Plant Division — Native Plant Conservation Program

Statute and Rule References: ORS Chapter 564 (Wildflowers; Threatened or Endangered Plants); and OAR Chapter 603, Division 73 (Plants: Wildflowers and Endangered, Threatened, and Candidate Species).

Permit: None required.

Discussion: The Oregon Department of Agriculture (ODA) provides technical review and recommendations regarding compliance with the Council’s threatened and endangered species standard (OAR 345-022-0070) as it relates to plant species. OAR 603-073-0070 contains the state list of endangered and threatened plant species. OAR 603-073-0080 gives ODA the authority to designate candidate plants. If E.ON finds any state-listed threatened or endangered plant species that may be affected by the proposed facility, E.ON must address the requirements of OAR 603-073-0090(5)(d)(A)-(E) in its application for a site certificate.

(c) Oregon Department of Environmental Quality — Water Quality Division

Statute and Rule References: ORS Chapter 468B (Water Quality); OAR Chapter 340, Divisions 40 (Groundwater Quality Protection), 45 (Regulations Pertaining To NPDES and WPCF Permits), 71 (Onsite Wastewater Treatment Systems), and 216 (Air Contaminant Discharge Permits).

Permits: National Pollutant Discharge Elimination System (NPDES) or NPDES Construction Storm Water 1200-C Permit, Water Pollution Control Facilities (WPCF) Permit, Clean Water Act Section 401 Water Quality Certificate, and onsite wastewater system permits.

Discussion:

OAR Chapter 340, Division 45 (NPDES and WPCF Permits)
In accordance with OAR 345-021-0000(7), E.ON must submit to the Department one copy of all applications for federally-delegated permits. The Applicant must also provide a letter or other indication from the Oregon Department of Environmental Quality (DEQ) stating that the agency has received a permit application from the Applicant. The correspondence should state any additional information the agency is likely to need from the Applicant based on the agency’s review of the application as submitted, and an estimation of the date when the agency will complete its review and issue a permit decision.

The U.S. Environmental Protection Agency has delegated authority to DEQ to issue NPDES Storm Water Discharge permits for construction and operation activities. The Council does not have jurisdiction over the federally-delegated NPDES permit, however, the Council may rely on the determinations of compliance and the conditions in the federally-delegated permit in making its determination about whether other standards and requirements under the Council’s jurisdiction are met.

The DEQ has responded to the Applicant’s NOI in correspondence referenced in Section VIII (B) of this Project Order. The Applicant has been provided a copy of the DEQ’s complete comments and should review and address these comments in its preliminary application.

OAR Chapter 340, Division 71 (Onsite Wastewater Treatment Systems)

The NOI states that the Operations and Maintenance (O&M) Building will discharge domestic wastewater to an onsite septic tank and drain field. Such discharges may require a WPCF permit from ODEQ. In such event, E.ON must first verify that the site is suitable for an onsite sewage disposal system by applying to DEQ or its designated agency for a site evaluation of groundwater and soil conditions. In the application for a site certificate, E.ON should provide information demonstrating either a) that the proposed septic system is exempt from the WPCF permit requirement or, b) if it is not exempt, that it meets the requirements for a permit.

If a WPCF permit is required, it is a state permit that is under Council jurisdiction. The requirements for the WPCF permit are identified in OAR Chapter 340, Division 71. Regulations pertaining to WPCF permits are in OAR Chapter 340, Division 45. E.ON must include in its application for a site certificate all information that would otherwise be required by DEQ in an application for the permit. As previously stated, the DEQ has responded to the Applicant’s NOI in correspondence referenced in Section VIII (b) of this Project Order.

OAR Chapter 340, Division 216 (Air Contaminant Discharge Permits)

Pursuant to OAR 340-216-0060(2)(b), a general Air Contaminant Discharge Permit (ACDP) is required for rock crushers and ready-mix concrete plants that are related and supporting facilities to the proposed Project.
(d) Oregon Department of Environmental Quality – Land Quality Division

Statute and Rule References: ORS Chapters 465 and 466 (Hazardous Waste and Hazardous Materials I and II); and OAR Chapter 340, Divisions 100 through 122 (Hazardous Waste Management).

Permit: None required.

Discussion: E.ON must include in its application a list of all hazardous materials that potentially would be stored or used at the Project site during construction and operation. E.ON must comply with DEQ regulations regarding the use of hazardous materials and the clean up and disposal of hazardous wastes. The requirement is incorporated in the general standard of review, OAR 345-022-0000.

The DEQ hazardous waste program implements requirements of the EPA and is a federally-delegated program. However, information on hazardous materials use and storage is important in determining the potential for spills that could adversely affect soils and potentially affect the cost and success of site restoration. A complete application should include sufficient information on plans and programs for storage and management hazardous materials, including petroleum products, for DEQ to comment on their adequacy. As previously stated, the DEQ has responded to the Applicant’s NOI in correspondence referenced in Section VIII (b) of this Project Order.

(e) Oregon Department of Environmental Quality — Noise Control Regulations

Statute and Rule References: ORS 467.020 and ORS 467.030 (Noise Control); and OAR Chapter 340, Division 35 (Noise Control Regulations).

Permit: None required

Discussion: The proposed facility must comply with the noise control regulations applicable to wind energy facilities. The requirement is incorporated in the general standard of review, OAR 345-022-0000.

E.ON shall include a noise analysis in the application for a site certificate. The analysis must contain information to support a finding by the Council that the proposed facility would comply with the requirements of OAR 340-035-0035.

(f) Oregon Department of Fish and Wildlife

Statute and Rule References: ORS Chapter 496 (Application, Administration and Enforcement of Wildlife Laws); ORS Chapter 498 (ORS 498.301 through 498.346—Screening and By-pass Devices for Water Diversions or Obstructions); ORS Chapter 506 (ORS 506.036—Protection and Propagation of Fish and ORS 506.109—Food Fish Management Policy); ORS Chapter 509 (ORS 509.140—Placing Explosives in Waters and ORS 509.580 through 509.910—related to Fish Passage); and OAR Chapter 635, Division 100 (Wildlife Diversity Plan) and Division 415 (Fish and Wildlife Habitat Mitigation Policy).

Permit: None required
**Discussion:** ODFW provides technical review and recommendations on compliance with Council standards. ODFW will base its review and recommendations on state wildlife policy and threatened and endangered species policy (Application, Administration and Enforcement of Wildlife Laws, see ORS 496.012 and ORS 496.171 - .192). See Section VI(p) of this Project Order for further discussion of information requirements to address the regulations cited below.

**OAR Chapter 635, Division 44 (Holding, Propagating, Protected Wildlife)**

OAR Chapter 635, Division 44 states that “it is unlawful for any person to hunt, trap, pursue, kill, take, catch, angle for, or have in possession, either dead or alive, whole or in part,” any of the species listed [see OAR 635-044-0130(1)]. Based on a recent meeting with ODFW, the application for site certificate should include information related to the applicant’s plan for protecting the listed species during operation and construction of the facility.

**OAR Chapter 635, Division 100 (Wildlife Diversity Plan)**

OAR Chapter 635, Division 100 provides authority for adoption of the state sensitive species list and the Wildlife Diversity Plan and contains the State list of threatened and endangered wildlife species. E.ON should include in its application for a site certificate a list of both state-listed and federally-listed threatened and endangered wildlife species and State Sensitive Species that have potential to occur in the analysis area. E.ON should identify these species based on a review of literature, consultation with knowledgeable individuals, and reference to the list of species published by the Oregon Natural Heritage Information Center.

E.ON should include in its application a description and the results of a field survey for the listed wildlife species performed by qualified survey personnel during the season or seasons appropriate to the detection of these species. The field survey report should include written descriptions of the survey methods and areas surveyed. E.ON should consult with ODFW regarding field survey methods, appropriate survey seasons, and qualifications of field survey personnel.

**OAR Chapter 635, Division 415 (Fish and Wildlife Habitat Mitigation Policy)**

OAR Chapter 635, Division 415 classifies six habitat categories and establishes a mitigation goal for each category. E.ON must identify the appropriate habitat category for all areas affected by the proposed Project and provide the basis for each category designation, subject to ODFW review. E.ON must show how it would comply with the habitat mitigation goals and standards by appropriate monitoring and mitigation.

**ORS 509.580 through 509.910 (Fish Passage)**

State law requires that the owner or operator of an artificial obstruction located in waters in which native migratory fish are currently or were historically present must address fish passage requirements prior to certain trigger events. Rules regarding fish passage may be found in OAR 635, Division 412. Such obstructions include culverts and bridges as well as dams and weirs. Trigger events include installation, major replacement, a fundamental change in permit status, or abandonment of the artificial obstruction. Further details concerning triggers ought to be requested from ODFW. If E.ON needs to construct, replace, or extend culvert crossings to manage
the road bearing requirements for equipment transport, these activities may be
considered triggers.

Native migratory fish include native salmon, trout, lamprey, sturgeon, and suckers,
as well as a few other species. It is ODFW's responsibility to determine the current
or historical presence of native migratory fish. Addressing fish passage
requirements entails the owner/operator obtaining from ODFW: 1) approval for a
passage plan when passage will be provided, 2) a waiver from providing passage, or
3) an exemption from providing passage. It is the intent of state fish passage laws
(ORS 509.585(1)) that, in most cases, option #1 should be sought and passage
should be provided at the artificial obstruction.

OAR Chapter 635, Division 425 (In-Water Blasting Permits)
OAR Chapter 635, Division 425 contains requirements for in-water blasting
activities. Although unlikely for this Project, in the event that construction would
require the use of explosives on, under, or in Oregon waters or in a location that
might affect fish or other wildlife or their habitat, an in-water blasting permit would
be required. An application for an in-water blasting permit must include the
information necessary to meet the requirements of ORS 509.140 and OAR 635-
425-0000 through 65-425-0050.

The ODFW has responded to the Applicant’s NOI in correspondence referenced in
Section VIII (b) of this Project Order. The Applicant has been provided a copy of
ODFW’s complete comments and should review and address these comments in its
preliminary application.

(g) Oregon Department of Geology and Mineral Industries

Statute and Rule References: OAR 345-022-0020

Permit: None required.

Discussion: The Department of Geology and Mineral Industries (DOGAMI)
provides technical review and recommendations on compliance with the Council’s
structural standard, OAR 345-022-0020. In its application, E.ON must include a
geotechnical report that includes, as a minimum, the information required by OAR
345-021-0010(1)(h). Also relevant is the information required by OAR 345-021-
0010(1)(i).

The Department understands that wind developers typically do not perform the
detailed site-specific geotechnical exploration until they have identified exact
turbine sites. If E.ON plans to defer some of the site-specific geotechnical work
pending completion of facility design, then the application for a site certificate must
include evidence of consultation with DOGAMI regarding the appropriate level of
pre-application site-specific geotechnical investigation.

(h) Oregon Parks and Recreation Department

Statute and Rule References: ORS 97.740 (Indian Graves and Protected Objects);
ORS 358.905 (Archaeological Objects and Sites); ORS 390.010 (Outdoor
Recreation); ORS 390.235 (Archaeological Sites and Historical Material); and OAR Chapter 736, Division 51 (Archaeological Permits).

Permit: An archaeological permit may be required to conduct archaeological investigations of the site.

Discussion: The Oregon Parks and Recreation Department provides technical review and recommendations on compliance with Council standards.

The State Historic Preservation Office (SHPO) within the Oregon Parks and Recreation Department provides technical review and recommendations in reference to the Council’s Historic, Cultural, and Archaeological Resources Standard (OAR 345-022-0090). The application for a site certificate should include an archaeological and cultural survey conducted by a qualified archaeologist. E.ON should work as early as possible with SHPO to ensure that E.ON provides required information in SHPO’s preferred formats.

NOTE: Information concerning the location of archaeological sites or objects may be exempt from public disclosure under ORS 192.501(11). Specific location information should not be included in the text of application for a site certificate. Such information, including archaeological survey reports, should be provided separately only after consultation with the Department.

(i) Oregon Department of State Lands — Removal-Fill Authorizations

Statute and Rule References: ORS 196.800 - 990 (Removal of Material; Filling); and OAR Chapter 141, Division 85 (Administrative Rules Governing the Issuance and Enforcement of Removal-Fill Authorizations Within Waters of Oregon including Wetlands).

Permit: A removal-fill permit is required if 50 cubic yards or more of material is removed, filled or altered within a jurisdictional water of the State [OAR 141-085-0520(4)(b)].

Discussion: E.ON should include information in the application for a site certificate to support a finding on whether a removal-fill permit is needed. E.ON should consult with the Oregon Department of State Lands (DSL) and obtain its concurrence, which may require a formal delineation of wetlands and waters of the State within the site boundary. If a removal-fill permit is needed, the application must include an itemized demonstration of each applicable provision of ORS 196.825 (Criteria for Issuance of a Permit) and OAR 141-085-0550 (Application Requirements for All Authorizations). If the permit is needed, the Council will make the issuing decision in consultation with the Department of State Lands. The Applicant should note the comments of DSL in Section VIII (b) regarding the timing for review of any wetland delineation reports.

(j) Oregon Water Resources Department — Water Rights/Adjudications Division

Statute and Rule References: ORS Chapters 536 through 540 (Water Resources/Water Rights); and OAR Chapter 690 (Water Resources Department).

Permit: A Limited License for construction use or other Water Right Permits are required if new water rights are necessary for the Project.
Discussion: E.ON should include information in its application for a site certificate to support a finding of whether a water right is or is not required. The application for a site certificate must identify the sources of water to be used by the proposed facility during construction and operation, the water right under which the water would be provided, the quantity of water needed, and the means of disposal of all water discharges from the proposed facility.

If a new water right or water right transfer is required, the application for a site certificate must include information to support a finding for issuance of a groundwater or surface water permit under ORS Chapter 537 (Appropriation of Water Generally) or transfer of a water use under ORS Chapter 540 (Transfer or Forfeiture of Water Rights), including a discussion and evaluation of all relevant factors, including those factors listed in ORS 537.153(2) and (3), ORS 537.170(8) and OAR Chapter 690, Divisions 310 (Water Right Application Processing) and 380 (Water Right Transfers). If a permit or transfer is needed, the Council will make the issuing decision in consultation with the OWRD. The OWRD has responded to the Applicant’s NOI in correspondence referenced in Section VIII (b) of this Project Order. The Applicant has been provided a copy of OWRD’s complete comments and should review and address these comments in its preliminary application.

III. NATIVE AMERICAN TRIBES

Statute and Rule References: Not applicable

Permit: None

Discussion: The application for a site certificate should include evidence of consultation with affected tribes. As indicated in email documentation from the Executive Director of the Legislative Commission on Indian Services to E.ON on October 20, 2011, consultation is required with the Confederated Tribes of the Umatilla Indian Reservation and the Confederated Tribes of Warm Springs regarding archaeological and cultural sites and materials within the site boundary. The affected tribes provide technical review and recommendations in reference to the Council’s Historic, Cultural, and Archaeological Resources Standard (OAR 345-022-0090).

IV. APPLICABLE LOCAL GOVERNMENT ORDINANCES

Statute and Rule References: Applicable substantive criteria from the Wasco County and Sherman County codes and comprehensive plans.

Permit: Conditional Use Permits.

Discussion: In the NOI, E.ON states that it intends to request a Council determination regarding land use in accordance with ORS 469.504(1)(b). Approximately 65 percent of the proposed Project is located in Wasco County, with approximately 35 percent located in Sherman County. The Council must consider the applicable substantive criteria for those portions of the Project residing in each county. Wasco County and Sherman County have been appointed as a Special Advisory Group, as required under ORS 469.480.
The applicable substantive criteria are those in effect on the date the application is submitted, as defined by ORS 469.504(1)(b)(A). In addition, the application must identify any Land Conservation and Development Commission administrative rules and goals and any land use statutes that are not implemented in the Counties’ comprehensive plans and are therefore directly applicable to the facility under ORS 197.646.

E.ON should contact the Wasco County and the Sherman County Planning Departments to discuss the requirements for conditional use permits. In the application for a site certificate, E.ON should include information necessary to demonstrate compliance with the substantive criteria from the county codes and comprehensive plans of both Counties that are applicable to issuance of the permits. As provided in ORS 469.401(3), if the Council issues a site certificate, the Counties will be bound to issue the conditional use permits, subject only to the conditions set forth in the site certificate.

It should be noted that Wasco County intends to update its Land Use and Development Ordinance with relation to energy facility standards and its Wasco County Comprehensive Plan in February 2012. E.ON should follow the Wasco County Ordinance and Comprehensive Plan that is in place at the time E.ONs application is submitted.

Sherman, Wasco, and Wheeler Counties have responded to the Applicant’s NOI in correspondence referenced in Section VIII (b) of this Project Order. The Applicant has been provided copies of the Counties’ comments and should review and address these comments in its preliminary application.

V. OTHER CONSTRUCTION-RELATED REGULATIONS

If the Council issues a site certificate, the certificate holder must comply with construction-related regulations that apply to the proposed facility. As provided under ORS 469.401(4), the site certificate does not address these regulations.

VI. APPLICABLE REQUIREMENTS FROM OAR CHAPTER 345, DIVISION 21

OAR 345-021-0000 (General Requirements)

All requirements apply. E.ON must submit the information required by OAR 345-021-0000, particularly the information in sections (6) and (7), regarding the status of non-federally-delegated and federally delegated permits.

OAR 345-021-0010 (Contents of an Application)

The application for a site certificate should include the information described in OAR 345-021-0010(2) and (3), as well as the information from 345-021-0010(1), which requires the Applicant to include in its application the information necessary to address each provision of the rules identified in this Project Order. Each of the paragraphs below indicates which provision(s) of OAR 345-021-0010(1)(a) – (dd) will apply to the Brush Canyon Wind Energy Project.

(a) Exhibit A – General Information about the Applicant

Paragraphs (A) through (D) apply.
Note that paragraph (B) calls for a list of “participating persons, other than individuals.” “Person” is defined in OAR 345-001-0010(45). If the applicant is a limited liability company (LLC), the applicant must provide information about the LLC similar to the information listed in the rule for corporations (OAR 345-021-0010(1)(a)(C)). The applicant must include in the application information about all third-party entities (persons other than individuals) that are important to the project.

(b) Exhibit B – General Information about the Proposed Facility

All paragraphs apply with the exception of except (A)(vi), (vii) and (viii).

Paragraph (D) applies to the collector line proposed for the southern portion of the Project, since it is greater than 10 miles in length and is located in both Wasco and Sherman Counties.

E.ON must provide specifications on all turbine types that might be used at the Project. If specific turbine types are not known, E.ON must provide information on the range of turbine types that might be used. Specifications include: peak generating capacity, turbine hub height in meters, rotor diameter in meters, maximum sound power level (and octave band data), overall weight of metals in the tower and nacelle per turbine in net (U.S.) tons, estimated cubic yards of concrete per turbine in the tower foundation to a depth of three feet below grade (that is, the concrete in the foundation above that depth), and the maximum diameter of the tower foundation. If the proposed facility might include more than one size of turbine (generating capacity), E.ON must state the maximum number of turbines in each turbine size that would be built and the maximum combined peak generating capacity of the facility as a whole.

E.ON must include a physical description and description of the location of all components of the facility including, but not limited to, turbines, meteorological towers, access roads, road modifications, transmission lines (including collector lines), concrete batch plant and gravel mining operations, substations, interconnection facilities, and O&M buildings. E.ON must include a written legal description of the micrositing corridors similar in form to the legal description required under OAR 345-027-0020(2). Corridors for turbine strings, access roads and transmission lines may be defined by Global Positioning System (GPS) coordinates and a distance from centerline. E.ON must describe any improvement or modification of existing structures, including roads.

The Applicant should note the additional information required by OAR 345-021-0010(1)(b)(D)(i) – (viii) which includes a corridor selection assessment.

Based on the NOI, the Applicant proposes to connect to BPA’s Buckley Substation. However, the Department understands that BPA currently is studying the interconnection of the Project and has not yet made any decisions regarding the Project’s interconnection at the Buckley Substation. The Applicant should note that any change in interconnection or re-routing of transmission lines will be subject to same rules and statutes pertinent to the currently proposed Project.
(c) **Exhibit C – Location**

Maps included in Exhibit C should provide enough information for property owners potentially affected by the facility to determine whether their property is within or adjacent to the site. Major roads should be named. E.ON should include maps drawn to a scale of 1 inch = 2,000 feet when necessary to show detail.

Maps should indicate the “site boundary” as defined in OAR 345-001-0010(53). The site boundary must include all areas within proposed micrositing corridors for turbines or other components. The proposed turbine string layout should be indicated. If the use of different turbine sizes would result in different turbine string alignments, all variations in turbine string alignments should be shown.

The Applicant should include mapping information in GIS format so that it can be conveyed to the Reviewing Agencies.

(d) **Exhibit D – Organizational Expertise**

All paragraphs apply. The Council’s review of the applicant’s ability to successfully construct and operate the project in accordance with site certificate conditions, is not limited to the applicant’s ability to construct a wind energy facility. The application must also provide evidence that the applicant will comply with conditions regarding minimization and mitigation of impacts on the resources protected by Council standards and that the applicant has demonstrated its ability to comply with the applicable regulations of other agencies.

Exhibit D should include a regulatory compliance history for the last three years that is focused on similar facilities owned or operated by the Applicant, such as transmission lines and substations. If possible, evidence of successful completion of mitigation projects should also be provided.

(e) **Exhibit E – Permits**

All paragraphs apply.

Although the Council does not review for compliance with federal permits, the application should describe federal permits particularly as federal permitting requirements are often relied on as evidence of compliance with EFSC or local standards. Ensure that Exhibit E identifies and discusses all the possible permits listed in Section II of this project order.

(f) **Exhibit F – Property Owners**

The NOI states that the facility corridors are located within zoned farmland. Accordingly, the distance in paragraph (C) applies (500 feet from the site boundary).

To ensure the greatest accuracy, the Department requests that the Applicant provide a property owner list at the time the preliminary application for site certificate is deemed complete by the Department. At the time Exhibit F is presented to the Department for review, the Applicant may reference the
Department’s request in the Exhibit and acknowledge that it will provide a complete and accurate list once the application has been deemed complete.

(g) **Exhibit G – Materials Analysis**

As discussed in Section II (d), ODOE also uses the materials analysis to identify any hazardous materials whose storage could affect site restoration.

(h) **Exhibit H – Geology**

The application should include all results of field and laboratory investigations and any other geotechnical and geologic hazard evaluation work completed for the proposed Project. A thorough ground shaking amplification, liquefaction, and lateral spread analysis with all of the calculations, methodologies, and recommendations based on this site-specific analysis will be required.

The Department understands that detailed site-specific geotechnical investigation for every turbine site is not always practical for wind energy facilities in advance of completing the facility design. However, the rule requires consultation with DOGAMI prior to submitting the application if the Applicant proposes to base Exhibit H on limited pre-application geotechnical work.

The Applicant should note that OAR 345-021-0010(1)(h), paragraphs (A), (F)(i), and (F)(iv), each contain references to potentially outdated guidelines and codes. The Applicant should consult directly with the Oregon Department of Geology and Mineral Industries regarding the most current standards that the Applicant should use in preparing information for the site certificate application. The application should note that the codes and guidelines used to prepare information in Exhibit H and provide an explanation if any are different from those cited in the Council’s rules.

(i) **Exhibit I – Soils**

E.ON should include information describing the impact of construction and operation of the proposed facility on soil productivity in farm zones. Describe all measures proposed to maintain soil productivity during construction and operation. E.ON should consult with the ODA, local rancher, landowners, and soil conservation districts regarding mitigation of impacts to ranchland. Specific discussion should be included on issues related to weed encroachment, interference with any irrigation equipment or livestock watering facilities, and the potential for restrictions to cattle movement caused by the proximity of tall structures (turbines or meteorological towers). Erosion control should also be emphasized on rangeland to minimize/mitigate damage to rangeland as well as
perennial and intermittent streams. Any NPDES permit issued should address
erosion control related to construction and operation of the Project.

(j) **Exhibit J – Jurisdictional Waters**

All paragraphs apply.

The Applicant should note OAR Chapter 141 Division 85 (“Administrative Rules
Governing the Issuance and Enforcement of Removal-Fill Authorizations Within
Waters of Oregon Including Wetlands”) was recently revised. The citations in
OAR 345-021-0010(1)(j) to rules in Division 85 of OAR Chapter 141 are no
longer valid. For example, reference to OAR 141-085-0010 should now be 141-
085-0510 (Definitions). The citation to OAR 141-085-0018 should now be to
OAR 141-085-0520.

The Applicant should consult directly with DSL if there are any questions
regarding the applicable regulations. The Applicant should note that DSL has
requested that any wetland reports should be submitted for its review as soon as
available prior to submittal of the application for site certificate, to allow enough
time for review and comment.

(k) **Exhibit K – Land Use (Statewide Planning Goals)**

Paragraphs (A) and (C) apply. Paragraphs (B) and (D) do not apply.

The application for a site certificate should include a discussion of whether the
proposed facility, including its related collection and transmission lines, would be
compatible with farm use, would not seriously interfere with accepted farm
practices, and would not significantly increase the cost of accepted farm practices.
The Applicant should note that OAR 660-33-0130(37) is the new standard that
replaced the requirement for a goal exception if more than 12-20 acres of
farmland was taken out of production. This has been incorporated in the Wasco
County Ordinance; however, the Applicant should evaluate if this new standard
has been incorporated into Sherman County’s ordinance.

Note that Wasco County Planning intends to update its Land Use and
Development Ordinance, with relation to energy facility standards, as well as its
and the Wasco County Comprehensive Plan in February 2012. E.ON should
follow the Wasco County Ordinance and Comprehensive Plan that is in place at
the time E.ON’s application is submitted.

(l) **Exhibit L – Protected Areas**

All paragraphs apply.

The Applicant should particularly note affects of transmission lines on Protected
Areas as described in the content for Exhibit L.

(m) **Exhibit M – Financial Capability**

All paragraphs apply.
(n) Exhibit N – Need for the Facility
Exhibit N does not apply.

(o) Exhibit O – Water Use
All paragraphs apply except (D).

(p) Exhibit P – Fish and Wildlife Habitat
All paragraphs apply.

The Applicant has completed avian and bat studies in 2010 and 2011. However, ODFW has commented that additional studies are to be conducted, including foot surveys for the state-sensitive species Swainson’s Hawk, and additional bat surveys to be conducted during the fall bat season between July 15 and October 15. The Applicant should refer to in-person discussions made among the Department, ODFW, and E.ON personnel in July 2011.

The Applicant also should consider the USFWS Draft Eagle Conservation Plan Guidance that calls for bat/avian protection. The Applicant should refer to in-person discussions made among the Department, USFS, and E.ON personnel in July 2011.

As a reviewing agency, ODFW provided specific comments regarding the proposed Project in a letter to the Department on November 21, 2011. These comments have been provided to E.ON and should be addressed in the application for site certificate.

(q) Exhibit Q – Threatened and Endangered Species
All paragraphs apply.

OAR Chapter 635, Division 100 (Wildlife Diversity Plan) and ODFW’s website contain the State list of threatened and endangered wildlife species. E.ON should include in its application for a site certificate a list of both state- and federally-listed endangered, threatened, and candidate plant species that have potential to occur in the analysis area. E.ON should identify these species based on a review of literature, consultation with knowledgeable individuals, and reference to the list of species maintained by the Oregon Natural Heritage Program.

E.ON should include in its application for a site certificate, a description, and the results of a field survey for the listed plant species. The survey must be conducted by a person with expertise in field botany, plant taxonomy, and biological conservation. The survey should be conducted during the time of year when it is possible to identify any listed plants (usually when these plants are in flower or fruit). The field survey report should include written descriptions of the survey methods and areas surveyed. In addition to the ODFW, E.ON should consult with the ODA Native Plant Conservation Program, and federal wildlife agencies regarding field survey methods, appropriate survey seasons, qualifications of field survey personnel, and the information to be included in the field survey report.
(r) Exhibit R – Scenic Resources
All paragraphs apply. Include visual depictions of the project’s impact on scenic resources within the analysis area.

The Applicant should consult with both the Prineville BLM office, which manages the Lower John Day River as a Federal Wild and Scenic River, and the Oregon Parks and Recreation Department, which manages the Lower John Day River as a State Scenic Waterway.

(s) Exhibit S – Historic, Cultural and Archaeological Resources
All paragraphs apply.

(t) Exhibit T – Recreation
All paragraphs apply.

(u) Exhibit U – Public Services
All paragraphs apply. Include an analysis of estimated facility-related traffic during construction and operation and the potential impact on traffic safety. Discuss transportation of heavy equipment and shipments of facility components during construction, including proposed transportation routes.

(v) Exhibit V – Solid Waste and Wastewater
All paragraphs apply.

(w) Exhibit W – Facility Retirement
All paragraphs apply. Explain and justify the methodology used to estimate retirement costs.

(x) Exhibit X – Noise
All paragraphs apply. The project is considered an industrial noise source on a previously unused site. The analysis should include noise predictions based on a “worst case analysis” that assumes that turbines would be located within micrositing corridors in a position closest to the nearest noise sensitive receiver. The application for a site certificate should include documentation of any waivers that E.ON needs if the predicted noise levels at an affected property exceed the ambient degradation standard.

The analysis must: identify all turbine locations used in performing the analysis; identify the locations of all noise sensitive properties that might be subject to noise levels potentially exceeding applicable limits from the Brush Canyon Wind Energy Project turbines; provide manufacturer’s warranted sound power levels, including octave band data, for all turbine types that might be used at the Brush Canyon Wind Energy Project. If specific turbine types are not known, E.ON must provide the maximum sound power level and octave band data that would not be
exceeded by any turbine type used at the facility; and identify all input parameters used in performing noise modeling.

(y) **Exhibit Y – Carbon Dioxide Emissions**
Exhibit Y does not apply.

(z) **Exhibit Z – Cooling Tower Impacts**
Exhibit Z does not apply.

(aa) **Exhibit AA – Electric and Magnetic Fields**
All paragraphs apply to any transmission line, regardless of size, that is a related or supporting facility, including collector lines.

(bb) **Exhibit BB – Other Information**
Any information requested in this Project Order that is not addressed in any other exhibit.

(cc) **Exhibit CC – Other Law**
Exhibit CC applies.

(dd) **Exhibit DD – Specific Standards**
Paragraphs (A) and (C) apply. Per Section I(a) of this Project Order, the Applicant should include in Exhibit DD information to support findings by the Council that the proposed facility complies with the Public Health and Safety Standards for Wind Energy Facilities (OAR 345-024-0010), the Siting Standards for Wind Energy Facilities (OAR 345-024-0015), and the Siting Standards for Transmission Lines (OAR 345-024-0090).

**VII. ANALYSIS AREAS FOR THE PROPOSED FACILITY**
The analysis areas are the minimum areas that E.ON must study for potential impacts from the construction and operation of the proposed facility. The analysis areas described in this Project Order do not limit the Applicant’s responsibility to assess the potential impacts of the facility. They are the areas in which significant adverse impacts from the proposed facility are likely to occur. If significant impacts could occur beyond the analysis areas described here, then E.ON must assess those impacts in the application for a site certificate and show how the facility would comply with the applicable standard with regard to the larger area where impacts could occur.

For all potential impacts, the analysis area includes all the area within the site boundary. In addition to the definition of “site boundary” in OAR 345-001-0010(53), the site boundary includes the perimeter of any micrositing corridors, of all outlying components (facility components lying outside of any micrositing corridor), and all temporary laydown and staging areas, turn-around areas and crane transport corridors. In its application for a site certificate, E.ON must describe the site boundary and provide a map showing the proposed site boundary.
The analysis areas are included in the following table:

<table>
<thead>
<tr>
<th>Affected Standard or Resource</th>
<th>Exhibit</th>
<th>Analysis Area</th>
</tr>
</thead>
<tbody>
<tr>
<td>Structural Standard</td>
<td>Exh. H</td>
<td>The area within the site boundary, notwithstanding the distances related to an assessment of seismic hazards required by OAR 345-021-0010(1)(h).</td>
</tr>
<tr>
<td>Soils</td>
<td>Exh. I</td>
<td>The area within the site boundary.</td>
</tr>
<tr>
<td>Wetlands</td>
<td>Exh. J</td>
<td>The area within the site boundary; and wetland areas hydrologically connected to wetlands within the site boundary.</td>
</tr>
<tr>
<td>Land Use</td>
<td>Exh. K</td>
<td>The area within the site boundary and one-half mile from the site boundary.</td>
</tr>
<tr>
<td>Protected Areas</td>
<td>Exh. L</td>
<td>The area within the site boundary and 20 miles from the site boundary.</td>
</tr>
<tr>
<td>Fish and Wildlife Habitat</td>
<td>Exh. P</td>
<td>The area within the site boundary and within one-half mile from all ground disturbing activities anticipated during construction, unless otherwise described in an ODFW- and ODOE-approved protocol.</td>
</tr>
<tr>
<td>Threatened and Endangered Species</td>
<td>Exh. Q</td>
<td>The area within the site boundary and 5 miles from the site boundary.</td>
</tr>
<tr>
<td>Scenic and Aesthetic Values</td>
<td>Exh. R</td>
<td>The area within the site boundary and 10 miles from the site boundary.</td>
</tr>
<tr>
<td>Historic, Cultural and Archaeological Resources</td>
<td>Exh. S</td>
<td>The area within the site boundary.</td>
</tr>
<tr>
<td>Recreational Opportunities</td>
<td>Exh. T</td>
<td>The area within the site boundary and 5 miles from the site boundary.</td>
</tr>
<tr>
<td>Public Services</td>
<td>Exh. U</td>
<td>The area within the site boundary and 10 miles from the site boundary.</td>
</tr>
</tbody>
</table>

VIII. COMMENTS FROM REVIEWING AGENCIES AND THE PUBLIC

a) Public Comments

In addition to the applicable statutes, rules, and land use requirements listed in this Project Order, the application must address issues arising from public comments following the informational meeting on the NOI (OAR 345-015-0130).

At the close of the comment period on December 15, 2011 the Department had received 9 written comments from members of the public. The Department has summarized the issues addressed in the public comments according to applicable Council standards; however, the summary presented below is not a substitute for the original comments, nor does it represent the opinions of ODOE or EFSC. Not all issues and questions raised in public comment are matters within EFSC jurisdiction; however, ODOE expects the Applicant to work directly with the public, stakeholders, and local governments to address comments to the extent practicable.
Comments Related to General Standard of Review (OAR 345-022-0000)

1. The Applicant should be financially obligated to remove project infrastructure once project reaches its end of life.

Comments Related to Soil Protection (OAR 345-022-0022)

1. The Applicant should avoid and minimize impacts to soil.
2. Land disturbance during construction will result in increased sediment loading on waterways.

Comments Related to Land Use (OAR 345-022-0030)

1. A small portion of the Project boundary crosses Hwy 218 and is owned by Antelope Creek Partners LLC. Excluding this parcel west of Highway 218 from the Project boundaries would greatly increase comfort level of the people of Antelope.

Comments Related to Fish and Wildlife Habitat (OAR 345-022-0060)

1. Applicant should avoid and minimize impacts to wildlife, particularly birds and bats.
2. Applicant should consider burying the transmission lines to reduce avian use.
3. Applicant should follow the Interim Guidance to Avoid and Minimize Wildlife Impacts from Wind Turbines (USFSWS, March 2003).
4. The Project is near nesting territory for the protected Golden Eagles.
5. The Applicant should study migration routes of birds relative to construction of wind turbine projects, to aid in responsible Project development.
6. The Applicant should follow guidelines set out by the National Wind Coordinating Council in the 1990s.
7. The Applicant should properly assess avian impacts.
8. A comprehensive study is needed to ensure the proposed Project will not adversely impact Golden Eagle nest sites located at Hannafin Canyon, Spring Basin, Cathedral Rock, Brush Canyon, Big Pine Hollow, and Horse Heaven.
9. A study is needed to assess areas where Steelhead could be impacted by Project. Mitigation measures should be taken to ensure water ways are protected from temporary and permanent land disturbance associated with the Project.

Comments Related to Threatened and Endangered Species (OAR 345-022-0070)

1. The Applicant should provide studies identifying threatened or endangered species.
2. The Applicant should avoid harmful impacts to state-listed threatened or endangered species.

Comments Related to Scenic and Aesthetic Values (OAR 345-022-0080)

1. The Project will impact scenic and aesthetic values in Sherman and Wasco Counties.
2. The Project will impact the “Journey Through Time Scenic Byway” and the historical district designation with City of Antelope. The “Journey Through Time Scenic Byway” should be treated as a scenic corridor and appropriate standards should apply.
3. The Project will impact view of a particular home site.

Comments Related to Historic, Cultural, and Archaeological Resources (OAR 20 345-022-0090)

1. Antelope Cemetery in the NE Corner of the City of Antelope should be protected.
2. Old Antelope Cemetery on Walt Wells Ranch should be protected.
3. The original Antelope town site at the Howard Maupin’s Homestead and the Walt Wells Ranch should be protected.

Comments Related to Public Services (OAR 345-022-0110)

1. City of Antelope does not have the infrastructure for fire protection services for the Project.
2. Operation of the Project may interfere with wireless communications from a cell phone tower the City of Antelope leases to ATT.
3. Construction and operations of the Project may affect the water supply of the City of Antelope.

Other Issues of Concern

1. The Proposed project is located in an area where navigable airspace is utilized by military aircraft for training. The Navy has requested the Applicant contact its representative for discussion.
2. The Applicant should minimize the spread of weeds.

b) Reviewing Agency and Other Comments

The Department has received comments on the proposed Project from Sherman County Planning Department, ODFW, OPUC, OWRD, Wasco County Planning Department, Wheeler County Planning Department, DSL, and ODEQ. These comments have been sent to E.ON for their consideration in development of a preliminary application for site certificate, as required by OAR 345-015-0140.

A summary of reviewing agency comments that are applicable to issues under Council jurisdiction is presented below, regardless of how the comment was submitted. This summary is not intended to substitute for careful review of each comment from a reviewing agency. The applicant should address each specific
concern detailed in the reviewing agency comments, either in the relevant application exhibit or in Exhibit BB. The application must include sufficient information for the Council to determine the adequacy of the Applicant’s response to significant comments from reviewing agencies. All of the reviewing agency comments have been provided under separate cover to the applicant and are incorporated by reference in this order.

1. **Sherman County Planning Department**
   Comments referenced the Sherman County Zoning Ordinance of 1994, Article 5, and Section 5.2 General Criteria. Sherman County provided a list of criteria that need to be met as conditions of approval. Sherman County also provided information regarding non-farm uses in an F-1 zone.

2. **Oregon Department of Fish and Wildlife (ODFW)**
   ODFW provided a list of applicable statutes and administrative rules and policies administered by ODFW that would pertain to the proposed project. ODFW provided a list of recommended impact avoidance and minimization measures for sensitive species (including the hoary bat, California myotis, and sagebrush lizard) and raptors should be reviewed carefully and addressed by the Applicant. Additionally, ODFW provided specific comments to the NOI, which included a request that the Applicant describe the need for 5-acre disturbance area for Met tower construction; 40-foot side constriction roads.

3. **Oregon Public Utilities Commission (OPUC)**
   OPUC provided comments regarding compliance with state statutes for constructing, operating, and maintaining the electrical supply and communication lines. OPUC indicated that the Applicant would need to provide a briefing to OPUC’s Safety Reliability and Security Staff regarding how it will comply with OAR Chapter 860 Division 024. The Applicant will be subject to the same OARs on an ongoing basis.

4. **Oregon Water Resources Department (OWRD)**
   OWRD indicated that unless water is provided by a municipal facility, a limited license will be required to obtain water for construction needs. Also, OWRD indicated that the intent of the Applicant to drill a well for the planned O&M building is appropriate as long as the water use does not exceed 5,000 gallons per day.

5. **Wasco County Planning Department**
   Wasco County indicated in its correspondence it is in the process of updating its Land Use and Development Ordinance (LUDO) relative to its energy facility standards and the Wasco County Comprehensive Plan and that the new standards are expected to be adopted by Wasco County prior to submittal of the formal application. The Applicant should note that Wasco County ordinances applicable to the Applicant would be those that are in place at the time the Application is submitted to the Department. Wasco County provided information regarding available accommodations for anticipated workers. Wasco County indicated that it will require the following from the Applicant:
Emergency Response Plan, Weed Control Plan, Fire Suppression/Wildfire Management Plan, and a County Road Management Plan. Wasco County provided specific recommendations regarding size and location of analysis area, additional study areas, and the need for local permits. Wasco County’s Applicable Substantive Criteria were included in the response as Attachment A.

6. Wheeler County Planning Department

Wheeler County’s primary comment was regarding the proposed project’s visibility from the John Day River and how that issue will be addressed in terms of the Wild and Scenic River regulations. Wheeler County commented that several residential properties and other lands including the Spring Basin Wilderness Area fall within the Recreation/Threatened and Endangered Species; Science Resources; and Protected Areas analysis areas.

7. Oregon Department of State Lands

DSL indicated that a wetland delineation should be provided to the state to determine the location of waters of the state within the project area. It was requested that any wetland delineation report be forwarded to DSL under separate cover well in advance of the preliminary application to accommodate review time. DSL also provided additional guidance including a willingness to offer a pre-application meeting with the Applicants to discuss permitting requirements.

8. Oregon Department of Environmental Quality

ODEQ provided information regarding what permits would be required of the Applicant including a Water Pollution Control Facilities (WPCF) if certain threshold conditions are met, and an NPDES 1200-C construction permit.

IX. EXPIRATION DATE OF THE NOTICE OF INTENT

In accordance with OAR 345-20-0060, the proposed Project NOI expires on October 15, 2013, unless E.ON petitions the Council for an extension. If E.ON does not submit an application for a site certificate before the expiration of the NOI, then E.ON must submit a new NOI to satisfy ORS 469.330.

X. PROJECT ORDER AMENDMENT AND APPLICATION COMPLETENESS

The Council or the Department may amend this Project Order at any time [ORS 469.330(4)]. Amendment may include changes to the analysis areas. To issue a site certificate, the Council must determine that the proposed facility complies with Oregon statutes and administrative rules identified in the Project Order, as amended, as applicable to the issuance of a site certificate for the proposed facility [ORS 469.503(3)].

Under OAR 345-015-0190(5), when the Department determines the application for a site certificate contains adequate information for the Council to make findings on all applicable Council standards, the Department may find the application for a site certificate complete, regardless of whether the application for a site certificate contains all information required under
OAR 345-021-0000 and OAR 345-021-0010. Notwithstanding a determination that an application for a site certificate is complete, the Department may require additional information from the Applicant if the Department identifies a need for that information during its review of the application for a site certificate [OAR 345-015-0190(9)].

XI. APPLICABILITY AND DUTY TO COMPLY

Failure to include an applicable statute, rule, ordinance, permit, or other requirement in this Project Order does not render that statute, rule, ordinance, permit or other requirement inapplicable, nor in any way relieves Applicant from the duty to comply with the same.

OREGON DEPARTMENT OF ENERGY

“/s/ Thomas M. Stoops”

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Thomas M. Stoops, Siting Manager
Oregon Department of Energy

Date of Issuance: 5 January 2012

1 Section VI states which paragraphs of OAR 345-021-0010 apply to each exhibit, but does include the text of the requirement—the applicant should carefully review the exact language in each applicable paragraph of OAR Chapter 345, Division 21.