

**RFA6 Draft Proposed Order Comment Index**

<b>Commenter Name</b>	<b>Title/Entity/Organization</b>	<b>Date Received</b>	<b>Scope of Comment</b>
Charles Little	Member of the Public	12/6/2021	General support of RFA6: Changing existing facilities allows renewable energy needs to be met timely
David Lawlor	Director of Development, NextEra Energy Resources (Certificate Holder)	12/13/2021	Objection to Type A Review path
Chris Powers	Environmental Manager, NextEra Energy Resources (Certificate Holder)	12/13/2021	Specificity of information in soil reclamation plan; Applicability of RFA6 modifications with: setback requirements, amended CUP, landowner consultation, and cost estimate; Numerous other non substantive, clarifications
Jason Allen, M.A.	Historic Preservation Specialist, Oregon State Historic Preservation Office	12/13/2021	Concurrence with Historic Properties Inventory Report determination
James Hayner, on behalf of Kirk and Gunder Terjeson	James Hayner, Minnick Hayner attorneys at law representing Kirk and Gunder Terjeson, Terjeson Ranches (adjacent land owners)	12/15/2021	Opposition to RFA6 if a road required access or easement across their property
George Murdock	Chair, Umatilla Board of Commissioners	12/15/2021	Recommended modifications to several conditions; clarification of current fees associated with amending CUP and zoning permits; guidance for various Umatilla County contacts; and requested updates from certificate holder on compliance with turbine road setbacks

December 3, 2021

Chase McVeigh-Walker  
Oregon Department of Energy  
550 Capitol St. NE  
Salem, Oregon 97301

Charles Little  
17 Westview Driver  
Hermiston, Oregon 97838

RE: Stateline Wind Project

Mr. McVeigh-Walker,

I would like to go on record of supporting the Stateline Wind Project request to add to additional two 2.6 MW wind turbines and replace up to four 2.6 MW existing wind turbines.

The amendment request to approval to construct and operate a 50 MW battery energy storage system. The additional 72 power transformers, bi-directional inverter and cooling unit; 18 inverters with step up transformers and interconnection facilities on the 11 acers within the site boundary.

The Department of Energy needs to allow changes to existing facilities to move forward so that renewable energy needs can be meet in a timely manner.

Thank you for your time in this matter.



Charles Little



December 10, 2021

Oregon Energy Facility Siting Council

c/o Mr. Todd Cornett, Council Secretary

550 Capital Street, NE, 1<sup>st</sup> Floor

Salem, OR 97301

Subject: Formal Objections to Department's October 19, 2021 Review Path  
Determination for Request for Amendment 6 of the Stateline Wind Project Site  
Certificate

Dear Chair Grail and Members of the Council:

On July 23, 2021, FPL Energy Stateline II, LLC (the "certificate holder") submitted its Preliminary Request for Amendment 6 ("pRFA 6") and Type B Amendment Determination Request ("ADR") for the Stateline Wind Project ("SWP") Site Certificate. The certificate holder requested that the Energy Facility Siting Council ("Council") review its Request for Amendment 6 ("RFA" or "RFA 6") pursuant to the Type B review process set forth in OAR 345-027-0351(3). On October 19, 2021, the Oregon Department of Energy ("Department") issued a review path determination ("Determination") concluding that Type B review is not appropriate for pRFA 6 based on the perceived complexity of the proposed modifications, the anticipated level of interest from the public and reviewing agencies, and the Department's potential interest in modifying mitigation requirements. On November 23, 2021, the Department issued its Draft Proposed Order ("DPO") affirming its determination that a Type B review is not appropriate and deciding to process RFA 6 pursuant to the Type A review process.

In the interest of securing a timely final decision on RFA 6, the certificate holder made the decision not to request review of the Determination by the Council. However, as outlined below, the proposed modifications are not complex, and the anticipated level of interest and potential changes to conditions simply do not warrant Type A review. The certificate holder is also concerned that the Department's determination creates unfavorable precedent that unnecessarily restricts the Department's and the Council's ability to use Type B review in the future. The Type B review path is a critical tool to process minor—but commercially essential—site certificate amendments as expeditiously as possible. Accordingly, the certificate holder writes to register its formal objections to the Department's review path decision in the hope that these comments will inform the Department and Council's consideration of review path for future requests for amendment. The

certificate holder urges the Council to protect the viability of Type B review for future amendment requests.

## **I. BACKGROUND**

SWP consists of three operational wind farm developments in Umatilla County: Stateline 1, Stateline 2, and Vansycle II. SWP is divided into two separate parts (Stateline 1 and 2 comprising one part and Vansycle II comprising the other part) with separate site boundaries.

In the certificate holder's previous Request for Amendment 5 ("RFA 5"), the Council approved dimensional changes to the approved turbine dimensions to allow for existing turbine towers be upgraded / repowered with current technology, by replacing the nacelles, hubs, rotors and turbine blades. However, since the Council approved RFA 5, wind power technology has further evolved, and the components that the certificate holder planned to use for the repower are no longer available. Therefore, the certificate holder has proposed RFA 6 to respond to the change in available turbine technology and allow for flexibility in its repower design.

RFA 6 includes repowering primarily by replacing existing nacelles, hubs and rotors, including blades for a new maximum blade tip height of approximately 499 feet (an addition of approximately 59 feet to the facility's currently permitted maximum height of 440 feet) on the existing turbine towers. The certificate holder also proposes to construct and operate a 50 MW Lithium-ion battery energy storage system within an 11-acre site adjacent to the existing substation in a previously impacted construction area. Additionally, the certificate holder proposes the flexibility to fully replace up to four existing turbines and add up to two turbines at previously approved locations, expanding the fleet from 43 to 45.

As set forth in the ADR, RFA 6 does not involve any changes to the facility site boundary and would not result in discernable visual impacts to any resources protected under Council standards (i.e., Recreation, Scenic Resources, Protected Areas, and Historic, Cultural and Archeological Resources Standards). It would also be similar in scope and scale to other RFAs for wind turbine tower/blade dimension changes previously approved by the Council. Simply stated, RFA 6 will allow the certificate holder to replace aging turbine components to take advantage of technological advances, optimizing wind harvesting efficiency as part of typical operational and maintenance ("O&M") activities for the facility.

## **II. ARGUMENT**

To determine whether a request for amendment justifies Type B review, the Department and the Council may consider factors "including, but not limited to":

- (a) The complexity of the proposed change;
- (b) The anticipated level of public interest in the proposed change;
- (c) The anticipated level of interest by reviewing agencies;
- (d) The likelihood of significant adverse impact; and
- (e) The type and amount of mitigation, if any.

OAR 345-027-0357(8). The purpose of this multi-factor analysis is to evaluate whether the scope of modifications proposed are so significant as to require a full Type A review. If the proposed modifications are not so significant, as is the case here, a streamlined Type B review is appropriate.

Throughout the Determination, the Department's analysis misapplies the individual factors at OAR 345-027-0357(8) based on speculation and vague assertions about potential impacts and what may occur during the review process. But moreover, the Department errs by apparently applying each factor as an end in itself, failing to account for the relative scale and intensity of the modifications as a whole. As a result, the Determination ignores that the modifications proposed in pRFA 6 are the very type of modifications for which Type B is appropriate. Collectively and individually, the factors at OAR 345-027-0357(8) weigh in favor of Type B review.

**A. The certificate holder has met its burden to demonstrate that the proposed changes are not complex, and the Department's assertions do not demonstrate otherwise.**

The Determination concludes that the proposed changes are "complex" for four reasons. This section addresses each of those reasons in turn.

First, in the Department's view, the certificate holder has not explained why the changes proposed in RFA 6 should be considered typical O&M activities and "has not previously described that O&M activities include th[e] level of activity" proposed in pRFA 6. Here, the certificate holder uses the term "O&M" in a broad sense, to capture routine repower activities that are necessary to maintain technologically current commercial power generation at the facility. As explained in pRFA 6, the proposed modifications to the existing turbines are far from complex, and in fact, are the sorts of technological modifications that are typical in an industry where the turbine fleet at existing projects is aging and wind turbine technology is advancing. The technology proposed here is not new or novel, and the Department and the Council have reviewed similar technology before.

The certificate holder acknowledges that the term "O&M" could be more precise. However, pRFA 6 details the specific changes proposed at length, and the Department's analysis of those details is scant. As set forth in pRFA 6, the substantial majority of the certificate holder's proposal involves replacing aging parts on existing turbines with newer, more efficient parts. While the certificate holder does propose to add 50 MW of new battery storage, this proposed modification is small in scale and will not create new impacts, because it will be collocated with the existing substation

upon previously impacted construction areas. Further, battery storage technology has now been reviewed by the Council at multiple jurisdictional facilities. Additionally, replacing four turbines and adding up to two turbines would occur within locations previously evaluated and approved by the Council. These proposed changes are minor within the context of the facility as a whole, and they do not alter the bases for the Council's previous findings on the site certificate. In short, the physical changes proposed for the facility are not complex.

Second, the Department concludes that the certificate holder has not provided "sufficient information ... to justify why changes within an existing site boundary should be considered non-complex." In the Department's view, certificate holders must provide additional detail to explain why repower activities that maintain an existing site boundary are not complex. It is not clear what other information is necessary to explain why the proposed modifications, all of which will occur within the existing site boundary, renders the RFA non-complex. That the RFA will maintain the existing site boundary is, in itself, an important fact in the path determination analysis, because it indicates that the RFA will not create external impacts beyond those that the Council has previously evaluated.

Third, the Department concludes that potential impacts to above-ground historic resources are "uncertain," because the Department has not yet completed its evaluation of those impacts, and RFA 6 will require further review under the Council's substantive standards. However, as the Determination acknowledges and as set forth at length in pRFA 6, the certificate holder's proposed changes will not alter the basis of the Council's previous findings under most of the Council's substantive standards. That the Department has not yet finished reviewing the proposed modifications under the Council's Historic, Cultural and Archeological standard—and is therefore "uncertain" about the potential for impacts to above-ground historic resources—does not render the RFA "complex." Rather, as detailed in the pRFA 6, the SWP has a long history of cultural resource surveying and monitoring, and existing conditions will adequately protect cultural resources in the event of that further analysis reveals any potential for impact.

Relatedly, the Determination relies on "the fact that pRFA 6 requires a substantive review under each Council standard" to conclude that the proposal is complex. However, as detailed in pRFA 6, the amendment is not expected to alter the Council's previous findings under any of the Council's substantive standards. The certificate holder submitted a complete burden of proof statement addressing each substantive standard, a professionally accepted best practice in proceedings before the Department and the Council. The Department's rationale now suggests that a Type B review is unavailable simply because the certificate holder submitted a thorough application that will require the Department's review and analysis. As a matter of procedural policy, this rationale does not support a finding that the proposal is complex.

Finally, the Department concludes that examples of previous RFAs processed under Type B review were necessarily less complex because, although they approved increases to wind turbine

dimensions similar to what the certificate holder proposes here, those facilities were not yet operational—whereas the SWP has been operational for many years.

As demonstrated in pRFA 6, the Council has previously reviewed wind turbine modifications that exceed what the certificate holder is proposing here. For example, the Golden Hills Project has a total facility height of 650 feet—161 feet more than the maximum height that the certificate holder proposes. Notably, in 2018, the Council concluded that the Type B process was appropriate for Wheatridge RFA3, which proposed to modify approved turbine specifications and increase the maximum blade tip height from 476 feet to 499.7 feet (an increase of 23.7 feet).

The Determination attempts to distinguish these precedential RFAs on the grounds that those projects had not yet been constructed at the time of the site certificate amendments. But it is unclear how this distinction is material. If anything, this distinction weighs even further in favor of the Type B pathway in this case because, as a practical matter, the vast majority of impacts from the SWP have already been evaluated, have already occurred, and are already being mitigated. The certificate holder acknowledges that, unlike those precedents, pRFA 6 would add 50 MW of battery storage and could potentially add up to two new turbines. However, those physical modifications are small when compared to the scale of the SWP as a whole and when compared to other wind projects previously approved by the Council. These small-scale physical modifications are necessary to maintain existing power generation at the SWP and are not so complex as to warrant Type A review.

### **B. The Department’s “conservative” assumption of public interest is speculative.**

In the Determination, the Department notes that it “conservatively assumes a moderate level of public interest in the changes proposed in RFA 6.” However, the Department’s rationale is based on the “reasons described under the ‘complexity’ factor,” and this analysis appears to conflate the two factors. The Department further asserts, without elaboration, that RFA 6 will result in construction impacts different from existing conditions that “may ... generate public interest in temporary impacts to roads, housing, hospital and emergency services, especially given the rural nature of the facility.” This rationale appears to be based not on the specific changes proposed in RFA 6 or on evidence that there has or will be public interest in the SWP, but on a view that rural communities often have moderate public interest in wind facilities and construction activities generally.

OAR 345-027-0051(3) provides that the Department and the Council may consider “the anticipated level of public interest in the proposed change,” not the general level of public interest in wind facilities. Although the certificate holder acknowledges that the level of interest in past proceedings may be an indication of interest in the proposed change, the Department’s speculative assertions do little to explain how the anticipated level of interest in the specific changes proposed justify Type A review.

Here, the modifications are proposed on a facility that has been in operation for more than a decade. As set forth in the pRFA, the proposed changes are primarily limited to replacing turbine blades and nacelles on existing turbines, modestly increasing the turbine dimensions, and adding a small battery storage unit next to an existing substation. At most, the RFA would authorize two additional turbines. There is no evidence to suggest that there would be significant public interest in these relatively small modifications to the facility, particularly given its location in a rural and unpopulated area. And, the certificate holder has engaged in early coordination with landowners precisely to proactively address any significant public concern.

Further, to the extent interest in past proceedings may be an indication of anticipated interest in the proposed change, historical public interest in this facility has been low. There were only two public (non-agency) comments on the amendments related to RFA 5 and one public comment on RFA 4. Even if the level of interest in past proceedings may be an indication of potential interest (and again, the plain language requires the Department to evaluate the anticipated level of public interest in the specific change proposed), the record demonstrates limited interest in this facility.

Finally, if the Department continues to opt for Type A review because of general public interest in wind facilities, it is difficult to imagine any proposed amendment for any facility that would fall under Type B. And while the certificate holder understands the Department's view that Type A is the "default," basing a review path determination on speculation about public interest is bad policy. Not only does such a practice unnecessarily add process and risk to small-scale maintenance projects like RFA 6, it opens the door for project opponents to force certificate holders into Type A processes for all future amendments by simply opposing a project during the initial siting process.

For these reasons, the Department's speculation about the possible level of public interest in the proposed change should not trigger Type A review.

**C. The interest in the proposed changes from reviewing agencies does not warrant application of the Type A review process.**

In the Determination, the Department notes that it coordinated with reviewing agencies and has already received comments representing a "moderate level of reviewing agency interest" in the proposed modifications. The Determination highlights its receipt of comments from Umatilla County, the Confederated Tribes of the Umatilla Indian Reservation, Oregon Department of State Lands, Oregon Department of Aviation, Oregon Department of Fish and Wildlife, and the State Historic Preservation Office ("SHPO"). The Determination states that SHPO's comment was "substantive." Based on these facts, the Department speculates that it will ultimately receive a "moderate to high level" of agency interest.

Of the agency comments received, the only comment evidencing more than a de minimis level of interest is the comment received from SHPO. SHPO requested additional information regarding



built properties within the project area, and the certificate holder responded to that request by providing a built environment/historic resources inventory for the analysis area. SHPO subsequently concluded, based on that report, that RFA 6 would result in no impacts to historic era properties eligible for listing on the National Register of Historic Places. The other agency comments received by the Department are non-specific and primarily address routine process considerations (e.g., the general need to analyze impacts to cultural resources or applicable local land use permits). It is unclear how benign comments from a handful of state agencies obligated to review and respond to the Department on RFA 6 should somehow contribute to the Department's conclusion that Type A review is appropriate. If this type of agency interest weighs in favor of Type A review, then no proposed amendments could possibly qualify under the Type B pathway.

As with the anticipated level of interest by members of the public, the anticipated level of interest by reviewing agencies should not trigger Type A review.

**D. Clerical changes to site certificate conditions are not equivalent to changes to the type and amount of mitigation warranting Type A review.**

In the Determination, the Department asserts that proposed changes to the site certificate conditions are equivalent to changes to the type and amount of mitigation, because “[c]onditions act as a form of mitigation.” The Department then identifies condition modifications proposed by the certificate holder that the Department concludes constitute changes to the mitigation. Those conditions include amendments to the facility description—e.g., adding battery storage to the description of the related or supporting facilities and modifying turbine specifications within the site certificate conditions—as well as purely clerical modifications—e.g., amending Condition 93 to refer to the Sixth Amended Site Certificate rather than the Fifth Amended Site Certificate.

The site certificate modifications identified by the Department in the Determination and those recommended by the Department in the DPO are administrative changes necessary to ensure that the Sixth Amended Site Certificate accurately represents the facility operations that the Council has approved. These types of changes are not changes to “mitigation,” which is an industry term of art widely understood to mean actions that respond to a facility's “impacts.” All requests for amendment result in changes to the site certificate. It cannot be the case that any change to the site certificate constitutes a change to the type and amount of facility mitigation. If it were, this factor would always weigh in favor of Type A review.

Moreover, OAR 345-027-0357(8)(e) directs the Department specifically to consider the “type and amount” of mitigation—indicating that this factor concerns substantive changes to mitigation and not simply any amended condition that relates to mitigation. For example, the DPO recommends that certificate holder submit a Noxious Weed Control Plan to address new ground disturbance from RFA 6, as part of the certificate holder's existing approved Revegetation Plan. This type of change to the site certificate is not a change to the “type and amount of mitigation.” It cannot be the

case that any change intended to extend existing mitigation obligations to new construction necessarily weighs in favor of Type A review. If it were, Type B review would never be available for an RFA proposing even modest new ground disturbance.

OAR 345-027-0357(8)(e) was intended to guide the Department in evaluating whether an RFA will fundamentally change the mitigation package that applies to a facility. Here, as set forth in the Department's proposed findings in the DPO, RFA 6 will not materially affect mitigation for this facility. Accordingly, neither the Department's findings nor rationale supports a conclusion that RFA 6 will result in changes to the type and amount of mitigation warranting Type A review.

### **III. CONCLUSION**

For the aforementioned reasons, we respectfully request that the Council take notice of these formal objections to the Department's Determination. Simply put, RFA 6 should have been subject to the Type B review process, and the certificate holder urges the Council to protect the Type B review process for future applications.

Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read "David Lawlor", is written in a cursive style.

David Lawlor

Director of Development

NextEra Energy Resources



December 13, 2021

Ms. Sarah Esterson, Senior Policy Advisor

Oregon Department of Energy

550 Capitol St. NE, 1st Floor

Salem, OR 97301

Subject: Applicant Comments on Draft Proposed Order for Stateline Wind Project RFA6

Dear Ms. Esterson:

This letter provides comments by FPL Energy Stateline II, LLC (the "certificate holder") on the Draft Proposed Order on Request for Amendment 6 ("RFA6") for the Stateline Wind Project ("SWP") Site Certificate, dated November 23, 2021 ("DPO"). The certificate holder supports the Oregon Department of Energy ("ODOE") findings that the certificate holder can safely and responsibly construct the modifications proposed in RFA6 and continue to operate Vansycle II ("Facility"). The certificate holder provides the following comments and proposed revisions to the DPO for the reasons outlined below.

- **Page 114 - Access Roads**

One permanent access road between ALT-1 and ALT-2 is proposed in RFA6; 0.44 miles total, 0.9 acres of permanent impacts. Accordingly, the certificate holder requests minor modifications to the condition language to ensure consistency with the proposed modifications and suggests edits to the following paragraphs:

    OAR 345-024-0015(1) encourages the use of existing roads for facility site access, minimizing the amount of land used for new roads, and locating new roads in such a manner that reduces adverse environmental impacts. The certificate holder proposes to utilize existing access roads, to be temporarily widened to support construction activities. ~~One~~**No extent of** new permanent roads ~~s~~ would be constructed as part of RFA6, **totaling 0.44 miles**. New conditions described in Section III.D. Soil Protection of this order would require that, during construction, the certificate holder implement erosion and sediment control measures outlined in the NPDES 1200-C permit and ESCP to reduce adverse environmental impacts from facility roads.

~~Because the proposed RFA6 facility modifications would not result in new permanent access roads, T~~he Department recommends the Council continue to find that the certificate holder demonstrates that it would use existing roads where practicable to provide access to the site and, through the temporary expansion of existing roads **and addition of a single 0.44**

~~mile road~~, would reduce adverse environmental impacts and constructed in a manner that minimizes the amount of land used.

- **Page 134 - Major Structures**

The combined peak generating capacity for the Facility should be up to 118.68 MW, not 98.9 MW. Accordingly, the certificate holder requests a minor modification to the Facility description language to reflect the accurate peak generating capacity. Suggested edits to the following paragraph:

~~Vansycle II Stateline 3~~ consists of up to ~~45-43 Siemens 2.3-MW~~ wind turbines.

~~Vansycle II Stateline 3~~ has a combined peak generating capacity of up to ~~118.68~~~~98.9~~ MW.

Major facility structures are further as described in the Final Order on Amendment #4.

[Amendment #4; AMD5; ~~AMD6~~]

- **Recommended Condition 152 - Construction Ground Disturbing Related Activities**

The new, recommended condition 152 is repetitive to other conditions and requires several additional pre-construction and construction steps and agency reviews that are unnecessary for the limited repair and maintenance activities required to facilitate the proposed repower. As explained in the RFA, the proposed repower of the existing Facility will be a much smaller construction effort than for a new facility. Additionally,

- The majority of the proposed changes in RFA6 require ground-disturbing impacts to previously impacted areas - access road widening and turbine pad widening – and these areas of successfully been revegetated and reclaimed.
- Revegetation and reclamation will be conducted per the Revegetation Plan (Condition 65), and as previously completed post-construction of the existing project in coordination with the underlying landowner.
- Existing landowner agreements (commercial agreements outside of the EFSC process) are in place and establish crop and reclamation compensation, as necessary.
- Relationships with existing landowners are established and any project-related complaints have been addressed by certificate holder since operations began in 2010.
- The Revegetation Plan (Condition 65), Noxious Weed Control Plan (Recommended Condition 158), Erosion and Sediment and Control Plan, and National Pollutant Discharge Elimination System 1200-C Permit (Condition 60) requirements include best management plans and conditions that overlap and address reclamation of ground disturbing related activities.
- The forementioned plans have already been or will be reviewed by the appropriate agencies prior to construction.

Specifically, the certificate holder requests consideration of the following redlined changes to Recommended Condition 152:

**Recommended Condition 152:** Prior to construction of the Vansycle II facility modifications approved in the Sixth Amended Site Certificate, the certificate holder shall develop and submit a Soil Reclamation Plan section of the Revegetation Plan (Condition 65) that is specific to temporary disturbance areas, used to inform the final assessment of soil erosion and compaction impact potential, and reclamation measures. The Soil Reclamation Plan shall be incorporated into the Final Revegetation Plan (Condition 65), to be implemented as part of the Final Revegetation Plan.

~~(a) The Soil Reclamation Plan shall include updated soil classification maps with descriptions of soils impacted and may consider information including but not limited to: (1) key soil properties related to soil productivity such as bulk density, K-factor, the thickness and organic carbon of the A and B horizons, porosity, permeability, and water holding capacity of the soils within disturbance areas; (2) existing vegetation cover type/invasive dominated areas based on literature review and preconstruction field surveys; (3) historic and current land use; and (4) seasonal precipitation conditions.~~

~~(b) Based on the soil productivity information provided in (a), the certificate holder shall develop quantitative reclamation criteria that will be used to measure successful reclamation of disturbed soils.~~

~~(c) The Soil Reclamation Plan must be submitted to the Department and Umatilla Soil and Water Conservation District for review and Department approval in consultation with the Oregon Department of Agriculture, Natural Resource Conservation Service or a third-party consultant with expertise in soils.~~

~~[Amendment #6]~~

- **Recommended Condition 153 - Umatilla County Amended Conditional Use Permit**

As stated in Section 152.616(HHH)(10) of the Umatilla County Development Code (UCDC), an amendment to the conditional use permit shall be required if the proposed Facility changes include any of the below listed changes. (Note that in Umatilla County, all components of the Facility and its related or supporting facilities (including battery energy storage) qualify as a “wind power generation facility,” which is a type of “commercial utility facility for the purpose of generating power for public use by sale” allowed as a conditional use under UCDC 152.060(F).)

*(10) (a) Permit Amendments. The Wind Power Generation Facility requirements shall be facility specific, but can be amended as long as the Wind Power Generation Facility does not exceed the boundaries of the Umatilla County conditional use permit where the original Wind Power Generation Facility was constructed.*

*(b) An amendment to the conditional use permit shall be subject to the standards and procedures found in §152.611. Additionally, any of the following would require an amendment to the conditional use permit:*

- (1) Expansion of the established Wind Power Generation Facility boundaries;*
- (2) Increase the number of towers;*
- (3) Increase generator output by more than 25 percent relative to the generation capacity authorized by the initial permit due to the re-powering or upgrading of power generation capacity; or*
- (4) Changes to project private roads or access points to be established at or inside the project boundaries.*
- (c) In order to assure appropriate timely response by emergency service providers, Notification (by the Wind Power Generation Facility owner/operator) to the Umatilla County Planning Department of changes not requiring an amendment such as a change in the project owner/operator of record, a change in the emergency plan or change in the maintenance contact are required to be reported immediately. An amendment to a Site Certificate issued by EFSC will be governed by the rules for amendments established by ESC.*

Under RFA6, the proposed repower **could** require an amendment to its Conditional Use Permit for Umatilla County, but only certain components of the proposed repower would trigger the need for an amendment. The repowering activities will only meet these amendment thresholds if there is an increase the number of towers or changes to the Facility access roads. Note that per UCDC § 152.616(HHH)(10)(C), there will be no change to the Facility owner/operator of record, no change in the emergency plan, and no change in the maintenance contact as part of RFA 6. To ensure consistency with the County's development code, the certificate holder requests additional language in Recommended Condition 153 to clarify that a conditional use amendment will only be required if one or more of the amendment triggers are met, as indicated below.

*(153) Prior to construction of any new turbines or changes to the Facility's access road or access points as the facility modifications approved in the Sixth Amended Site Certificate, the certificate holder shall provide evidence to the Department that it has obtained an amended conditional use permit from the Umatilla County Planning Department.*

*[Amendment #6]*

- **Recommended Condition #155 - Umatilla County Turbine Setback Requirement**

In the DPO, the Department concludes that the 2-mile rural residential setback standard at UCDC 152.616(HHH)(6)(a)(3), which requires turbine towers to be set back 2 miles from rural residences, should apply to new **and replacement** turbines. Although the Department does not provide further analysis of the applicability of the provision to existing turbines locations, the Department's conclusion appears to be based in part on its determination that the turbine locations described in the RFA (both existing and new turbine locations) would meet the 2-mile setback.

While the certificate holder has provided evidence of compliance with the standard and anticipates that it may be able to maintain a 2-mile separation from rural residences from new and existing turbine locations during final design, Recommended Condition 155, as proposed, is impractical and inconsistent with state and local law. From a practical standpoint, if a neighboring landowner were

to build a residence within 2 miles of the Facility prior to the certificate holder's construction of the repower, Recommended Condition 155 could operate to prevent the certificate holder from replacing a turbine in the middle of the Facility.

Further, Recommended Condition 155 is inconsistent with the nonconforming use protections that are afforded to the facility under the Umatilla County Development Code ("UCDC") and Oregon land use law. A "non-conforming structure or use" is a "lawful existing structure or use at the time ... any amendment [to the UCDC] becomes effective, which does not conform to the requirements of the zone in which it is located." UCDC § 152.003. Here, the Facility was developed prior to the County's adoption of the 2-mile setback standard in 2011, so the Council does not have the authority to apply that standard to existing turbine locations. To the extent that any of the existing locations were within 2 miles of a rural residence, the County nonconforming use provisions would allow the certificate holder to maintain the location and repair/alter the turbine structure consistent with the County's nonconforming use provisions.

Under the UCDC and state statute, the Council may authorize "[a]lterations or repairs of a nonconforming use" in order "to continue the use in a reasonable manner." UCDC § 152.597(A); *see also* ORS 215.130(5). An allowable "alteration" of a non-conforming structure is "[a] change in the structure or physical improvements of no greater adverse impact to the neighborhood." UCDC § 152.597(C)(2); ORS 215.130(9)(b). The Council "shall not place conditions upon the continuation or alteration of a use ... when necessary ... to maintain in good repair the existing structures associated with the use." ORS 215.130(5) (emphasis added); *see also* UCDC § 152.600(F) (providing that county code authorizes conditions on a non-conforming use only "to the extent provided by ... Oregon State law").

The repower is necessary to maintain the existing turbines in good working condition and, therefore, if a particular turbine location were within 2 miles of a rural residence, the repower would be an authorized "repair" or "alteration" to a non-conforming structure under the UCDC. As set forth in RFA 6, the requested changes to the turbines are aimed at maintaining the viability of the existing facility by increasing its efficiency. With respect to the 2-mile rural residential setback, the Certificate Holder's repair activities at existing turbine locations necessarily will not cause greater adverse impacts to the neighborhood than the impacts that the Council has already evaluated and approved through the existing site certificate. For those reasons, the Certificate Holder requests that the Council find that the 2-mile rural residential setback does not apply to the 43 **existing** turbine locations and amend Recommended Condition 155 as follows:

**Recommended Condition 155: Prior to construction of facility modifications approved in the Sixth Amended Site Certificate, the certificate holder shall provide to the Department and Umatilla County Planning Department final layout maps demonstrating compliance of any new ~~and replacement wind turbines~~ turbine locations with the 2-mile rural residential setback, based on UCDC 152.616(a)(3) definition of rural residence. The certificate holder shall also provide in tabular format turbine identification numbers and distance from nearest rural residence for any new and replacement turbines, as applicable, based on final design.**



- **Recommended Condition #156 - Landowner Coordination**

The temporary impacts to repowering existing turbines would largely be limited to impacts along existing access roads. Repowering the Facility will involve substantially less construction activity than construction of a new facility. Disturbance areas will generally be immediately adjacent to the existing facility infrastructure in areas that were disturbed as part of facility construction and disturbance is anticipated to be more superficial i.e. there will be minimal grading. The areas proposed for disturbance were also successfully reclaimed and restored after the initial facility construction. Moreover, besides the Revegetation Plan, these temporary disturbance areas are subject to the requirements of the NPDES 1200-C a Noxious Weed Plan and other conditions that require landowner coordination (Condition 44). As stated in the DPO:... the Department recommends Council find that the Condition 44, which requires that the certificate holder coordinate with landowners on road improvements to minimize crop impacts, is also applicable for the purpose of minimizing impacts to productive soils from the proposed RFA6 facility modifications. Therefore, landowner coordination is already implicated in an existing condition to account for the temporary impacts from repowering existing turbines. For this reason, the certificate holder recommends modifying Recommended Condition 156 to only require additional evidence of landowner coordination if there would be a new permanent impact per the below:

**Recommended Condition 156:** Prior to construction of new facilities (new turbines (and associated collector lines and access roads extents) and battery storage) ~~the facility modifications~~ approved in the Sixth Amended Site Certificate, the certificate holder shall provide to the Department evidence of landowner consultation for properties to be impacted by temporary and permanent disturbance. Consultation shall demonstrate that the certificate holder sought landowner input on extent and timing of disturbance and considered, to the maximum extent feasible from a technological and engineering perspective, methods to minimize unnecessary disturbance from construction and operation. The certificate holder shall provide a final design map of facility components approved in the Sixth Amended Site Certificate and shall promptly notify the Department of any changes in design that would impact any disturbance minimization measures identified after landowner consultation.  
[Amendment #6]

- **Recommended Condition 157 – Retirement Bond or Letter of Credit**

The proposed amended changes to Condition 109 removes the requirement for the existing bond to be updated annually. The certificate holder asserts that if the final design for the repower results in no new turbines or battery storage, that Condition 109 should be maintained as is and the existing bond continue to be updated annually including to account for the repower. The reason is that the cost of updating the existing turbines with blades and nacelles will decrease due to the decrease in weight of the blades and nacelles which are a factor in the cost estimate and there will be no changes to other facilities that factor into the cost estimate such as length of collector lines or access roads - i.e. the estimate will be within the range of the existing bond. Therefore, the certificate holder recommends that Recommended Condition 157 be adjusted accordingly:

**Recommend Condition 157:** Prior to construction of a repowering design with new turbines and/or construction of battery storage ~~facility modifications~~ approved in the Final Order on Amendment 6, the certificate holder shall submit to the State of Oregon through



the Council a bond or letter of credit in the amount described herein naming the State of Oregon, acting by and through the Council, as beneficiary or payee. The initial bond or letter of credit amount is either \$6,906,000 million (in 4th Quarter 2021 dollars), to be adjusted to the date of issuance as described in (b), or the amount determined as described in (a). The certificate holder shall adjust the amount of the bond or letter of credit on an annual basis thereafter as described in (b)....

Best regards,



Chris Powers

Environmental Manager

NextEra Energy Resources

Cc: Chase McVeigh-Walker, ODOE  
David Lawlor, NextEra Energy Resources  
Anneke Solsby, NextEra Energy Resources  
Sarah Curtiss Stauffer, Stoel Rives  
Carrie Konkol, Tetra Tech



Oregon  
Kate Brown, Governor

Parks and Recreation Department  
State Historic Preservation Office  
725 Summer St NE Ste C  
Salem, OR 97301-1266  
Phone (503) 986-0690  
Fax (503) 986-0793  
[www.oregonheritage.org](http://www.oregonheritage.org)



December 13, 2021

Ms. Kathleen Sloan  
Oregon Department of Energy  
550 Capitol St. NE  
Salem, OR 97391

RE: SHPO Case No. 10-1059  
Stateline Vansycle II Wind Proj  
Final monitoring report  
Multiple legals, Umatilla County

Dear Ms. Sloan:

Thank you for submitting information for the undertaking referenced above. We concur with the determination that the four properties examined in the Historic Properties Inventory Report are all not eligible for listing in the National Register of Historic Places. We concur that there will be no historic properties affected for this undertaking.

This concludes consultation with our office for built-environment resources. If you have not already done so, be sure to consult with all appropriate Native American tribes and interested parties regarding the proposed undertaking.

If the undertaking design or effect changes or if additional historic properties are identified, further consultation with our office will be necessary before proceeding with the proposed undertaking. Additional consultation regarding this case must be sent through Go Digital. In order to help us track the undertaking accurately, reference the SHPO case number above in all correspondence.

Please contact our office if you have any questions, comments or need additional assistance.

This letter refers to built-environment resources only. Comments pursuant to a review for archaeological resources have been sent separately.

Sincerely,

Jason Allen, M.A.  
Historic Preservation Specialist  
(503) 986-0579  
[jason.allen@oregon.gov](mailto:jason.allen@oregon.gov)

cc: Lara Rooke, Tetra Tech, Inc.





Minnick Hayner

attorneys at law

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249 West Alder · P.O. Box 1757 · Walla Walla, WA 99362-0348  
(509) 527-3500 · Fax (509) 527-3506 · E-mail [info@minnickhayner.com](mailto:info@minnickhayner.com)

December 15, 2021

Chase McVeigh-Walker, Senior Siting Analyst  
Oregon Department of Energy  
550 Capitol St. NE  
Salem, OR 97301

VIA EMAIL: [Chase.MCVEIGH-WALKER@energy.oregon.gov](mailto:Chase.MCVEIGH-WALKER@energy.oregon.gov)

Re: Stateline Wind Project Comments on Amendment 6

Dear Mr. McVeigh-Walker:

Our law firm represents Kirk Terjeson and Gunder Terjeson who own Terjeson Ranches. Terjeson Ranches owns the land adjacent to the project area. The developer on the project and applicant, NextEra, has indicated a desire to expand or move the road at Butler Grade. The new road is proposed to be on land owned the Terjesons and Terjeson Ranches. Terjeson Ranches has not agreed to allow access to their property or an easement for access. The proposed road would severally impact the Terjeson Ranches farmland. Therefore, the Terjesons are in opposition to any Order of Amendment that would require use of a road across their land to provide access or equipment to the project site.

Very truly yours,

James K. Hayner  
[jim@minnickhayner.com](mailto:jim@minnickhayner.com)

JKH/sh

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James K. Hayner · Steven C. Frol · Mona J. Geidl · Robert R. King · Peter D. Lucas-Roberts · Kathryn A. Unbehaun

H.H. Hayner (1916-2010) · W.L. Minnick (1913-1993)

*Minnick Hayner is a Washington Professional Service Corporation*

# Umatilla County

## Board of County Commissioners

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**George L. Murdock**  
541-278-6202

**John M. Shafer**  
541-278-6203

**Daniel N. Dorran**  
541-278-6201

December 15, 2021

Oregon Department of Energy  
Attn: Mr. Chase McVeigh-Walker, Senior Siting Analyst  
550 Capital Street NE  
Salem, OR 97301

**Subject:** Stateline Wind Energy Facility (Amendment 6)  
Response to Draft Proposed Order

Dear Mr. McVeigh-Walker:

Umatilla County has completed a review of Stateline III Wind Energy Facility – Draft Proposed Order (DPO) – Amendment 6. A summary of comments from the review is included below:

In the DPO, recommended Condition 153 would require that the certificate holder obtain an amended conditional use permit per UCDC 152.616(10)(a). We request that the condition be amended to also specify that amended zoning permits, for each tax lot that would include modified or new structures, would be required, in accordance with UCDC 152.025. Recommendations provided below:

**Recommended Condition 153:** Prior to construction of the facility modifications approved in the Sixth Amended Site Certificate, the certificate holder shall provide evidence to the Department that it has obtained an amended conditional use permit and amended zoning permits per tax lot from the Umatilla County Planning Department.

For the certificate holder's benefit, please note that current fees for an amended conditional use permit are \$5,000, plus a \$1,000/wind turbine (totaling up to \$50,000 if the 45 wind turbine scenario is completed), plus \$200 per zoning permit.

In the DPO, recommended Condition 154 requires that the certificate holder notify and provide copies of construction and operational Emergency Response Plans to satisfy UCDC 152.616(10)(c). We request that the condition specify that the plans would be coordinated with emergency response providers and local fire districts; specify that mutual aid agreements may be necessary; and, that notification and copies of the plans be provided to both the Department of Energy and Umatilla County Planning Department to ensure adequate coordination and understanding of schedule and potential impacts to public services. Recommendations provided below:

**Recommended Condition 154:** The certificate holder shall develop emergency response plans per (a) and (b) in consultation with local emergency and fire service providers and shall establish whether mutual aid agreements are necessary to provide adequate services during construction and operation:

(a) Prior to and during construction of the facility modifications approved in the Sixth Amended Site Certificate, as applicable, the certificate holder shall notify and provide copies of the final health and safety plans and/or emergency response plans to the Department and Umatilla County Planning Department, to be implemented during construction activities.

(b) Prior to and during operation of the facility modifications approved in the Sixth Amended Site Certificate, as applicable, the certificate holder shall notify and provide copies of the final Emergency Action Plan to the Department and Umatilla County Planning Department, to be implemented during operations.

In the DPO, recommended Condition 158 would require that the certificate holder develop and submit a Noxious Weed Plan, to be reviewed and approved by the Department of Energy in consultation with the Umatilla County Road Department. We concur with this condition. Theodore Orr is the Weed Department Supervisor and should be the contact for the Department and certificate holder in the development of the plan. His phone number is (541) 278-5462 and email is [theodore.orr@umatillacounty.net](mailto:theodore.orr@umatillacounty.net).

In the DPO, recommended Condition 155 requires that the certificate holder provide maps and tabular data for demonstrate compliance with the 2-mile rural residential setback for wind turbines. We request that the condition require GIS data to enable the Department of Energy and county to more accurately evaluate compliance with UCDC 152.616(HHH)(a)(3). Recommendations provided below:

**Recommended Condition 155:** Prior to construction of facility modifications approved in the Sixth Amended Site Certificate, the certificate holder shall provide to the Department of Energy and Umatilla County Planning Department final layout maps and GIS data of final turbine locations demonstrating compliance of any new and replacement wind turbines with the 2-mile rural residential setback, based on the UCDC 152.616(a)(3) definition of rural residence. The certificate holder shall also provide in tabular format turbine identification numbers and distance from nearest rural residence for any new and replacement turbines, as applicable, based on final design.

In the DPO, recommended amended Condition 142 requires a compliance demonstration for wind turbine road setbacks. We request that the certificate holder provide an update to the county as soon as possible on the status of the right-of-way relocation or adjustment of Gerking Flat Road and Butler Grade Road, which we previously understood were necessary in order for 2 of the existing wind turbines to be repowered and maintain compliance with UCDC 152.616(HHH)(6)(a)(4).



We understand that Council previously imposed a condition requiring that turbine parts associated with the repower be recycled to the maximum extent feasible. We recommend that the condition specify that the certificate holder be required to demonstrate that the selected recycling or disposal site be a qualified and/or DEQ-approved facility. Recommendations provided below:

Condition 144: During construction of the Vansycle II facility modifications, as approved in the Sixth Amended Site Certificate, the certificate holder shall ensure its third-party contractors reuse or recycle wind turbine blades, hubs and other removed wind turbine components to the extent practicable. The certificate shall demonstrate that the recycling or disposal facility selected to receive turbine parts is qualified and approved by an applicable regulatory agency. The certificate holder shall report in its semi-annual report to the Department the quantities of removed wind turbine components recycled, reused, sold for scrap, and disposed of in a landfill. [Amendment #5, #6]

Thank you for the opportunity to comment on this DPO. Any additional questions may be directed to Robert Waldher, Planning Director, Umatilla County Planning, 216 S. E. 4<sup>th</sup> Street, Pendleton, Oregon 97801; phone (541) 278-6251 or e-mail at [robert.waldher@umatillacounty.net](mailto:robert.waldher@umatillacounty.net).

Sincerely,



George Murdock,  
Chair  
Umatilla County Board of Commissioners

CC: Doug Olsen, Umatilla County Counsel  
Umatilla County Planning Commission  
Tom Fellows, Umatilla County Public Works Director  
Theodore Orr, Umatilla County Weed Supervisor  
Anne Debbaut, DLCD Regional Representative  
Hilary Foote, DLCD Farm and Forest Specialist