



Oregon

Kate Brown, Governor



550 Capitol St. NE
Salem, OR 97301
Phone: 503-378-4040
Toll Free: 1-800-221-8035
FAX: 503-373-7806
www.oregon.gov/energy

To: Energy Facility Siting Council

From: Kellen Tardaewether, Senior Siting Analyst

Date: September 16, 2022

Subject: Agenda Item B (Action Item): Boardman to Hemingway Transmission Line (B2H) – Council Review of Draft Final Order; Material Change Hearing and Hearing to Adopt Final Order under ORS 469.370(7) at the September 27, 2022 EFSC Meeting

Attachments: Attachment A: [Draft Final Order on ASC](#) (available via hyperlink)
Attachment 6 (to the Draft Final Order): [Contested Case Order as Amended by Council](#) (available via hyperlink)

AGENDA ITEM OVERVIEW

Based on the Council's review of the Proposed Order, Hearing Officer's Proposed Contested Case Order (PCCO), Exceptions to the PCCO, and Responses to Exceptions provided at the July and August 2022 EFSC Meetings, Department staff incorporated Council-directed modifications to the Proposed Order and Proposed Contested Case Order, including supporting findings of fact and conclusions of law, into this draft Final Order. The draft Final Order (dFO) was made available electronically on September 16, 2022 and the Notice of the Hearing to Adopt a Final Order and the "Material Change Hearing" was issued on September 13, 2022. ORS 469.370(7) states, in part, that:

"...the council may amend or reject the proposed order, so long as the council provides public notice of its hearing to adopt a final order, and provides an opportunity for the applicant and any party to the contested case to comment on material changes to the proposed order, including material changes to conditions of approval resulting from the council's review..."

At the September 27, 2022 EFSC Meeting, Council will review the draft Final Order and will conduct a "material change" hearing, where parties and limited parties to the contested case may provide oral exception on the modifications. Following the "material change" hearing, the Council may issue a final order either approving or reject the ASC based upon the standards adopted under ORS 469.501, and any additional state statutes, rules, or local government regulations or ordinances determined to be applicable to the facility in the amended project

order.¹

Material changes include substantive changes to conditions of approval imposed to meet a standard or conditions imposed based upon an applicant representation. Material changes could also include any reversal of recommendations under a standard or reversal of Council acceptance or rejection of a site certificate. However, material changes do not include updated findings of fact that are reflected in the dFO in redline. The facts added to the record in the contested case proceeding and those referenced in the Hearing Officer's PCCO are part of the record of the ASC and are reflected in the Council's findings.

A summary of the material changes from the Proposed Order to the draft final order, based on Council review, Findings of Fact, Conclusions of Law and Opinion from the Hearing Officer and information in the record, are provided below.

Amendments incorporated to the Contested Case Order following Council's review at the August 29-30-31, 2022 Council meeting are listed below:

- Additional facts on the record were added to findings of fact, after #68, to support the evaluation of Issue HCA-3
- Correction incorporated to the Opinion for Issue SS-5 to clarify that the extent of work conducted to date was reconnaissance level
- Reasoning added to address proposed conditions improperly dismissed on "untimely" in Closing Arguments, as had been presented in the Proposed Contested Case Order
 - Marlette Proposed Conditions for Issue M-6
 - Geer Revised Condition related to *Trifolium douglasii*
 - Gilbert Proposed Condition for Issue FW-9
 - Gilbert Proposed Condition for Issue FW-3
 - Geer Proposed Condition for Issue FW-3
 - Gilbert Proposed Condition for Issue HCA-3
 - Williams Proposed Condition for Issue HCA-7
 - Gilbert Proposed Condition for Issues LU-7 and LU-8
 - Gray Proposed Condition for Issue NC-6
 - STOP B2H's Proposed Condition for Issue NC-1
 - STOP B2H's Proposed Condition for Issue NC-2
 - Cooper Proposed Condition for Issue PS-4
 - Gilbert Proposed Condition for Issue RFA-1

MATERIAL CHANGES TO PROPOSED ORDER IN DRAFT FINAL ORDER

IV.A. General Standard of Review: OAR 345-022-0000

Material Change:

General Standard of Review Condition 6: The certificate holder shall design, construct, operate, and retire the facility:

- a. Substantially as described in the Final Order on the ASC ~~the and~~ site certificate;

¹ ORS 469.370 (7) and ORS 469.370 (9).

- b. In compliance with the requirements of ORS Chapter 469, applicable Council rules, and applicable state and local laws, rules and ordinances in effect at the time the site certificate is issued; and
 - c. In compliance with all applicable permit requirements of other state agencies.
- [Mandatory Condition OAR 345-025-0006(3)]

IV.B. Organizational Expertise: OAR 345-022-0010

No material changes.

IV.C. Structural Standard: OAR 345-022-0020

Material Change: Modifications made to the draft Framework Blasting Plan (imposed under Soil Protection Condition 4, which is attached to the draft Final Order as Attachment G-5). The added requirements to the Plan include landowner and occupant notification within 1,250 feet of blasting actions, which provided in the Structural Section of the dFO and in Attachment G-5 as follows:

“Consistent with the Structural Standard, to ensure that proposed facility design and construction avoids dangers to human safety and environment from risks such as subsidence, landslides, and slope instability which could be impacted by blasting activities, the applicant ~~developed~~ would be required to implement a final Blasting Plan, based on the draft Framework Blasting Plan (see provided as Attachment G-5 of this order. The draft Framework Blasting Plan) ~~which~~ outlines safety procedures and a notification process, as summarized below:

- At least 14-days prior to any blasting necessary during construction of the facility, certificate holder shall ensure that its Construction Contractor identifies all landowners of record and occupants within 1,250 feet of blasting actions and provide notification to those landowners and occupants of the blasting schedule, certificate holder or construction contractor contact information, potential risks/hazards and of measures that will be taken to monitor and minimize any ground shaking impacts...”

IV.D. Soil Protection: OAR 345-022-0022

Material Change: Soil Protection Condition 4 was amended in the PCCO based on an applicant-representation to incorporate the requirements of Design Feature 32 (Contested case issue SS-1) into a site condition, to which the Hearing Officer and Department agreed, as follows:

Soil Protection Condition 4:

- a. Prior to construction, in accordance with the OAR 345-025-0016 agency consultation process outlined in the draft Framework Blasting Plan (Attachment G-5 of the Final Order on the ASC), the certificate holder shall finalize, and submit to the Department for approval, a final Blasting Plan. The final Blasting Plan shall meet all applicable federal, state and local requirements related to the transportation, storage, and use of explosives.
- b. Prior to construction, the certificate holder will consult with landowners regarding right-of-way acquisition, and during these consultations, the certificate holder will

discuss with the landowner any blasting that the certificate holder plans to conduct on the landowner's property. If the landowner identifies a natural spring or well on the property, the certificate holder will notify the landowner that at the landowner's request, the certificate holder shall conduct pre-blasting baseline flow and water quality measurements for turbidity. The certificate holder shall compensate the landowner for adequate repair or replacement if damages to the flow or quality of the natural spring or well occur solely as a result of blasting.

- c. During construction, the certificate holder shall conduct all work in compliance with the final Blasting Plan approved by the Department.

IV.E. Land Use: OAR 345-022-0030

Material Change: Modifications made to Section 7.2 of the Agricultural Lands Assessment (Attachment K-1) based on applicant and Department agreements during contested case related in notification of land owners.

IV.F. Protected Areas: OAR 345-022-0040

No material changes.

IV.G. Retirement and Financial Assurance: OAR 345-022-0050

Material Change: Based on Council's review of the Retirement and Financial Assurance Condition 5 under Retirement and Financial Assurance standard, Council added a requirement that during any off-cycle year within or during the 5-year reporting period if requested by Council, and on each subsequent fifth anniversary or off-cycle year if requested by Council thereafter, the certificate holder would report (5-year report) to the Department and Council on the following subjects for the prior 5-year period: (a) the physical condition of the facility; (b) any evolving transmission or electrical technologies that could impact the continued viability of the facility; (c) the facility's performance in the context of the larger Northwest power grid; and (d) the certificate holder's financial condition, including the certificate holder's credit rating at that time, as per the following:

Retirement and Financial Assurance Condition 5: Consistent with Mandatory Condition OAR 345-025-0006(8), no later than the date the facility is placed in service (the In-Service Date), the certificate holder shall submit to the State of Oregon, through the Council, a bond or letter of credit naming the State of Oregon, acting by and through the Council, as beneficiary or payee. The certificate holder shall maintain a bond or letter of credit as follows:

a. Notwithstanding subsections (b) – (g) of this condition, the Council retains the authority to require the certificate holder to submit a bond or letter of credit in an amount equal to the estimated total decommissioning cost for the facility (\$140,779,000 in 3rd Quarter 2016 dollars adjusted to present day value), or another amount deemed by the Council to be satisfactory to decommission the facility and restore the site to a useful, nonhazardous condition.

a.b. From the In-Service Date until In-Service Year 51, the amount of bond or letter of credit shall be \$1.00.

~~b.c.~~ On the 50th anniversary of the In-Service Date, the certificate holder shall begin maintaining a bond or letter of credit in an amount that will increase on an annual basis for the next 50 years. In year 51, the amount of the bond or letter of credit will be set at one-fiftieth (1/50) of the total estimated decommissioning costs, adjusted for inflation, as specified in section (d) of this condition. Each year, through the 100th year of service, the bond or letter of credit shall be increased by one-fiftieth (1/50) of the estimated decommissioning costs. Once the bond or letter of credit is in an amount equal to 100 percent of decommissioning costs, it will remain at that level for the life of the facility.

~~e.d.~~ On the fifth anniversary of the In-Service Date, and on each subsequent quinquennial thereafter, or any year if requested by Council, the certificate holder shall notify the Department 60 days prior and report to the Council in writing or in-person on the following subjects for the prior 5-year reporting period: (i) the physical condition of the facility; (ii) any evolving transmission or electrical technologies that could impact the continued viability of the facility; (iii) the facility's performance in the context of the larger power grid; and (iv) the certificate holder's general financial condition, including the certificate holder's credit rating ~~at that time~~ for that 5-year reporting period. The Department shall review the 5-year report and may engage its consultant in the review of the 5-year report. The Department may also include other information in its evaluation of the 5 year-report, including but not limited to; expertise of other reviewing agencies and internal Department staff, consultation with industry experts, or other consulting parties. The certificate holder shall be responsible for all costs associated with review of the 5-year report, in accordance with applicable rules and statutes. Based on the information provided in the 5-year report, and the Department's review and recommendations, the Council will consider whether the certificate holder should be required to post a bond or letter of credit that varies from the financial assurance requirements set forth in sections (a) and (b) of this condition. The certificate holder shall be subject to Council's determination. The Council's determination may include extending the date on which the certificate holder would be required to begin posting the financial assurances set forth in section (b) of this condition.

~~e.e.~~ The estimated total decommissioning cost for the facility is \$140,779,000 (3rd Quarter 2016 dollars), to be adjusted to the date of issuance of the bond or letter of credit in In-Service Year 51, and on an annual basis thereafter. Subject to Department approval, the certificate holder may request an adjustment of the bond or letter of credit amount based on final design configuration of the facility by applying the unit costs and assumptions presented in, ~~Attachment W-1 of~~ the Final Order on the ASC Attachment W-1, Facilities Removal and Site Restoration Cost Estimate. Such adjustments may be made without amendment to the site certificate. The Council authorizes the Department to agree to these adjustments in accordance with this condition. The certificate holder shall adjust the decommissioning cost for inflation using the following calculation:

- i. Adjust the estimated total decommissioning cost (expressed in Q3 2016 dollars) to present value, using the U.S. Gross Domestic Product Implicit Price Deflator, Chain-Weight, as published in the Oregon Department of

Administrative Services' "Oregon Economic and Revenue Forecast" or by any successor agency and using the third quarter 2016 index value and the quarterly index value for the date of issuance of the new bond or letter of credit. If at any time the index is no longer published, the Council shall select a comparable calculation to adjust third quarter 2016 dollars to present value.

- ii. Round the result total to the nearest \$1,000 to determine the inflated-adjusted estimated total decommissioning cost.

~~e.f.~~ The certificate holder shall use an issuer of the bond or letter of credit approved by the Council.

~~f.g.~~ The certificate holder shall use a form of bond or letter of credit approved by the Council. The certificate holder shall describe the status of the bond or letter of credit in the annual report submitted to the Council under OAR 345-026-0080(1)(b). The certificate holder shall maintain a bond or letter of credit in effect at all times as described in this condition and Retirement and Financial Assurance Condition 4 until the facility has been retired.

IV.H. Fish and Wildlife Habitat: OAR 345-022-0060

Material Change: Applicant-represented and Hearing officer recommended modifications to the draft Noxious Weed Plan (Attachment P1-5) are included in the Attachment P1-5. The modifications to the Plan are considered a material change, however, Fish and Wildlife Condition 3 (condition that imposes the draft Noxious Weed Plan) is not materially changed. In the revised Plan, the applicant:

- Will review the state and county lists annually to ensure that monitoring and control actions are targeting the appropriate species.
- Updated Table 1, Designated Noxious Weeds Known to Occur or with the Potential to Occur within the Site Boundary.
- Added that surveyors will be trained to identify Oregon flora, specifically native plants, noxious weeds, and threatened and endangered plant species.
- Will implement noxious weed control efforts "at least once annually" for the first five years and, with the concurrence of the Department, will "continue to monitor the sites as described below in Section 6.1, but will cease treatment unless determined to be necessary through subsequent monitoring.
- After the five-year initial assessment period, applicant will prepare a location-specific long-term monitoring plan to ensure control or mitigation of all project-related noxious weed infestations.
- Updated information on vehicle cleaning to reduce the spread of weeds, including that Construction Contractor(s) will clean construction vehicles and equipment at the Project multi-use areas or other cleaning stations each night or morning prior to returning to the Project construction areas.
- Commits to identifying, controlling, treating, and monitoring noxious weed species listed on Oregon's Weed Board Class A, B and T lists; as well as Baker, Malheur, Morrow, Umatilla, and Union County Class A and B lists.

- Commits to consulting with county weed districts annually regarding appropriate treatment (if any) for Class C weeds and to annual review of state and county weed lists.

Material Condition Change: In a summary determination, the Hearing Officer ruled that the reference to Fish and Wildlife Condition 14 be removed from Fish and Wildlife Condition 12. Other non-material changes made to Condition titles:

Fish and Wildlife Condition 12: During construction, if active pygmy rabbit colonies or the roost of a State Sensitive bat species is observed during the biological surveys set forth in Fish and Wildlife Conditions ~~(14)~~, 15 and 16, the certificate holder shall submit to the Department for its approval a notification addressing the following:

- Identification of the State Sensitive bat species observed;
- Location of pygmy rabbit colony or bat roost; and
- Any actions the certificate holder will take to avoid, minimize, or mitigate impacts to pygmy rabbit colony or bat roost.
- The Department in consultation with the Oregon Department of Fish and Wildlife (ODFW) will review and approve the proposed avoidance, minimization, or mitigation measures prior to the action by the certificate holder to impact State Sensitive bat species roosts or hibernacula.

Material Condition Change: In her ruling on Ruling and Order on Idaho Power Company's Motion for Summary Determination on Contested Case Issues FW-9, FW-10, FW-11 and LU-10, the Hearing Officer ordered that "State Sensitive bat species" shall be removed from the list of required surveys under Fish and Wildlife Condition 16²:

Fish and Wildlife Condition 16: Prior to construction of a phase or segment of the facility, the certificate holder shall conduct, as applicable, the following biological surveys on all portions of the site boundary, regardless of whether those portions have been surveyed at the time of issuance of the site certificate, based on the survey protocols included in ASC Exhibit P Attachment P1-2 Revised Final Biological Survey Work Plan, unless otherwise approved by the Department in consultation with ODFW:

- Washington ground squirrels;
- Raptor nests;
- Pygmy rabbits;
- ~~State Sensitive bat species;~~
- e.d. State-listed Threatened and Endangered plants
- f.e. Greater sage-grouse, as necessary for the State of Oregon to calculate the amount of sage-grouse habitat compensatory mitigation required for the facility using Oregon's Sage-Grouse Habitat Quantification Tool.

² In the Department's response to applicant's motion, the Department acknowledged that "state sensitive bat species" were included in the recommended condition based on an erroneous interpretation of Fish and Wildlife Condition 12. Ruling and Order on Idaho Power Company's Motion for Summary Determination on Contested Case Issues FW-9, FW-10, FW-11 and LU-10; pg. 7.

Material Condition Change: In her ruling on Ruling and Order on Idaho Power Company's Motion for Summary Determination on Contested Case Issues FW-9, FW-10, FW-11 and LU-10, the Hearing Officer ordered changes to section b.iii. of Fish and Wildlife Condition 17 to correct transcription errors. These changes are reflected in the draft Final Order.

Fish and Wildlife Condition 17.b.iii: The final Sage-Grouse Habitat Mitigation Plan shall include compensatory mitigation sufficient to address ~~direct~~ impacts from, at a minimum, all facility components except indirect impacts from existing access roads substantially modified for the facility (related or supporting facilities). For calculation purposes, new facility roads with~~out~~ access control will be assigned a "no-traffic" designation, and new roads with~~out~~ access control will be assigned a "low-traffic" designation. * * *

IV.I. Threatened and Endangered Species: OAR 345-022-0070

No Material Changes.

IV.J. Scenic Resources: OAR 345-022-0080

No Material Changes.

IV.K. Historic, Cultural, and Archaeological Resources: OAR 345-022-0090

No Material Changes.

IV.L. Recreation: OAR 345-022-0100

Material Change: Applicant-represented H-frame tower modification for 3-miles segment in the Morgan Lake Area to reduce visual impacts to recreational opportunities at Morgan Lake Park.

Recreation Condition 1: If the Morgan Lake alternative facility route is selected, the certificate holder shall construct the facility using tower structures that meet the following criteria for the transmission line that would be visible from Morgan Lake Park, specifically between milepost (MP) ~~56.0~~ to MP ~~8.06-9~~ of the Morgan Lake alternative, as shown on ASC Exhibit C, Attachment C-3, Map 8.

- a. H-frames;
- b. Tower height no greater than 130 feet; and
- c. Weathered steel (or an equivalent coating).

IV.M. Public Services: OAR 345-022-0110

Material Changes: Material changes were made to the Draft Fire Prevention and Suppression Plan, based upon applicant-raised issues in the contested case proceeding. Additionally, changes to traffic related and fire-related conditions below were made to address concerns raised in the contested case.

Attachment U-3 Draft Fire Prevention and Suppression Plan: Changes made to Section 1.4 of Attachment U-3 Draft Fire Prevention and Suppression Plan, updating the Fire Response Agreements during construction and operation.

Public Services Condition 2: At least 90 days prior to construction of a facility phase or segment in each affected county and jurisdiction, unless otherwise approved by the Department, the certificate holder shall complete the following to address traffic impacts and transportation coordination in each county and jurisdiction:

- a. The certificate holder shall, in accordance with the OAR 345-026-0016 agency consultation process outlined in the draft Transportation and Traffic Plan (Attachment U-2 of the Final Order on the ASC) submit to the Department for review and approval, a final county-specific Transportation and Traffic Plan associated with the phase or segment of the facility to be constructed. The protective measures described in the draft Transportation and Traffic Plan, Attachment U-2 to the Final Order on the ASC, shall be included and implemented as part of the final county-specific Plan, unless otherwise approved by the Department, in consultation with the county or jurisdiction;
- b. The final county-specific Transportation and Traffic Plan submitted to the Department, county, and jurisdiction shall include:
 - i. The identification of the final material/equipment transportation, access, and haul routes and documentation of the existing condition of the routes/roads;
 - ii. Attachment B-5 Road Classification Guide and Access Control Plan attached to the Final Order on the ASC updated to reflect the final design of the facility. Include applicable road segment maps with road names for existing public roads, road names in Appendix A: Access Road Segment Attribute Table, road improvements designations, and final access control device description and locations;
 1. If, at final facility design, substantial modification of existing roads not identified as related or supporting facilities in Attachment B-5 (maps) of the Final Order on the ASC is necessary, the certificate holder must submit an Amendment Determination Request (OAR 345-027-0357), or submit a site certificate amendment request to the Department, prior to the modification to determine whether the road modifications are related or supporting facilities. Substantial modification of existing roads shall be as defined in Attachment B-5, which includes repairs to more than 20 percent of road surface, defined by the road prism width and longitudinal distance over a defined road segment.
 - iii. List any road use permits, encroachment permits, oversize/overweight permits, or road use or other legal agreements obtained by the construction contractor or applicant.
- c. The final Transportation and Traffic Plan for a phase or segment of the facility must be approved by the Department, in consultation with each county or jurisdiction, prior to construction.
- ~~e~~.d. Prior to construction or road modification in any area designated as a geologic hazard zone by Oregon Department of Geology and Mineral Industries (DOGAMI) data and maps (e.g., as landslide or debris flow fan), or by relevant local zoning ordinances and maps, the site certificate holder and/or its construction contractors will consult with a licensed civil engineer to assess the proposed construction or road design in relation to potential geologic hazards.

Public Services Condition 6: Prior to construction of a facility phase or segment, in accordance with the OAR 345-025-0016 agency consultation process outlined in the plan (Attachment U-3 of the Final Order on the ASC), the certificate holder shall submit final Fire Prevention and Suppression Plan(s) to the Department for approval. The plan finalization process shall consider (a)(i) and (a)(ii). The final Fire Prevention and Suppression Plan shall include the following, unless otherwise identified by a land management agency or other participating review agency approved by the Department:

- a. The protective measures as described in the draft Fire Prevention and Suppression Plan as provided in Attachment U-3 of the Final Order on the ASC and: The final plan shall establish that wildfire training for onsite workers and facility personnel be conducted by individuals that are National Wildfire Coordination Group and Federal Emergency Management Agency certified.
 - i. Wildfire training for onsite workers and facility personnel be conducted by individuals that are National Wildfire Coordination Group and Federal Emergency Management Agency certified.
 - ii. Specific seasonal work restrictions, onsite fire-fighting equipment and necessary fire protection resources based on: 1) documented evaluation of reasonably available sources related to wildfire risk and sensitive seasonal conditions such as high temperatures, drought and high winds; and 2) update Table PS-9 of the Proposed Order based on information obtained from the LGRFPD on the number of full-time and volunteer employees, number and type of equipment/vehicles, and response times to the facility. Response time must consider LGRFPD crew mobilization time and access limitations (e.g., road condition, level of service and impact of multi-users from Morgan Lake Park, residents and emergency services.
- b. A description of the fire districts and rural fire protection districts that will provide emergency response services during construction and copies of any agreements between the certificate holder and the districts related to that coverage.
- c. All work must be conducted in compliance with the approved plan during construction and operation of the facility.

Recommended Public Services Condition 7: The certificate holder shall:

- a. Prior to operation, provide a copy of its Wildfire Mitigation Plan to the Department and each affected county which provides a wildfire risk assessment and establishes action and preventative measures based on the assessed operational risk from and of wildfire in each county affected by the facility. ~~The plan shall address facility and emergency contacts, agency coordination and responsibilities, necessary fire fighting equipment, and long term agreements with service providers, as needed.~~
- b. During operation, the certificate holder shall update the Wildfire Mitigation Plan on an annual basis, or frequency determined acceptable by the Department in consultation with the Oregon Public Utilities Commission.
- c. During operation, for the service territories the facility would be located within, the certificate holder shall provide to each of the fire districts and rural fire protection a contact phone number to call in the event a district needs to request an outage as part of a fire response.

- d. Any Wildfire Mitigation Plan required by the Oregon Public Utilities Commission shall be considered by EFSC as meeting the requirements of this condition.

IV.N. Waste Minimization: OAR 345-022-0120

No Material Changes.

IV.O.1. Need for a Facility: OAR 345-023-0005

No Material Changes.

IV.P.1. Siting Standards for Transmission Lines: OAR 345-024-0090

No Material Changes.

IV.Q.1. Noise Control Regulations: OAR 340-035-0035, OAR 340-035-0010 and OAR 340-035-0100

Material Changes: Council Reviewed the Noise Control conditions provided in the PCCO, and as represented in Exceptions and Responses to Exceptions. Council also reviewed and heard testimony on limited party's proposed conditions. The following include Council-directed modifications to conditions represented in the PCCO.

Noise Control Condition 1: Prior to construction, the certificate holder will initiate discussions work with the 41 NSR property owners at which it has estimated exceedances of the ambient antidegradation standard may occur identified in Attachment X-4 and/or X-5 of the Final Order on the ASC (NSR: 8, 9, 10, 11, 5002, 69, 70, 5004, 46, ~~118, 119, 121~~, 125, 5010, 5011, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 518, 111, 112, 132, 133, 5008, 5009, 113, and 115) to develop mutually agreed upon Noise Exceedance Mitigation Plans, specific to each NSR location. The site-specific Noise Exceedance Mitigation Plans will include agreed upon measures that would be implemented at the NSR location to minimize or mitigate the ambient antidegradation standard noise exceedance.

- a. If the certificate holder and the NSR property owner agree upon a specific Noise Mitigation Plan, executes an agreement with the NSR property owner, the certificate holder will submit a signed acknowledgement from the property owner to the Department for its records.
- b. If an agreement between certificate holder and NSR property owner is not obtained, the certificate holder shall concurrently notify the Department and NSR property owner of the dispute and of Council review of the dispute to occur at the next regularly scheduled Council meeting, to the extent possible, from the date of the certificate holder's notice. The notice shall explain that the NSR property owner will be given an opportunity to provide comments to the Council on the dispute, unless the Council Chair defers the dispute review to the Department. Review of the dispute will be based on the information per sub(i) below, and any other relevant facts provided by the NSR property owner and will result in a determination of the appropriate mitigation measure(s), proportional to the facility operational noise levels in excess of the ambient degradation standard, as determined to occur at the NSR property. The Council or Department's determination of appropriate mitigation is not binding on the NSR property owner or certificate holder if the NSR property owner opts not to accept the mitigation.

- i. At the time of issuance of the notice per (b) above, certificate holder will submit to the Department: (1) the mitigation measures it offered the NSR property owner, the mitigation measures that the NSR property owner requested and an explanation of the dispute; (2) a list of the dates that the certificate holder communicated with, or attempted to communicate with, the NSR property owners; and (3) the names, addresses, and phone numbers of the NSR owners.
- a. In working with NSR property owners under this condition, certificate holder will propose corona-noise mitigation of installation of sound- attenuating windows for residential structures as follows:
 - i. For NSRs where an 11 to 14 dBA sound level increase above ambient noise levels are expected, certificate holder will purchase and install sound attenuating windows with an STC rating of 25-40.
 - ii. For NSRs where a 15 dBA or greater sound level increase is expected, certificate holder will purchase and install sound attenuating windows with an STC rating of above 40.
 - iii. If an owner of an NSR where an 11 dBA or greater sound level increase is expected provides a letter from a health care provider indicating that health care provider's belief that the owner has a health condition that is exacerbated by increased sound levels, upon request, certificate holder will purchase and install sound attenuating windows with an STC rating of over 40 and would work with the NSR property owner to consider other mitigation options, as appropriate. During landowner consultations required under this condition, the certificate holder will specifically ask each landowner whether that landowner has a health condition that the landowner believes is exacerbated by elevated sound levels.
 - iv. At the request of an NSR property owner, certificate holder will offer alternative mitigation proposals, such as performing air-sealing of the NSR residence, planting trees, or installing insulation.
- b. Prior to operation, the certificate holder will implement the mitigation measures agreed upon with the NSR property owners and/or as determined by EFSC or the Department to be the appropriate mitigation measures.

~~b. the certificate holder cannot reach an agreement with the NSR property owner, the certificate holder will submit to the Department a list of the dates that the certificate holder communicated with, or attempted to communicate with, the NSR property owners; and the names, addresses, and phone numbers of the NSR owners.~~

Noise Control Condition 2:

- a. After the Site Certificate has been issued and before landowner consultations contemplated in Condition 1, the certificate holder will prepare a new version of Attachment X-7, which will update landowner information and correct any errors (Updated Attachment X-7). The certificate holder will send notices to all landowners listed in Updated Attachment X-7, which notice shall inform the recipient: (a) that the

recipient is the owner of an NSR; (b) the requirements and condition language of Noise Control Conditions 1 and 2 as adopted by the Council; and (c) a plain summary of the steps designated Noise Control Conditions 1 and 2. In addition, prior to construction, the certificate holder shall develop and submit to the Department an operational noise complaint response plan as well as distribute a simplified operational noise complaint response plan for landowners to the landowners listed in Updated Attachment X-7.

b. The plan shall specify that it is intended to address complaints filed by persons falling into one of the following categories: (1) the owner of an NSR property identified in Noise Control Condition 1, and for whom has received mitigation under Noise Control Condition 1, but who believes that exceedances (as measured at their NSR property) are occurring in a manner not otherwise allowed under Noise Control Condition 4 or Noise Control Condition 5; or (2) An owner of an NSR property within one mile of the site boundary who was not identified under Noise Control Condition 1 and who has not received mitigation from the certificate holder, but who nevertheless believes that exceedances above the ambient degradation standard have occurred at their NSR property.

c. The plan shall include the following: Scope of the complaint response plan, including process for complaint filing, receipt, review and response. The scope shall clearly describe how affected persons will be provided necessary information for filing a complaint and receiving a response, and will specify the information that the complainant must include in its complaint, including the date the certificate holder received the complaint, the nature of the complaint, weather conditions of the date for which the complaint is based (including wind speed, temperature, relative humidity, and precipitation), duration of perceived noise issue, the complainant's contact information, and the location of the affected property.

d. The plan shall require that the certificate holder notify the Department within three working days of receiving a noise complaint related to the facility. The notification shall include the date the certificate holder received the complaint, the nature of the complaint, weather conditions of the date for which the complaint is based (such as wind speed, temperature, relative humidity, and precipitation) as described by the complainant, duration of perceived noise issue, the complainant's contact information, the location of the affected property, and a schedule of any actions taken or planned to be taken by the certificate holder (including inspection and maintenance actions, or actions taken or planned to be taken pursuant to the processes described in subsection (e) of this condition).

e. The plan shall identify the following process if a noise complaint is received:

i. The certificate holder shall assess possible causes of the corona noise. If the complaint is received within the first 12 months of operation, the certificate holder will assess whether the corona noise is typical of noise that occurs during the transmission line "burn in period" (the first 12 months of operation) and ensure that it already has taken appropriate measures near that NSR to minimize corona noise that may occur during the burn in period (e.g., use conductors with a nonspecular finish/sandblasting of conductors to make them less reflective and clean them of manufacturing oils, protect the conductors to minimize scratching and nicking during construction). If the exceedance occurs during the burn-in

- period, and if the certificate holder complies with the requirements of this condition, the certificate holder will not be found to be in violation of its site certificate because of the exceedance.
- ii. If it is determined the corona noise is not typical burn in period noise, the certificate holder will assess whether the noise exceeds the ambient antidegradation standard in a manner not otherwise allowed under Noise Control Condition 4 or Noise Control Condition 5. If the complainant's noise sensitive property or properties are included in Attachment X-5 of the Final Order on the ASC, the modeled sound level increases as presented in Attachment X-4 of the Final Order on the ASC may be relied upon to determine whether the corona noise exceeds the ambient antidegradation standard, unless the complainant voluntarily provides alternative noise data.
- iii. If the complainant's NSR property or properties are not included in Attachment X-5 of the Final Order on the ASC, the certificate holder shall model the sound level increases using the methods set forth in ASC Exhibit X, unless the complainant voluntarily provides alternative noise data.
- iv. If the complainant voluntarily provides alternative noise data and the data suggests an exceedance that had not previously been identified and mitigated, and/or an exceedance not otherwise allowed under Noise Control Condition 4 or Noise Control Condition 5, the complaint shall be verified through site specific sound monitoring conducted by an Oregon registered Professional Engineer, Board Certified by the Institute of Noise Control Engineering noise specialist, employed or contracted by the certificate holder, in accordance with NPCS-1 unless otherwise approved by the Department. If site specific sound monitoring is not authorized by the complainant, the certificate holder's modeling results may be relied upon to determine compliance.
- v. In the event of a dispute regarding complainant's noise data and the certificate holder's data from site specific sound monitoring, certificate holder shall request that EFSC, in consultation with the Department's noise consultant, if necessary, make the final determination regarding which data will be used to determine whether corona noise exceeds the ambient antidegradation standard and/or in a manner not allowed under Noise Control Condition 4 or Noise Control Condition 5. The EFSC Chair may direct the Department to make this determination.
- f. The plan shall specify that if it is determined pursuant to the process described in subsection (e) of this condition that corona noise at the complainant's NSR property exceeds the ambient antidegradation standard in a manner not allowed under Noise Control Condition 4 or Noise Control Condition 5, and/or exceeds the ambient antidegradation standard at an NSR property that had not previously been predicted to experience exceedances under Noise Control Condition 1, the certificate holder shall work with the NSR property owner to develop a mutually agreed upon mitigation plan to include agreed upon measures that would be implemented at the NSR location to minimize or mitigate the ambient antidegradation standard noise exceedance. To be clear, the fact that the certificate holder has received an exception or variance under Noise Control Conditions 4 and 5 does not excuse the certificate holder from providing mitigation under this condition.

- i. If the NSR property was identified in Noise Control Condition 1 and has previously received mitigation by the certificate holder, and if it has been determined that the NSR property experiences exceedances not allowed under Noise Control Condition 4 or Noise Control Condition 5, the certificate holder will work with the complainant to identify supplemental mitigation measures, which may include any of the measures discussed in Noise Control Condition 1 or the ASC, or other measures requested by the complainant.
 - ii. If the NSR property was not identified in Noise Control Condition 1 and has not been provided with mitigation by the certificate holder, certificate holder will work with the NSR property owner to identify appropriate mitigation measures, which may include any of the measures discussed in Noise Control Condition 1 or the ASC, or other measures requested by the landowner.
 - iii. If, through the efforts described above, the certificate holder executes an agreement with the NSR property owner, the certificate holder will submit a signed acknowledgement from the property owner to the Department for its records. If an agreement between certificate holder and NSR property owner is not obtained, the certificate holder shall concurrently notify the Department and NSR property owner of the dispute and of Council review of the dispute to occur at the next regularly scheduled Council meeting, to the extent possible, from the date of the certificate holder's notice. The notice shall explain that the NSR property owner will be given an opportunity to provide comments to the Council on the dispute, unless the Council defers the dispute review to the Department. Review of the dispute will be based on the information per (iv) below, and any other relevant facts provided by the NSR property owner and will result in a determination of the appropriate mitigation measure(s), proportional to the facility operational noise levels in excess of the ambient degradation standard, as determined to occur at the NSR property. The Council or Department's determination of appropriate mitigation is not binding on the NSR property owner or certificate holder if NSR property owner opts not to accept the mitigation.
 - iv. At the time of issuance of the notice per (iii) above, certificate holder will submit to the Department: (1) the mitigation measures it offered the NSR property owner, the mitigation measures that the NSR property owner requested and an explanation of the dispute; (2) a list of the dates that the certificate holder communicated with, or attempted to communicate with, the NSR property owners; and (3) the names, addresses, and phone numbers of the NSR owners.
- a-g. The certificate holder shall provide necessary information to the complainant to support understanding of corona noise, corona noise levels and effects, and of the process to verify actual noise levels of events resulting in complaints. If the complainant opts not to authorize the certificate holder to conduct monitoring, and it is otherwise determined pursuant to the process described in subsection (e) of this condition that corona noise does not exceed the ambient antidegradation standard, the noise complaint shall be considered fully resolved and no mitigation shall be required.

Noise Control Condition 4: During operation:

- a. Pursuant to OAR 340-035-0010, An exception to compliance with the ambient antidegradation standard at OAR 340-035-0035(1)(b)(B) (which prohibits an increase of more than 10 dBA above ambient sound pressure levels) i.e. an increase of 10 dBA above ambient sound pressure levels) is granted during facility operation when there is foul weather (a rain rate of 0.8 to 5 millimeters per hour), which Council finds constitutes an infrequent event under ~~for infrequent or unusual foul weather events during facility operation, pursuant to~~ OAR 345-035-0035(6)(a).
- b. The ambient antidegradation standard at OAR 340-035-0035(1)(b)(B) may be exceeded by the transmission line at any time of day or night during ~~infrequent or unusual~~ foul weather events (defined as a rain rate of 0.8 to 5 millimeters per hour). [OAR 340-035-0010(2)]
- c. The quantity and quality of noise generated in exceedance of the ambient antidegradation standard ~~(ambient plus 10 dBA) at~~ OAR 340-035-0035(1)(b)(B), ~~during infrequent or unusual~~ foul weather events (defined as a rain rate of 0.8 to 5 millimeters per hour), shall not be more than 10 dBA (or ambient plus 20 dBA), ~~as measured at any NSR location and from corona noise consisting of a low hum and hissing, frying or crackling sound, respectively.~~ [OAR 340-035-0010(2)]

Noise Control Condition 5: During operation:

- a. A variance to compliance with the ambient antidegradation standard at OAR 340-035-0035(1)(b)(B) (i.e. an increase of 10 dBA above ambient sound pressure levels) is granted pursuant to OAR 345-035-0100(1) for the transmission line at any time of day or night during foul weather events (defined as a rain rate of 0.8 to 5 millimeters per hour).

The ambient antidegradation standard at OAR 340-035-0035(1)(b)(B) may be exceeded by the transmission line at any time of day or night. [OAR 340-035-0100]

IV.Q.2. Removal Fill Law: OAR 141-085-0500 through -0785

No Material Changes.

IV.Q.3. Water Rights: OAR 690-310-0000; OAR 690-380-0000

No Material Changes.

IV.Q.4. Fish Passage: OAR 635-412-0035

Material Change:

Fish Passage Condition 1:

- a. Prior to construction, the certificate holder shall finalize, and submit to the Department for its approval in consultation with ODFW, a final Fish Passage Plan. As part of finalizing the Fish Passage Plan, the certificate holder shall request from ODFW any new information ODFW may have on the status of the streams within the site boundary and shall address the information in the final Fish Passage Plan. In addition, the certificate holder shall seek concurrence from ODFW on the fish-presence determinations for non-fish bearing streams within the Ladd Creek watershed, as presented in ASC Exhibit P1-7B Table 3. If the certificate holder in consultation with ODFW, determines any of the previously identified non-fish bearing streams within the Ladd Creek Watershed to be fish-bearing, the

certificate holder shall complete a crossing risk evaluation and obtain concurrence from ODFW on applicability of fish passage requirements. If fish passage requirements apply, certificate holder shall seek approval from the Energy Facility Siting Council of a site certificate amendment to incorporate ODFW approval of new crossings and fish passage design/plans and conditions.

The protective measures described in the draft Fish Passage Plan in Attachment BB-2 to the Final Order on the ASC, shall be included as part of the final Fish Passage Plan, unless otherwise approved by the Department.

- b. The certificate holder shall maintain compliance with the measures outlined in the final Fish Passage Plan approved by the Department in consultation with ODFW.
- c. The certificate holder shall comply with the following operational provisions, as required per ODFW's fish passage approval (December 30, 2015), per Attachment BB-2 Appendix A of the Final Order on the ASC:
 1. All in water work shall occur during the ODFW in-water work windows for each waterbody.
 2. Temporary water management and fish rescue, salvage, and recovery, is required (as prescribed in OAR 635-412-0035(10)) prior to all in-water work activities (defined as all work at or below the ordinary high water elevation) associated with the project. Fish salvage activities require the certificate holder to obtain State of Oregon Scientific Take Permits from ODFW.
 3. Wildlife rescue, salvage, and recovery activities associated with the facility require the applicant to obtain State of Oregon Wildlife Rescue Salvage Permits from ODFW.
 4. Fish passage design standards, as defined in OAR 635-412-0035(1) and (3), shall be implemented for all fish passage components of these projects.
 5. The certificate holder shall be responsible for all maintenance required such that projects provide adequate passage for native migratory fish. If monitoring by the certificate holder or ODFW indicates that fish passage is not being provided, the certificate holder in consultation with ODFW, shall determine the cause and, during a work period approved by ODFW, shall modify the structure as appropriate to rectify problems as necessary. Failure to maintain fish passage for the duration of these approvals shall constitute a violation of these approvals and applicable fish passage laws (ORS 509.610).
 6. After construction completion, the certificate holder or its designee, shall maintain, monitor, evaluate and report on the effectiveness of fish passage as required under ORS 509.610, and shall provide written status reports to ODFW's Fish Passage Program annually for the first three (3) years and then a final report at Year 5, or as determined by ODFW. Reports shall include photographs from established photo-points as part of the fish-passage evaluation and monitoring. Monitoring, evaluation, and reporting shall be conducted annually unless problems are observed that may require additional analysis. Fish passage reports shall consist of visual observations, photographs, as-built plan reviews, and future site visits with regards to fish passage at and through the project sites. Reports shall be submitted to the State Fish Passage Coordinator and the La Grande and Malheur Watershed District Fish Biologists. Electronic or hard copy submissions are acceptable.
 7. Failure to maintain fish passage at these locations shall constitute a violation of these approvals and applicable fish passage laws (ORS 509.585 and 509.610).

8. ODFW shall be allowed to inspect the crossing sites at reasonable times for the duration of the approval Unless prompted by emergency or other exigent circumstances, inspection shall be limited to regular and usual business hours, including weekends.
9. The appropriate ODFW District Fish Biologist shall be contacted 2-weeks in advance and prior to implementation of fish passage projects.
10. These fish passage approvals in no way ~~purports or~~ authorize a take of a federally listed species.

ATTACHMENTS

Attachment A: Draft Final Order on ASC (available via hyperlink)

Attachment 6 (to the Draft Final Order): Contested Case Order as Amended by Council
(available via hyperlink)

