



Oregon

Tina Kotek, 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: Kathleen Sloan, Senior Siting Analyst

Date: March 10, 2023

Subject: Agenda Item D (Action Item): Oregon Trail Solar Facility, Final Order on Request for Amendment 1 of the Site Certificate for the March 24, 2023 EFSC Meeting

Attachments: Attachment 1: Proposed Order on Request for Site Certificate Amendment 1 (redline version for any changes since Council's review of the Draft Proposed Order)

Attachment 2: Proposed Order Attachments A thru G redline versions, including:

- Proposed Order Attachment A: Draft Amended Site Certificate; and
- Proposed Order Attachment B-2: Comments received on the record of the Draft Proposed Order

STAFF RECOMMENDATION

The Oregon Department of Energy (Department) recommends the Energy Facility Siting Council (EFSC or Council) approve the Proposed Order as the Final Order on Request for Amendment 1 of the Oregon Trail Solar Site Certificate, subject to compliance with new, existing and recommended amended site certificate conditions.

At the March 24, 2023 Council meeting, the Department will present to Council a review of any additional Department evaluation, additional or revised recommended Council findings, and any proposed revisions to new or amended site certificate conditions since Council's review of the Draft Proposed Order.

FACILITY OVERVIEW

The Oregon Trail Solar Facility is an approved, but not yet constructed, energy generation facility to include any combination of wind and solar photovoltaic energy generation components not to exceed 41 megawatts (MW), including up to 16 wind turbines or up to 400 acres of solar photovoltaic energy generation equipment within two approved micro-siting

areas: 12,638 acres for wind and 1,228 acres for solar facility components.¹ The certificate holder is Oregon Trail Solar, LLC, a wholly owned subsidiary of Avangrid Renewables, LLC, the U.S. division of parent company Iberdrola, S.A.

CHANGES PROPOSED IN AMENDMENT REQUEST

The certificate holder requests to amend Condition 24 to allow an extension of the construction commencement date from August 30, 2022 to August 30, 2025. The construction completion deadline is tied to the date of construction commencement; therefore, the proposed Condition 24 amendment would also extend the completion date (three years from commencement date, as specified in Condition 25).

The certificate holder also requests to amend Condition 50(b) to adjust the circumstances for which a tribal cultural monitor will need to be on-site during facility construction.

PROCEDURAL HISTORY

On August 19, 2021, Oregon Trail Solar, LLC submitted preliminary Request for Amendment 1 of the Oregon Trail Solar Facility Site Certificate (RFA1) to the Department. Following five months of review and coordination with state, tribal and local governments on the changes proposed in the amendment request, and changes in fact or law², the Department determined RFA1 to be complete and on December 23, 2022 issued its Draft Proposed Order (DPO) on Amendment 1. On the same day, the Department issued a public notice of a comment period and public hearing on RFA1 and the DPO. The public comment period extended from December 23, 2022 through January 19, 2023 and closed at the end of the public hearing held in Condon, Oregon. A total of 9 comments were received on the DPO and RFA1, all in support of the requested amendment and no comments in opposition. Council reviewed the DPO at the January 20, 2023 EFSC meeting. Based upon comments received and Council review, the Department issued the Proposed Order and the public notice on the Proposed Order and Opportunity to Request a Contested Case on January 25, 2023. A 30-day period to request a contested case closed on February 24, 2023. No requests for a contested case were received by the February 24, 2023 deadline. Council will review the Proposed Order at the March 24, 2023 EFSC meeting and may either adopt, modify or reject the Proposed Order as the Final Order.

STAFF EVALUATION OF AMENDMENT REQUEST AND SUMMARY OF PROPOSED ORDER

The Proposed Order provides an evaluation of the Council standards that may be impacted by the requested amendment, and includes an evaluation of all Council standards to support why some Council standards would not likely be impacted by the requested changes in RFA1. The Department recommends that Council find, based on a preponderance of evidence on the

¹ The Oregon Trail Solar Facility Site Certificate originated from the Montague Wind Power Facility Site Certificate, as authorized in the 2020 Final Order on Amendment 5 of the Montague Wind Power Facility Site Certificate, which allocated approved facility components into three, mirror site certificates for three facilities (Montague Wind Power, Montague Solar Facility and Oregon Trail Solar Facility).

² For a request for amendment to extend the deadlines for beginning or completing construction, Council must first consider any changes in fact or law since the date the current site certificate was executed to determine whether such changes would impact its prior findings of compliance with applicable laws and Council standards (OAR 345-027-0375).

record, that the site certificate may be amended as requested, with the recommended changes to existing site certificate conditions, including one new site certificate condition for Land Use (Condition 120).

As presented in the Proposed Order, the Department recommends that Council find that the changes proposed in RFA1 would not result in new or different impacts not previously evaluated by Council. Public comments and Council review of the Draft Proposed Order did not change the Department's evaluation. Therefore, the Department recommends that Council continue to rely on previous reasoning and analysis for the following standards:

- Structural OAR 345-022-0020
- Soil Protection OAR 345-022-0022
- Protected Areas OAR 345-022-0040
- Retirement and Financial Assurance OAR 345-022-0050
- Scenic Resources OAR 342-022-0080
- Recreation OAR 345-022-0100
- Public Services OAR 345-022-0110
- Waste Minimization OAR 345-022-0120
- Cumulative Effects Standard for Wind Energy Facilities OAR 345-024-0015
- Noise Control Regulations OAR 340-035-0035
- Removal Fill Law OAR 141-085-0500 through 141-085-0785
- Water Rights OAR 690 Divisions 310 and 380

The Proposed Order identifies changes to the Department's evaluation on the standards where there were additional changes in fact or law, new or recommended substantive condition language changes since Council's review of the DPO. The Proposed Order considers all comments received on the record of the DPO and as reviewed by Council at the January 20, 2023 EFSC meeting. Comments received on the DPO are summarized in Table 1 (See Pages 11-13 of Attachment 1: Proposed Order redline version) and are also included in Attachment 2: Attachment B-2: Comments received on DPO.

The Department further recommends that Council continue to rely on the Department's prior evaluation, recommended Council findings, and recommended new or amended site certificate conditions in the DPO for the Proposed Order for the following standards for which no substantive changes in the Department's evaluation, recommended Council findings or conditions have been made since Council's review of the DPO:

- General Standard of Review OAR 345-022-0000
- Organizational Expertise OAR 345-022-0010
- Retirement and Financial Assurance OAR 345-022-0050
- Fish and Wildlife Habitat OAR-022-0070
- Threatened and Endangered Species OAR 345-022-0080
- Historic, Cultural, and Archaeological Resources OAR 345-022-0090

Changes to the Department’s evaluation, recommended Council findings, or condition language since Council’s review of the DPO, as reflected in the redline version of the Proposed Order, (See Attachment 1 of this staff report) are summarized below:

III.E. LAND USE: OAR 345-022-0030..... SEE ATTACHMENT 1: P.38-47

Department revised the recommended findings of fact related to the exception to Goal 3, *Preservation of Agricultural Lands*, reflecting additional Department evaluation of comments received and revised recommended changes to condition language in the Proposed Order since Council’s review of the DPO (See Attachment 1: Proposed Order redline version Pages 42-47).

Department recommends Council make the following new findings:

- That the recommended new land use condition is in response to comments on the record of the DPO made by the Gilliam County Special Advisory Group (County), and responses by the certificate holder to address those comments.
- The County’s comments on the record of the DPO reflect the County’s experience on a related and adjacent facility with certificate holder, specific to meeting the requirement of “local economic benefit” and “minimal loss to productive agriculture”, reasons previously approved by Council for the Goal 3 exception already granted to the facility by previous Council action.
- Specific details of the agreements between County and Certificate holder include the Community Donation Fund, per Memorandum of Agreement (MOA) with the Port of Arlington and Gilliam County Soil and Water Conservation District totaling \$922,500 (\$461,250 to each entity in a lump sum payment within 60 days of the start of facility construction) are sufficient resolution of the concerns identified by the County, and support Council imposing the new condition below under the Land Use standard.

The Department recommends Council impose the following new Land Use condition (Condition 120), as revised in the Proposed Order:

Recommended Land Use Condition: If the final facility design includes solar photovoltaic energy generation components, the certificate holder shall:

- a. Within 60-days of approval of Final Order on Amendment 1, provide to the Department copies of fully executed Memorandums of Agreement (MOA) substantially similar to the draft MOAs provided in Attachment F of Final Order on Amendment 1 and consistent with the pre-construction payment requirement under (b) of this condition. Substantive changes to the MOA shall be reviewed and approved by Council.
- b. Prior to construction, provide to the Department evidence that the Community Donation Funds have been issued to the Port of Arlington and Gilliam County Soil and Watershed Council consistent with the findings presented in the Final Order on Amendment 1.
- c. In the annual report to the Department (Condition 21), for the first 10-years of operation, unless Donation Funds are expended prior to the 10-year period, provide copies of the annual reports obtained under the executed MOAs per sub (b) that

demonstrate the status of projects completed during the reporting year and the schedule and description of projects to be completed in the next reporting year.

III.N. WILDFIRE PREVENTION AND RISK MITIGATION: OAR 345-022-0115 ATTACH 1: P.121-143

Department recommends Council make the following additional findings of fact since Council's review of the DPO and reflected in the Proposed Order (See Attachment 1: Proposed Order redline version Pages 141 -143):

- In order for the Department to evaluate the frequency for future amendments to the WMP, the Council requires that the certificate holder submit an updated wildfire risk assessment and WMP prior to facility operations; and
- The certificate holder shall be required to provide an updated wildfire risk assessment and WMP (or justification for why no WMP revisions are necessary) annually, and included as part of the annual report submitted to the Department.

The Department recommends that Council amend Condition 60 as follows:

Recommended Amended Condition 60:

- (a) During construction ~~and operation~~ of the facility, the certificate holder shall develop and implement fire safety plan(s) in consultation with the North Gilliam County Rural Fire Protection District to minimize the risk of fire and to respond appropriately to any fires that occur on the facility site. In developing the fire safety plans, the certificate holder shall take into account the dry nature of the region and shall address risks on a seasonal basis. ~~For solar facility components, the certificate holder shall address worker training requirements, inspections, vegetation management, fire prevention and response equipment and potential mutual assistance in the case of fire within or around the facility site boundary. The certificate holder shall meet annually with local fire protection agency personnel to discuss emergency planning and shall invite local fire protection agency personnel to observe any emergency drill or tower rescue training conducted at the facility.~~
- (b) Prior to operation of the facility, the certificate holder shall submit to the Department and the North Gilliam County Rural Fire Protection District, a final Wildfire Mitigation Plan (WMP) based on final facility design, new information from the data sources identified in WMP Table 5 and :
 - i. An updated wildfire risk assessment, taking into account the facility on the landscape.
 - ii. Information substantially similar to those included in the WMP (Attachment E of the Final Order on RFA1), listed under OAR 345-022-0115(1)(b), taking into account wildfire risk with the facility on the landscape.
- (c) During operation, the certificate holder shall:
 - i. Meet annually with local fire protection agency personnel to discuss emergency planning and shall invite local fire protection agency personnel to observe any emergency drill or tower rescue training conducted at the facility.
 - ii. Implement the measures in the WMP.

- iii. In every annual report required under Condition 21 (OAR 345-026-0080), provide an updated WMP based on review of WMP Table 5 or confirm that WMP updates are not required because there have been no changes to the recommendations from the data sources identified in WMP Table 5 during the reporting year.
- iv. Submit an updated WMP to the North Gilliam County Rural Fire Protection District if substantive changes are made to the WMP as a result of the review under sub (c)(iii) of this condition.
[AMD5, Sept 2020, OTSAMD1 Date]

III.P. PUBLIC HEALTH AND SAFETY OF WIND ENERGY FACILITIES: OAR 345-024-0010..... ATTACH 1:P146-149

Department recommends Council make the following additional findings since Council’s review of the DPO (See Attachment 1: Proposed Order in redline version, pages. 147-149:

- Based on increased awareness of potential hazards for energy infrastructure in general, and potential structural issues for wind components, the Council finds that the Department requires more information on monitoring, inspections and safety protocols for operations of the facility.
- In order to allow the Department to better evaluate and track a facility’s monitoring, maintenance, inspection, response and reporting protocols due to increased awareness of potential safety and structural issues associated with wind facilities, the Department recommends Council amend Condition 67.

The Department recommends Council amend Condition 67 as follows:

Recommended Amended Condition 67

Recommended Amended Condition 67

During operation of the facility, the certificate holder shall ~~have a safety monitoring program and shall inspect all turbine and turbine tower components on a regular basis. The certificate holder shall maintain or repair turbine and turbine tower components as necessary to protect public safety~~ develop and implement an operational safety-monitoring program that includes regular inspections, maintenance, and reporting program to prevent structural or electrical failure of wind turbine foundations, towers, blades, or electrical equipment. Required elements of the operational safety-monitoring program include:

- (a) Identify and conduct inspections and testing of wind facility components, including but not limited to foundations, towers, blades, nacelle, pad-mounted transformers, and SCADA system, consistent with manufacturers' recommendations and recognized and generally accepted good engineering practices (RAGAGEP) for frequency and process.
- (b) Maintain records of each inspection and test performed. Records shall:
 - (i) Identify the date of the inspection or test, the name of the person who performed the inspection or test, the serial number or other identifier of the

- equipment on which the inspection or test was performed, a description of the inspection or test performed, and the results of the inspection or test.
- (ii) Identify testing or inspection results that show deficiencies in equipment or operation issues that are outside acceptable limits or recommendations identified by the manufacturer. These issues must be corrected before further use, or in a safe and timely manner if precautions are taken to assure safe operation.
 - (iii) Be made available for inspection by the Department’s Compliance Officer during site visits, or upon request from the Department..
- (c) In the event of blade or tower failure, a structural or electrical issue that causes a fire or other safety hazard the certificate holder shall report the incident to the Department within 72 hours, in accordance with OAR 345-026-0170(1), and shall, within 30 days of the event, submit a report which contains:
- (i) A discussion of the cause of the reported incident including results of on-site or remote inspections or investigations;
 - (ii) A description of immediate actions taken to correct the reported conditions or circumstances; and
 - (iii) A description of actions taken or planned to minimize the possibility of recurrence and a description of manufacturers' recommendations and recognized and generally accepted good engineering practices to avoid instances in the future.

RECOMMENDED COUNCIL ACTION

The Department recommends the Council approve Proposed Order as the Final Order as recommended by the Department and issue the first amended site certificate.

If Council adopts the Proposed Order as the Final Order, the only changes the Department recommends be made would be administrative in nature. Examples of recommended changes include updating “Department recommended findings” to “Council findings” and updates to procedural history (Section I.D of the Proposed Order). There are no substantive changes recommended by the Department for the Final Order.

ATTACHMENTS:

- Attachment 1: Proposed Order on Request for Site Certificate Amendment 1 (redline version for any changes since Council’s review of the Draft Proposed Order)
- Attachment 2: Proposed Order Attachments A thru G redline versions:
 - See Proposed Order Attachment A: Draft Amended Site Certificate; and
 - See Proposed Order Attachment B-2: Comments received on the record of the Draft Proposed Order