Oregon Department of ENERGY

Energy Facility Siting Council Meeting

Boardman City Hall, Boardman, Oregon

February 23, 2018
Opening Items:

• Call to Order
• Roll Call
• Agenda Modifications
• Announcements
Announcements:

• For those attending in person:
  • Comment Registration Cards are available on the table
  • GovDelivery Sign Up Cards to receive project information by email are also on the table

• For those attending via teleconference, opportunity for public comment will occur at the end of today’s meeting. We will request that individuals interested in making a public comment identify themselves prior to the comment period

• Those participating via the AT&T phone line, please mute your phone and if you receive a phone call, please hang up from this call and dial back in after finishing your other call

• If you would like to address the Council, please do not use the speaker phone feature, because it will create feedback
Announcements continued:

• For those signed onto the webinar, please do not broadcast your webcam
• Please silence your cell phones
• Energy Facility Council meetings shall be conducted in a respectful and courteous manner where everyone is allowed to state their positions at the appropriate times consistent with Council rules and procedures. Willful accusatory, offensive, insulting, threatening, insolent, or slanderous comments which disrupt the Council meeting are not acceptable. Pursuant to Oregon Administrative Rule 345-011-0080, any person who engages in unacceptable conduct which disrupts the meeting may be expelled.
Agenda Item A

• Consent Calendar
• Council Secretary Report
Boardman Solar Energy Facility: Application for Site Certificate

February 23, 2018

Presented by:
Katie Clifford, Senior Siting Analyst
Overview

• Facility background
• Procedural history
• Changes from Draft Proposed Order to Proposed Order
• Changes from Proposed Order to draft Final Order
• Council deliberation and action

Photo credit: cablinginstall.com
Facility Background

**Applicant:** Boardman Solar Energy LLC (Invenergy LLC)

**Type of Facility:** Photovoltaic Solar Facility

**Location:**
- Morrow County: 75 MW photovoltaic solar array
- Gilliam County: 115 kV, 2.1 mile transmission line (related and supporting facility)

**Acreage:** Approximately 798 acres
# Procedural History Overview

<table>
<thead>
<tr>
<th>Milestone</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Preliminary Application for Site Certificate</td>
<td>January 13, 2017</td>
</tr>
<tr>
<td>ODOE determined Application for Site Certificate complete</td>
<td>August 29, 2017</td>
</tr>
<tr>
<td>Final Application for Site Certificate Filed</td>
<td>September 1, 2017</td>
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<tr>
<td>Public Information Meeting</td>
<td>September 20, 2017</td>
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<tr>
<td>Draft Proposed Order and Notice of Hearing Issued</td>
<td>November 13, 2017</td>
</tr>
<tr>
<td>Hearing on the Draft Proposed Order</td>
<td>December 14, 2017</td>
</tr>
<tr>
<td>Proposed Order, Notice of Proposed Order, and Notice of Contested Case Issued</td>
<td>December 29, 2017</td>
</tr>
<tr>
<td>Contested Case Concluded</td>
<td>February 7, 2018</td>
</tr>
</tbody>
</table>
Changes from Draft Proposed Order to Proposed Order

• Minor administrative changes
  • (e.g., updates to procedural history section)

• Modifications to recommended conditions
  • Administrative revisions
  • Revisions in response to comments on the record of the public hearing

• Revised discussion/analysis in Section IV.E., Land Use
Modifications to Recommended Conditions
(Changes from Draft Proposed Order to Proposed Order)

Updated references to Oregon Administrative Rules to reflect the relocation of some Division 27 rules to Division 25 as a result of the rulemaking on amendment processes:

- General Standard Condition 1
- Mandatory Conditions 1 through 9
- Site Specific Conditions 1 and 2
- Retirement and Financial Assurance Conditions 1 through 4
Modifications to Recommended Conditions
(Changes from Draft Proposed Order to Proposed Order)

Retirement and Financial Assurance Condition 4

• Rounding error corrected

• Mandatory Condition 3
  • Based upon the language of OAR 345-025-0006(5)
  • Modified to exclude specific reference to pipelines and wind energy facilities
Modifications to Recommended Conditions
(Changes from Draft Proposed Order to Proposed Order)

Revisions in response to comments received from Morrow County Special Advisory Group

• Mandatory Condition 1
  o Provide county with legal description of site

• Mandatory Condition 5
  o Require disposal of land clearing and construction waste in accordance with Morrow County’s Solid Waste Management Plan

• General Standard Condition 2
  o Provide county with copy of compliance plan

• Fish and Wildlife Habitat Condition 10
  o County involvement in review of final Revegetation and Noxious Weed Plan
Revised discussion/analysis - Land Use
(Changes from Draft Proposed Order to Proposed Order)

Revised OAR 660-033-0130(38) discussion/analysis

• Discussion of comments received
• Feasibility of transferring water rights to site boundary
• Agricultural potential of rest of tract
• Limitations on siting the proposed facility on areas outside the site boundary but within the tract that are not considered high-value farmland
• Annual days of grazing in site boundary
Revised discussion/analysis - Land Use
(Changes from Draft Proposed Order to Proposed Order)

Revised Goal 3 Exception discussion/analysis

• Clarification regarding the applicable statutes and rules to the review
• Discussion of comments received regarding:
  • Solar photovoltaic facility as a “rural industrial use”
  • Availability of land within urban growth boundary
  • Locational attractor
  • Lost agricultural productivity
  • Comparative advantage
  • Alternatives analysis
Changes from Proposed Order to draft Final Order

- Minor administrative changes
  - (e.g., updates to procedural history section)
## Final Order on ASC – Council Deliberation and Action

### Council Options

<table>
<thead>
<tr>
<th>Option 1</th>
<th>Option 2</th>
<th>Option 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>• ADOPT Order on ASC as presented by staff, and issue Site Certificate</td>
<td>• AMEND Order, and approve. May require additional comment period and hearing.</td>
<td>• REJECT Order and Deny ASC. Would require additional comment period and hearing.</td>
</tr>
</tbody>
</table>
Montague Wind Power Facility:
Change Request #3
Staff Determination referred to Council

February 23, 2018
Chase McVeigh-Walker, Siting Analyst
Montague Wind Power Facility

Facility Overview

- Type of Facility: 404 MW wind
- Location: Gilliam County
- Approved, under construction, RFA in review

Site Certificate History

- Site Certificate executed and became effective on September 14, 2010
- Site Certificate amended in 2013, 2015, and 2017
- Change Request filed on August 4, 2017
Certificate Holder’s Request

• The certificate holder, Montague Wind Power Facility, LLC, submitted a change request for the Department’s review of whether a site certificate amendment is required pursuant to Council rules for two proposed facility modifications.

Staffs Determination

• The Department reviewed the change request and supporting material and determined that the changes do not require a site certificate amendment.

Council Action

• Pursuant to OAR 345-027-0050(5) the Department is referring its determination to Council for concurrence, modification, or rejection.
## Changes Requested

<table>
<thead>
<tr>
<th>Site Boundary Additions</th>
<th>Modified Transmission Line Route/Corridor</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Outside of existing site boundary</td>
<td></td>
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<tr>
<td>• Access Road Segment</td>
<td></td>
</tr>
<tr>
<td>• Collector Line Segment</td>
<td>• Within existing site boundary</td>
</tr>
<tr>
<td></td>
<td>• Reduction in total linear length</td>
</tr>
<tr>
<td></td>
<td>• Modification to route/corridor to avoid Category 1 WGS habitat</td>
</tr>
</tbody>
</table>
Site Boundary Additions

Access Road Segment

- Outside of existing site boundary
- Approximately 1-mile in length
- 80 ft. wide during construction, reduced to 20 ft. during operation

Collector Line Segment

- Outside of existing site boundary
- Include 4,224-linear feet of aboveground and below ground segments
- Provide more direct access to facility components
- Avoids construction in geographically constrained areas
Site Boundary Additions
Modified Transmission Line Route/Corridor

Change to Transmission Line Route/Corridor

• Entirely within the previously-approved facility site boundary
• Route modification to avoid Category 1 WGS habitat identified during 2017 pre-construction surveys
• Reduce the total linear length of the transmission line from 19- to 10.5 miles
• Transmission line corridor will extend the length of the 10.5-mile transmission line route, and extend ½-mile in width consistent with the OAR 345-001-0010(13) definition of “corridor.”
Modified Transmission Line Route/Corridor

Proposed 230-kV Transmission Line Corridor
Previously Approved 230-kV Transmission Line Corridor

Miles
Staffs Evaluation Under OAR 345-027-0050(1)(a)

- Structural Standard and Soil Protection Standard
- Land Use Standard
- Protected Areas Standard, Scenic Resources Standard, and Recreation Standard
- Fish and Wildlife Habitat Standard and Threatened and Endangered Species Standard
- Historic, Cultural and Archeological Resources Standard
- Cumulative Effects Standard for Wind Energy Facilities
Structural Standard and Soil Protection Standard

• Site Boundary Additions
  • 2017 pre-construction site specific geotechnical investigation
  • DOGAMI review of geotechnical investigation and consultation

• Modified Transmission Line Route/Corridor
  • Located entirely within previously approved site boundary
  • ASC evaluation of Structural Standard
Land Use Standard

- Site Boundary Additions
  - Gilliam County Zoning Ordinance evaluation
  - OAR 660-033-0130(37) evaluation

- Modified Transmission Line Route/Corridor
  - Previously evaluated under ORS 215.275
  - Evaluation under ORS 215-274
Protected Areas Standard, Scenic Resources Standard, and Recreation Standard

- Site Boundary Additions
  - located at distances greater than 5-miles to the nearest protected area
  - located at distances greater than 4-miles to the nearest important recreational opportunity and significant scenic resource.

- Modified Transmission Line Route/corridor
  - The Horn Butte Area of Critical Environmental Concern is the closest protected area at more than 3-miles away at its closest point.
Fish and Wildlife Habitat Standard and Threatened and Endangered Species Standard

- Site Boundary Additions
  - 2017 final pre-construction habitat assessment
  - Final Revegetation Plan
  - Desktop and field surveys

- Modified Transmission Line Route/Corridor
  - Desktop and field surveys
  - ASC evaluation of Fish and Wildlife Habitat and Threatened and Endangered Species standard
Historic, Cultural and Archeological Resources Standard

• Site Boundary Additions
  • Pedestrian cultural resources field investigation conducted
    • entire area within the proposed site boundary addition

• Modified Transmission Line Route/Corridor
  • Pedestrian cultural resources field investigation conducted
    • 1,000-foot area within the proposed transmission line route/corridor
Cumulative Effects Standard for Wind Energy Facilities

- **Site Boundary Additions**
  - Reduction in total linear miles of access road, and both above- and below-ground 34.5 kV collector line segments
  - Overall permanent and temporary disturbance impacts would be reduced due to shorter lengths of access roads and collector lines

- **Modified Transmission Line Route/Corridor**
  - Reduction in total linear miles of 230 kV transmission line
  - Overall permanent and temporary disturbance impacts would be reduced due to a shorter transmission line
  - Council approval of a “corridor”
Department’s Determination
Opportunity to Comment
Council Action
MORNING BREAK

Next up:
Agenda D: Training Opportunity
Agenda Item D
(Information Item)

Training Opportunity

February 23, 2018
Jesse Ratcliffe, Counsel
Common Government Ethics and Public Meetings Issues

Jesse Ratcliffe
Assistant Attorney General
February 23, 2018
Oregon Government Ethics Law

- ORS Chapter 244
Oregon Government Ethics Law

• ORS Chapter 244
• Under the jurisdiction of the Oregon Government Ethics Commission
With certain exceptions, Oregon ethics law prohibits every public official from using or attempting to use the position held as a public official to obtain a financial benefit, if the opportunity for the financial benefit would not otherwise be available but for the position held by the public official.
Prohibition On Use Of Office For Financial Gain

• With certain exceptions, Oregon ethics law prohibits every public official from using or attempting to use the position held as a public official to obtain a financial benefit, if the opportunity for the financial benefit would not otherwise be available but for the position held by the public official.

• The financial benefit prohibited can be either an opportunity for gain or to avoid an expense.
Gift Limit

• $50 limit in calendar year
Gift Limit

- $50 limit in calendar year
- Commonly encountered exemptions
Conflicts Of Interest

• Council members must take certain action in response to actual and potential conflicts of interest.
Conflicts Of Interest

- Council members must take certain action in response to actual and potential conflicts of interest.

- Actual conflict: Arises where Council member may take action as Council member that would be to private financial benefits or detriment of member, member’s business, member’s relatives, or member’s relative’s business.
Conflicts Of Interest

• Council members must take certain action in response to actual and potential conflicts of interest.
• Actual conflict: Arises where Council member may take action as Council member that would be to private financial benefit or detriment of member, member’s business, member’s relatives, or member’s relative’s business.
• Potential conflict: Same as actual conflict, but action could have financial effect.
Response To Conflict of Interest

• Actual conflict: Council member must:
  – Publicly announce nature of conflict prior to action
Response To Conflict of Interest

• Actual conflict: Council member must:
  – Publicly announce nature of conflict prior to action
  – Not participate in discussion or debate on the issue out of which the conflict arises
Response To Conflict of Interest

- Actual conflict: Council member must:
  - Publicly announce nature of conflict prior to action
  - Not participate in discussion or debate on the issue out of which the conflict arises
  - Not vote on that issue (unless necessary for quorum)
Response To Conflict of Interest

• Actual conflict: Council member must:
  – Publicly announce nature of conflict
  – Not participate in discussion or debate on the issue out of which the conflict arises
  – Not vote on that issue (unless necessary for quorum)

• Potential conflict: Council member must:
  – Publicly announce nature of conflict prior to action
Safe Harbor

- No safe harbor based on DOJ advice
Safe Harbor

- No safe harbor based on DOJ advice
- Limited safe harbor based on advice or opinion from Oregon Government Ethics Commission
Common Public Meetings Issues
Inadvertent “Meetings”

• The email meeting
Inadvertent “Meetings”

• The email meeting
• Social gatherings: A purely social gathering is not a meeting, but can inadvertently become one if (1) a quorum is present, and (2) official business is discussed
Inadvertent “Meetings”

• The email meeting
• Social gatherings: A purely social gathering is not a meeting, but can inadvertently become one if (1) a quorum is present, and (2) official business is discussed
• On-site inspections of a project or program are not meetings, but the Council may not deliberate toward any decision. ORS 192.610(5).
Due process requires impartiality on the part of whose who function in judicial or quasi-judicial capacities.
Bias

- Due process requires impartiality on the part of those who function in judicial or quasi-judicial capacities.
- Applies to decisions on site certificate applications, amendments, amendment determination requests.
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• Applies to decisions on site certificate applications, amendments, amendment determination requests.
• Council members should avoid contacts that appear to compromise their impartiality in a contest case.
Bias

• Due process requires impartiality on the part of whose who function in judicial or quasi-judicial capacities.
• Applies to decisions on site certificate applications, amendments, amendment determination requests.
• Council members should avoid contacts that appear to compromise their impartiality in a contest case.
• Holding a generalized view on questions of law or policy is not bias.
Ex Parte Communications

• Definition: Oral or written communication to a Council member not made in presence of all parties to hearing, concerning a fact in issue in the proceeding.
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- Only applies during contested case proceeding (from issuance of proposed order to final order).
Ex Parte Communications

• Definition: Oral or written communication to a Council member not made in presence of all parties to hearing, concerning a fact in issue in the proceeding.

• Only applies during contested case proceeding (from issuance of proposed order to final order).

• Otherwise, Council may have discussions with interested persons, but should consider whether contacts could give rise to perception of bias or result in inadvertent public meeting.
If You Receive An Ex Parte Communication

• You must:
  – Give all parties notice of the substance of the communication
If You Receive An Ex Parte Communication

• You must:
  – Give all parties notice of the substance of the communication
  – Provide an opportunity for rebuttal
If You Receive An Ex Parte Communication

• You must:
  – Give all parties notice of the substance of the communication
  – Provide an opportunity for rebuttal

• Receipt of an ex parte communication may require a separate hearing
Resources

• Ethics commission guide:  

• DOJ Public meetings manual

• DOJ Administrative Law Manual
Agenda Item E
(Action Items)

Special Advisory Group Appointments

February 23, 2018

Maxwell Woods, Senior Policy Advisor

Next: Agenda F: Facility Mapping Project
Facility Mapping Project
February 23, 2018
Yuan Gao, Siting Analyst
Why is this important?

• To better understand spatial allocation of EFSC facilities
  • Existing facilities
  • Proposals in proximity to current facilities

• To improve efficiencies
  • Organizational
  • Decision-making

• To better communicate
  • Between different state departments
  • Increase overall transparency to public
What is contained in the map?

• Facilities that are under Council jurisdiction, including:
  • Proposed
  • Approved
  • Operating
  • Decommissioned
How is it displayed?

ArcMap 10.5/ ArcGIS Online
• Site Boundary: Polygon
• projection/coordinate system: NAD_1983_Oregon_Statewide_Lambert_Feet_Intl
Step 1: Examine existing shapefiles

Step 2: Create shapefiles for the facilities that are missing site boundary information

Step 3: Build attribute table

Step 4: Web-based Map

Step 5: Web App
http://arcg.is/1DiH4O
Question or Comment?
Financial Assurance Update

February 23, 2018

Sisily Fleming, Fiscal Analyst
Public Comment

This time is reserved for the public to address the Council regarding any item within the Council’s jurisdiction that is not otherwise closed for comment.
Adjourn

Next Council Meeting:
April 26-27, 2018
• The Dalles, OR