



Oregon

Kate Brown, Governor



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RE: Department Determination on Type B Review Amendment Determination Request for preliminary Request for Amendment 5 of the Stateline Wind Project Site Certificate

Dear Mr. Marshall,

On June 28, 2018, the Oregon Department of Energy (ODOE or the Department) received a Type B review amendment determination request (Type B Review ADR), submitted pursuant to OAR 345-027-0057(3), and a preliminary Request for Amendment 5 (pRFA5) of the Stateline Wind Project site certificate from the certificate holders' parent company, NextEra Energy Resources (NextEra). RFA5 requests approval for: repowering of Stateline 3 wind turbines by replacing the existing turbine blades and nacelles; increasing maximum blade tip height from 416 to 440 feet; amendment of two site certificate conditions; a facility name change from Stateline 3 to Vansycle II; and, redevelopment of previously approved temporary access road improvements and laydown areas in order to deliver the new turbine blades and remove the old turbine blades (referred to as "proposed modifications").

NextEra previously submitted a Type B Review ADR on April 17, 2018, which did not include the pRFA. Predominately based on uncertainties given the fact that the pRFA had not been included with the Type B Review ADR, on June 21, 2018, the Department issued its determination that Type A review be maintained.

On July 20, 2018, after review of pRFA5, and consultation with reviewing agencies and Tribal Governments, the Department issued a Request for Additional Information (RAI). NextEra provided responses to the Department's RAI on September 19, 2018. The RAI responses resulted in a structural assessment of the wind turbine foundations, prepared by Barr Engineering Company; a detailed description of ground disturbance activities and extent of previously surveyed and disturbed areas; and removal of a request for variance from a setback for two wind turbines to existing county road rights-of-way. As requested by NextEra in the June 28th Type B Review ADR and based on the Department and agency review of the RAI responses, the Department reconsiders NextEra's Type B Review ADR. For the reasons described in this letter, the Department reaffirms its previous determination that Type A review be maintained for the amendment request.

Amendment Review Process

Energy Facility Siting Council (EFSC or Council) rules describe the process for Type A and Type B review of a request for amendment at OAR 345-027-0051. The Type A review is the standard or “default” site certificate amendment process. A certificate holder can request Department determination of the Type B review process, but the certificate holder has the burden of justifying the appropriateness of the Type B review process. The Department may consider, but is not limited to, the factors identified in OAR 345-027-0057(8) when determining whether to process an amendment request under Type B review. The Department’s evaluation of the OAR 345-027-0057(8) factors is presented below.

The table below summarizes key differences in the review phases/steps and timelines between the two processes. Council rules describe both processes in greater detail.

Review Phase/Step	Timeline	
	Type A	Type B
ODOE Issues Determination of Completeness on Preliminary Request for Amendment	Within 60 days	Within 21 days
ODOE Issues Draft Proposed Order	Within 120 days of notice of Determination of Completeness	Within 60 days of notice of Determination of Completeness
Public Hearing	At least 20 days after issuance of Draft proposed order	Not applicable
ODOE Issues Proposed Order	Within 30 days following the Public Hearing	Within 21 days of close of comment period on Draft Proposed Order
Deadline for Contested Case Requests	At least 30 days after issuance of Proposed Order	Not applicable
ODOE Review and Council Decision on Contested Case (CC) Requests	Next regularly scheduled Council meeting following deadline for CC requests	Not applicable
Contested Case Proceeding	At Council’s discretion (no specific timeline)	Not applicable
Issuance of Final Order and Amended Site Certificate	Next regularly scheduled Council meeting following deadline for CC requests	Next regularly scheduled Council meeting following issuance of PO

As presented in the above table, the key procedural differences between the Type A and Type B review are that the Type A review includes a public hearing on the draft proposed order and there is an opportunity for a contested case proceeding. The key timing differences between Type A and Type B review are in the maximum allowed timelines for the Department’s determination of completeness of the preliminary amendment request, and the issuance of the draft proposed order and proposed order; it is important to note that Council rules authorize the Department to adjust the timelines for these specific procedural requirements, if necessary.

Description of Proposed Modifications

The certificate holder proposes to repower up to 43 existing wind turbines of the Stateline 3, Stateline Wind Project. Wind turbine repower would include replacement of existing nacelles and turbine blades, and would increase the total turbine height from 416 to 440 feet. The certificate holder also requests approval for use of temporary access road improvement and laydown areas; these temporary areas were previously approved and disturbed in 2009 during facility construction. The Type B Review ADR describes that the proposed modifications would necessitate amendment of two existing site certificate conditions specific to total turbine height and local setback requirements; however, in its RAI response, the certificate holder affirms that the setback variance previously requested for two wind turbines to county road rights-of-way is no longer requested and that the certificate holder is working directly with Umatilla County on a road vacation and potential minor right-of-way realignment in order to complete repowering of the two wind turbines in compliance with the existing road rights-of-way setback requirement.

Considerations for Determining Whether to Process an Amendment Request as Type B Review

OAR 345-027-0057(8) provides a non-exhaustive list of factors the Department may consider in determining whether to process an amendment request under Type B review. When evaluating whether Type B review is warranted, the Department may consider these factors individually or in combination.

The listed factors are evaluated as follows:

(a) The complexity of the proposed change;

NextEra's Type B Review ADR suggests that the proposed modifications are not complex based on minimal: temporary and permanent disturbance; structural changes; and potential impacts related to visibility, public health and safety, and accepted farm practices on surrounding lands, as summarized in the list below. NextEra describes that the proposed repowering of 43 existing wind turbines would result in:

- No new permanent ground disturbance, nor any changes to the site boundary; and, temporary disturbance would be entirely within areas previously disturbed during facility construction and restored in accordance with revegetation requirements.
- No wind turbine structural changes as the current foundations have sufficient capacity to support the incremental increase in weight associated with the repowered turbine.
- No visual impact from the minor change in total turbine height (from 416 to 440 feet) to areas protected under the Council's Recreation, Scenic Resources, Protected Areas, and Historic, Cultural and Archeological Resources standards.
- No public health and safety impacts from reducing the minimum aboveground blade-tip clearance from 111 to 85 feet as the facility is located in a rural area, on private property where public access is restricted.
- No public health and safety impacts to aircraft operators from increase in maximum blade tip height from 416 to 440 feet as there are no airports or airfields in proximity to the site boundary.
- No changes in wind turbine operation that would impact the certificate holder's ability to operate the facility in a manner that protects public health and safety.
- No impacts to accepted farm practices or cost of farm practices within the surrounding area

because the facility is an existing operational facility and the site boundary and wind turbine locations would not change.

The Department evaluates the complexity of a proposed change based on both the scope and scale of the change and whether the change includes a new technology or a type of change that has not previously been subject to substantive analysis by the Department or Council. The Department considers the proposed modifications complex because wind turbine repowering has not been previously reviewed or approved by Council for any EFSC-jurisdictional facility. While NextEra's evaluation, as summarized above, asserts that that proposed modifications are not complex based on the significance of potential impacts, the Department considers the compliance evaluation of the proposed modification with Council standards to be complex. Specifically, the technical review conducted by the Department, in consultation with the Department of Geology and Mineral Industries, of the certificate holder's third-party technical foundation report for the wind turbines, the certificate holder's proposed condition, and compliance review of the Council's Structural standard was complex.

(b) The anticipated level of public interest in the proposed change;

NextEra's Type B Review ADR suggests that the anticipated level of public interest will be low because while the proposed modifications would increase the overall wind turbine tower height, the new blades would be placed on existing towers and the increased height "would be generally unnoticeable by the public."

The Department does not consider the reasons and level of analysis provided by the certificate holder sufficient to support a conclusion that the level of public interest would be minimal. When assessing the public interest factor, the Department considers whether previous Council proceedings for the subject facility or other similar facilities included comments raising issues related to the changes proposed in an amendment request.

The impacts of maximum blade tip height have been the subject of comments for similar facilities. Moreover, the Department anticipates that the proposed modifications could warrant new findings, not previously relied upon on the record for the facility under the Council's Structural and Fish and Wildlife Habitat standards; the Council's Public Health and Safety Standards for Wind Energy Facilities; and, Noise Control Regulation, at a minimum. The Department notes that the Council's most recent evaluation of the facility occurred in 2009 during review and approval of Request for Amendment 4, and that Request for Amendment 5 would need to evaluate the impacts of the proposed modification based upon current environmental conditions and physical features, which could differ from the evaluation completed in 2009. Based on general public interest in the height of turbines at similar facilities, historic public interest in EFSC proceedings for the facility and other facilities in the vicinity, recommended new findings under certain Council standards (e.g. new conditions under the Structural Standard), and the fact that turbine repowering has not been previously evaluated for this facility or any EFSC-jurisdictional facility, the Department takes a conservative approach and assumes that the level of public interest in the proposed modifications would be moderate and perhaps higher.

(c) The anticipated level of interest by reviewing agencies;

NextEra's Type B Review ADR suggests that the anticipated level of interest by reviewing agencies will be low because Stateline 3, Stateline Wind Project is an existing facility and because the proposed modifications would not result in any new, permanent ground disturbance. The certificate holder also states that independent reviewing agency consultation on the proposed modifications has occurred with Umatilla County, the Department of Defense regarding airspace, the Confederated Tribes of the Umatilla Indian Reservation (CTUIR), and Oregon Department of Fish and Wildlife (ODFW) for Washington ground squirrels (WAGS).

Based on the timing of this evaluation, the Department has coordinated with reviewing agencies and received comments from the Umatilla County, Oregon Department of Aviation, Oregon State Historic Preservation Office, ODFW, DOGAMI, and CTUIR, representing a moderate level of interest in the proposed modifications.

(d) The likelihood of significant adverse impact;

NextEra's Type B Review ADR suggests that the likelihood of a significant adverse impact be low because the proposed modifications would not result in new, permanent ground disturbance or changes to the site boundary. The certificate holder states that the temporary disturbance areas would be restored to their pre-construction condition, consistent with existing site certificate requirements.

Based on the timing of this evaluation, the Department has reviewed the pRFA and the impact assessment and, based upon compliance with existing and recommended new and amended conditions, considers that the likelihood of significant adverse impacts under Council standards would be low.

(e) The type and amount of mitigation, if any.

NextEra's Type B Review ADR states that because there will not be any new, permanent ground disturbance impacts, substantial changes to existing mitigation plans are not expected.

Based on the timing of this evaluation, the Department has reviewed the pRFA and the impact assessment and acknowledges that new and amended conditions are both proposed by the certificate holder and necessary to satisfy the requirements of applicable Council standards. Therefore, the proposed modifications would result in a change in the type and amount of mitigation in the form of new and amended site certificate conditions.

Amendment Type Determination

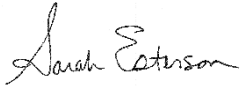
After reviewing the Type B Review ADR and consideration of the OAR 345-027-0057(8) factors, the Department determines that Type A review remains appropriate for RFA5 for the following reasons:

- The proposed modifications could be considered complex;
- There is an anticipated level of interest from members of the public and reviewing agencies in the proposed modifications;
- The proposed modifications would result in a change in the type and amount of mitigation currently imposed in the certificate; new or amended conditions are both proposed by the certificate holder and necessary to satisfy applicable Council standard requirements.

NextEra has the right to refer the Department's determination to the Council. Pursuant to OAR 345-027-0057(7), at the request of the certificate holder, the Department must refer its determination to the Council for concurrence, modification or rejection. Given the Department's anticipated release schedule for the draft proposed order in January 2019, please inform the Department if NextEra requests to refer the determination to Council at the next regularly scheduled Council meeting by January 11, 2019.

If there are any questions or comments, please feel free to contact me per the information below.

Sincerely,



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