



Oregon

Kate Brown, Governor



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

Dear Mr. Marshall,

On April 17, 2018, the Oregon Department of Energy (ODOE or the Department) received NextEra Energy Resource's (NextEra or certificate holder) Type B review amendment determination request (Type B Review ADR) for Request for Amendment 5 (RFA5) of the Stateline Wind Project site certificate, submitted pursuant to OAR 345-027-0057(3). The ADR describes that RFA5 would request approval for: repowering of Stateline 3 wind turbines by replacing the existing turbine blades and nacelles; 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"). The preliminary RFA5 was not included with the Type B Review ADR.

On April 19, 2018, the Department posted the Type B Review ADR to its website and commenced review. On May 11, 2018, prior to issuing its determination on the Type B Review ADR, the Department received a request from NextEra to withhold its determination until receipt of preliminary RFA5, which the certificate holder requested be reviewed in tandem to support the Type B Review ADR. On the same day, the Department confirmed it would withhold its determination. Subsequently, on June 15, 2018, the certificate holder requested that the Department continue its review of the April 17, 2018 Type B Review ADR and issue its determination, and preemptively requested to refer the Department's determination to Council, in the event the Type A review would be maintained. The preliminary RFA5 was not submitted as part of the review continuance request and has not yet been received by the Department.

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.

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 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 difference between the Type A and Type B review is that the Type A review includes a public hearing on the draft proposed order and 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.

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 because the proposed wind turbine repowering would not result in new, permanent ground disturbance or changes in the previously approved site boundary. The Type B Review ADR states that amendment of two existing site certificate conditions (Conditions 36 and 126) would be necessary and that communication with Umatilla County regarding blade-to-tip setbacks (Condition 126) has been initiated.

The Department does not consider the reasons and level of analysis provided by the certificate holder sufficient to support a conclusion that the proposed modifications are not complex. The Department questions the complexity of the described Condition 126 amendment, and notes that if, for example, there are new or differing setbacks that apply or if an administrative adjustment from the setback is necessary in order to comply with the applicable setback requirement, such changes and associated analysis would be 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 Fish and Wildlife Habitat standard, 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 and the possibility of new findings under certain Council standards, the Department anticipates at least a moderate level of public interest in the proposed turbine repowering.

(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 would occur and that the amendment request would incorporate any reviewing agency comments received.

The Department does not consider the reasons and level of analysis provided by the certificate holder sufficient to support a conclusion that the anticipated level of interest from reviewing agencies will be low. Even though there will not be any new, permanent ground disturbance, there could be new or differing information included in the amendment request in which a reviewing agency would be interested. Moreover, because the total turbine height would increase and because changes in existing environmental conditions/physical features could have occurred since the Council's 2009 review, the Department anticipates a level of interest from several reviewing agencies such as, but not limited to, Oregon Department of Fish and Wildlife, Umatilla County, and Oregon Department of Aviation.

(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.

The Department does not consider the reasons and level of analysis provided by the certificate holder sufficient to support a conclusion that the likelihood of significant adverse impact from the proposed modifications would be low. The Type B Review ADR did not include an impact assessment to support the Department's review of the proposed wind turbine repowering and potential impacts under the Council's Fish and Wildlife Habitat standard or Noise Control Regulation, for example. The proposed turbine repowering could result in differing temporary and temporal habitat impacts, differing impacts to avian species or differing impacts to new sensitive noise receptors not previously evaluated. Because an impact assessment was not provided in the Type B Review ADR, the Department does not have enough information to analyze whether there would be a potential significant adverse impact from the proposed modifications.

(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.

The Department does not consider that the reasons and level of analysis provided by the certificate holder sufficient to support a conclusion that the existing mitigation plans would continue to satisfy the Council's Fish and Wildlife Habitat standard. Based on the Department's review of the record for Stateline 3, Stateline Wind Project, the Department notes that temporary habitat impacts, as identified in Request for Amendment 4, would occur on Conservation Reserve Program, Shrubbe-steppe, and Grass-steppe habitats. The Department is uncertain of the current habitat category and conditions of the site, and whether these previously disturbed areas have been restored to pre-disturbance conditions, and have demonstrated achievement of the Revegetation Plan success criteria. Specifically, if the revegetated areas have not yet demonstrated achievement of the established success criteria, the Department would expect for the impact assessment to discuss potential temporary, temporal and permanent impacts, if temporary impacts have extended beyond a 2-3 year time frame, and to propose mitigation within the habitat mitigation area to account for temporal and potential permanent impacts. The Department is also uncertain whether the Revegetation Plan and Habitat Mitigation Plan adequately address temporary and temporal impacts that could result from the proposed modifications. The Department does not consider the information provided in the Type B Review ADR adequate for the evaluation of the type and amount of mitigation potentially necessary should there be temporary and temporal impacts from the proposed modifications.

Amendment Type Determination

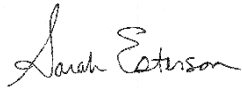
After reviewing the Type B Review ADR and consideration of the OAR 345-027-0057(8) factors, the Department determines that Type A review remains appropriate for RFA5 for the following reasons:

- 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 likelihood of potential significant adverse impacts from the proposed modifications is uncertain, primarily because the Type B Review ADR did not include any supporting analysis or the RFA documentation.
- The type and amount of mitigation necessary for the proposed modifications is uncertain.

The Department understands based on the June 15, 2018 email request from Ms. Stauffer Curtiss, certificate holder's legal representative from Stoel Rives LLP, that the certificate holder preemptively requests to refer the Department's Type A review determination to Council for their concurrence, modification, or rejection. On June 21, 2018, the Department provided its Type A determination to Council and notified Council of the certificate holder's request for referral to Council. Per OAR 345-011-0025, the Council may add this item to the June 29, 2018 meeting agenda if a majority "agree that the matter is so substantial and of such immediate concern that the Council should not defer action until the next regular Council meeting."

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

Sincerely,



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