



# Oregon

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**To:** Oregon Energy Facility Siting Council

**From:** Maxwell Woods, Senior Policy Advisor

**Date:** February 8, 2019

**Subject:** Agenda Item B (Action Item)  
Stateline Wind Project, Request for Amendment 5 - Certificate Holder Referral to Council of Department's Type A Amendment Process Determination

**Attachments:** Attachment 1: ODOE's 2nd Type A Determination (2019-01-09)  
Attachment 2: Certificate Holder Type A Council Referral Request (2019-01-11)  
Attachment 3: ODOE's 1<sup>st</sup> Type A Determination (2018-06-21)  
Attachment 4: Type B Review Amendment Determination Request (2018-04-17)  
Attachment 5: Request for Amendment 5 ([hyperlink](#))

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## Background and Summary

The Stateline Wind Project consists of three operational wind farm developments located within Umatilla County, referred to as Stateline 1, Stateline 2, and Stateline 3. Stateline 3 is the most recent development and has been operational since 2009. The certificate holder for Stateline 3 is FPL Energy Stateline II, Inc, a wholly subsidiary of NextEra Energy Resources, LLC.

On April 17, 2018, the certificate holder submitted a Type B Review Amendment Determination Request (Type B Review ADR) for a fifth site certificate amendment request applicable to Stateline 3. In Request for Amendment 5 (RFA5), the certificate holder seeks Energy Facility Siting Council approval to repower up to 43 existing wind turbines of Stateline 3; re-disturb temporary access roads and laydown areas; and, amend and add new site certificate conditions. Wind turbine repowering would consist of replacement of existing nacelles and turbine blades with new equipment, but would maintain and use the existing turbine towers. The repowered wind turbines would increase the maximum blade tip height from 416 to 440 feet. There would be no expansion of the site boundary. Based on the scope of RFA5 and the

OAR 345-027-0057(8) factors established for evaluating a Type B Review ADR, the Department previously determined that Type A review be maintained.

The certificate holder has referred the Department's Type A review determination to Council, as is its right under OAR 345-027-0057(7). As stated in the same rule, Council shall "concur, modify, or reject" the Department's determination. For the reasons outlined in this staff report and in the Department's January 9, 2019 Type A determination, the Department recommends Council concur that the Type A review process be maintained.

### **Procedural History**

On April 17, 2018, the certificate holder submitted to the Department a Type B Review ADR for RFA5, but did not at the time include the amendment request materials (preliminary request for amendment, or 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 as the appropriate amendment review process, and that the Type B review was not justified.

On June 28, 2018, the certificate holder submitted to the Department a request for reconsideration of the Type A determination, and included preliminary Request for Amendment 5 (pRFA5). The request for reconsideration was included with pRFA5, and is available for download from the Department's website: <https://www.oregon.gov/energy/facilities-safety/facilities/Pages/SWP.aspx>

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). The certificate holder 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 in the June 28<sup>th</sup> Type B Review ADR and based on the Department and agency review of the RAI responses, the Department reconsidered the Type B Review ADR.

On January 9, 2019, the Department reaffirmed its determination that the Type A review is the appropriate procedural pathway, not Type B (*see Attachment 1*). On January 11, 2019, the

certificate holder requested Council review, and as noted above, Council shall concur, modify or reject, the Department's determination, in accordance with OAR 345-027-0057(7) and (8).

### **Assessment of Type B Review Requests**

#### *Overview*

Site certificate amendment process rules are established in OAR 345-027-0011 to -0100, which includes three review process options ("Type A, B, and C"). Type A review is the default process, and includes a mandatory in-person public hearing on the draft proposed order (DPO), and an opportunity for a person to request a contested case proceeding on the proposed order.

The Type A review process also includes longer maximum timelines for certain Department procedural steps (though the Department can complete procedural steps more expeditiously than the maximum time allowed). The Type B review process does not include an in-person public hearing on the DPO, and does not have the opportunity for a person to request a contested case proceeding on the proposed order. The Type C process is only available during facility construction and is not at issue here.

If a certificate holder believes the Type B review is justified as the amendment review process, it must submit the request pursuant to OAR 345-027-0057(8) and include supporting information to the Department. By rule, the Department must decide on the merits of a Type B review request as promptly as possible, and determine if the facts of the case justify Type B review, or if the default process, Type A, should be maintained. The certificate holder has the ability to appeal the Department's determination to Council, as has occurred here.

#### *Council Scope of Review*

Pursuant to OAR 345-027-0057(8), in determining whether a request for amendment justifies review under the Type B Review process described in OAR 345-027-0051(3), the Council may consider factors including but not limited to:

- (a) *The complexity of the proposed change;*
- (b) *The anticipated level of public interest in the proposed change;*
- (c) *The anticipated level of interest by reviewing agencies;*
- (d) *The likelihood of significant adverse impact; and*
- (e) *The type and amount of mitigation, if any.*

Pursuant to OAR 345-027-0057(7), at the request of the certificate holder, the Council shall concur, modify or reject the Department's Type A review determination.

### **Summary of Staff Evaluation of Type B Review ADR**

Based on consideration of the OAR 345-027-0057(8) factors and the analysis and reasoning presented in the Department's January 9, 2019 Type A review determination, incorporated by reference and provided as *Attachment 1* to this staff report, the Department determined that RFA5 be processed under Type A review. The following is a summary of the Department's determination document, the entirety of which can be found in *Attachment 1* to this staff report.

- The proposed modifications are complex. 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 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.
- There is an anticipated level of interest from members of the public and reviewing agencies in the proposed modifications. Based on general public interest in the height of wind 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 wind 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.
- 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.

### **Recommended Council Action**

Based on the analysis presented here, the Department recommends that Council concur with the Department's January 9, 2019 Type A review determination.

### **Attachments**

Attachment 1: ODOE's 2nd Type A Determination (2019-01-09)

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