



Oregon

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To: Oregon Energy Facility Siting Council

From: Katie Clifford, Senior Siting Analyst

Date: August 8, 2019

Subject: Agenda Items B (Information Item), E (Public Hearing) and I (Council Review of Draft Proposed Order, Information Item) – Perennial Wind Chaser Station, Draft Proposed Order on Request for Amendment 1 of the Site Certificate for the August 22-23, 2019 EFSC Meeting

Attachments: Attachment 1: Draft Proposed Order on Request for Amendment 1 to the Perennial Wind Chaser Station Site Certificate

NOTE TO COUNCIL MEMBERS

The Perennial Wind Chaser Station Request for Amendment 1 is being evaluated by the Oregon Department of Energy and Energy Facility Siting Council under the “Type A” site certificate amendment process rules contained in Oregon Administrative Rule (OAR) 345, Division 27. Please see the staff report on Agenda Item C for additional information regarding the August 1, 2019 Supreme Court decision concerning the amendment rules and the staff proposal for temporary and permanent rulemaking.

BACKGROUND

The Perennial Wind Chaser Station (facility) is an approved, but not yet constructed, natural gas power generation facility comprised of up to four natural gas-fired combustion turbine generators which would produce up to approximately 415 megawatts. In addition, the facility would include the following related and supporting facilities: lateral natural gas pipeline, reconducted transmission line, step-up substation, interconnecting water pipelines, utility lines, temporary construction facilities, and operations and maintenance facilities.

The Council issued a Final Order on the Application for Site Certificate on September 18, 2015. The site certificate was fully executed soon thereafter (on September 23, 2015). In its Request for Amendment 1 of the Site Certificate, the certificate holder (Perennial-WindChaser LLC, a wholly-owned subsidiary of Perennial Power Holdings, Inc., which is a wholly-owned subsidiary

of Sumitomo Corporation and Sumitomo Corporation of America) seeks approval to extend the construction deadlines by two years. The certificate holder requests to extend the construction initiation date from September 23, 2018 to September 23, 2020, and to extend the construction completion date from September 23, 2021 to September 23, 2023.

The certificate holder submitted Request for Amendment 1 on August 2, 2018, prior to the construction initiation deadline; therefore, expiration of the site certificate is suspended pending final action by the Council on the Request for Amendment pursuant to OAR 345-027-0085(2). The certificate holder requests an extension of the construction deadlines to allow it to obtain a power purchase agreement for power generated by the facility. This is the certificate holder's first request to extend the construction deadlines.

The Department determined on June 21, 2019 that the Request for Amendment was complete. On July 8, 2019, the Department issued its Draft Proposed Order and public notice of a public comment period beginning on that same day and ending at the conclusion of the public hearing scheduled for August 22, 2019, for a total of 45 days.

During the Department's review of Request for Amendment 1 (prior to issuance of the Draft Proposed Order), the Department received comments from the Confederated Tribes of the Warm Springs Indian Reservation, Umatilla County (a Special Advisory Group), City of Umatilla (another Special Advisory Group), Oregon Department of Fish and Wildlife, and Oregon Department of Land Conservation and Development. Attachment B of the Draft Proposed Order provides a copy of these comments.

No public comments have been received by the date of issuance of this staff report. Any written comments received during the remainder of the comment period will either be transmitted to Council electronically or hand-delivered at the August 22-23 Council meeting.

PROCESS STEPS

On August 22, 2019 (Thursday; the first day of the Council meeting), the Department will present to Council a summary of the Request for Amendment and the Draft Proposed Order. That evening the Council will conduct a public hearing on the Draft Proposed Order during which members of the public may address Council directly regarding any issues or concerns with the Request for Amendment or the Draft Proposed Order. The close of the public hearing will close the record of the Draft Proposed Order. The certificate holder will have the opportunity to request additional time to respond to public comments.

The following day (Friday the 23rd) at the Council meeting, Department staff will present to the Council any comments received, and Council will review the Draft Proposed Order, consider all comments received on the record, and provide comment to the Department regarding the Draft Proposed Order. After Council's review of the Draft Proposed Order and consideration of comments, the Department will issue its Proposed Order, which shall take into consideration

Council comments and any comments received “on the record of the public hearing” (i.e., oral testimony provided at the public hearing and written comments received by the Department after issuance of the notice of the public hearing and prior to the close of the record).

SUMMARY OF DRAFT PROPOSED ORDER

Pursuant to OAR 345-027-0065(2), the Draft Proposed Order includes draft proposed findings of fact, conclusions of law, and conditions concerning the facility’s compliance with applicable laws and Council standards. The Draft Proposed Order recommends that the Council find that the facility – with the requested extension of the construction deadlines and subject to compliance with existing, recommended new, and recommended amended conditions – would comply with applicable laws and Council standards.

For amendments requesting to extend construction deadlines, the Department and Council evaluate whether there have been “changes in fact or law” since the site certificate was issued to determine whether, based on changes in fact or law, the facility would continue to satisfy requirements of the standard. The Request for Amendment requests only to extend the construction commencement and completion deadlines. The certificate holder does not propose a change to the site boundary, facility design, or facility layout.

Based upon the information in the record, no changes in fact or law have been identified that would affect previous Council findings or necessitate new or amended conditions under the following standards:

- Historic, Cultural and Archaeological Resources
- Recreation
- Waste Minimization

As such, these standards are not further addressed in this staff report. However, the Department has conducted a full review of these standards, which can be found in the respective sections of the Draft Proposed Order and which the Department would be happy to discuss should the Council have any questions.

While some changes in fact have occurred since the site certificate was issued, information provided by the certificate holder and the Department’s assessment verified that the previous findings are still applicable for the following standards and other applicable regulatory requirements under Council jurisdiction:

- Organizational Expertise¹
- Protected Areas

¹ The analysis under the Organizational Expertise standard relies in part on recommended amended Condition G.4 under the Retirement and Financial Assurance standard.

- Threatened and Endangered Species²
- Scenic Resources
- Public Services
- Noise Control Regulations
- Removal-Fill Law
- Water Rights

For example, while the certificate holder identified 25 new noise sensitive receptors within one mile of the site boundary, all new noise sensitive receptors are located at a greater distance from the facility components than previously identified noise sensitive receptors and would therefore experience lower noise levels than previously evaluated by the Council. The Department therefore recommends in the Draft Proposed Order that the Council find that the presence of the new noise sensitive receptors does not change the Council's previous finding that operation of the facility components would comply with the noise control regulations at OAR 340-035-0035.

The Department notes that the certificate holder conducted supplemental surveys to identify vegetation communities, verify the presence or lack of wetlands/waters, and evaluate Washington ground squirrel presence and potential habitat. No new wetlands/waters, Category 1 or Category 2 habitat, or threatened or endangered species were identified.

During review of the Request for Amendment, the Department identified conditions that the Department recommends the Council amend for clarification purposes:

- Soil Protection: Amend Condition D.3 to ensure the Revegetation and Noxious Weed Control Plan accounts for temporary impacts at the pulling-tensioning sites and to require that the plan be finalized using information from the pre-construction habitat assessment required by Condition H.1
- Fish and Wildlife Habitat: Amend Condition H.2 to remove the uncertainty associated with the way the existing condition is phrased regarding the requirement to develop and implement a Habitat Mitigation Plan
- Siting Standards for Transmission Lines: Amend Condition O.1 to align the condition with the most current version of the National Electrical Safety Code

Changes in fact or law since the site certificate was issued affect previous Council findings and, in some cases, necessitate new or amended conditions under the following standards:

- General Standard of Review
- Structural Standard
- Land Use
- Retirement and Financial Assurance

² The analysis under the Threatened and Endangered Species standard relies in part on recommended amended Condition D.3 under the Soil Protection standard.

- Carbon Standard

General Standard of Review (Draft Proposed Order pages 16-21)

Additional analysis/recommended changes in findings:

- Discussion of certificate holder’s request to extend the construction deadlines

Recommended new or amended conditions:

- Amend Conditions A.1 and A.2 to extend the construction commencement date to September 23, 2020 and the construction completion date to September 23, 2023
- Adopt new Condition A.12 to require submittal of a compliance plan prior to construction

Structural Standard (Draft Proposed Order pages 26-34)

Additional analysis/recommended changes in findings:

- Additional review of the risks of ground shaking, fault rupture, landslide, and flooding, based on consultation with the Oregon Department of Geology and Mineral Industries
- New analysis of disaster resilience as well as the impacts of future climate conditions on the facility based on the Council’s 2017 Structural and Geologic rulemaking

Recommended new or amended conditions:

- Amend Conditions C.5 through C.7 to reflect the updated rule references and revised mandatory condition language based on the 2017 Structural and Geologic rulemaking
- Amend Condition C.3 to reflect changes in the applicable building codes
- Amend Condition C.2 to require a site-specific ground motion study that accounts for long-period ground motion hazards at the site of the power generation station
- Adopt new Condition C.8 requiring an emergency response plan for disasters to ensure that the facility would return to normal operation as quickly as practical after a disaster

Land Use (Draft Proposed Order pages 36-47)

Additional analysis/recommended changes in findings:

- Analysis and recommended findings based on 1) Umatilla County amending its development code at UCDC § 152.617(II)(7) to add standards for a “utility facility necessary for public service” that is an “associated transmission line” (mirroring the requirements of ORS 215.274) and 2) the City of Umatilla informing the Department that the transmission line reconductoring would be a use permitted outright (instead of a conditional use) within the Neighborhood Commercial, Residential – single family, and Residential – multi-family zones

Retirement and Financial Assurance (Draft Proposed Order pages 50-58)

Additional analysis/recommended changes in findings:

- Updated analysis based on the certificate holder's updated site restoration cost estimate and a recent letter from the certificate holder's financial institution to demonstrate its continued ability to receive an adequate bond or letter of credit

Recommended new or amended conditions:

- Amend existing Condition G.4 to require an initial bond or letter of credit amount that reflects the updated site restoration cost estimate, and so that any revision to the restoration costs (beyond whether or not the facility would use a zero liquid discharge system) would need to be reviewed and approved by the Council through a site certificate amendment

Standards for Energy Facilities that Emit Carbon Dioxide (Draft Proposed Order pages 81-97)

Additional analysis/recommended changes in findings:

- Updated monetary path payment estimate based on 1) changes in the estimated annual operational hours (and therefore the estimated amount of carbon dioxide emissions), and 2) the Council's 2017 and 2018 rulemaking to amend the Carbon Dioxide Standard

Recommended new or amended conditions:

- Amend Conditions S.2, S.10, and S.11 to align with the current monetary offset rate
- Amend Condition S.4 to reflect the current net carbon dioxide emissions rate threshold for non-base load power plants

As summarized above and as described in the Draft Proposed Order, the Department recommends that the Council find that the facility – with the requested extension of the construction deadlines and subject to compliance with existing, recommended new, and recommended amended conditions – would comply with applicable laws and Council standards.

**Attachment 1: Draft Proposed Order on Request for Amendment 1 to the Perennial Wind
Chaser Station Site Certificate**