



Oregon

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To: Oregon Energy Facility Siting Council

From: Chase McVeigh-Walker, Senior Siting Analyst

Date: August 8, 2019

Subject: Agenda Item L – Montague Wind Power Facility, Council Decision on Requests for Contested Case on Request for Amendment 4 of the Site Certificate, possible Council Final Decision on RFA4 for the August 22-23, 2019 EFSC Meeting

Attachments: Attachment 1: Montague Wind Power Facility Proposed Order (Red Line)

NOTE TO COUNCIL MEMBERS

The Montague Wind Power Facility Request for Amendment 4 is being evaluated by the Oregon Department of Energy and the 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

Montague Wind Power Facility, Request for Site Certificate Amendment 4 (RFA4, or “Montague Facility Phase 2”), seeks Council authorization to expand the site boundary by approximately 13,339 acres, allowing flexibility to install any combination of wind, solar, and battery storage energy components described in the RFA4. The certificate holder proposes three design scenarios (referred to as Scenario A, B, and C). Scenarios A and B represent a maximum and minimum disturbance layout, respectively, that includes wind turbines and battery storage; Scenario C represents a disturbance layout for a solar photovoltaic array that would occupy a maximum footprint of up to 1,189 acres and battery storage. In April 2019, the Department issued its draft proposed order (DPO) on the amendment request, recommending Council approval of the Request for Amendment 4 of the Site Certificate. At its May 2019 meeting in Condon, Oregon, Council held a public hearing on the amendment request and DPO. At the June 2019 meeting, Council reviewed public comments and the DPO. Following the June 2019 meeting, on July 9, the Department issued its proposed order, as well as a notice of the opportunity to request contested case on the proposed order. The Department’s proposed order addresses all public comments received on the record of the DPO that are within EFSC

jurisdiction. The proposed order continues to recommend that the Council approve the Request for Amendment 4, subject to existing and amended site certificate conditions.

In accordance with Council rules (OAR 345-027-0071(6)), the opportunity to request a contested case on a proposed order for a Type A amendment was sent to all persons who commented in person or in writing on the record of the DPO public hearing, as well as to the certificate holder itself. The opportunity to request a contested case must extend for at least 30 days.

The deadline to request contested case is August 9, 2019, at 5 pm. Due to the timing of distribution of Council packets, the opportunity to request a contested case is still open as of the writing of this staff report.

The Department will analyze all requests for contested case that it receives prior to the deadlines. The Department will issue its recommendation regarding any contested case requests to Council by Thursday, August 15.

At the August 22-23, 2019 EFSC meeting, Council must decide whether or not to grant any requests for contested case that are received by the deadline, and that are submitted in accordance with Council rules regarding standing for contested case requests (OAR 345-027-0071(5)-(10)). If Council grants a request for contested case, it would conduct a contested case in accordance with Council rules at OAR 345, Division 15. If Council denies requests for contested case, then Council will conduct its final review of the proposed order and issue a final order on the amendment request, either granting or denying issuance of an amended site certificate.

The Department recommends that the Council find that with existing site certificate conditions and recommended new or amended site certificate conditions, the certificate holder has the ability to design, construct, and operate the facility, with proposed changes, in compliance with all Council standards.

STAFF EVALUATION OF AMENDMENT REQUEST AND SUMMARY OF PROPOSED ORDER

The Department evaluated the amendment request against each applicable Council standard, and considered comment letters received on the RFA4 from reviewing agencies and the public. As described in the proposed order, the Department recommends that the Council find that the components included in the RFA4 would not change the certificate holder's ability to design, construct, operate, and retire the facility in compliance with the following Council Standards, subject to compliance with existing site certificate conditions:

- Protected Areas
- Threatened and Endangered Species
- Scenic Resources
- Recreation

- Public Services
- Waste Minimization
- Cumulative Effects Standard for Wind Energy Facilities [Division 24]
- Removal-Fill Law
- Water Rights

For the standards and regulations listed above, the proposed order does not recommend any new conditions or changes to existing conditions in the site certificate. The Department recommends that Council impose several new or modified conditions to ensure compliance with the remaining applicable EFSC standards, which are briefly described below.

- **General Standard of Review (Recommended Amended Condition):**
 - Department recommends Council amend Condition 25 to remove the restriction on wind turbine hub height for Phase 2 wind turbines
- **Organizational Expertise (Recommended New Condition and Amended Condition):**
 - Department recommends Council impose a new condition, Condition 116, requiring that, prior to construction, the certificate holder provide a description of applicable regulations and manufacturer recommendations for the transport and disposal of batteries and battery related waste; and during construction and operation, the certificate holder shall report any cited violations of its third party contractor for the transport and disposal of batteries and battery related waste, as identified during preconstruction.
 - Department recommends Council amend Condition 29 to require the certificate holder to provide a list of all third-party permits normally governed by the site certificate and necessary for construction, and once obtained, provide copies of the third-party permits to the Department and Gilliam County; also, amended Condition 29 would require the certificate holder to promptly report any third-party permits, as previously identified, have been subject to a cited violation of Notice of Violation.
- **Structural Standard (Recommended Amended Conditions):**
 - Department recommends Council amend Conditions 12, 13, and 14 to incorporate updates made to mandatory conditions contained within OAR Chapter 345 Division 25.
 - Department recommends Council amend Condition 53 to update the building code reference, referencing building codes in place at the time of Phase 2 facility construction.
 - Department recommends Council amend Condition 52 to specify, per phase of the facility, the required pre-construction site-specific geotechnical investigation and report.

- **Soil Protection (Recommended New Condition and Amended Conditions):**
 - Department recommends Council amend Conditions 55, 85, 87, and 92 to incorporate updates either made to add reference to phased construction of the facility, or to reference facility components not previously evaluated (solar array and battery storage).
 - Department recommends Council amend Condition 80 to require, prior to construction, the certificate holder to submit to the Department and Gilliam County a topsoil management plan for review and approval. The topsoil management plan may be incorporated into the final Erosion and Sediment Control Plan, recommended by the Department to be provided by the certificate holder prior to beginning facility operation.
 - Department recommends Council impose Condition 117 requiring the certificate holder to conduct inspections of the battery storage system in accordance with manufactures specifications, and maintain documentation of inspections including corrective actions. The documentation shall be available for review upon request by the Department.

- **Land Use (Recommended Amended Conditions)**
 - Department recommends Council amend Condition 38 to require the certificate holder to consult with landowners and lessees during construction and operation of Phase 2 to reduce and avoid impacts to ongoing farm practices on surrounding lands.
 - Department recommends Council amend Condition 39 to require the certificate holder to design and construct Phase 2 of the facility to minimize the permanent impacts to agricultural land, and in a way that allows ongoing access to agricultural fields.
 - Department recommends Council amend Condition 42 to establish setback requirements for the solar array and the battery storage system to the nearest property lines, respectively; and establish wind turbines setback requirements to the nearest edge of the breaks of Rock Creek Canyon.

- **Retirement and Financial Assurance (Recommended Amended Conditions):**
 - Department recommends Council amend Conditions 8 and 32 to update the retirement cost estimate and pre-construction bond or letter of credit amount necessary for site restoration, and to add reference to phased construction of the facility.

- **Fish and Wildlife Habitat (Recommended Amended Conditions):**
 - Department recommends Council amend Condition 31 to direct the certificate holder to discuss Category 2 Washington ground squirrel habitat if Category 1 Washington ground squirrel habitat is identified during the pre-construction habitat assessment, with ODFW.

- Department recommends Council amend Condition 93 to clarify the submission time frame in which the certificate holder must provide habitat impact and mitigation calculations to the Department and ODFW.
- **Historic, Cultural, and Archeological Resources (Recommended Amended Conditions):**
 - Department recommends Council amend Condition 47 to require the certificate holder to submit for review and approval by the Department, in consultation with the State Historic Preservation Office (SHPO), a final Phase 2 Historical Resource Mitigation Plan (HRMP). The HRMP is to include the following: setback requirements of Phase 2 facility components to the Weatherford barn, or, if confirmed by the Department and SHPO, an alternate mitigation option selected from the HRMP to reduce significant adverse indirect impacts to the Weatherford Barn. The Department also recommends that Council amend Condition 50 to require mitigation for any significant adverse indirect impacts to the Olex resources, should the Olex resources be found to be likely eligible for listing as individual or together as a historic district on the National Register of Historic Places (NRHP).
 - Department recommends Council amend Condition 50 to require that during construction, a qualified cultural resource monitor approved by the Department, in consultation with the Confederated Tribes of the Umatilla Indian Reservation (CTUIR), be onsite during ground disturbing activities at depths of 12 inches or greater.
- **Public Health and Safety Standards for Wind Energy Facilities (Recommended Amended Conditions)**
 - Department recommends Council amend Condition 69 to add reference to facility components not previously evaluated (solar array and battery storage).
 - Department recommends Council amend Condition 64 to require the certificate holder to provide the Department with the evaluations and determinations of both the Federal Aviation Administration (FAA) and the Oregon Department of Aviation (ODA) for the proposed final locations of turbine towers and meteorological towers.
- **Siting Standards for Transmission Lines (Recommended Condition Removal):**
 - Department recommends Council remove Condition 17 based on an outdated reference to the National Electric Safety Code.
- **Noise Control Regulations (Recommended Amended Conditions):**
 - Department recommends Council amend Condition 107 to require the certificate holder verify that all noise sensitive properties within one mile of the final design locations of noise generating components for Phase 1 and Phase 2 have been identified and included in the preconstruction noise analysis.

- Department recommends Council amend Condition 108 to include a noticing requirement for the certificate holder to notice noise sensitive receptors within one mile of noise generating facility components of the noise complaint system and how to file a noise complaint.

Based upon compliance with existing site certificate conditions, and recommended new, modified, and removed site certificate conditions, the Department recommends in the proposed order that Council conclude that the facility, with proposed changes, would continue to comply with the applicable Council Standards, rules, and statutes.

STAFF RECOMMENDATIONS

The Department recommends Council adopt the proposed order, with modifications outlined in this staff report, as the final order and grant an amended site certificate.