



Oregon

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To: Oregon Energy Facility Siting Council

From: Maxwell Woods, Senior Policy Advisor/Acting Council Secretary

Date: August 8, 2019

Subject: Agenda Item M (Action Item) – Summit Ridge Wind Farm Request for Amendment 4 (RFA4), Council Decision on Requests for Contested Case on Amended Proposed Order, possible Council Final Decision, for the August 22-23, 2019 EFSC Meeting

Attachments: Attachment 1: Record of ODOE Consultation with ODFW re: Habitat and Survey Conditions
Attachment 2: Request for Contested Case: Irene Gilbert, as an individual and representing Friends of the Grande Ronde Valley
Attachment 3: Request for Contested Case: Friends of the Columbia Gorge, Oregon Wild, Oregon Natural Desert Association, Central Oregon LandWatch, and the East Cascades Audubon Society
Attachment 4: Amended Proposed Order

NOTE TO COUNCIL MEMBERS

The Summit Ridge Wind Farm Request for Amendment 4 (RFA4) is being evaluated by the Oregon Department of Energy (Department) and Energy Facility Siting Council (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 Department’s proposal for temporary and permanent rulemaking.

BACKGROUND

The Summit Ridge Wind Farm is an approved but not yet constructed wind energy generation facility, to be located within Wasco County, with up to 72 wind turbines and a maximum generating capacity of approximately 194.4 megawatts (MW). Request for Amendment 4 (amendment request or RFA4) is the certificate holder’s third request to extend construction deadlines by an additional two years, and if approved, would extend the date of construction commencement from August 19, 2018 to August 19, 2020, and the date of construction

completion from August 19, 2021 to August 19, 2023. RFA4 is being processed as a “Type A” amendment request.

In January 2019, the Department issued its draft proposed order (DPO) on the amendment request, recommending Council approval of the construction deadline extension. At its February 2019 meeting in The Dalles, Council held a public hearing on the amendment request and DPO. At the February and March 2019 meetings, Council reviewed public comments and the DPO. On April 2, 2019, the Department issued its proposed order, as well as a notice of the opportunity to request contested case on the proposed order.

The opportunity to request a contested case on the proposed order was open until May 2, 2019. Three parties requested a contested case, on multiple issues. The Council considered the contested case requests at its May 17, 2019 meeting, held in Condon, Oregon. At that meeting, the Council found that the issues identified in the contested case requests were properly raised, but that none of the issues justified a contested case because the Council could further address two of the issues in an amendment to the proposed order. The Council found that the following two issues were properly raised but could be settled in a manner satisfactory to the Council with amendments to the proposed order, including modifications to Conditions 10.7, 10.5, and 10.4, conditions imposed under the Council’s Fish and Wildlife Habitat standard.

Friends of the Columbia Gorge, Oregon Wild, Oregon Natural Desert Association, Central Oregon LandWatch, and the East Cascades Audubon Society (“Friends et al”) included in its May 2, 2019 request for a contested case proceeding on the proposed order Issue A.1 and Issue A.3/A.7, as summarized below:

- Issue A.1 alleged that the certificate holder failed to comply with Council’s information requirements under OAR 345-021-0010(1)(p) for the Fish and Wildlife Habitat standard
- Issue A.3/A.7 alleged that the certificate holder failed to comply with the Council’s Fish and Wildlife Habitat standard and ODFW’s Fish and Wildlife Habitat Mitigation Policy

As referenced in the Council’s July 9, 2019 Order on Requests for Contested Case, to address Friends et al Issue A.1 and A.3/A.7, Council directed staff to incorporate changes to recommended findings of facts and conditions under the Council’s Fish and Wildlife Habitat standard.

Specifically, Council directed the Department to amend Condition 10.7, which as previously imposed required that the certificate holder submit to the Department and ODFW a pre-construction habitat assessment based on field surveys conducted in accordance with an ODFW-approved protocol. Council directed the Department amend the condition to require that the pre-construction habitat survey include all area within the micro-siting corridor, or site boundary, not including lands actively used for agricultural activities. Council also directed the Department to amend Condition 10.7 requiring that the field survey report be posted to the Department’s website and be presented by the Department and ODFW to Council at a future Council meeting.

Council directed the Department to amend Condition 10.5, which as previously imposed required that, prior to construction, the certificate holder finalize and obtain approval from the Department in consultation with ODFW, of a Wildlife Monitoring and Mitigation Plan, to be implemented during operation. Council directed the Department to amend Condition 10.5 to require consultation with ODFW after the results of the two-year fatality monitoring; require mitigation if the results show exceedances of thresholds of concern in the Wildlife Monitoring and Mitigation Plan; require the Department staff and ODFW staff to present the results of the fatality monitoring and consultation outcomes to Council; make necessary changes to the Wildlife Monitoring and Mitigation Plan to reflect the amended condition. And, after making these amendments, send a notice of the amended proposed order to the certificate holder and those persons who commented on the record of the public hearing on the draft proposed order.

Finally, the Council directed the Department to amend condition 10.4 to provide clarity that the habitat assessment conducted at the habitat mitigation sites be field-based (rather than a desk-top analysis).

Considering the amendments to the proposed order, Council concluded that a contested case was not justified on any issue, and directed the Department to amend the proposed order and recirculate for review and for commenters to request contested case on the proposed modifications in the order. The Council direction is in accordance with OAR 345-027-0071(10)(b).

On July 3, 2019, the Department issued an amended proposed order, as directed by Council. The specific changes to recommended findings and conditions, based on Council direction, are included in Section III.H, *Fish and Wildlife Habitat* of the amended proposed order. All changes from the initial April 2, 2019 proposed order to the amended proposed order are shown in “track changes” to clearly delineate changes to recommended findings and conditions. Administrative changes are also included in Section I, *Introduction*, and II.C, *Council Review Process* of the amended proposed order, also shown in track changes. The amended proposed order is included as Attachment 4 to this staff report.

Issuance of the amended proposed order opened an opportunity for those persons who commented on the record of the draft proposed order and the certificate holder to request a contested case proceeding limited to issues related to the amendment to the proposed order. The Department sent notice of the opportunity to request a contested case proceeding to all persons who commented on the record of the draft proposed order and that the Department had accurate contact information. The notice was sent via certified mail, and an email notice was also sent, again to those persons where email contact information had been provided. The deadline to request a contested case on the amended proposed order was August 5, 2019. On August 5, 2019, before the 5 pm deadline, the Department received two requests for a contested case proceeding on the amended proposed order. Requests for a contested case proceeding were received from Irene Gilbert, as an individual and on behalf of the Friends of the Grande Ronde Valley (FGRV), and from Friends of the Columbia Gorge, Oregon Wild,

Oregon Natural Desert Association, Central Oregon LandWatch, and the East Cascades Audubon Society (“Friends et al”).

The Department received the requests for contested case on the closing date, consequently, the Department has not been able to fully analyze the requests for contested case and prepare recommendations for Council’s review at the time of issuance of this staff report. However, the requests, in their entirety, are included as Attachments 2 and 3 to this staff report (please note that the request from Friends of the Columbia Gorge *et al* includes as an attachment the written comments submitted by Friends *et al* on the record of the Summit Ridge DPO as well as the previous request for contested case on the proposed order). The Department will analyze the requests and will issue to Council its recommendation regarding the contested case requests by Friday, August 16, 2019.

At the August 23, 2019 EFSC meeting, Council is requested to decide whether or not to grant any requests for contested case on the amended proposed order. 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 all requests for contested case, then Council will conduct its final review of the amended proposed order and request for amendment, and issue a final order on the amendment request, either granting or denying issuance of an amended site certificate.