



Oregon

Kate Brown, Governor



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To: Oregon Energy Facility Siting Council

From: Maxwell Woods, Senior Policy Advisor

Date: September 12, 2019

Subject: Agenda Item I (Information Item): Wheatridge Wind Energy Facility – Staff Report on the Draft Proposed Order on Request for Amendment 4 (RFA4) of the Site Certificate for the September 26-27, 2019 EFSC Meeting

Attachments: Attachment 1: Draft Proposed Order on RFA4 Comments

BACKGROUND

On July 25, 2019, the Oregon Department of Energy (Department) issued public notice of a 45-day public comment period on Request for Amendment 4 (RFA4) and the Draft Proposed Order (DPO) on RFA4, and of a public hearing on the DPO held at 5:00 p.m. on August 22, 2019 at Port of Morrow in Boardman, Oregon for the Wheatridge Wind Energy Facility site certificate. During the 45-day public comment period, the Department received 8 comments from members of the public, reviewing agencies and Morrow County Board of Commissioners as the Special Advisory Group. In this staff report, the Department presents its analysis of comments received and issues raised in comments, and provides recommendations for Council consideration of modifications to be included in the proposed order as necessary to address issues raised in comments received.

As presented in the August 8, 2019 staff report for the August 26-27, 2019 Council meeting, RFA4 requests Council approval to add 1,527 acres to the site boundary for construction and operation of 150 megawatts (MW) of photovoltaic solar power generation equipment and up to 41 distributed energy storage (battery) systems. The proposed photovoltaic solar power generation equipment would be configured into two solar arrays (Solar Array 1 and Solar Array 2). Solar arrays would include a combination of solar modules, tracker systems, posts, and related electrical equipment. The certificate holder also seeks Council approval to amend four

previously imposed condition including Land Use Condition 9 (GEN-LU-03), Land Use Condition 18 (PRE-LU-08), Fish and Wildlife Condition 3 (CON-FW-01), and Fish and Wildlife Habitat Condition 5 (CON-FW-02).

COUNCIL SCOPE OF REVIEW

In accordance with OAR 345-027-0071, the Council will review and provide comments to the Department on the DPO at the September 26-27, 2019 Council meeting, where the Department will provide a description of the DPO and comments received. Following the Council's review and consideration of comments received on the record of the public hearing, staff will issue a proposed order in accordance with OAR 345-027-0071, taking into consideration the comments of the Council, public comments received on the record of the DPO public hearing (i.e. July 25 – September 9, 2019), and agency consultation. In conjunction with the issuance of the proposed order, the Department will issue a notice of an opportunity to request a contested case, which will include an opportunity for those who commented, either orally or in writing, on the record of the DPO public hearing to request a contested case on the proposed order.

STAFF EVALUATION OF DRAFT PROPOSED ORDER COMMENTS

During the 45-day public comment period on the DPO on RFA4, the Department received 8 written comments from members of the public, reviewing agencies and Morrow County Board of Commissioners as the Special Advisory Group, as presented in Table 1: DPO on RFA4 Comment Summary below.¹ The Department presents its analysis and proposed modifications to the proposed order, by Council standard, in response to issues raised in the following subsection.

¹ WRWAMD4. August 26, 2019 Council Meeting Audio File. On the record of the Draft Proposed Order Public Hearing, at the August 26, 2019 Council meeting, oral comments were provided from Carla McLane, Planning Director of Morrow County Planning Department; Mike Pappalardo, representative of the certificate holder, NextEra Energy Resources; and, Ms. Irene Gilbert. At the hearing, there were no substantive issues raised or specific comments related to RFA4 or the DPO provided in oral testimony and are not further described in this staff report.

Table 1: DPO on RFA4 Comment Summary

Date Received	Commenter Name	Organization	Issue Evaluation (Council Standard)
07/31/2019	Jordan Brown	Oregon Department of Agriculture	Non-substantive comment
08/08/2019	Gary Kahn	Friends of the Columbia Gorge, Northwest Environmental Defense Center, Oregon Natural Desert Association, Oregon Wild, Thrive Hood River, Columbia Riverkeeper, WildLands Defense, Greater Hells Canyon Council, Oregon Coast Alliance (Friends et al)	Oregon Administrative Rule (OAR) 345 Division 27 (Procedural)
08/27/2019	Steve Cherry	Oregon Department of Fish and Wildlife (ODFW)	OAR 345-022-0060 (Fish and Wildlife Habitat)
09/05/2019	Teara Farrow Ferman	Confederated Tribes of Umatilla Indian Reservation (CTUIR)	OAR 345-022-0090 (Cultural, Historic, and Archeological Resources)
09/06/2019	Christian Nauer	Confederated Tribes of the Warm Springs Reservation of Oregon (CTWS)	OAR 345-022-0090 (Cultural, Historic, and Archeological Resources)
09/06/2019	Carla McLane	Morrow County Board of Commissioners/Special Advisory Group	OAR 345-022-0030 (Land Use) OAR 345-022-0050 (Retirement and Financial Assurance)
09/09/2019	Irene Gilbert	Public	OAR 345 Division 27 (Procedural) OAR 345-022-0030 (Land Use) OAR 345-022-0060 (Fish and Wildlife Habitat)
09/09/2019	Jesse Marshall	Certificate Holder (NextEra Energy Resources)	OAR 345-022-0090 (Cultural, Historic, and Archeological Resources) OAR 345-022-0030 (Land Use) OAR 345-022-0050 (Retirement and Financial Assurance)

Each of the issues raised in written comment is addressed below, along with the Department's recommended modifications to be incorporated into the proposed order in response to issues raised. The Department seeks Council comment and input on each of the issues raised.

Procedural Issues

1. Procedural Issue 1 (Friends et. al)

Friends et. al raise a procedural issue based on the August 1, 2019 Supreme Court decision declaring that the OAR 345 Division 27 rules are invalid. First, they argue that RFA4 is invalid, cannot be processed further and must be denied because it was filed under rules the Supreme Court has held to be invalid. Second, Friends et. al argue that (assuming RFA4 is invalid), RFA4 cannot be retroactively processed under rules that were not in effect at the time the amendment request was submitted, nor under rules later adopted.

The August 1, 2019 Supreme Court decision holds that OAR 345 Division 27 rules approved by EFSC through Permanent Administrative Orders EFSC 4-2017 and 5-2017 are invalid due to a procedural error and further holds that provisions regarding judicial review in those rules were beyond Council's authority to adopt. However, the Supreme Court's decision is not effective until the issuance of the appellate judgment, which has not yet occurred. Further, and of greater significance, in accordance with ORS 183.335(5), on August 22, 2019 Council adopted temporary rules removing the limited provisions regarding judicial review identified in the August 1, 2019 Supreme Court decision as being beyond the jurisdiction of the Council, and allowing certificate holders that had submitted requests for amendment under the invalidated rules to have their requests processed under the temporary rules without having to resubmit those requests. Thus, the temporary rules adopted on August 22, 2019 are in effect and apply to the review and processing of RFA4.

The Department recommends modifications be incorporated into the proposed order to reference rule citation of temporary rules adopted on August 22, 2019, and summarize and address the comments as presented above.

2. Procedural Issue 2 (Gilbert)

Ms. Gilbert argues that the following statement included in Section II.C. Council Review Process of the DPO, "All rules and supporting evidence that a person may wish to cite or include in a request for a contested case proceeding must be included in comments provided on the record of the draft proposed order public hearing," represents an arbitrary requirement imposed on lay people intended to block members of the public from a contested case proceeding (see DPO, pp.10-12). Ms. Gilbert argues that this restriction is not consistent with ORS 469.370(3) and OAR 345-067-0067(5)(b).

ORS 469.370(3) applies to new applications for site certificates, but is mirrored in OAR 345-027-0367(5)(b) which applies to site certificate amendment requests. As Ms. Gilbert references, OAR 345-027-0367(5)(b) states that any issue that may be the basis for requesting a contested case must be raised on the record of the public hearing with sufficient specificity to afford the Council, the Department and the certificate holder an adequate opportunity to respond to the issue. To raise an issue with sufficient specificity, a person must present facts, on the record of the public hearing, that support the person's position on the issue. In Section II.D. Council Review Process of the DPO, the Department explains that pursuant to OAR 345-027-0367(3)(f)(G), Council will not consider or accept further public comment on the request for amendment or on the draft proposed order after the close of the public hearing.

The purpose of these rules is to ensure that the public provides the Department and Council all comments, including any documents or statutory or regulatory citations, that the public believes are relevant to the site certificate analysis conducted by the Department and Council at a point in the process where the Department, Council and certificate holder have "an adequate opportunity to respond to the issue"(as stated in OAR 345-027-0367(5)(b)) – *i.e.*, at a point when the Department can address any relevant issues raised by those comments in the proposed order. Allowing a person requesting a contested case to submit additional documents or information that might have influenced the Council's comments regarding a draft proposed order and the Department's preparation of a proposed order undermines that goal.

Importantly, however, as noted in the DPO, pursuant to OAR 345-027-0371(5), individuals who comment in person or in writing on the record of the public hearing may request a contested case proceeding on their issues raised; these individuals are also further afforded an opportunity to raise *new* issues related to material changes, including any recommended conditions of approval, presented in the proposed order. It is not the Department's position that an individual interested in raising issues related to material changes presented in the proposed order be limited to the rules and supporting evidence submitted in their specific issues raised on the record of the DPO; it is the Department's position that a request for contested case is not an opportunity to further supplement an individual's original issue raised with rules, citations and supporting evidence without regard to material changes made in the proposed order in response to the issue. It is, however, an opportunity to raise new issues related to material changes made in response to such issues.

Further, as described in the DPO, it is not the Department's position that all information that would be submitted in a contested case proceeding be submitted in comments provided on the record of the draft proposed order. It is not the Department's intent to limit the level, type and amount of information that may be submitted in a contested case proceeding, if granted. A contested case proceeding is an evidentiary process overseen by a third-party hearing officer, whom has the discretion to allow the introduction of new evidence into the record for the purpose of evaluating contested case issues.

The Department recommends further clarification be incorporated into the proposed order to address the ability of individuals to introduce new information and citations related to material changes presented in the proposed order.

Substantive Issues and Comments

Land Use (OAR 345-022-0030)

1. Land Use Issue 1

The Morrow County Board of Commissioners, on behalf of Carla McLane, Morrow County Planning Director, as the Special Advisory Group (SAG) appointed for the facility, comments on the Department's analysis of Morrow County Zoning Ordinance (MCZO) Section 3.010 Yard Setbacks for conditionally permitted uses in Exclusive Farm Use (EFU) zoned land.

In Section III.E. Land Use of the DPO, the Department presents recommended amended Land Use Condition 1 (GEN-LU-01) establishing front and side yard setback requirements for the perimeter fenceline of proposed RFA4 solar facility components. The SAG recommends that yard setbacks not apply to the perimeter fenceline but to proposed facility structures, and that the condition further allow for a county-level evaluation of yard setbacks at the time the certificate holder obtains its zoning permit for the proposed RFA4 solar components. Based on the SAG's comments, the Department recommends that the condition be further amended in the proposed order to establish yard setbacks based on proposed facility structures and include a process for evaluating specific yard setback at time of zoning permit acquisition.

2. Land Use Issue 2

The SAG comments on the Department's analysis of MCZO Section 6.030(D) General Conditions for vehicle access points. In Section III.E. Land Use of the DPO, the Department describes that the certificate holder has not proposed to develop or improve any access roads intersecting with county roads and state highways, and therefore additional conditions are not warranted. However, the SAG requests that this analysis be amended to describe that the proposed facility would require access from one or more county roads and that crossing and right-of-way permits would be required.

In RFA4 Exhibit E, the certificate holder identifies that access approach site permits, crossing and right-of-way permits would be required from the county and Oregon Department of Transportation. Therefore, based on the SAG's comments and certificate holder representations in RFA4, the Department recommends the evaluation of MCZO Section 6.030(D) be amended in the proposed order to accurately describe access point and road permits required.

3. Land Use Issue 3

The SAG comments on the Department's evaluation of the certificate holder's requested Goal 3 exception and reasons analysis. Specifically, the SAG recommends Council consider the certificate holder's de minimus reason which relies upon a comparison of agricultural lands precluded from the proposed RFA4 facility components to Morrow County Winter Wheat crop production. The SAG recommends this reason be considered in the Goal 3 exception because it is used to support the socioeconomic consequence analysis, also evaluated under the Goal 3 exception process. The SAG is silent on whether it agrees with the de minimus argument, and only suggests it be considered for consistency with the socioeconomic consequence analysis.

The Department disagrees that the reasons analysis and the Environmental, Economic, Social and Energy Consequences evaluation conducted as part of the Goal 3 exception process pursuant to OAR 345-022-0030(4)(c)(B) need to align entirely. The evaluation of potential socioeconomic consequences presented in Section III.E. Land Use of the DPO recommends that the benefits of proposed RFA4 facility components should be measured against the relatively small amount of agriculture that would be displaced during construction and operation. The de minimus reason suggests that a reason justifying a Goal 3 exception be based on acreage, which the Department disagrees be considered a valid reason justifying an exception to the state embodied Goal 3 policy because it uses acreage as an argument for an exception that relies upon acreage to establish the threshold at which an exception is required. The Department recommends that Council consider that social and economic consequences may be appropriately evaluated based on the overall impact of removing land from agricultural production compared to the county-level production status.

The Department recommends that the proposed order address this comment, but that substantive changes are not necessary.

4. Land Issue 4

Ms. Gilbert expresses concern related to weed control and the certificate holder's ability to satisfy ORS 569.390 and ORS 469.507. ORS Chapter 569 establishes state weed control laws; ORS 569.390 applies to any person, firm or corporation owning or occupying land and requires that noxious weeds be destroyed or prevented from seeding. Ms. Gilbert suggests that the certificate holder needs to be required to: identify noxious weeds at the site and identify noxious weed seed production season; develop a monitoring and treatment schedule that would prevent weeds from seeding; and, establish a monitoring schedule that extends for the life of the operating facility.

The Department agrees that ORS 569.390 applies to the certificate holder and the site boundary of proposed RFA4 facility components, and that ORS 469.507 establishes an obligation for the certificate holder to develop plans for monitoring environmental impacts of its facility. The Department also notes that, as presented in Section III.E. Land Use of the DPO,

OAR 660-033-0130(38)(h)(D) requires that the certificate holder demonstrate that construction and operation of proposed RFA4 facility components would not result in the unnecessary spread of noxious weeds. The evaluation under OAR 660-033-0130(38)(h)(D) relies upon previously imposed Land Use Condition 6 (PRE-LU-03) which requires that, prior to construction, the certificate holder obtain approval by the Department in consultation with ODFW and County Weed Control personnel of a Weed Control Plan.

However, in response to this issue and in order to demonstrate compliance with ORS 569.390 and OAR 660-033-0130(38)(h)(D), the Department agrees that components of the Weed Control Plan should be further specified by amending Land Use Condition 6 (PRE-LU-03) and by including a draft Weed Control Plan in the proposed order. In response to this issue and to be provided as an attachment to the proposed order, the Department developed a draft Weed Control Plan in coordination with Morrow County and ODFW identifying county- and state listed noxious weeds of economic concern, seed schedule, agency coordination and approval requirements, monitoring and treatment frequency and duration, and reporting requirements.

5. Land Use Comment 1

The SAG comments that the county treats infrastructure greater than 6-feet in height to be a structure requiring a zoning permit, and possibly a building permit, which applies to the proposed 7-8 foot perimeter fence associated with the proposed RFA4 solar facility components.

In response, the Department recommends that Section III.E. Land Use of the DPO, under the evaluation of MCZO Section 1.050 Introductory Provisions, Zoning Permit, be modified to include a footnote confirming that structures requiring a zoning permit would include the proposed RFA4 solar facility perimeter fence.

6. Land Use Comment 2

The SAG requests clarification on site certificate implementation and compliance tracking due to anticipated construction of the previously approved wind facility and future construction of proposed RFA4 solar facility components. The SAG also confirms that an amendment to the Conditional Use Permit would be required for the proposed RFA4 solar facility components.

The Department recommends incorporating into conditions of the draft amended site certificate language stating, "Prior to construction of any phase of the facility,..." to allow a process for the conditions to be re-satisfied based on components to be constructed in a given phase or year. Pre-construction and construction conditions may continue to be satisfied throughout the 6-year construction timeframe, provided the certificate holder demonstrates compliance with pre-construction and construction requirements applicable to the impacts associated with a given construction phase.

7. Land Use Comment 3

The SAG comments on the Goal 3 exception process and expresses concern that there is not a clear mechanism for incorporating granted exceptions to local Comprehensive Plans. The SAG then recommends that Council impose conditions requiring that (the certificate holder be obligated to): 1) work with the county to incorporate the Goal 3 Exception into the Morrow County Comprehensive Plan and 2) work with the county following facility decommissioning to remove the Goal 3 Exception from Morrow County Comprehensive Plan.

As the SAG mentioned, there are not rules or statutes that support the process of an EFSC-jurisdictional facility working with a county to procedurally update a local plan. Therefore, prior to adoption of appropriate rules and requirements establishing a process, the Department recommends Council not impose specific conditions in the site certificate to address this comment.

Cultural, Historic and Archeological Resources (OAR 345-022-0090)

1. Cultural Comments

The CTUIR comments that a Traditional Use Survey should be completed for new site boundary area proposed for RFA4 facility components and recommends onsite cultural monitoring during ground-disturbing construction. In a response to comments, the certificate holder confirms that it met with CTUIR in Spring 2019 and has initiated coordination for a Traditional Use Survey for all areas within the approved and proposed amended site boundary, and confirms that it would coordinate with CTUIR for on-site cultural monitoring during ground-disturbing construction. The Department recommends CTUIR's comments and the certificate holder's responses be referenced in the proposed order, but that substantive modifications are not necessary.

The CTWS comments that the proposed new site boundary area should be surveyed for cultural, archeological and historic resources, which as described in Section III.K. Historic, Cultural and Archeological Resources section of the DPO, was completed to support RFA4. The Department recommends CTWS's comments be referenced in the proposed order, but that substantive modifications are not necessary.

Retirement and Financial Assurance (OAR 345-022-0050)

1. Retirement Issue 1

The SAG comments on the certificate holder's representation in RFA4 Exhibit B that solar panel posts, while not expected, conservatively could be placed in approximately 8-foot foundations, which as represented in RFA4 Exhibit W, would be removed at depths of 3-feet upon facility decommissioning. Based on consultation with staff at Oregon State University's Extension

Program, the SAG expresses that there may be differences in appropriate depths for foundation removal, such as 6-feet versus 3-feet, in areas historically used for Winter Wheat production. Based on potential changes in science and understanding of root depth, the SAG recommends that Council impose a condition requiring that, upon facility decommissioning, the certificate holder be required to seek further expertise on farming practices to confirm adequate depths for foundation removal.

In response to comments, the certificate holder counters that previously imposed Land Use Condition 23 (OPR-LU-03) and 27 (OPR-LU-06) allow for the Department and Morrow County to review a decommissioning plan prior to implementation and require landowner consultation prior to decommissioning, which would adequately address the concerns raised by the SAG.

The Department agrees that Council previously imposed conditions related to facility decommissioning allowing for agency review and landowner considerations. Therefore, for this reason and because the SAG did not provide any supporting evidence related to the recommendation for consideration of a differing foundation removal depth, beyond a reference to a discussion with an OSU Extension staff, the Department recommends that the proposed order address the SAG's comment and certificate holder response, but that substantive modifications are not necessary.

In its response to comments, the certificate holder provides clarification that removal of solar panel post foundations was included in its RFA4 Exhibit W retirement, but that an additional \$240k should be included in the retirement estimate, totaling \$9.6 million for the proposed RFA4 facility components, or \$27.4 million for the facility, with proposed changes. The Department recommends this line item and decommissioning estimate be updated in the proposed order accordingly.

Fish and Wildlife Habitat (OAR 345-022-0060)

1. Fish and Wildlife Habitat Issue 1

Ms. Gilbert seemingly expresses concern regarding recommended amended Fish and Wildlife Habitat Condition 5 (CON-FW-02), which establishes construction area seasonal restrictions within sensitive nesting and breeding seasons, but as amended would allow the certificate holder an opportunity to request consideration by the Department and ODFW of an exception to the restriction, if due to demonstrated construction schedule, planning and unforeseen circumstances, strict compliance represents significant jeopardy to the construction completion schedule.

Ms. Gilbert argues that the previously imposed condition (buffer/seasonal restrictions) needs to apply to federally listed threatened and endangered (T&E) bird species (e.g. buto hawks, peregrine falcon, bald eagle, burrowing owl, Golden eagles and any other federal T&E raptor species), which should be considered Category 1 habitat where an exception to the

seasonal/buffer restriction (as presented in the recommended amended condition) would result in indirect impacts which are not allowable under ODFW's Fish and Wildlife Habitat Mitigation Policy (OAR 635-415-0025) and would be illegal under the Endangered Species Act.

The Council's Fish and Wildlife Habitat and Threatened and Endangered Species standards protects state-listed species and its habitat; neither standard addresses federally-listed T&E species or support Ms. Gilbert's representation that habitat of federally-listed T&E species is Category 1 habitat. There is not a Council standard authorizing Council to impose or enforce regulations related to T&E species listed under 16 USC Section 1533. ODFW could make recommendations under its Fish and Wildlife Habitat Mitigation Policy based on information about federally-listed T&E species, which would then be implemented through the Council's standard. The Department does not agree that EFSC has the authority to impose buffer/seasonal restrictions for federally listed T&E species. However, federal wildlife laws, including buffer/seasonal restrictions if in existence, must be adhered to by the certificate holder, which are under the jurisdiction and authority of the United State Fish and Wildlife Service.

The Department recommends that this comment be addressed in the proposed order, but that substantive modifications are not necessary.

2. Fish and Wildlife Habitat Comment 1

Comments received from ODFW clarified that temporary impacts to Category 2 habitat, if grassland and not with a shrub-steppe component, may adequately be mitigated based on a methodology where 1 acre for every 1 acre impacted is included in the compensatory mitigation area; otherwise, the appropriate methodology for mitigating temporary (or temporal) impacts to Category 2 habitat with a shrub- steppe component includes establishing 2 acres for every 1 acre impacted in the compensatory mitigation area.

In response to these components, the Department recommends the proposed order clarify that proposed RFA4 solar facility components would result in temporary impacts to Category 2 grassland habitat; and, that the certificate holder's mitigation for temporary impacts from construction of proposed RFA4 solar facility components includes revegetation and inclusion of 1 acre for every 1 acre impacted in the compensatory mitigation area.

STAFF RECOMMENDATIONS

Department staff recommend Council direct staff to incorporate the recommended amended conditions and additional analysis outlined in this September 12, 2019 staff report into the proposed order.

Agenda Item I Staff Report - Attachment 1:

Draft Proposed Order on RFA4 Public Comments

Attachment 1: DPO on RFA4 Comment Index

Date Received	Commenter Name	Organization	Issue Evaluation (Council Standard)
07/31/2019	Jordan Brown	Oregon Department of Agriculture	Non-substantive comment
08/08/2019	Gary Kahn	Friends of the Columbia Gorge, Northwest Environmental Defense Center, Oregon Natural Desert Association, Oregon Wild, Thrive Hood River, Columbia Riverkeeper, WildLands Defense, Greater Hells Canyon Council, Oregon Coast Alliance (Friends et al)	Oregon Administrative Rule (OAR) 345 Division 27 (Procedural)
08/27/2019	Steve Cherry	Oregon Department of Fish and Wildlife (ODFW)	OAR 345-022-0060 (Fish and Wildlife Habitat)
09/05/2019	Teara Farrow Ferman	Confederated Tribes of Umatilla Indian Reservation (CTUIR)	OAR 345-022-0090 (Cultural, Historic, and Archeological Resources)
09/06/2019	Christian Nauer	Confederated Tribes of the Warm Springs Reservation of Oregon (CTWS)	OAR 345-022-0090 (Cultural, Historic, and Archeological Resources)
09/06/2019	Carla McLane	Morrow County Board of Commissioners/Special Advisory Group	OAR 345-022-0030 (Land Use) OAR 345-022-0050 (Retirement and Financial Assurance)
09/09/2019	Irene Gilbert	Public	OAR 345 Division 27 (Procedural) OAR 345-022-0030 (Land Use) OAR 345-022-0060 (Fish and Wildlife Habitat)
09/09/2019	Jesse Marshall	Certificate Holder (NextEra Energy Resources)	OAR 345-022-0090 (Cultural, Historic, and Archeological Resources) OAR 345-022-0030 (Land Use) OAR 345-022-0050 (Retirement and Financial Assurance)

ESTERSON Sarah * ODOE

From: Jordan Brown <brownj@science.oregonstate.edu>
Sent: Wednesday, July 31, 2019 12:02 PM
To: ESTERSON Sarah * ODOE
Subject: Re: Wheatridge Wind Energy Facility: Notice of Request for Amendment 4 of the Site Certificate, Draft Proposed Order and Public Hearing - August 22, 2019 Hearing; Comment Deadline is September 9, 2019

Hello Sarah,
I'm sorry to say that due to recent funding cuts I'm unable to review this project amendment and provide comments.

If you have further concerns or issues relating to Threatened and Endangered plants in Oregon, or would like further clarification on why I'm unable to assist you, please contact my Manager, Tim Butler (503-986-4625, tbutler@oda.state.or.us), Division Manager, Helmuth Rogg (503-986-4662, hrogg@oda.state.or.us), or Assistant Director of the Department of Agriculture, Lauren Henderson (503-986-4588, lhenderson@oda.state.or.us).

Quoting ESTERSON Sarah * ODOE <Sarah.Esterson@oregon.gov>:

Good afternoon,

On July 1, 2019 the Oregon Energy Facility Siting Council (Council) and the Oregon Department of Energy (Department) received a complete Request for Amendment 4 of the Wheatridge Wind Energy Facility site certificate (RFA4). On July 25, 2019, the Department issued its Draft Proposed Order presenting recommended findings of fact related to Council standards at OAR Chapter 345 Divisions 22-24.

Background

The Wheatridge Wind Energy Facility is an approved wind energy generation facility to be located in Morrow and Umatilla counties. The facility has not been constructed, but has been previously approved by Council for construction and operation of up to 292 wind turbines, with a peak generating capacity of up to 500 megawatts (MW) of electricity.

Summary of the amendment request

RFA4 seeks Council approval to amend its site certificate to add 1,527 acres to the site boundary, within Morrow County, for construction and operation of two solar arrays with a generating capacity up to 150 megawatts (MW) comprised of solar modules, tracker systems, posts and related electrical equipment; and, up to 41 energy storage (battery) system sites distributed throughout the proposed solar arrays. RFA4 also seeks to amend site certificate conditions.

Attachments

Public Notice on Request for Comments on the Complete RFA4 and Draft Proposed Order, and Notice on the Draft Proposed Order Public Hearing is attached for your reference.

RFA4, draft proposed order and public notice are available on the Department's project website at: <https://www.oregon.gov/energy/facilities-safety/facilities/Pages/WRW.aspx>

Comment Deadline

Written comments on RFA4 and the draft proposed order must be received by the Department by September 9, 2019, 18-days following the August 22, 2019 public hearing. Comments on the amendment request and the draft proposed order must be submitted in writing by mail, **email, hand-delivery or fax per below:**

Sarah Esterson, Senior Siting Analyst
Oregon Department of Energy
550 Capitol Street NE, 1st Floor
Salem, OR 97301
Email: sarah.esterson@oregon.gov

Fax: 503-373-7806

Thank you and please do not hesitate to contact me with any questions.

-Sarah



Sarah T. Esterson

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Stay connected!



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ESTERSON Sarah * ODOE

From: Gary Kahn <gkahn@rke-law.com>
Sent: Thursday, August 8, 2019 2:22 PM
To: ESTERSON Sarah * ODOE
Cc: Jesse.marshall@nee.com
Subject: Wheatridge Wind Energy Facility – Proposed Amendment #4

To Whom It May Concern:

I am writing on behalf of Friends of the Columbia Gorge, Northwest Environmental Defense Center, Oregon Natural Desert Association, Oregon Wild, Thrive Hood River, Columbia Riverkeeper, WildLands Defense, Greater Hells Canyon Council, and Oregon Coast Alliance regarding the above-referenced matter.

On August 1, 2019, the Oregon Supreme Court held that the rules under which this application was submitted are invalid. Because this application was submitted pursuant to invalid rules, the application is likewise invalid and cannot be processed by ODOE nor approved by EFSC.

Nor can this application be retroactively processed under rules that were not in effect at the time the application was submitted, nor under rules that might be adopted at a later date. Again, this application was expressly submitted pursuant to invalid rules. To begin processing this application under a completely different set of rules mid-stream would be unlawful and would prejudice the substantial rights and interests of my clients and the general public. If the applicant wishes to proceed, it has the option of filing a new application at any time.

Please confirm that the application will not be processed any further.

Thank you very much for your time and consideration.

Gary K. Kahn

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Gary K. Kahn
Reeves, Kahn, Hennessy & Elkins
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Portland, OR 97286
Tel: (503) 777-5473
Fax: (503) 777-8566
Email: gkahn@rke-law.com

MEMORANDUM

TO: Sarah Esterson
Oregon Department of Energy

FROM: Steve Cherry, District Wildlife Biologist
Oregon Department of Fish and Wildlife
PO Box 363 Heppner, OR 97836
(541) 676-5230
Steve.p.cherry@state.or.us

DATE: August 27, 2019

RE: Oregon Department of Fish and Wildlife (ODFW) Comments the Draft Proposed Order (DPO) for Amendment 4 for the Wheatridge Wind Energy Facility

GENERAL COMMENTS: ODFW appreciates the opportunity to review this project according to the Energy Facility Siting Standard for Fish and Wildlife Habitat, as well as the Threatened and Endangered Species Standard.

ODFW recognizes that the proposed amendment adds 1,527 acres to the site boundary to construct two solar arrays and up to 41 energy storage sites. ODFW has worked with ODOE and the Applicant to address wildlife issues associated with this amendment and appreciates the Applicant addressing ODFW's concerns about wildlife impacts due to the facility and working with ODFW to avoid, minimize and mitigate for the potential impacts.

SPECIFIC COMMENTS: The DPO shows that temporary impacts to Category 2 habitat are mitigated at >1:1 ratio and that permanent impacts to Category 2 are mitigated at a 2:1 ratio. The impacts table in the DPO shows that the impacts are mitigated at 2:1 for permanent impacts and 1:1 for temporary impacts. If the temporary impacts are in grasslands or shrub steppe without a sagebrush component, a 1:1 ratio is adequate. However if the impacts are in a sage dominated shrub steppe habitat ODFW would recommend that the temporary impacts be mitigated at a 2:1 ratio since it will take a very long time for the sage component to return and provide the wildlife value it provided preconstruction.

ODFW has no further comments on this amendment at this time. Please contact Steve Cherry (District Wildlife Biologist) or Sarah Reif (Energy Coordinator) with any questions.



**Confederated Tribes of the
Umatilla Indian Reservation**

Department of Natural Resources

46411 Timine Way, Pendleton, Oregon 97801

MEMORANDUM

To: Sarah Esterson, Senior Siting Analyst
Oregon Department of Energy
Sent via email to: Sarah.Esterson@oregon.gov

From: Teara Farrow Ferman, Cultural Resources Protection Program Manager
Confederated Tribes of the Umatilla Indian Reservation *TEARA FARROW FERMAN*
46411 Timine Way, Pendleton, OR 97801
TearaFarrow Ferman@ctuir.org
541-276-3447

Date: September 5, 2019

RE: Confederated Tribes of the Umatilla Indian Reservation's Comments on the Wheatridge Wind Energy Facility Request for Comment on Request for Amendment 4 and Draft Proposed Order

General Comments:

Thank you for contacting the Confederated Tribes of the Umatilla Indian Reservation (CTUIR) regarding the Wheatridge Wind Energy Facility Request for Comment on Request for Amendment 4 and Draft Proposed Order. The CTUIR offers the following comments for the project.

Specific Comments:

The locations of the proposed facilities described in the Request for Amendment 4 along with the other areas of this proposed project should have a traditional use survey completed for the project areas. In previous phases of the Wheatridge project, the CRPP has recommended that the project have a cultural resource monitor present during ground disturbing construction. This is also our recommendation for this portion of the project as well.

ESTERSON Sarah * ODOE

From: Christian Nauer <christian.nauer@ctwsbnr.org>
Sent: Friday, September 6, 2019 12:08 PM
To: ESTERSON Sarah * ODOE
Cc: Robert Brunoe
Subject: Re: Wheatridge Wind Energy Facility: Notice of Request for Amendment 4 of the Site Certificate, Draft Proposed Order and Public Hearing - August 22, 2019 Hearing; Comment Deadline is September 9, 2019
Attachments: PastedGraphic-1.pdf

Hi Sarah,

Thank you very much for the opportunity to provide comment on the Wheatridge Wind Energy Facility Notice of Request for Amendment 4 of the Site Certificate.

General Comment:

As the technical reviewer for NHPA Section 106 and other cultural resource issues for the Confederated Tribes of the Warm Springs Reservation of Oregon (CTWSRO), the CTWSRO Tribal Historic Preservation Office (THPO) has concerns with the potential effects to historic properties or cultural resources within the Project Area of Potential Effects (APE). The Project APE is within the areas of concern for the CTWSRO.

Project-specific Comment(s):

This office recommends that if the proposed boundary expansion of the Project APE has not been surveyed for historic properties and cultural resources, then additional identification efforts will need to be undertaken.

Thank you for your efforts to protect cultural resources.

Best Regards,

Christian

Christian Nauer, MS
Archaeologist
Confederated Tribes of the Warm Springs Reservation of Oregon
Branch of Natural Resources

christian.nauer@ctwsbnr.org

Office 541.553.2026

Cell 541.420.2758

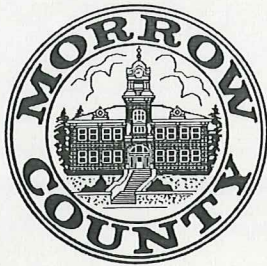
Standard Disclaimers:

*The Confederated Tribes of the Warm Springs Reservation of Oregon have reserved treaty rights in Ceded Lands, as well as Usual and Accustomed and Aboriginal Areas, as set forth through the Treaty with the Middle Tribes of Oregon, June 25, 1855.

*Please know that review by the Tribal Historic Preservation Office does not constitute Government-to-Government consultation. Please ensure that appropriate Government-to-Government consultation is made with the Confederated Tribes of the Warm Springs Tribal Council.

On Jul 29, 2019, at 3:58 PM, ESTERSON Sarah * ODOE <Sarah.Esterson@oregon.gov> wrote:

<WRWAMD4 DPO Public Notice 2019-07-25.pdf>



PLANNING DEPARTMENT

PO Box 40 • 205 Third Street NE
Irrigon, Oregon 97844
(541) 922-4624

September 9, 2019

Sarah Esterson, Senior Siting Analyst
Oregon Department of Energy
550 Capitol Street NE, 1st Floor
Salem, OR 97301

Dear Ms. Esterson. *SARAH*

The following comments are on behalf of the Morrow County Board of Commissioners serving as a Special Advisory Group for the Wheatridge Wind Energy Facility. The purpose of this letter is to address the Draft Proposed Order related to Request for Amendment 4 (RFA4), which is a request to amend the site boundary, extend the construction commencement deadline, and to construct and operate the following additional components: 150 MW photovoltaic solar energy system, distributed energy storage system sites, and expansion of a previously approved substation.

Morrow County has reviewed the Oregon Department of Energy's Draft Proposed Order (DPO), and a list of several minor errors have been identified and listed at the conclusion of this letter. The balance of this letter addresses identified concerns or omissions within the DPO.

Land Use Condition 1 is proposed to be amended to address setback requirements. Morrow County would not require the fence to meet the established setback, just facility components. The fence could be placed on the project boundary. The exception would be the installation along roads would need to meet sight distance requirements, and therefore may need to be set back more than the established set back. Morrow County would recommend that the final setback be established as part of the issuance of the local Zoning Permit to allow evaluation of the permitted point of access and appropriate setback for the fencing.

On page 43, lines 32-40, is a discussion of access points. The Departments analysis indicates that no access roads will intersect, however the proposed solar facility will require access from one or more county roads. Morrow County would require an Access Permit for each of those access points. Additionally crossing and work in right-of-way permits will also be required.

On page 45, lines 30-34, there is discussion of the proposed 7- to 8-foot fence. Morrow County requires any fencing 6-feet or higher in height to be treated as a structure with a requirement that a Zoning Permit, and in some instances a Building Permit, be obtained.

As part of the Goal 3 Exceptions discussion on pages 62 through 64 at one-point Department staff dismiss acreage as a justification for the 'reasons' goal exception, but then use that same acreage argument, or statement of facts, as part of the discussion of socioeconomic impacts. That seems inconsistent; if appropriate for the socioeconomic discussion it should be equally valid for the 'reasons' goal exception.

During review of the document it became clear that the applicant has identified a construction standard that would place the solar panels on foundations that could be as deep as 8-feet. While the application indicates their preference is not to have foundations, there is a recognition that they may be required to support the type of solar panels being installed. A concern with this type of installation are the resulting reclamation requirements. The discussion of restoration begins on page 74 and indicates that foundations would be completely removed with underground collector lines at depths of 3-feet or greater being the only components to be abandoned in place.

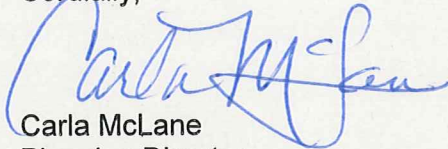
Current activity on the proposed solar site is dryland wheat farming. Current understanding of crop depth for wheat is 6-feet (based on conversation with Larry Lutchter, OSU Extension Crop Scientist). So any components remaining to that depth could impact future crop growth and development. Morrow County would like to see a condition added as part of the Retirement Conditions that does more than require a retirement plan, but puts in place new standards for removal of the foundations and other solar facility components to at least 6-feet with a clarifier that would seek further expertise on farming practices at the time of retirement.

There are a number of conditions that are currently being completed by the applicant as they are moving towards construction of the wind energy facility. Those same conditions will need to be applied once again for the solar component of the energy facility, but it is unclear in the draft Fourth Amended Site Certificate that those same conditions will once again be applicable. What does the Department suggest, or how will those same conditions, be reapplied? Morrow County would like to seek clarity on how the Department will manage future compliance for any condition that will be applicable to multiple portions of this project constructed on differing time lines. An example would be that the applicant has obtained their local Conditional Use Permit for the wind energy component of the project up to and including the third amendment. The applicant will also need to obtain an amendment to that same Conditional Use Permit at the conclusion of the fourth amendment. Without such an amendment there will be inconsistencies between the Site Certificate and the local Conditional Use Permit.

Concerns continue related to how Exceptions are taken by the Energy Facility Siting Council without a clear mechanism for those same Exceptions to be incorporated into local Comprehensive Plans. In this instance the applicant had suggested a Condition that they be responsible for removing the Exception at the conclusion of the project. It does not appear that Department staff have incorporated that Condition, nor is there a defined path for the County to incorporate the Goal 3 Exception into the Morrow County Comprehensive Plan. Both activities should be conditioned, with the applicant having responsibility to assure those steps are taken.

The opportunity to comment is much appreciated. It has been a pleasure working with you and other Department staff to date, and I anticipate that will continue. Should you have any questions about this comment letter, previous comment letters, or need additional information, please do not hesitate to contact me.

Cordially,



Carla McLane
Planning Director

cc: Jesse Marshall and Mike Pappalardo, NextERA
Morrow County Board of Commissioners
Matt Scrivner and Sandra Pointer, Morrow County Public Works
Larry Lutchter, Oregon State University

Comment to the Draft Proposed Order for the Wheatridge Energy Facility

Page	Concern, error or omission
21, line 10	The reference to Gilliam County should probably be Morrow County.
62, line 34	The word "be" needs to be added prior to "permanent."
63, line 28-29	This appears to be a partial sentence.
63, line 39-40	This appears to be a partial sentence.
64, line 9	The word "of" needs to be added between implementation and existing.
120, line 32	The word "approved" needs to be added between previously and wind.

ESTERSON Sarah * ODOE

From: Irene Gilbert <ott.irene@frontier.com>
Sent: Monday, September 9, 2019 4:56 PM
To: ESTERSON Sarah * ODOE; ESTERSON Sarah * ODOE; CORNETT Todd * ODOE
Subject: Comments on Wheatridge Wind Amendment 4
Attachments: Wheatridge comment One.docx

Attached are my comments on the above application.

Sarah Esterson, Senior Siting Analyst

Oregon Department of Energy

550 Capitol Street NE, 1st Floor

Salem, OR 97301

Email: sarah.esterson@oregon.gov

COMMENT REGARDING THE REQUEST FOR AMENDMENT 4 BY THE Wheatridge Wind Energy Facility

Issue One;

I object to the restriction listed on Page 11, starting on Line 37 stating that all evidence that the person may want to cite or include in a request for contested case proceeding must be included in comments provided on the record of the draft proposed order.. This restriction is not consistent with the statute or the Administrative Rule cited in the draft proposed order. ORS 469.370(3) states, “Any issue that may be the basis for a contested case shall be raised not later than the close of the record at or following the final public hearing prior to issuance of the department’s proposed order. Such issues shall be raised with sufficient specificity to afford the council, the department and the applicant an adequate opportunity to respond to each issue.”

OAR 345-067-0067(5)(b) states, “A person who intends to raise an issue that may be the basis for granting a contested case proceeding must raise that issue on the record of the public hearing with sufficient specificity to afford the Council, the department and the certificate holder an adequate opportunity to respond to the issue.. To raise an issue with sufficient specificity, a person must present facts, on the record of the public hearing that support the person’s position on the issue.”

Note that neither the statute or the administrative rule refer to anything other than the close of the comment period and there is no reference to how the comments effect the contested case request with the exception of indicating the above language regarding the need to have raised it with “sufficient specificity.”

While there is no doubt that the Oregon Department of Energy and Energy Facility Siting Council will deny any contested case request based upon these comments, I want this request in it’s entirety included on the record for documentation purposes.

I have been denied multiple contested case requests on amended site certificates during the past 8 years, and the reasons have changed time and again. The department has developed a reputation as was stated by one of the attorneys testifying before the Legislative Committee charged with attempting to “fix” the siting process that what is being run is a “Kangaroo Court”. Given that the department and the council have never allowed even one contested case on an amended solar or wind development since the department was formed, it seems that reputation is well earned.

In order to place this comment in perspective, the following applies:

When I first submitted a contested case request, the response was that the request did not provide any new information that had not been submitted with my comments and those comments had already been considered. DENIED

I then attempted to include additional information that supported the need for the contested case. The response was DENIED

Then I added even more information in the contested case request to the point that I argued that the department and the council were requiring me to include all my arguments and documents in the contested case request which should not be required until the contested case hearing. The department and council were basically determining the outcome of the hearing based upon the request and determining that they did not agree with my arguments. DENIED

Now the department has decided to read into the statute requirements which are not in the plain language of the statute (nothing is supposed to be added that isn't there) and limit the contested case request to the information provided in the comments. I have now received a response that my contested case request related to a new issue because I included additional statutes supporting the fact that the agency was not acting in compliance with the statutes and rules. DENIED

Since the department has a history of doing what they want absent any rule or statute change and then changing their rules to be consistent with what they have been doing and calling it "housekeeping", I can predict the future plans to amend the rules to make them inconsistent with the statute and hope that no one takes them to court for their actions.

Since the draft proposed order references the above administrative rule and interprets it in a manner that conflicts with the Oregon Statute, any decisions made regarding future requests for a contested case which limit the listing of related rules, statutes, or documents supporting the original issue brought up in public comments will be in conflict with ORS 469.370. Per ODOE and EFSC rules and the Oregon law, the department cannot overrule state statutes. The proposed order needs to remove the information regarding the restriction of information submitted as a part of a contested case request to only those documents and statutes referenced in public comments.

Comment Issue Number Two:

The previous information regarding Issue Number One also apply to this comment:

There is no basis in state statute, ODOE administrative rules, Administrative rules of other state agencies or the model rules where there is any requirement that the public identify statutes or rules which apply to a comment or contested case request. This is an arbitrary requirement that is being imposed upon the lay people attempting to have a voice in the siting of energy developments in Oregon. It can only be interpreted as yet another requirement intended to block the public from being able to access the contested case procedure. Absent the identification of a statute or rule requiring the public to correctly identify ODOE administrative rules specific to any given comment, this requirement needs to be removed from the draft proposed order prior to issuing it as a "proposed order".

Comment Issue Number Three:

The Oregon Department of Energy and Energy Facility Siting Counsel are required to honor state statutes and do not have the authority to overrule Statutes that may conflict with their rules.

Since there is a conflict between what ODOE is requiring and the statute, I am referencing the statute as the standard that must be met. ORS 569.390 requires the owner or occupant to eradicate weeds. This statute requires that noxious weeds be destroyed or prevented from seeding. This statute applies for the life of the development. A site certificate condition needs to be added requiring the developer to identify noxious weeds at their site, and when they typically produce seeds. The developer then needs to develop a monitoring and treatment timeframe that will keep the weeds from going to seed. In addition, ORS 469.507 requires a monitoring program that extends for the life of the development. The draft Proposed Order does not include a monitoring program that assures that noxious weed seeds will not be allowed to develop during the years when no monitoring or treatment is being required.

Comment Issue Number Four:

This comment is related to Comment 3 and the comments above should be looked at cumulatively. “machinery which may be infected with noxious weed seeds must be cleaned prior to traveling over public roads or from one farm to another”. The site certificate needs to require compliance with ORS 569.390 and ORS 569.445 at a minimum. A site certificate condition needs to be added requiring this cleaning of equipment used in areas with different land owners.

Comment Issues Number Five:

The draft proposed order fails to provide protection for federally protected bird habitats. The nest sites for these birds are considered Category 1 habitat. The DPO ignores the requirement in OAR 635-415-0025 that there be no direct or indirect impacts to Category 1 habitat by completely ignoring at risk bird species in the list of sensitive species and required setbacks from nests. The draft proposed order needs to include setbacks from buto hawks, peregrine falcon, bald eagle, burrowing owl. Golden Eagles (setbacks need to be a minimum of ½ mile from nest site per previous site certificate requirements and ODFW recommendations on previous developments), and any other federal threatened or endangered raptor species. Per the previously submitted memo from Oregon Legislative Council to Greg Barreto regarding the failure to address federally listed threatened and endangered wildlife under the T & E standard, the Oregon Department of Energy and Energy Facility Siting Council must address them under the habitat standard. This site certificate fails to do that which puts the agency out of compliance with the federal rules.

Any exceptions to the setback requirements for times when nests are not occupied are not legitimate. The nest sites remain Category 1 during the times the birds are not physically present or hatching young. Raptors return to the same nest sites year after year, and the action of destroying or building structures within the setback areas does not provide protection from direct or indirect impacts. Displacement of protected species is not allowed under the Endangered Species Act, and taking action that requires the birds to move to other habitat that may not provide the same quality is illegal.

Irene Gilbert

2310 Adams Ave.

La Grande, Oregon 97850

Email: ott.irene@frontier.com



September 9, 2019

Ms. Sarah Esterson
Siting Analyst
Oregon Department of Energy
550 Capitol St. NE, 1st Floor
Salem, OR 97301

**Subject: Wheatridge Wind Energy Facility Request for Amendment 4 –
Response to Reviewing Agency Comments on Draft Proposed Order**

Dear Ms. Esterson:

NextEra Energy Resources, LLC (NextEra), on behalf of Wheatridge Wind Energy, LLC (the Certificate Holder), is providing the following clarifications with respect to the comments provided on the Request for Amendment 4 (RFA 4) Draft Proposed Order by the Morrow County Board of Commissioners, which is serving as a Special Advisory Group for the Wheatridge Wind Energy Facility (Facility). NextEra's comments concern the letter from Carla McLane to the Oregon Department of Energy (ODOE), dated September 9, 2019. One of the comments is in regard to retirement of the solar facility, specifically regarding site restoration if 8-foot concrete-encased foundations are necessary for the solar posts.

NextEra would like to reiterate that the anticipated and preferred design for the solar panel posts are driven steel piles. With that said, the Certificate Holder's reference to concrete-encased foundations for the solar posts was to address a "worst-case" scenario for solar facility installation. Concrete encasement is only necessary in the worst of conditions (soft sand, wet areas, backfilled areas), so it is very unlikely. Foundations for inverters would be according to industry standards: slab on grade, and they would not have footings or frost walls. The foundation for the substation transformer may extend into the subgrade; but this has been accounted for in the cost estimate provided in Exhibit W, Attachment W-1 of RFA 4, and retirement and restoration associated with decommissioning will be the same as what was previously approved by the Energy Facility Siting Council (Council) for the Facility's substations.

The cost estimate in Exhibit W, Attachment W-1 of RFA 4 includes the removal of posts in their entirety. The actual effort to remove the posts, regardless of their construction method, is already provided in the cost estimate. However, there would be an additional cost to transport the concrete offsite. To transport 40,000 posts, with concrete encasement to the full depth of 8 feet, would result in 20,000 cubic yards of concrete at a rate of \$11.97 per cubic yard, for an additional cost to retirement of \$239,400. This brings the total "worst case" cost to retire the Facility to \$27,463,400. The Certificate Holder provided a letter of credit commitment in the amount of \$60,000,000 (see RFA 4, Exhibit M, Attachment M-1); it would therefore cover any incremental increase to the

retirement costs from concrete encasing that had not previously been accounted for in the calculations.

The Facility is located entirely on exclusive farm use (EFU) zoned land. Therefore, to satisfy the retirement standard as part of the Application for Site Certificate, the Certificate Holder had to show that the site can be restored to a useful, non-hazardous condition appropriate for EFU uses, including dry wheat farming. The Council found after reviewing the Application for Site Certificate and through subsequent amendments that the Facility site can be adequately restored to a useful, non-hazardous condition following permanent cessation of construction or operation of the Facility, including the removal of turbine foundations. Site Certificate Conditions OPR-LU-03 and OPR-LU-06 provide the *minimum* retirement restoration plan activities required for decommissioning which will require Council approval as part of plan finalization and includes consulting with land owners as well as providing copies of retirement and restoration plans to Morrow and Umatilla counties. Therefore, no condition changes are warranted because the Certificate Holder has provided a letter of credit commitment that would account for the “worst-case” scenario for the Facility’s decommissioning and restoration costs, the site can be returned to a useful condition for EFU uses (similarly to what was previously approved by the Council), and there are adequate Site Certificate Conditions to ensure compliance in restoring the site to a useful condition.

NextEra would also like to comment on the letter from the Confederated Tribes of the Umatilla Indian Reservation (CTUIR) to the ODOE, dated September 5, 2019, regarding a Traditional Use Survey. The Certificate Holder met with the CTUIR in Spring 2019 and has initiated coordination for a Traditional Use Survey, which will be conducted by CTUIR. In addition, the Certificate Holder will coordinate with CTUIR for on-site monitoring during the portions of the Facility’s construction where ground disturbance will occur.

Thank you for your consideration.

Best regards,



Jesse Marshall

Project Director

NextEra Energy Resources

(760) 846-4421

jesse.marshall@nee.com