



Oregon

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To: Oregon Energy Facility Siting Council

From: Katie Clifford, Senior Siting Analyst

Date: September 12, 2019

Subject: Agenda Item K – Perennial Wind Chaser Station, Council Review of Request for Amendment 1 of the Site Certificate (RFA1) and Draft Proposed Order on RFA1 and Public Comments (Information Item) for the September 26-27, 2019 EFSC Meeting

Attachments: Attachment 1: Correspondence with Oregon Department of Environmental Quality
Attachment 2: Comments Received on the Record of the Public Hearing

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)¹ 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.

¹ Perennial-WindChaser LLC is a wholly-owned subsidiary of Perennial Power Holdings, Inc., which is a wholly-owned subsidiary of Sumitomo Corporation and Sumitomo Corporation of America.

The Department determined on June 21, 2019 that the Request for Amendment (RFA) 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. On August 22, 2019, the Department presented to Council a summary of the RFA and the Draft Proposed Order. That evening the Council conducted a public hearing on the Draft Proposed Order during which members of the public addressed Council directly regarding issues and concerns with the RFA and the Draft Proposed Order. The record of the Draft Proposed Order closed at the conclusion of the public hearing.

This staff report summarizes the verbal and written comments received on the record of the public hearing. All submitted comments have previously been provided to Council members in their entirety.

PROCESS STEPS

On August 23, 2019, the Council reviewed the Draft Proposed Order and some of the public comments; however, Council carried over its full review of public comments and the Draft Proposed Order to its September meeting. At the Council meeting on Friday, September 27, 2019, 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 COMMENTS RECEIVED ON THE RECORD OF THE PUBLIC HEARING

Over 1,600 written comments were received on the record of the public hearing. The Council received oral testimony (summarized in the August draft meeting minutes) from six individuals in addition to the certificate holder during the August 22nd public hearing.

Reviewing Agency Comments

The Confederated Tribes of the Umatilla Indian Reservation (CTUIR) requested that a cultural resource monitor be present during ground-disturbing activities, and explained why portions of the site boundary have a high potential for buried cultural resources.

Existing conditions imposed by Council under the Historic, Cultural and Archaeological Resources standard do not require that a cultural resources monitor be present during construction. Condition K.1 requires that a qualified archaeologist instruct construction personnel in the identification and avoidance of accidental damage to identified resources. If any archaeological or cultural resources are found during construction, Condition K.3 requires

ground-disturbing activities to cease until a qualified archaeologist has evaluated the significance of the find and appropriate mitigation measures have been implemented.

As stated during the August 23rd presentation to Council, based upon the information provided by the CTUIR, the Department intends to recommend in the Proposed Order that the Council amend one or more conditions under the Historic, Cultural and Archaeological Resources standard to require that a cultural resources monitor be present during ground-disturbing construction activities.

Public Comments

The following organizations commented on the record of the public hearing:

- 350 PDX
- 350 Seattle
- Center for Sustainable Economy
- Climate Action Coalition
- Climate Solutions
- Columbia Riverkeeper
- Food & Water Watch
- Friends of the Columbia Gorge
- Greater Hells Canyon Council
- Northwest Environmental Defense Center
- Oregon Chapter Sierra Club
- Oregon Coast Alliance
- Oregon Natural Desert Association
- Oregon Physicians for Social Responsibility
- Oregon Wild
- Power Past Fracked Gas Coalition
- Rogue Climate
- Sierra Club
- Stop Fracked Gas PDX
- The Lands Council
- Thrive Hood River
- WildLands

In addition, numerous individuals commented, most of which are members and supporters of one or more of the commenting organizations.

The following types of comments were raised on the record of the public hearing. Due to anticipated Council interest or relevance to Council standards, the issues in **bold** text will be discussed in this staff report:

- General statements of support or opposition, and general appeals to the Governor and the Council to approve or deny the facility
- Impacts to property values
- Appropriateness of facility name
- References to other facilities
- **Validity of rules under which the RFA is being processed**
- **Environmental and health impacts of hydraulic fracturing**
- **Climate impacts of fossil fuel infrastructure and hydraulic fracturing**
- **Consistency with state policy and actions by the Governor's Office**
- **Need for the facility**

- **Need for an extension**
- **Air emissions from the generating station**
- **Air Contaminant Discharge Permit validity**
- **Other certificate holder investments**
- **Pipeline safety**
- **Potential for the facility to be left on the landscape**

During our presentation, the Department is happy to answer questions the Council may have about any of the issues raised on the record of the public hearing.

Validity of rules under which the RFA is being processed

Commenters contend that, based on the Supreme Court's August 1, 2019 decision related to the site certificate amendment rules adopted by Council in October 2017, the amendment request was submitted pursuant to invalid rules and, because the construction commencement deadline has passed, the site certificate for the facility is "expired, void, and cannot be amended."

On August 22, 2019, the Council adopted temporary rules governing the process for amending site certificates. The temporary rules are in effect until February 17, 2020. Amongst other changes, the temporary rules replaced the amendment processing rules contained in OAR 345, Division 27. As stated in OAR 345-027-0311(1), "The rules in this division apply to all requests for amendment to a site certificate and amendment determination requests for facilities under the Council's jurisdiction that are submitted to, or were already under review by, the Council on or after the effective date of the rules. The Department and Council will continue to process all requests for amendment and amendment determination requests submitted on or after October 24, 2017 for which Council has not made a final decision prior to the effective date of these rules, without requiring the certificate holder to resubmit the request or to repeat any steps taken as part of the request prior to the effective date of these rules." This reference includes the review at hand, the Perennial Wind Chaser Station Request for Amendment 1.

"Fracking" impacts

The majority of comments characterize the Perennial Wind Chaser Station as "fracked gas" infrastructure and express concern about the environmental and health impacts of hydraulic fracturing, or "fracking." The certificate holder does not propose to drill for natural gas. The proposed facility would include a lateral natural gas pipeline that would transport natural gas to the generating station by tapping an existing pipeline owned by Gas Transmission Northwest located approximately 4.63 miles south of the generating station site. Gas Transmission Northwest's interstate natural gas pipeline system transports natural gas sourced from multiple basins in the United States and Canada.²

² TC Energy webpage, "About Gas Transmission Northwest LLC," <http://www.tcplus.com/GTN> (accessed September 5, 2019).

The proposed facility does not include drilling for natural gas; furthermore, a natural gas drilling project would not fall within the definition of an “energy facility” under ORS 469.300(11). Therefore, comments regarding the environmental impacts of hydraulic fracturing are outside the scope of the Council’s review.

Climate impacts

Many commenters expressed concern about the climate impacts of fossil fuel infrastructure and hydraulic fracturing. Commenters additionally pointed to the requirement that the Council consider “any changes in facts or law since the date the current site certificate was executed” in its evaluation of a request to extend the construction commencement or completion deadlines.³ The commenters argue that changes in fact or law that the Council must consider include Oregon’s evolving policies with respect to climate change as well as scientific literature published since the site certificate was executed that “demonstrate the cradle-to-grave climate change impacts of fracked gas.”

As required by OAR 345-027-0075(2)(b):

For a request for amendment to extend the deadlines for beginning or completing construction, after considering any changes in facts or law since the date the current site certificate was executed, the facility complies with all laws and Council standards applicable to an original site certificate application.

Based upon the rule language, changes in fact or law must be considered in the context of the facility’s compliance with laws and standards applicable to the Council’s review.

The one Council standard directly related to climate change is the Carbon Standard. Upstream carbon emissions, such as methane released during the production and transportation of natural gas, are not within the scope of the Council’s Carbon Standard.

To issue a site certificate for a non-base load power plant, the Council must find that the net carbon dioxide emissions rate of the facility does not exceed 0.614 pounds of carbon dioxide per kilowatt-hour of net electric power output, with carbon dioxide emissions and net electric power output measured on a new and clean basis. Any emissions above the net rate of 0.614 pounds of carbon dioxide per kilowatt-hour must be offset via one of the compliance pathway options outlined in the standard. The certificate holder previously elected – and in this RFA continues to elect – to offset the facility’s excess carbon dioxide emissions by providing offset funds to The Climate Trust consistent with the monetary path payment requirement of OAR 345-024-0710.

As discussed during the Department’s August 22nd presentation (Agenda Item B), subject to compliance with existing and recommended amended site certificate conditions, the

³ OAR 345-027-0075(2)(b)

Department recommends that the Council find that the construction and operation of the facility would continue to meet the Carbon Dioxide standard.

Consistency with state policy and actions by the Governor’s Office/Need for the facility

Based upon the State of Oregon’s efforts to inventory and reduce its greenhouse gas emissions, commenters stated that approving the RFA would be inconsistent with state policy and recent actions by the Governor’s Office (e.g., the Governor’s support of House Bill 2020, which would have instituted a carbon cap and trade system in Oregon). While some commenters stated that Oregon needs the facility to replace declining coal power in the region and to help balance intermittent resources like wind energy, other commenters stated that Oregon should forgo future investments in fossil fuel infrastructure in favor of renewable energy resources.

As discussed during our August 23rd presentation to Council (Agenda Item I), ORS 469.501(1)(L) explicitly prohibits the Council from adopting a need standard for generating facilities: “The council shall not adopt a standard requiring a showing of need or cost-effectiveness for generating facilities...” Similarly, ORS 469.310 states, “...It is furthermore the policy of this state, notwithstanding ORS 469.010(2)(f) [part of Oregon’s energy policy] and the definition of cost-effective in ORS 469.020, that the need for new generating facilities, as defined in ORS 469.503, is sufficiently addressed by reliance on competition in the market rather than by consideration of cost-effectiveness and shall not be a matter requiring determination by the Energy Facility Siting Council in the siting of a generating facility, as defined in ORS 469.503.” Accordingly, the Council cannot consider the “need” for the facility in its review of the amendment request.

Need for an extension

Pursuant to OAR 345-027-0085(1), the preliminary request for amendment must include an explanation of the need for an extension and must be submitted to the Department before the applicable construction deadline. In its RFA, the certificate holder stated:

The reason for this request is that Perennial has been unable to obtain a power purchase agreement and it is unlikely that one will be obtained before the required construction start date. There have been tremendous changes in the energy market and in pending federal regulations covering the energy sector, since the issuance of the Site Certificate. Perennial is optimistic that as soon as future energy planning becomes stable, the need for the Facility will become apparent to the market place.

Commenters argue that Perennial’s explanation is insufficient because the certificate holder did not include additional details (such the steps it has taken to try to obtain a power purchase agreement) or explain why each construction deadline must be extended by a full two years.

The certificate holder provided its explanation of the need for an extension to address the requirements of OAR 345-027-0085(1), which requires the certificate holder to explain its “need” for the requested deadline extension. However, Council rules include no substantive review criteria for why the extension is needed and requested. Council is not required to find, and rules do not guide a finding, as to what constitutes an “acceptable” need for a timeline

extension. If the Department were to determine that the certificate holder failed to meet the OAR 345 Division 27 information requirement to include an explanation of the need for the extension, then it would determine the amendment request to be incomplete and request further information during its completeness review.

Because the information required under OAR 345-027-0085(1) was provided by the certificate holder, the Department recommends the Council consider the merits of the amendment request and the certificate holder's ability to satisfy the requirements of Council standards and other applicable statutes, rules and ordinances. The stated need for more time to obtain a power purchase agreement does not bear a relationship to the ability of the facility to comply with all applicable laws and Council standards.

Air emissions from the generating station and Air Contaminant Discharge Permit validity

Commenters expressed concern about air emissions from the generating station (besides those that contribute to climate change) – such as carbon monoxide, volatile organic compounds, and nitrogen oxide – that could impair air quality in the Columbia River Gorge, result in smog, and cause acid deposition during inversion events, particularly when combined with emissions from other area power plants. Perennial previously applied for and received an Air Contaminant Discharge Permit (ACDP) from Oregon Department of Environmental Quality (DEQ) following an evaluation of these potential impacts in its ACDP application.

DEQ issued a Standard ACDP for the Perennial Wind Chaser Station on January 26, 2016. On July 26, 2017, DEQ issued a permit modification that extended the construction commencement deadline by 18 months (to January 26, 2019). As noted by some commenters and confirmed by DEQ (Attachment 1), Perennial has applied for a second construction deadline extension. DEQ is evaluating the application; the permit has not yet been modified and will be subject to the public comment process. If DEQ grants the second extension, the new construction commencement date will be July 26, 2020 – slightly less than two months prior to the new construction commencement date requested by Perennial (September 23, 2020) in its RFA to the EFSC site certificate. Should Perennial fail to begin construction by July 26, 2020, the existing facility DEQ-issued ACDP would no longer be valid and Perennial would need to apply for a new ACDP.⁴ Commenters argue that, “[s]ince Perennial’s Air Permit requires construction to begin, at the absolute latest, by July 26, 2020, there is no reason for EFSC to extend the construction start deadline in the site certificate beyond that date.”

As the Council considers these comments, a review of the relationship between the EFSC process and federally-delegated programs may be helpful. The Environmental Protection Agency (EPA) has delegated authority to the DEQ to administer air quality under the Clean Air

⁴ OAR 340-224-0030(5)(c) ([e]xcept as provided in subsection (i), the permit will be terminated 54 months after it was initially issued if construction does not commence during that 54 month period. If the owner or operator wants approval to construct beyond the termination of the permit, the owner or operator must submit an application for a new Major NSR or Type A State NSR permit).

Act. The ACDP program administered by DEQ includes the federally-delegated new source review requirements of the Clean Air Act and the Prevention of Significant Deterioration program. The ACDP is therefore a federally-delegated permit over which the Council does not have jurisdiction.⁵

Although the Council does not have jurisdiction over federally-delegated permits, the Council may rely on the determinations of compliance and the conditions in federally-delegated permits in evaluating an application for compliance with relevant Council standards. The Council did so in the Final Order on the Application for Site Certificate in its evaluation of facility compliance with the Protected Areas standard.⁶

The Protected Areas standard requires the Council to find that, taking into account mitigation, the design, construction and operation of a facility are not likely to result in significant adverse impacts to any protected area as defined by OAR 345-022-0040. Perennial's original ACDP application assessed the potential impact of air emissions on two of these protected areas, the Eagle Cap Wilderness Area and the Columbia River Gorge National Scenic Area. The Eagle Cap Wilderness Area is the closest Class I Prevention of Significant Deterioration area to the facility and is located over 133 miles from the generating station. The Columbia River Gorge National Scenic Area is located approximately 121 miles away at its nearest distance. The Council previously found that because of the distance of the facility from Class 1 areas as well as the fact that the facility would need to obtain a Prevention of Significant Deterioration/ACDP from DEQ, the facility would have a negligible impact on Class 1 areas and the Columbia River Gorge National Scenic Area.⁷

At the time the Council made this finding, DEQ had not yet issued the original ACDP for the facility. In other words, the Council's finding was based on the fact that Perennial had not yet obtained, but that it would need to obtain and maintain, a valid ACDP prior to commencing construction. This remains true – even if the Council amends the site certificate to extend the construction commencement date to September 23, 2020, Perennial would not be able to commence facility construction without a valid DEQ permit.

DEQ has informed the Department that DEQ would not issue an ACDP or a modified ACDP for a facility if there would be significant adverse impacts to Class I areas (Attachment 1). As DEQ has previously issued an ACDP and a modified ACDP for the facility, information now exists that allows the Council to further evaluate the likelihood of significant adverse impacts to Class I areas and the Columbia River Gorge National Scenic Area. DEQ's review report for the original ACDP concluded, "Based on the air quality analysis, DEQ has determined that the Perennial-

⁵ In accordance with ORS 469.503(3), "...except for those statutes and rules for which the decision on compliance has been delegated by the federal government to a state agency other than the council, the [Council must find that the] facility complies with all other Oregon statutes and administrative rules..."

⁶ *Final Order on the Application for Site Certificate*, Section IV.F. (Protected Areas).

⁷ *Final Order on the Application for Site Certificate*, Section IV.F. (Protected Areas), p. 124.

WindChaser will not have an adverse impact on air quality in any Class I and Class II areas nor on the Columbia River Gorge National Scenic Area.” DEQ has informed the Department that DEQ does not anticipate that the facts underlying this conclusion would change any time before September 23, 2020 (the requested construction commencement deadline in RFA1) for the following reasons:⁸

- Perennial’s current request for an ACDP permit modification does not indicate any changes to the configuration or emissions profile of the facility.
- The ambient air quality is not likely to change appreciably before September 23, 2020.
- The relevant air quality standards are not likely to change appreciably before September 23, 2020.
- The relevant air quality models have not recently changed appreciably, and are not likely to change appreciably before September 23, 2020.

The Department notes that, in determining whether to issue an ACDP modification to Perennial, DEQ considers the cumulative air quality impacts of the Perennial Wind Chaser Station and the Hermiston Generating Plant.⁹ While each facility has been issued a separate air quality permit, DEQ considers Perennial Wind Chaser Station and the Hermiston Generating Plant “a single, existing source for purposes of determining New Source Review (NSR) applicability due to Perennial’s location, similar operation, and operational control. [OAR 340-200-0020(166)]”.¹⁰

Other certificate holder investments

During oral testimony, one individual informed the Council that Perennial Power Holdings, Inc. owns a 40 percent stake in American Bituminous Power Partners (an 80 MW coal waste power plant in West Virginia). The individual referred to a 2018 Associated Press article that reported that American Bituminous Power Partners was at risk of bankruptcy,¹¹ and to an EPA finding that the coal waste plant was not fully in compliance with Clean Air Act requirements.

On May 21, 2019, the EPA’s Office of Enforcement and Compliance Assurance issued four administrative compliance orders on consent to four owners/operators of coal refuse-burning electric generating plants, including American Bituminous Power Partners. EPA found that these facilities were non-compliant with the sulfur dioxide emission limits of the Mercury and Air Toxics Standard (MATS). The agency issued an order establishing enforceable sulfur dioxide emission limits for each unit and requiring that each unit come into compliance with MATS no

⁸ Attachment 1.

⁹ While DEQ considered cumulative air quality impacts from the Perennial Wind Chaser Station and the existing Hermiston Generating Plant, the EFSC Protected Areas standard does not require review of cumulative impacts.

¹⁰ DEQ Standard ACDP Review Report for the 2017 ACDP permit modification for the Perennial Wind Chaser Station.

¹¹ <https://www.apnews.com/774c9333739d4ded9f512da95cbaec2>

later than April 15, 2020.¹² Perennial Power Holdings, Inc. does not operate the West Virginia power plant.¹³

Perennial Power Holdings, Inc.'s portfolio includes one existing resource in the west, the Hermiston Generating Plant. The Council issued a site certificate for the Hermiston Generating Plant in 1994. As noted in the Draft Proposed Order on the RFA for the Perennial Wind Chaser Station site certificate, based on review of the record for the facility, the Department confirms that, to date, no regulatory citations have been issued by the Department for the Hermiston Generating Plant.¹⁴ In addition, Hermiston Generating Plant has had no regulatory citations associated with its DEQ air quality permits since it began operation (Attachment 1).

Pipeline Safety

Commenters expressed concern about the health and safety risks that could occur if the pipeline ruptured. As described in RFA Attachment 5, there are no known slope hazards along the pipeline route; the topography is a flat agricultural landscape with no mapped landslides. Existing site certificate Condition A.11 requires the certificate holder to design, construct and operate the lateral natural gas pipeline in accordance with the requirements of the U.S. Department of Transportation as set forth in Title 49 Code of Federal Regulations, Part 192. This condition is based on the Site-Specific Condition at OAR 345-025-0010(3). In addition, existing Condition A.10 (which is based on the Site-Specific Condition at OAR 345-025-0010(2)) requires the certificate holder to submit to the Department copies of all incident reports involving the pipeline required under 49 CFR § 191.15. The gas lateral would be owned and operated by Cascade Natural Gas Corporation. Cascade Natural Gas Corporation provides natural gas service to over 260,000 customers in Oregon and Washington.¹⁵

Potential for the facility to be left on the landscape

Commenters raised the potential for the facility to be abandoned on the landscape. The Retirement and Financial Assurance standard requires a finding that the facility site can be restored to a useful, non-hazardous condition at the end of the facility's useful life, should the certificate holder either stop construction or cease operation of the facility. In addition, it requires a demonstration that the certificate holder can obtain a bond or letter of credit to restore the site to a useful, non-hazardous condition. For the reasons discussed in Section III.G. of the Draft Proposed Order, subject to compliance with the existing and recommended amended conditions, the Department recommends that the Council find that the facility, with the requested extension of the construction deadlines, would comply with the Council's Retirement and Financial Assurance standard.

¹² <https://www.epa.gov/enforcement/mercury-and-air-toxics-standards-mats-administrative-compliance-orders>

¹³ <http://www.perennialpower.net/Portfolio/American-Bituminous-Power-Partners/>

¹⁴ Section III.B., Organizational Expertise, p. 23.

¹⁵ *Perennial Wind Chaser Station Application for Site Certificate*, Exhibit D, pp. D-1 and D-2.

Certificate Holder Comments

The certificate holder's legal representation provided written and oral testimony that responded to comments pertaining to the validity of the amendment rules, the need for the requested timeline extension, facility air emissions and the ACDP, the need for the facility, and facility greenhouse gas emissions. In addition, the certificate holder noted that while Council members are appointed by the Governor, ORS 469.405(1) vests the Council with the authority to amend a site certificate.

Attachment 1: Correspondence with Oregon Department of Environmental Quality

Attachment 2: Comments Received on the Record of the Public Hearing