



Oregon

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To: Energy Facility Siting Council

From: Sarah Esterson, Senior Siting Analyst

Date: February 28, 2020

Subject: Agenda Item B (Information Item):
Bakeoven Solar Project – Staff Report on the Draft Proposed Order on
Application for Site Certificate for the March 13, 2020 EFSC Meeting

Attachments: Attachment 1: Draft Proposed Order
Attachment 2: Comments Received on Record of DPO Public Hearing

STAFF RECOMMENDATION

The Oregon Department of Energy's (Department) Draft Proposed Order recommends the Energy Facility Siting Council (Council) approve the Application for Site Certificate (ASC) for the proposed Bakeoven Solar Project, subject to compliance with the recommended site certificate conditions (see Attachment 1 of this staff report). Based on issues raised in public comments received on the record of the DPO public hearing, the Department recommends modifications be incorporated into the proposed order.

BACKGROUND

On January 17, 2020, the Department issued a Draft Proposed Order (DPO) on the proposed Bakeoven Solar Project (proposed facility) ASC. The DPO includes the Department's recommended findings of fact regarding Bakeoven Solar LLC's (applicant) ability to comply with Council standards under Oregon Administrative Rule (OAR) Chapter 345 Divisions 22 and 24 as well as draft conditions of approval. Based upon its review of the ASC, as well as comments received from reviewing agencies throughout the ASC review process, the DPO includes recommendations that Council approve the ASC for the proposed facility, subject to compliance with recommended site certificate conditions (see Attachment A of this staff report).

The Department accepted comments on the DPO from January 17, 2020 to the close of the public hearing held on February 25, 2020. At the applicant's request, the Council-appointed Hearing Officer, Joe Allen (Oregon Office of Administrative Hearings, Administrative Law Judge), extended the comment period from February 25 to February 28, 2020, limited to the applicant, to provide an adequate opportunity for the applicant to respond to comments received. Pursuant to OAR) 345-015-0230(1), Council will review the DPO and comments received on the

record of the DPO public hearing, and will provide comments to the Department for consideration in the proposed order at its March 13, 2020 meeting to be held at The Discovery Center in The Dalles, Oregon.

Following the Council's review and consideration of issues raised on the record of the public hearing, the Department will issue a proposed order in accordance with OAR 345-015-0230(2), taking into consideration the comments of the Council, public comments received on the record of the DPO public hearing, and agency consultation. In conjunction with the issuance of the proposed order, the Department will issue a notice of 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 party status in the contested case proceeding. Hearing Officer Joe Allen will conduct the contested case proceeding pursuant to OAR 345-015-0012 through - 0085.

The following provides an overview of the written comments and oral testimony submitted on the record of the public hearing that fall within Council jurisdiction. This memo is intended to assist the Council in its review of the DPO and to assist the Council in providing comments to the Department.

PROPOSED FACILITY

The proposed facility includes up to 303 megawatts alternating current (MWac) of solar photovoltaic energy generation equipment, and related or supporting facilities including an approximately 11-mile 230 kilovolt (kV) transmission line; a collector substation; an operations and maintenance building; communication and supervisory control and data acquisition (SCADA) system; site access, internal service roads, 8-foot perimeter fencing, and gates; temporary staging areas, and up to 100 MW of either lithium-ion or flow battery storage systems. The proposed facility would occupy up to 2,717 acres on Exclusive Farm Use zoned land, predominately composed of soils in capability class III (approx. 2,518 of 2,717 acres), as specified by the National Cooperative Soil Survey (operated by the Natural Resources Conservation Service of the United States Department of Agriculture).

DPO COMMENTS

The Department received 21 comments on the record of the DPO public hearing. Oral testimony was provided by seven individuals during the February 25, 2020 DPO public hearing. As described above, the applicant requested additional time to respond to the issues identified below; applicant responses will be provided to Council, along the Department's evaluation, in a supplemental staff report prior to the March 13, 2020 Council meeting. Each of the issues raised in written comments and oral testimony is summarized below. The Department seeks Council comment and input on each of the issues raised in written and oral comments.

Land Use

Agricultural Use

Underlying landowners of the proposed project site, Robert Krine and Vicki and Larry Ashley, provided information regarding historic agriculture use and production value of the land. Robert Krine explained that he purchased the land in 2002, which has not been farmed in the last 15 years, contains shallow soils with yields lower than 25 bushels an acre. He also explained that lands used for cattle grazing yield \$4-5/acre, and expressed support for the proposed facility to offset lower than average agricultural economic value of the land.

Larry and Vicki Ashley explained that their family has owned the land for 80 years and that their lands historically yielded 12-15 bushels an acre, which is not enough to cover the cost of crop cultivation.

Public Services

Wasco County Planning Department, on behalf of the Wasco County Board of Commissioners, submitted comments requesting a condition be imposed in the site certificate to address concerns on level of service impacts to the ambulatory service area given lack of available resources.

Retirement and Financial Assurance

The applicant and a member of the public, Michelle Slater, requested additional consideration of the applicant's proposal to apply the value, or some proportion of, of scrap metal to the total estimated decommissioning bond, and submitted additional information related to the process and assurances afforded by a security interest – which applicant commits to executing with the state as part of the proposal. The applicant also requested additional consideration of their proposal for a phased decommissioning approach (i.e. bond for full decommissioning amount prior to construction; once operational, bond amount lowered to \$1 for the duration of the terms of the power purchase agreement (PPA); assurances provided through PPA terms, parent guarantee between applicant and Department, and annual Council review of applicant/PPA offtaker financial stability). In their DPO comments, applicant submitted additional information and evidence to support the Department's legal review of the proposal.

Ms. Irene Gilbert expressed concern on the ability of the applicant's proposal for use of scrap value and a phased decommissioning approach to satisfy the Council's Retirement and Financial Assurance standard.

Fish and Wildlife Habitat

Public comment provided by Fiona Noonan, Conservation Associate with Deschutes Land Trust, confirmed coordination with the applicant on potential acquisition of 4,500 acres on high-value upland, riparian, and stream habitat of Trout and Antelope Creeks. She also described the entities experience as inclusive of 25 years of land management.

Comments received from the Oregon Department of Fish and Wildlife (ODFW) expressed concern regarding the success criteria and monitoring protocol for differing types of habitat within the mitigation sites proposed under the applicant's two proposed mitigation options. ODFW requested that the applicant consider more quantitative success criteria, identify a process for establishing paired monitoring and reference sites, and establish a process for evaluating weed control success.

Historic, Cultural and Archeological Resources

Members of the Confederated Tribes of the Warm Springs Indian Reservation of Oregon (CTWS) expressed concern regarding uncertainties in underground impacts and future access restrictions related to the proposed facility, and requested that the applicant be required to conduct government to government consultation with the Tribal Council to address concerns of impacts to potential first food areas. The CTWS members acknowledged the applicant's coordination with the CTWS Natural Resources Division; however, explained that other divisions had concerns that were not yet addressed.

The applicant provided oral testimony in response to these comments and described the oral history investigation conducted in 2019 by the applicant in coordination with CTWS Natural Resources Division, where significant tribal resources were not identified within the proposed site boundary for the facility, and explained that Avangrid, as a company, has experience working with tribal governments in providing land lease agreements for first food access. The applicant committed to ongoing coordination with CTWS members in efforts to resolve potential concerns.

RECOMMENDATIONS

The Department recommends that modifications be incorporated into the proposed order to address the comments and new information summarized above and provided in Attachment 2 of this staff report.

ATTACHMENTS:

- Attachment 1: Draft Proposed Order (DPO)
- Attachment 2: Comments Received on Record of DPO Public Hearing