



Oregon

Kate Brown, Governor



550 Capitol St. NE
Salem, OR 97301
Phone: 503-378-4040
Toll Free: 1-800-221-8035
FAX: 503-373-7806
www.oregon.gov/energy

To: Energy Facility Siting Council

From: Sarah Esterson, Senior Siting Analyst

Date: April 10, 2020

Subject: Agenda Item B (Action Item):
Bakeoven Solar Project, Council Decision on Application for Site Certificate
April 24, 2020 EFSC Meeting

Attachments: Attachment 1: Draft Final Order

STAFF RECOMMENDATION

Oregon Department of Energy (Department) staff recommend the Energy Facility Siting Council (Council) find, based on the recommended findings of fact and conclusions of law, as presented in the Proposed Order on the Application for Site Certificate for the Bakeoven Solar Facility (proposed order), that Council approve the proposed order as the final order and grant issuance of a site certificate.

PROCEDURAL HISTORY

On July 5, 2019, Bakeoven Solar, LLC (applicant) submitted to the Department a preliminary Application for Site Certificate (pASC) for the Bakeoven Solar Project. The proposed facility is an approximately 303 megawatt alternating current (MWac) solar photovoltaic energy generation facility to be located in Wasco County, Oregon. Following receipt of the additional information requested from the applicant, the Department determined the Application for Site Certificate (ASC) to be complete on October 31, 2019; the applicant filed a complete ASC on November 4, 2019.

On November 5, 2019, after review of the ASC and reviewing agency comments on the complete ASC, the Department issued the draft proposed order on the ASC, which included staff's recommendation to grant with conditions a site certificate for the proposed facility, pursuant to Oregon Administrative Rule (OAR) 345-015-0210. On February 25, 2020, hearing officer Joe Allen conducted a public hearing on the draft proposed order in Maupin, Oregon. The record of the public hearing opened on January 17, 2020 (the issuance date of the notice of the draft proposed order public hearing and request for comments) and closed for public comment at the conclusion of the February 25, 2020 public hearing, and on February 29, 2020

for applicant response to comments. The Council reviewed the draft proposed order at its regularly scheduled Council meeting on March 13, 2020. At the meeting, staff presented a summary of the Department's evaluation of compliance with the applicable standards, recommended site certificate conditions, and comments received on the record of the draft proposed order.

On March 20, 2020, following Council's review of the DPO, the Department issued the proposed order taking into consideration the comments received on the record of the public hearing and agency consultation. Concurrent with the issuance of the proposed order, the Department issued a Public Notice of Proposed Order and Contested Case (notice). Pursuant to the notice, the deadline for requesting party status in the contested case is 5:00 pm on April 20, 2020.

Please Note: At the time of this staff report, no requests for party status had been received; if any are received on or before the April 20, 2020 deadline, this agenda item will be postponed until the conclusion of the contested case proceeding, to be conducted by Hearing Officer Joe Allen. If no requests for contested case are received on or before the April 20, 2020 deadline, the Hearing Officer will open the contested case proceeding and promptly close it, thereby terminating the contested case phase of the application review.

REVISIONS FROM THE DRAFT PROPOSED ORDER TO THE PROPOSED ORDER

The proposed order issued by the Department included minor administrative changes, as well as revised discussion or analysis within Sections IV.B. Organizational Expertise, IV.E. Land Use, IV.G. Retirement and Financial Assurance, IV.H. Fish and Wildlife Habitat, and IV.M. Public Services. These changes were presented in red-line, track-changes format to allow easy review and reference to the incorporated changes.

REVISIONS FROM THE PROPOSED ORDER TO THE FINAL ORDER

The Department has prepared a draft final order and a draft site certificate for Council consideration and review. Revisions from the proposed order to the draft final order, made by the Department, were administrative in scope such as updating the procedural history, and converting "Department recommends" to "Council finds," references to "recommended" conditions to "imposed" conditions, and reference to the "proposed order" to "final order."

The Department also provided additional information in Section IV.M. Public Services and IV.Q.3 Water Rights based on consultation with Oregon Department of Water Resources on the City of Maupin's ability to meet the applicants' forecasted construction-related water demand (maximum of 77 million gallons per year) under their existing water right, but the Department makes no recommended changes to conditions or findings of compliance.

COUNCIL OPTIONS

At the conclusion of the contested case, in accordance with Oregon Revised Statute (ORS) 469.370(7), the Council shall issue a final order either approving or rejecting the ASC based

upon the standards adopted under ORS 469.501 and any additional statutes, rules or local ordinances determined to be applicable to the facility by the project order, as amended. The Council shall make its decision by the affirmative vote of at least four members approving or rejecting the application. The Council's order is considered a final order for purposes of appeal under ORS 469.403. If the Council grants issuance of a site certificate, the Council shall issue a site certificate. The site certificate becomes effective upon execution by the Council and by the Applicant. The Council's three options are included below.

- 1. Approve as presented by staff.** The Council can approve the draft of the final order and site certificate as presented by staff, with no changes. The site certificate would become effective based on date of Council approval.
- 2. Amend, and approve.** The Council can amend the staff's proposed order, including either the findings of the order or specific conditions of approval. If the amendments are not considered material, the Council can approve and issue the final order and site certificate at the same Council meeting. However, if the amendments are considered material, including material changes to conditions, the Council must provide public notice and a comment opportunity on the revised findings or conditions, and hold a hearing at a later Council meeting to consider any comments received, and ultimately issue its final order.
- 3. Reject the application.** The Council can decide that the proposed facility does not meet one or more Council standards or other applicable rules and statutes, and reject the application and deny issuing a site certificate. However, because the proposed order finds that the facility meets all Council standards and applicable rules and statutes (with conditions), if Council disagrees with staff's findings in the proposed order, Council would have to specify which standard or rule is not met and why, and direct staff to prepare findings accordingly. As per ORS 469.370(7), Council would be required to provide public notice and a comment opportunity on the revised findings, and hold a hearing at a later Council meeting to consider any comments received, and ultimately issue its final order.

Staff Recommendation

Staff recommends that Council select "Option 1" and approve the draft of the final order as presented by staff to Council, and issue a site certificate for the Bakeoven Solar Project.

ATTACHMENT:

Attachment 1: Draft Final Order