

# Oregon Department of **ENERGY**

Energy Facility Siting  
Council Meeting

Virtual Meeting –  
Teleconference and  
Zoom

August 21, 2020



# Opening Items:

- Call to Order
- Roll Call
- Announcements

# Announcements:

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- Reminder that this meeting is being held via teleconference and WebEx
- Reminder to Council and to anyone addressing the Council:
  - Clearly state your full name;
  - Do not use speakerphone feature (creates feedback)
- You may sign up for email notices via the following hyperlink:  
<http://web.energy.oregon.gov/cn/a6n53/subscribe>
- Access to the Department's online mapping tool and documents are provided through the Department's project webpages
- Those participating by phone, please mute your phone and if you receive a phone call, please hang up from this call and dial back in after finishing your other call

# Announcements continued:

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- For those signed into the WebEx, please do not broadcast your webcam
- Please silence your cell phones
- Please use the “Raise Your Hand” feature in Zoom to speak during the public comment period.
- Energy Facility Council meetings shall be conducted in a respectful and courteous manner where everyone is allowed to state their positions at the appropriate times consistent with Council rules and procedures. Willful accusatory, offensive, insulting, threatening, insolent, or slanderous comments which disrupt the Council meeting are not acceptable. Pursuant to Oregon Administrative Rule 345-011-0080, any person who engages in unacceptable conduct which disrupts the meeting may be expelled.

# Agenda Item A

- Council Secretary Report

# Agenda Item B (Transfer Hearing)

## Request to Transfer Ownership of Wheatridge Renewable Energy Facility I Site Certificate

August 21, 2020 (8:45 a.m.)

Hanley Jenkins, II Transfer Hearing Presiding Officer. Energy Facility Siting Council  
Sarah Esterson, Senior Siting Analyst, Oregon Department of Energy



# Facility/Certificate Holder Overview

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Facility Type:	Wind (100 MW)
Facility Location:	Morrow County
Certificate Holder:	Wheatridge Wind Energy, LLC
Site Certificate History:	Original: 2017 AMD1 – AMD5: 2017 - 2020



# Request for Transfer of Site Certificate Ownership

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## Certificate Holder

- Wheatridge Wind Energy, LLC
- NextEra Energy Resources LLC  
(parent company)

## New Owner (Certificate Holder)

- Portland General Electric  
Company

The Department evaluated the two applicable Council standards (Organizational Expertise & Retirement and Financial Assurance) for the Request to Transfer. Presentation of the Departments evaluation following the close of the Transfer Hearing.

# Transfer Hearing

# Agenda Item B (Action Item)

## **Council Review of Request to Transfer Wheatridge Renewable Energy Facility II Site Certificate**

**August 21, 2020**

**Sarah Esterson, Senior Siting Analyst, Oregon Department of Energy**

# Transfer Procedural History

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Requirement	Responsible Party	Date
Notification of Intent to Transfer Site Certificate	Certificate Holder	June 16, 2020
Submittal of Written Request	New Owner	June 10, 2020
Notice of Transfer Request	ODOE	June 15, 2020
Transfer Hearing	ODOE	August 21, 2020

# Transfer Review Process

OAR 345-027-0400

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Council must find that the new owner complies with:

## Organizational Expertise standard

- (OAR 345-022-0010)

## Retirement and Financial Assurance standard

- (OAR 345-022-0050)

## Standards for Facilities that Emit Carbon Dioxide – Monetary Path Payment Requirement (If applicable)

- (OAR 345-024-0710(1))

# Organizational Expertise

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- Experience in construction/operation of wind/other energy facilities
- Past Performance
  - Regulatory compliance
  - Mitigation experience
- Previously Imposed Conditions
- Recommended Condition Removal
  - Org Exp Condition 9: notification of changes in parent company corporate structure (no longer applicable)

# Retirement and Financial Assurance

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- Ability to Restore Site to Useful, Nonhazardous Condition
  - No changes in previously identified tasks/actions
- Ability to Obtain Bond/Letter of Credit (\$3.9 million)
  - Commitment letter from JPMorgan Chase Bank, N.A.
- Legal Authority to Construct/Operate Facility
  - Legal opinion from PGE's General Counsel

# Department Recommendations

# Council Action

# Agenda Item C (Action Item)

## **Rulemaking to Clarify Standard for Contested Case Requests for Type A Amendments Council Review of Comments & Final Decision**

**August 21, 2020**

**Christopher M. Clark, Siting Policy Analyst & Rules Coordinator**

# Overview

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- Overview of Amendment Review Process
- Background and Summary of Proposed Rules
- Procedural History
- Review of Public Comments and Recommended Responses
- Council Decision on Permanent Rules

# Amendment Review Processes

## OAR 345-027-0351

### Transfer

- Only applies when transfer is the only issue.

### Type A

- “Default Process”
- Allows requests for contested case proceeding

### Type B

- Expedited process
- Must be requested
- No opportunity to request a contested case proceeding

### Type C

- Applies to changes to approved, but non operational components.
- May be used to address unforeseeable/unavoidable circumstances

# Changes Requiring an Amendment

## OAR 345-027-0350

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- Transfer ownership of the facility or the certificate holder
- Apply "later adopted" laws
- Extend construction beginning or completion deadlines
- Design, construct, or operate a facility in a manner different from the description in the site certificate, if the proposed change could:
  - Result in a significant adverse impact to a resource or interest protected by an applicable law or standard that was not addressed in an earlier order
  - Impair the certificate holder's ability to comply with a site certificate condition
  - Require a new or amended site certificate condition

# Type A/B Amendment Determination

## OAR 345-027-0357

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- If Type B review is requested, staff determines whether it is justified, considering:
  - The complexity of the proposed change
  - The anticipated level of public interest in the proposed change
  - The anticipated level of interest by reviewing agencies
  - The likelihood of significant adverse impact; and
  - The type and amount of mitigation, if any
- The Department, Applicant, or a Council member may request referral to the Council

# Amendment Review Processes

	Type A	Type B
Preliminary Request for Amendment (pRFA)	✓ 	✓ 
Completeness Review	60 days	21 days
Determination of Completeness (DOC)	✓ 	✓ 
Draft Proposed Order (DPO)	120 Days	60 Days
Public Comment Period	✓ 	✓ 
Public Hearing	✓	
Proposed Order (PO)	30 Days 	21 Days 
Potential Contested Case	✓	
Final Order (FO)	Yes	Yes

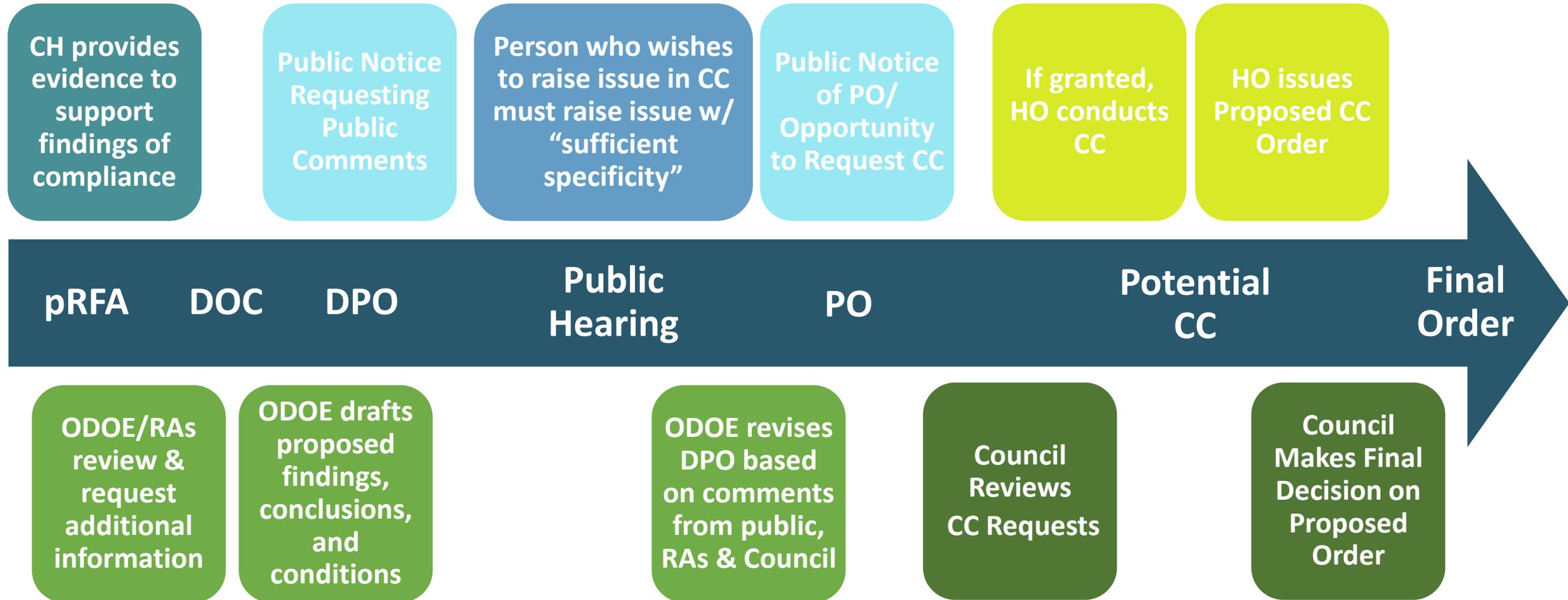
# Scope of Review

## OAR 345-027-0375

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- To issue an amended site certificate, the Council must determine that the preponderance of evidence on the record supports the conclusion that the facility, with the proposed change, complies with all applicable laws or Council standards
- Scope of review, and applicability of standards/laws depends on amendment requested
- For all requests, Council must also determine the amount of the bond or letter of credit is adequate

# Development of “the record” in Type A Review



# EFSC Contested Case Overview



# Contested Cases under Type A Review

## OAR 345-027-0371

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- Only persons who commented on the record of the public hearing on the proposed order may request a contested case proceeding
- To properly raise an issue:
  - The issue must be within the jurisdiction of the Council
  - With some exceptions, the person must have raised the issue on the record of the public hearing with sufficient specificity to afford the decision maker an opportunity to respond
- Purpose of Contested Case is to allow additional fact-finding or legal argument in the record that may influence the Council's final decision

# Threshold for Granting a Contested Case

## OAR 345-027-0371 (9)

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- To determine that an issue justifies a contested case proceeding “\* \* \* the Council must find that the request raises a significant issue of fact or law that *may* affect the Council’s determination that the facility, with the change proposed by the amendment, meets the applicable laws and Council standards included in chapter 345 divisions 22, 23 and 24 (emphasis added.)
- In January, the Council clarified by order that the word “*may*” in the rule means an issue is “*in some degree likely to*” affect a Council determination
- Council also recommended the rule be further amended to clarify this meaning in rulemaking

# Proposed Rule Change

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In March, the Council authorized staff to issue Notice of Proposed Rulemaking to amend OAR 345-027-0371(9) as follows:

“\*\*\* To determine that an issue justifies a contested case proceeding, the Council must find that the request raises a significant issue of fact or law that ~~may~~ **is reasonably likely to** affect the Council’s determination that the facility, with the change proposed by the amendment, meets the applicable laws and Council standards included in chapter 345 divisions 22, 23 and 24.  
\*\*\*”

# Procedural History

Permanent Rulemaking Steps	Completion Date
Council initiated permanent rulemaking process & approved Notice of Proposed Rulemaking	<b>March 13, 2020</b>
Notice of Proposed Rulemaking provided to legislators and rulemaking list	May 6, 2020
Notice appeared in SOS Bulletin	June 1, 2020
Rulemaking Hearing	<b>June 25, 2020</b>
Extended Deadline for Written Comments	July 16, 2020
Council consideration of public comments/permanent rules	August 21, 2020
Staff submits permanent rule filing to Secretary of State	TBD
Permanent rules are effective.	TBD

# Review of Public Comments

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- The Council received 177 written comments on the proposed rules.
- At the June 25, 2020 hearing 3 persons provided oral testimony:
  - Gary Kahn representing Friends of Columbia Gorge and 11 public interest organizations opposing adoption of the proposed rule.
  - Nathan Baker, representing Friends of the Columbia Gorge, also provided oral testimony.
  - Irene Gilbert provided oral testimony opposing adoption of the proposed rule change.
- Comments were generally opposed to the proposed rule change.

# Objection to Rulemaking Caption & Summary

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**Issue Summary:** The Notice of Proposed Rulemaking states that the purpose of the proposed rule amendment is to “clarify” the threshold for determining whether an issue justifies a contested case. Commenters object the use of the word “clarify” because, they argue, the rule would “modify” the threshold.

**Staff Recommendation:** Staff recommends that Council may proceed because the notice reasonably identified the subject matter of the Council’s intended action.

# Request for Additional Rulemaking History

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**Issue Summary:** Commenters requested Council examine rulemaking history to determine the intent of the current rule:

- Council adopted the “may affect” language on February 2, 2000, replacing rules requiring Council had to determine an issue was “significant” or otherwise justified a contested case proceeding.
- In testimony in support of the rule change, staff explained the proposed language was modeled after the language in the Final Order on South Mist Feeder Amendment No. 2.
- Rule remained mostly unchanged until 2017 rulemaking, when some provisions implemented in section (10)(b) were removed. These changes were re-adopted in 2020.

# Request for Additional Rulemaking History

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**Staff Recommendation:** Staff recommends that the rule intends for the Council to employ a two-part analysis when determining whether a person raised an issue that justifies a contested case proceeding on an amendment:

- (1) Did the request raise a significant issue of fact or law regarding compliance with a Council standard;
- (2) Did the request adequately explain how additional fact-finding or argument would help the Council resolve the issue;

# Objection to Adjudication of Merits of Argument Prior to Contested Case

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**Issue Summary:** Numerous commenters object to the proposed rules because they believe the proposed rule would require the Council to evaluate the ultimate merits of the issues before a contested case is held to adjudicate those issues.

**Staff Recommendation:** Staff recommends that like current rule, the proposed rule only requires a requestor to explain how the contested case process, either through additional fact finding or development of new legal argument, could reasonably affect a determination of compliance made by the Council.

# Council Decision on Proposed Rules

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## Option 1

Adopt proposed rules presented in the Notice of Proposed Rulemaking as permanent.

## Option 2

Adopt proposed rules with modifications based on public comment.

## Option 3

Reject proposed rules and pend further consideration until rulemaking scheduled until 2022.

BREAK

# Agenda Item D (Information Item)

## Continuation of Council Review of Draft Proposed Order on Application for Site Certificate for Obsidian Solar Center

August 21, 2020

Kellen Tardaewether, Senior Siting Analyst and Sarah Esterson Senior Siting Analyst, Oregon Department  
of Energy



# Council Scope of Review

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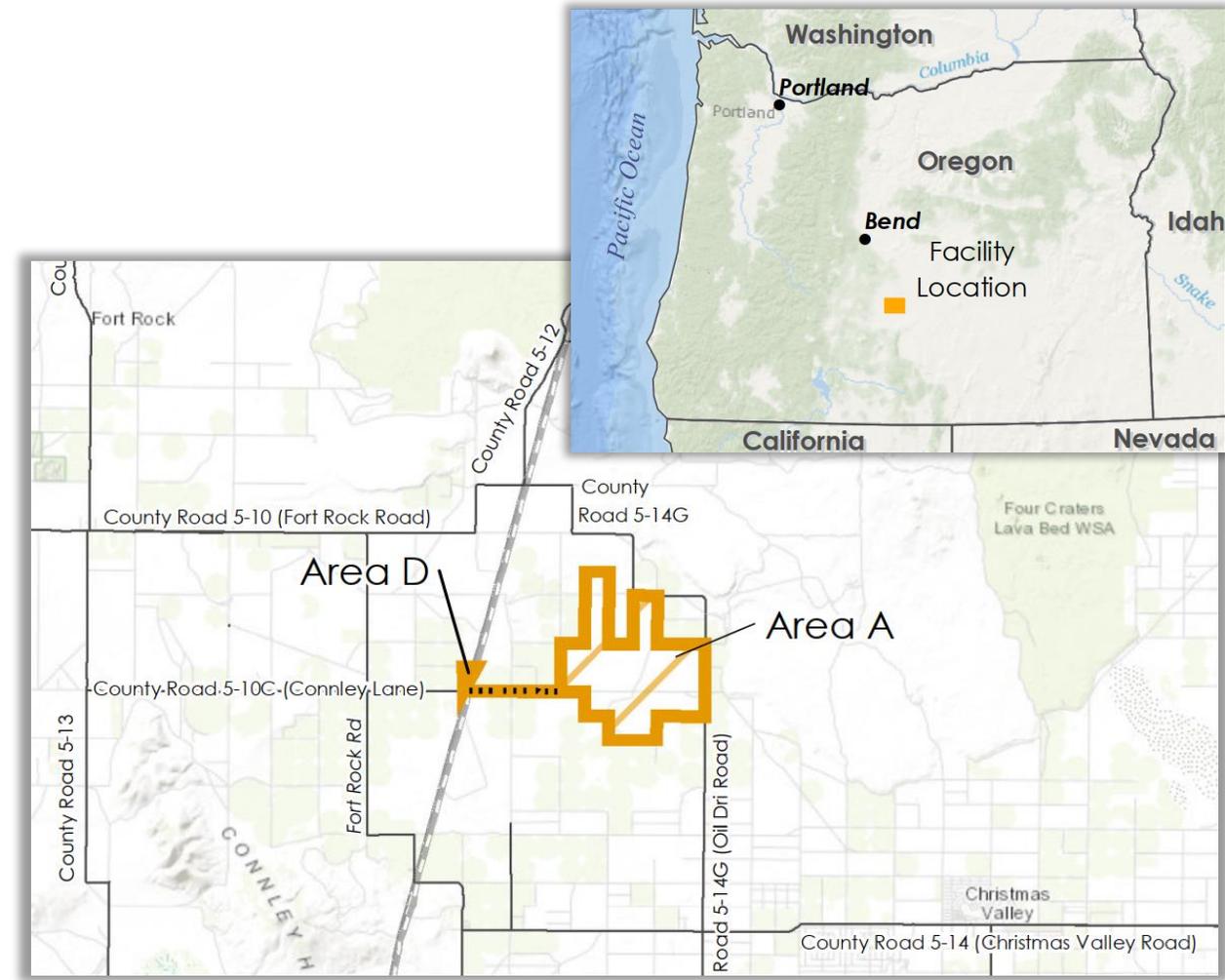
## OAR 345-015-0230

- Review DPO Comments by issue, Applicant's response to issues raised; Department recommendations
- Provide comments for Department consideration in proposed order
  - Provide comments individually, consensus, or vote at EFSC meeting
  - Provide comments by issue or standard as staff presents

# Council Review of DPO/Comments

## Description of Proposed Facility

- Applicant: Obsidian Solar Center LLC
- Proposed Facility: 400 MW solar facility with flow technology battery storage
- Location: 3,921 acre site boundary in Lake County



# Obsidian Solar Center: Procedural History

Milestone	Responsible Party	Date
Notice of Intent (NOI)	Applicant	January 16, 2018
Preliminary Application for Site Certificate (pASC)	Applicant	September 25, 2018
Application for Site Certificate (ASC)	Applicant	October 30, 2019
Draft Proposed Order (DPO)	ODOE	March 12, 2020
Public Hearing on the DPO	ODOE/EFSC	July 20, 2020*
EFSC Review of DPO and Comments	EFSC	July 24, 2020 and August 21, 2020
Proposed Order and Notice of Contested Case	ODOE	TBD
Final Decision	EFSC	TBD



\* Record closed on July 20, 2020 for public comments; and on July 22, 2020 for applicant responses to DPO comments.

# Council Review of DPO/Comments

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## Wind (Dust) and Soil Erosion Impacts to Accepted Agricultural Practices

### Issues

- Disturbance of soils most susceptible to wind erosion
- Soil compaction resulting in surface erosion
- Adequacy of mitigation and monitoring

### Measures and Recommended Conditions

- Minimized site grading/mowing and brush beating
- Soil Protection Condition 1 (NPDES 1200-C/ESCP)

### Additional Applicant Commitments

- Dust Abatement and Management Control Plan

# Council Review of DPO/Comments

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## Impacts of Mammal (Rodent/Elk) Displacement on Adjacent Agriculture

### Issues

- Increased rodent and elk damage to adjacent properties from displacement at the site

### Applicant Response/ODOE Evaluation

- Applicant: rodent increases expected to subside within 6 months; referred to ODFW's existing programs for elk damage support
- ODOE: Based on consultation with ODFW, DLCDC and Lake County Planning Department
  - Elk damage from displacement challenging to directly correlate to facility
  - Recommend reliance on existing ODFW programs for elk damage support/tag program, rather than applicant mitigation obligation

# Council Review of DPO/Comments

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## Noxious Weeds

### Issue

- No noxious weeds currently at site
- Applicant does not commit to eradication of weeds following disturbance

### Applicant Response/ODOE Evaluation

- Applicant commits to work with Fort Rock/Silver Lake Soil and Water Conservation District
- Regular treatment monitoring through Reveg/Weed Plan
- Reveg/Weed Plan reviewed by Lake County and ODFW

# Council Review of DPO/Comments

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## Water Use/Availability: Water Supplier Permits

### Issues

- Concerns about availability of water for construction and operation of proposed facility
- Christmas Valley Domestic Water Supply District water right permits “quasi-municipal use” do not allow for water used for solar facility
- District water right permits “place of use” do not allow proposed water use within areas in site boundary

### Applicant Response

- Proposed facility’s water use is considered a “municipal purpose” pursuant to OAR 690-300-0010(29)
- District is treated like a municipality under ORS 540.510 and therefore is authorized to sell water outside of the places of use specified on water rights certificates

# Council Review of DPO/Comments

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## Water Use/Availability: Water Supplier Permits

### ODOE Evaluation

- Based on consultation with OWRD:
  - Proposed water use is considered “Industrial Water Use” (municipal water use) permissible under quasi-municipal water permits
  - A quasi-municipal water right shall not be granted the statutory municipal preferences given to a municipality under ORS 540.510(3) (water use outside the designated “place of use”)

### Measures and Recommended Conditions

- ODOE still reviewing and consulting with OWRD
- Add Recommended Water Rights Condition 1 designating areas within site boundary where water from District may be used, if applicant requires water right, it may obtain a water right from OWRD via its third-party contractor or submit a request to amend its site certificate in the future

# Council Review of DPO/Comments

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## Water Use/Availability: Wells

### Issues

- Permit exempt well(s) may not exceed 5,000 gallons per day (gpd) combined, if exceeded permit is necessary
- Commenters recommend Council require the installation of a self-regulating water meter with automatic shut off valve

### Applicant Response/ODOE Evaluation

- Applicant commits to limit water withdrawal to 5,000 gpd for well system (two wells combined) and to the installation water meters on any groundwater wells
- ODOE: Based on consultation with OWRD, concur with 5,000 gpd for well system

### Measures and Recommended Condition

- Revise Recommended Water Rights Condition 2 to add flowmeters or measuring tubes

# Council Review of DPO/Comments

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## Success of Juniper Treatment, Mitigation Ratio, and WLIP Agreements

### Issues

- ODFW requested specific success criteria and monitoring methodology within the Juniper Treatment Plan
- ODFW and commenters maintain a mitigation ratio of 2:1 is necessary for compliance with the Council F&W standard
- To demonstrate durability of WLIP Agreements, ODFW recommends the Agreements are for the life of the facility, ODOE/ODFW site visits, combining Agreement and HMP, modify list of prohibited/allowed uses at mitigation sites, establish baseline info

# Council Review of DPO/Comments

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## Success of Juniper Treatment, Mitigation Ratio, and WLIP Agreements

### Applicant Responses/Commitments

- Applicant revised the Juniper Treatment Plan and the HMP to include success criteria
- Applicant increased mitigation ratio from 1:1.1 to 1:1.2 (3,587 acres perm Cat 2 impact = 4,304 acres mitigation site(s)), maintains that 2:1 mitigation ratio is not required to satisfy Cat 2 mitigation goal under the ODFW mitigation policy
- Applicant affirms that several ODFW requested provisions in WLIP Agreements are already included or represented in Agreements, or are addressed as part of EFSC compliance with HMP. Applicant commits to other ODFW recommendations. Applicant objects to removing passive recreation, hunting, and applicant's right of quiet use and enjoyment provisions.

### ODOE Evaluation

- ODOE recommends applicant-represented commitments



# Council Review of DPO/Comments

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## Decommissioning/Financial Assurance

### Applicant Comments

- ODOE description of “useful, non-hazardous condition” that includes ODFW Cat 2 habitat is inconsistent with historic Council interpretation and application of the standard’s requirement. Applicant requests revisions to describe that certain structures/roads may remain on land upon retirement based on landowner preferences
- Contingency for flow battery technology (as a decommissioning line item) should be reduced from 20% to 10% because flow battery technology not hazardous materials like lithium battery technology

### Measures and Recommended Revisions

- Retirement and decommissioning plan (Recom RFA Condition 2) would include land uses at the time of retirement. Recommend revising description of “useful, non-hazardous condition”
- Flow battery contingency reduction still under review by ODOE

# Council Review of DPO/Comments

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## Decommissioning/Financial Assurance

### Issues

- Applicant cost estimate to restore the site is low (\$19M) and is out of date (2018 dollars).
- Documentation provided in ASC Exhibit M and W do not adequately demonstrate that the applicant has a reasonable likelihood of obtaining a bond or letter of credit

### ODOE Evaluation

- Cost estimate is \$23.9 million (Q3 2018 dollars) in DPO, ODOE recommends Council find that this amount is satisfactory to restore the site of proposed facility components to a useful, non-hazardous condition.
- The Department points to Recommended Retirement and Financial Assurance Condition 5 requires financial assurance be provided and maintained for the life of the proposed facility, and that without a bond posted, the facility cannot be constructed.

# Council Review of DPO/Comments

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## Consistency with Lake County Comprehensive Plan Goals and Policies

### Issues

- Failure to demonstrate consistency with goals for citizen participation (Goal 1), planning process (Goal 2), agricultural land (Goal 3), air, water and land resource quality (Goal 6), economic development (Goal 9), public services and facilities (Goal 11), and energy (Goal 13)

### Applicant Response/ODOE Evaluation

- Recommend findings of compliance with applicable substantive criteria implementing goals and policies, as applicable, for consistency evaluation
- Consulted with Lake County Planning Department

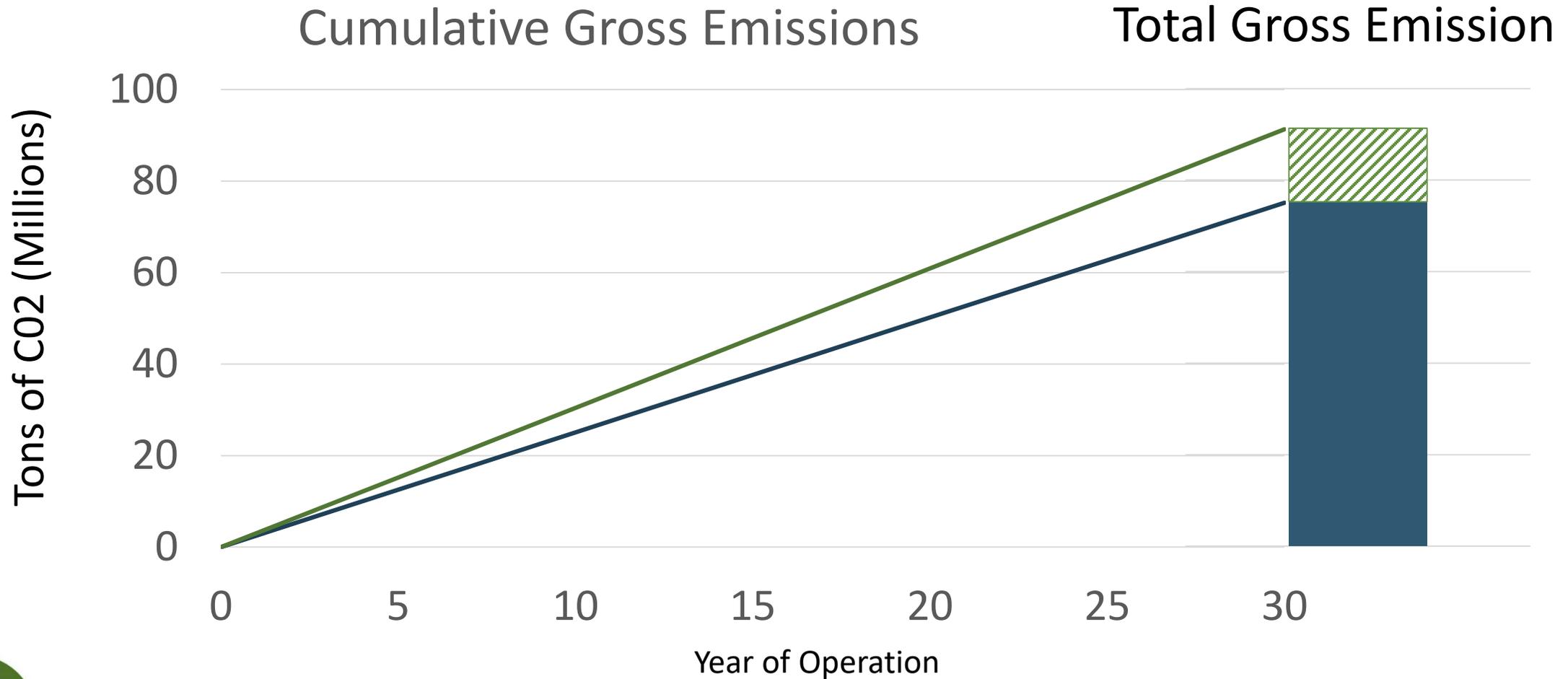
# Agenda Item E (Information Item/Potential Action Item)

## **Council Appointment to The Climate Trust's Oregon Offset Committee Options**

**August 21, 2020**

**Todd Cornett, Council Secretary**

# Council's Carbon Standard (Example)



■ Cumulative Allowed Emissions

▨ Cumulative Excess Emissions

# Council's Carbon Standard Compliance

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## Three Options

- Design and operate the facility to displace another source of carbon dioxide emissions
- Implement offset projects directly or through a third party
- **Provide offset funds, directly or through a third party (qualified organization)**

# The Climate Trust

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- Sole Qualified Organization

*OAR 345-001-0010(49)(c)(B) - Require that decisions on the use of the offset funds are made by a decision-making body composed of seven voting members **of which three are appointed by the Council (emphasis added)**, three are Oregon residents appointed by the Bullitt Foundation or an alternative environmental nonprofit organization named by the body, and one is appointed by the applicants for site certificates that are subject to OAR 345-024-0550, 345-024-590, and 345-024-0620 and the holders of such site certificates; and*

- The Climate Trust Board – original decision-making body
- The Oregon Offset Committee – current decision-making body

# Council Appointees to Oregon Offset Committee

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- Ryan McGraw – Formerly the President of Orion Energy Group, currently Vice President, Project Development, PacifiCorp.
- Brad Hunter – Vice President and Senior Business Lender with Craft3.
- Arya Behbehani – General Manager of Environmental and Licensing Services with Portland General Electric.

# Oregon Offset Committee Time Commitment

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- Frequency of Meetings
  - 2-3 call/board meeting approvals per year
  - 3-4 email approvals per year
  
- Average Time per Meeting
  - 30-60 minutes

# Council Appointment Options

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- Options
  - The Climate Trust Board Member
  - Council Member
  - Solicitation
- Staff Recommendation - none

# Council Deliberation

# Agenda Item F

## **PUBLIC COMMENT**

# Agenda Item G (Action Item)

## **Council Review of Financial Institution for Pre-Approval List**

**August 21, 2020**

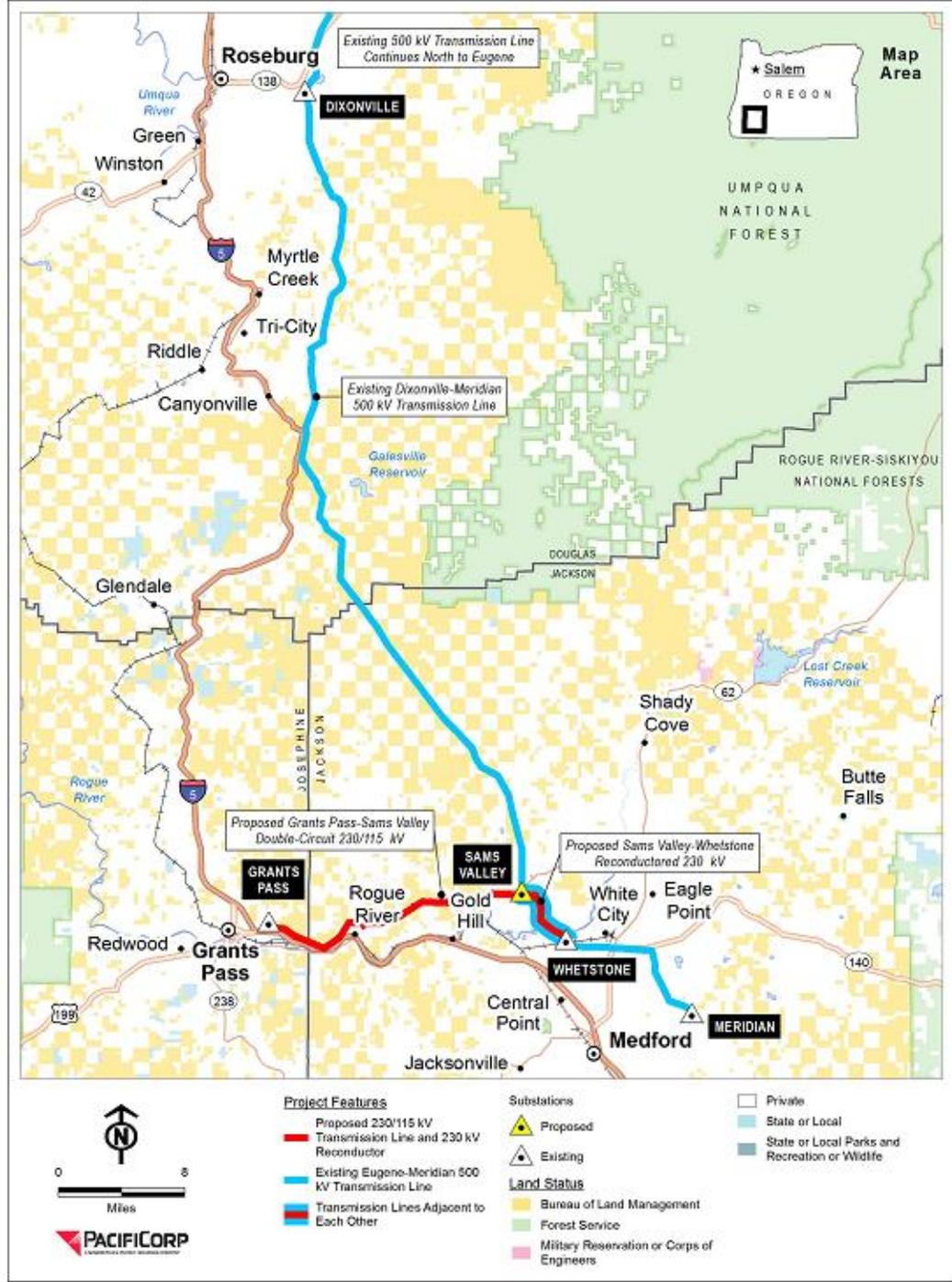
**Sisily Fleming, Fiscal Analyst, Oregon Department of Energy**

# Agenda Item H (Action Item)

## **Eugene to Medford Transmission Line Request for Amendment 4 – Consultant Appointment**

August 21, 2020

Katie Clifford, Senior Siting Analyst, ODOE



Existing 500 kV Transmission Line Continues North to Eugene

DIXONVILLE

\* Salem  
OREGON

Map Area

Myrtle Creek

Existing Dixonville-Meridian 500 kV Transmission Line

UMPQUA NATIONAL FOREST

ROGUE RIVER-SISKIYOU NATIONAL FORESTS

Galesville Reservoir

DOUGLAS JACKSON

Glendale

Leaf Creek Reservoir

Shady Cove

Butte Falls

Proposed Grants Pass-Sams Valley Double-Circuit 230/115 kV

GRANTS PASS

SAMS VALLEY

Proposed Sams Valley-Whetstone Reconstructed 230 kV

Rogue River

Gold Hill

White City

Eagle Point

Redwood

Grants Pass

WHETSTONE

Central Point

Medford

MERIDIAN

Jacksonville



PACIFICORP

**Project Features**

- Proposed 230/115 kV Transmission Line and 230 kV Reconductor
- Existing Eugene-Meridian 500 kV Transmission Line
- Transmission Lines Adjacent to Each Other

**Substations**

- Proposed
- Existing

**Land Status**

- Bureau of Land Management
- Forest Service
- Military Reservation or Corps of Engineers

**Private**

- State or Local
- State or Local Parks and Recreation or Wildlife



# Council Options

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Support evaluating impacts to resources under (1)(b) of the Historic, Cultural and Archaeological Resources standard:

*For a facility on private land, archaeological objects, as defined in ORS 358.905(1)(a), or archaeological sites, as defined in 358.905(1)(c).*

## **Council Options:**

- 1) Appoint Hart Crowser to serve as a consultant.
- 2) Deny the appointment of Hart Crowser to serve as a consultant.

# Council Deliberation

# Agenda Item I (Action Item)

## **EFSC Contested Cases Administrated by Office of Administrative Hearings Administrative Law Judge – Council Review of Applicable Procedural Rules**

August 21, 2020

Maxwell Woods, Senior Policy Advisor, Oregon Department of Energy

# EFSC Contested Case Procedural Rules

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- Combination of model rules of procedure (OAR 137-003-001 through 137-003-0092) and EFSC-adopted rules (OAR 345, Division 15)
- EFSC-adopted rules include:
  - Noticing requirements
  - “Raise it or waive it” requirement
  - “Sufficient specificity” requirement
  - Duties of hearing officer
  - Procedural steps
  - Appeals directly to Council
  - Other requirements and procedures

# EFSC Contested Case Hearing Officer

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- Contested cases are managed by a hearing officer on behalf of EFSC
- Hearing officer can, by statute and rule, be anyone EFSC determines is appropriate to conduct the contested case
- In recent years, EFSC has appointed Administrative Law Judges from the Office of Administrative Hearings as its hearing officers
- ALJs from OAH, by rule, must use the OAH procedural rules unless an exemption is granted by the Attorney General
- EFSC should request the exemption from the AG, which will then be processed by DOJ counsel working with the AG and the OAH

# Adjourn

