



# 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](http://www.oregon.gov/energy)

**To:** Energy Facility Siting Council

**From:** Chase McVeigh-Walker, Senior Siting Analyst

**Date:** January 14, 2022

**Subject:** Agenda Item E (Action Item):  
Stateline Wind Project Amendment 6 – Council Review/Decision on Contested Case Requests, if received, and Review/Decision on Proposed Order for the January 28, 2022 EFSC Meeting

**Attachments:** Attachment 1: Proposed Order on Amendment 6  
(Also available via hyperlink: [Stateline Wind Project - Proposed Order on Amendment 6](#))

---

## STAFF RECOMMENDATION

The Oregon Department of Energy's (Department) recommends the Energy Facility Siting Council (Council) approve the Proposed Order on Request for Amendment 6 of the Stateline Wind Project Site Certificate (Proposed Order) as the Final Order and grant issuance of an amended site certificate, subject to compliance with existing and recommended new and amended site certificate conditions (see Attachment 1 of this staff report).

## FACILITY OVERVIEW

The Stateline Wind Project is a 222 megawatt (MW) operational, wind energy generation facility, comprised of two distinct geographic units, located in north Umatilla County, near the city of Helix. Stateline 1 & 2 (Unit 1) includes 186 wind turbines and has a peak generating capacity of up to 123 MW. Vansycle II (Unit 2) includes 43 wind turbines with a peak generating capacity of 99 MW. There are two certificate holders for this facility - FPL Energy Vansycle, LLC and FPL Energy Stateline II, Inc, both subsidiaries of NextEra Energy Resources, LLC.

## PROPOSED FACILITY MODIFICATIONS

Request for Amendment 6 is specific to Vansycle II and therefore was submitted by FPL Stateline. FPL Stateline requests Council to approve the following changes:

- Replace blades and nacelles of up to 43 existing wind turbines, resulting in an increase in maximum blade-tip height from 440 to 499 feet, reduce the minimum ground clearance from 85 to 59 feet, increase in hub height from 262.5 to 295 feet, and increase in generating capacity from 2.3 to 2.66 MW.

- Options to: 1) construct and operate 2 new 2.3 MW wind turbines, within maximum dimensions presented above, and/or 2) decommission and replace up to 4 2.3 MW existing wind turbines, within maximum dimensions presented above; for a maximum total of 45 turbines, and a maximum increase in peak generating capacity of 20 MW – from 99 to 119 MW.
- Construct and operate a 50 MW battery energy storage system (BESS), consisting of approximately 72 containers, each with a skid-mounted power transformer, bi-directional inverter and cooling unit; 18 inverters with step-up transformers; and interconnection facilities (control house, protective device and power transformer) on 11 acres within the site boundary, near the substation.
- Temporarily disturb approximately 211 acres for road widening, crane paths, rotor assembly areas, and a 20-acre staging areas; permanently disturb approximately 12 acres for up to 5 new wind turbine foundations, the BESS, and 0.44-mile segment of a 16-foot wide new road.

#### **PROCEDURAL HISTORY SUMMARY – DRAFT PROPOSED ORDER ISSUANCE TO DATE**

On November 23, 2021, the Department issued a Draft Proposed Order on RFA6 (DPO), initiating a 23-day comment period on the DPO and the complete RFA6. The Council conducted a public hearing on the Draft Proposed Order on Thursday, December 16, 2021 via teleconference/webinar. On the record of the DPO, comments from two state governmental agencies (State Historic Preservation Office and the Oregon Department of Aviation), Umatilla Board of Commissioners (as the Special Advisory Group [SAG]), four members of the public, and the certificate holder were received. On December 17, 2021, Council reviewed the DPO and comments received on the DPO, and provided recommendations to staff to be considered in the Proposed Order.

On December 21, 2021, the Department issued a Proposed Order and Notice of Proposed Order, with a 30-day opportunity for individuals that commented on the record of the DPO public hearing to submit requests for a contested case proceeding on the Proposed Order (deadline is January 20, 2022). To date, the Department has not received any requests for A contested case proceeding.

Any requests for a contested case proceeding received on or before the January 20, 2022 deadline will be provided via email to Council and available on the Council meeting webpage ([Council Meetings](#)) by January 24, 2022. If received, staff will present to Council the issues raised in the request(s) for their evaluation of whether to grant or deny the request, or remand the proposed order to the Department in accordance with OAR 345-027-0371. If there are no requests for a contested case proceeding received, Council will receive a staff presentation on proposed order revisions made in response to comments from Council and as received on the record of the DPO public hearing, and will either approve, modify or reject the proposed order as the final order, and grant or deny issuance of an amended site certificate.

## **SUMMARY OF CHANGES – DRAFT PROPOSED ORDER TO PROPOSED ORDER**

In accordance with OAR 345-027-0367(7), Council reviewed the DPO and public comments on the DPO on December 17, 2021.<sup>1</sup> Council's review and comments on the DPO and issues raised in comments received, as provided to the Department, is summarized below and incorporated into the recommended findings of fact in Section III.C. *Structural Standard*, Section III.D. *Soil Protection*, Section III.E. *Land Use*, Section III.G. *Retirement and Financial Assurance*, Section III.H. *Fish and Wildlife Habitat*, Section III.K. *Historic, Cultural and Archeological Resources*, Section III.P.1. *Public Health and Safety Standards for Wind Energy Facilities* and Section III.P.2. *Cumulative Effects Standard for Wind Energy Facilities* of the Proposed Order. All changes between the DPO and proposed order are presented in red-line/track changes format.

### *Structural Standard*

At the December 17, 2021 meeting, Council reviewed the DPO and recommended that the certificate holder's proposed amendments to Condition 140 and 141, as presented in Section III.C. *Structural Standard* of the DPO, be modified to require that the certificate holder, prior to repowering, complete a foundation suitability analysis; develop and implement a minimum annual inspection and monitoring scheme for the 43 repowered wind turbines but informed further by the results of the foundation suitability analysis, to then be submitted to the Department for review and approval in consultation with DOGAMI or a third-party consultant; and, establish that any foundation mitigation or remediation deemed necessary through the final turbine foundation suitability analysis be described and submitted to the Department to determine whether the changes require a site certificate amendment pursuant to OAR 345-027-0357(2). Based on Council input, changes were incorporated into recommended amended Condition 140 on Page 40 of the proposed order.

### *Soil Protection*

The Certificate holder commented on the Department's recommended Condition 152, as presented in Section III.D. *Soil Protection* of the DPO, requesting that the condition language be amended because the condition "requires several additional pre-construction and construction steps necessary and agency reviews that are unnecessary for the limited repair and maintenance activities required to facilitate the proposed repower."

Based on Council's review on December 17, 2021, the Department described that Condition 152, as proposed in the DPO, was intended to provide a framework for evaluating predisturbance soil conditions and ensure that there are methods for evaluating and tracking success of soil reclamation, neither of which are included in the certificate holder's Revegetation Plan, Noxious Weed Plan or specifically a part of the 1200-C permit. Council agreed that there should be a requirement for evaluating success of soil reclamation when soil impacts are represented as temporary. Based on Council input, the certificate holder's proposed change to condition language was not incorporated into the proposed order (note, condition numbering change in the proposed order from 152 to 151 on Page 49 of the proposed order).

---

<sup>1</sup> SWPAMD6Doc21 EFSC DPO Review 2021-12-17.

## Land Use

### 1. *Recommended Condition 152*

The certificate holder commented on the Department's recommended Condition 153, as presented in Section III.E. *Land Use* of the DPO, and requested that the condition, if imposed, be amended to clarify that an amended conditional use permit would only be required for the components that necessitate an amendment pursuant to Umatilla County Development Code (UCDC) 152.16(HHH)(10) (note, condition numbering changed from 153 to 152 on Page 56 of the proposed order).

Umatilla County Board of Commissioners, the appointed Special Advisory Group (SAG) for this facility, also commented on the Department's recommended Condition 153 which is now Condition 152, on Page 56 of the proposed order. The SAG requested that the condition language specify that zoning permits, per affected tax lot, would be required for any new or modified structures pursuant to UCDC 152.025.

Based on Council's review on December 17, 2021, Council directed the Department to amend the condition as requested by the certificate holder and the SAG based on the following analysis and reasons:

- UCDC 152.025 establishes that zoning permits are required for any new or modified structures. Therefore, zoning permits would be required prior to construction of the new, replacement or repowered wind turbines.
- UCDC 152.616(HHH)(10) establishes the types of changes that would require a conditional use permit amendment, including expansion of site boundary, increase in the number of wind turbines, increase in generator output by more than 25 percent or changes to private roads or access points.
- The certificate holder proposes several changes in RFA6, which may be completed in part or in totality, where if completed in part, the changes may not align with those specified in UCDC 152.616(HHH)(10). If certificate holder only repowers 43 existing wind turbines or repowers some of the 43 existing wind turbines and completes some of the 4 replacement wind turbines, neither scenario align with the UCDC 152.616(HHH)(10) criteria and therefore on their own, would not trigger a conditional use permit amendment.
- The Department consulted with Umatilla County Planning Director Robert Waldher on December 16, 2021, who confirmed concurrence with the above reasons and analysis that an amended conditional use permit would only be required for the two new wind turbines and 0.44-mile access road, if constructed.

### 2. *Recommended Condition 153*

The SAG commented on the Department's recommended Condition 154 and requested that the condition be further amended to specify that the construction and operational Emergency Response Plans required to satisfy UCDC 152.616(10)(c) be developed by the certificate holder

in coordination with emergency response providers and local fire districts, and that the plans specify that mutual aid agreements may be necessary; and that the condition require that the plans be provided to the Department and Umatilla County Planning Department (note, condition numbering changed from 154 to 153 on Page 58 of the proposed order).

Based on Council's review on December 17, 2021, it was determined that the SAG's comments were consistent with the scope and intent of UCDC 152.616(10)(c) and the requested condition amendments were incorporated into Section III.E.1 on Page 58 of the proposed order.

### 3. *Recommended Condition 154*

The certificate holder commented on the Department's recommended Condition 155, as presented in Section III.E. *Land Use*, and requested that the condition, if imposed, only apply to the proposed 2 new wind turbines because the proposed repowering of 43 wind turbines and proposed 4 replacement wind turbines represent an allowable "non-conforming" use (UCDC 152.003)<sup>2</sup> which may be altered because the proposed alteration would not result in an increase in adverse impacts from the "non-conformance" (UCDC 152.597(C)(2)) (note, condition numbering changed from 155 to 154 on Page 61 of the proposed order).

Umatilla County commented on the Department's recommended Condition 155 and requested that the certificate holder be required to provide GIS data to both the Department and the county, to adequately evaluate compliance with the 2-mile setback. Umatilla County also affirmed the interpretation on inapplicability of the 2-mile setback to the repowered and replacement wind turbines.

Based on Council's review on December 17, 2021, Council directed the Department to amend the condition which is on Page 61 of the proposed order as requested by the certificate holder based on the following analysis and reasons:

- The 43 existing wind turbines were approved and constructed in 2009, prior to adoption of UCDC 152.616(HHH)(6)(a)(3), which established a 2-mile setback requirement for wind turbines to rural residential structures.
- Based on the above timing, the 43 wind turbines represent an allowable non-conforming use pursuant to UCDC 152.003.
- The proposed repower would not result in changes in the location or proximity of the wind turbines to rural residences.
- The closest residence to a proposed repowered wind turbine is located at 0.3 miles and is a participating landowner, and as a participating landowner, the setback does not apply per UCDC 152.616(HHH)(6)(a)(3).
- The closest residence not located on property for which the site boundary is located is 1.1 miles away from the proposed repowered and replacement wind turbine. Based on this distance, there would not be an expected increase in non-conformance.

---

<sup>2</sup> UCDC 152.003 – N – defines "non-conforming structure or use" as "a lawful existing structure or use at the time this chapter or any amendment thereto becomes effective, which does not conform to the requirements of the zone in which it is located."

Based on the above reasons and analysis, the 2-mile setback was determined inapplicable to the new and replacement wind turbines.

#### 4. *Recommended Condition 155*

The certificate holder commented on the Department's recommended Condition 156, as presented in Section III.E. *Land Use*, and requested that the condition, if imposed, only apply to the proposed 2 new turbines, new access roads and BESS, excluding the requirement to consult with landowners on temporary disturbance associated with repowered and replacement turbines (note, condition numbering changed from 156 to 155 on Page 66 of the proposed order). The certificate holder expressed that landowner consultation of farm road improvements is already required by existing Condition 44.

Based on Council's review on December 17, 2021, Council directed the Department to maintain Condition 156 which is on Page 97 of the proposed order, as presented in the DPO, based on the following analysis and reasons:

- Council imposed Condition 44 in the original site certificate for the facility, based on a representation made by the applicant in the 2001 Application for Site Certificate, which applied to construction of new access roads. While the certificate holder suggests that compliance with Condition 44 would ensure that landowners potentially impacted by the approximately 211 acres of temporary disturbance would be consulted, Condition 44 was not imposed to specifically apply to the type of development actions proposed in RFA6 (i.e. temporary expansion of existing roads and crane paths, temporary disturbance from 20-acre laydown areas, and temporary disturbance at turbine pad areas).
- The intent of the Department's recommended Condition 156 was to require that the certificate holder coordinate with all agricultural landowners potentially impacted by temporary and permanent disturbance, and require that evidence be provided to the Department documenting that landowner consultation occurred. The condition would also require an explanation by the certificate holder, if landowner requests were received but then not accepted, of the reasons why landowner requests were determined infeasible.

#### 5. *UCDC 152.616 HHH(6)(a)(4)*

Mr. Hayner, attorney at law, representing Kirk Terjeson and Gunder Terjeson – landowners with property adjacent to the Vansycle II site boundary - commented that the certificate holder's proposal to potentially move or expand the road at Butler Grade would severely impact the Terjeson Ranches farmland, where the property owners have not agreed to allowing such access.

The certificate holder responded to this comment and stated that they have, "reached out and begun coordinating with them." Certificate holder describes that, if the road right-of-way is adjusted, it would impact approximately 2 acres of the Terjeson's land.

Comments provided by Mr. Hayner did not include facts or evidence, nor did they reference a standard or other legal requirement believed to apply to the issue, to support further evaluation by the certificate holder, the Department or Council. The Department notes, however, that OAR 345-025-0006(5), establishes a mandatory site certificate condition that is imposed in all EFSC site certificates and is imposed as Condition 11 in the Stateline Wind Project Site Certificate. This condition requires that the certificate holder obtain legal rights of the site of any construction activities. In order to relocate or adjust the road right of way, approval is required from Umatilla County (see recommended amended Condition 141 on Page 62 of the proposed order); any expansion or modification of the road would not be permitted under the site certificate until the certificate holder acquires the necessary legal rights, which may also include landowner approval dependent upon right-of-way law.

#### *Fish and Wildlife Habitat*

At the December 17, 2021 meeting, Council reviewed the DPO and requested that the Department's recommended Condition 158, as presented in Section III.H. *Fish and Wildlife Habitat* of the DPO, ensure that the "review and approval" of the final Noxious Weed Control Plan not be interpreted as to bind the Department to "approval" if modification or rejection of the plan is necessary (note, condition numbering changed from 158 to 156 on Page 97 of the proposed order). In response to these comments, the Department amended its recommended findings of fact to clarify the intent of the review and approval process established by the condition.

#### *Retirement and Financial Assurance*

The certificate holder requested that the bonding requirement imposed in the Department's recommended Condition 157, as presented in Section III.G. *Retirement and Financial Assurance* of the DPO, be amended to exclude the costs of repowering and replacing the existing turbines, and rely on existing Condition 109 for those associated costs. This change would narrow the scope of the bonding requirement of recommended Condition 157 to any "new turbines and/or battery storage approved in the Final Order on Amendment 6." The certificate holder asserts that the existing bonding requirements of Condition 109 should be maintained, and would continue to cover the "cost of updating the existing turbines with blades and nacelles [because, the cost of updating (repower and/or replacing the existing turbines) will decrease due to the decrease in weight of the blades and nacelles which are a factor in the cost estimate and there will be no changes to other facilities that factor into the cost estimate such as length of collector lines or access roads - i.e. the estimate will be within the range of the existing bond."

Based on Council's review on December 17, 2021 of the certificate holder's comments, Council directed staff to remove Condition 157 and incorporate the proposed changes into existing Condition 109 on Page 90 of the proposed order, for consolidation and unnecessary duplication of condition requirements.

### Historic, Cultural and Archeological Resources

Jason Allen, a Historic Preservation Specialist at the Oregon State Historic Preservation Office, concurred with the certificate holder's evaluation of historic properties within 1-mile of the Vansycle II site boundary, including the certificate holder's determination that four properties evaluated were not likely eligible for listing on the National Register of Historic Places, and therefore would not be impacted by the proposed RFA6 facility modifications.

Based on Council's review on December 17, 2021, these comments were incorporated into the recommended findings of fact and relied upon, in part, to support the recommended conclusions of law presented in Section III.K. *Historic, Cultural and Archeological Resources* on Page 107 of the proposed order.

### Public Health and Safety Standards for Wind Energy Facilities

Seth Thompson, an Aviation Planner at the Oregon Department of Aviation (ODA), commented that the certificate holder is required to submit an obstruction analysis to Federal Aviation Administration (FAA) and ODA for the new and replacement wind turbines. Mr. Thompson requested that Council impose a condition requiring that the certificate holder first submit an obstruction analysis for the new and replacement wind turbines to ODA, to then be followed by submittal to FAA, to ensure that the new and replacement wind turbines would not pose a hazard to navigable air space.

During review of pRFA6, the certificate holder provided to ODA an obstruction analysis for the 43 existing and 2 new wind turbines, at the maximum proposed new blade-tip height. The certificate holder explained that the replacement turbines would be located within 1 arc-per-second of the existing location, where ODA/FAA hazard determinations apply within 1 arc-per-second of the location and therefore were not separately included in the analysis. On September 29, 2021, ODA provided both the Department and the certificate holder with their Determination of no Hazard letter, based on the FAA Form 7460-1 obstruction evaluation data.

Council previously imposed and amended Condition 145 requiring that the certificate holder, prior to construction, demonstrate receipt of Determinations of No Hazard or other comments from FAA and ODA. Based on the No Hazard Determinations obtained by the certificate holder from ODA, included on the record of RFA6, and existing Condition 145, no changes were made in the proposed order in response to ODA's comments.

### Waste Minimization

The SAG commented on existing Condition 144 and requested that the condition be amended to require that the certificate holder or its third-party contractor be required to dispose of any waste or recycled materials at a licensed facility. Similarly, Henry Davies and Richard Jolly, on behalf of Blue Mountain Alliance, requested that Council require the certificate holder to provide a waste manifest or chain of custody from the receiving disposal facility, to ensure that the waste is disposed of at a licensed facility.



Ms. Gilbert, a member of the public, commented that RFA6 lacked specific information regarding the recycling and removal of the wind turbine blades associated with the repower. Furthermore, Ms. Gilbert expressed concern that wind turbine blades would fill up landfills, and could limit capacity for public use in the future. Ms. Gilbert also indicated that the forecasted life of the wind turbines when originally approved by council was 20 to 25 years, and questioned why the entire life [of the turbine blades] would not be utilized.

Based on the Council review on December 17, 2021, amendments to Condition 144 were incorporated into the proposed order on Page 122, including specifying that waste and recycled materials were required to be received by a licensed facility, and that the certificate holder be required to demonstrate, prior to construction, an evaluation of practicable means for recycling turbine parts.

#### *Cumulative Effects Standard for Wind Facilities*

The certificate holder commented on the recommended findings of fact presented in the DPO Section III.P.2. RFA6 proposes a 0.44-mile new road segment to interconnect an existing turbine string road to the proposed location of the two new wind turbines. The certificate holder identified that this new road segment was not accurately represented in the recommended findings of fact of Section III.P.2.

Based on Council's review on December 17, 2021, the following recommended findings of fact were incorporated into Section III.P.2., beginning on Page 129 of the proposed order.

- In RFA6, Table 3 identifies that the proposed 0.44-mile new road segment would be 16-feet in width.
- The proposed land area for the new road is the same width approved for existing, facility roads in the site certificate.
- RFA6 Figures 3-B and 3-C presents the location of the proposed 0.44-mile new road segment and demonstrates that the road would provide access from an existing turbine string to the location of the proposed 2 new wind turbines, and would be located within the existing, approved site boundary.
- Access to the proposed 2 new wind turbines is necessary for both construction and operation.

Based on these recommended findings of fact, the Department recommends Council find that the proposed 0.44-of a mile new road segment would be constructed in a manner that minimizes land area and adverse environmental impacts.

#### *Comments on Draft Amended Site Certificate*

The certificate holder commented on the Vansycle II description presented in the draft amended site certificate in DPO Attachment A, including a request to update the number of wind turbines from 43 to 45, remove the reference to 2.3 MW capacity, and update the overall capacity from 99 to 118.68 MW. The Department considers these changes to be administrative

and consistent with the changes proposed in RFA6, and therefore were incorporated into the Proposed Order Attachment A (shown in red-line).

The certificate holder commented that, because the facility modifications proposed in RFA6 may not commence at the same time or even at all, that the site certificate include language clarifying that conditions applicable to the proposed RFA6 facility modifications may be satisfied based on the applicability of the condition to the phase or facility component within a given timeframe. The certificate holder cited ORS 469.300(6) as the basis. The Department recommends Council consider this proposed approach to be both consistent with past Council actions on site certificates with the potential for phased construction and allowable within the context of ORS 469.300(6).

## **COUNCIL SCOPE OF REVIEW**

### *Contested Case Requests*

There are varying procedural steps outlined in OAR 345-027-0371 depending on whether there are requests for contested case.

If there are one or more requests for contested case, the Council has three options.

1. Approve the contested case request. This would require Council to determine one or more issues raised in a contested case request are significant issues of fact or law that may affect the Council's determination that the facility meets applicable laws and Council standards.
2. Remand the proposed order to staff. If Council determines that an issue raised in a contested case request could be settled in a manner satisfactory to the Council through an amendment to the proposed order, Council may remand the proposed order to staff with specific direction
3. Reject the contested case request. If the Council determines that all issues raised in contested case requests are not significant issues of fact or law that may affect the Council's determination that the facility meets applicable laws and Council standards, then Council would proceed with staff's presentation under the no request for contested case scenario below.

### *Proposed Order Review*

If there are no requests for contested case, the Council will receive a presentation from staff on the proposed order and will adopt or modify the proposed order and issue a Final Order, which would grant approval of an amended site certificates; or, the Council may reject the Proposed Order and deny approval of RFA6.

If Council adopts the proposed order as the final order, the only changes the Department recommends be made would be administrative in nature. Examples of recommended changes include updating Department “recommended findings” to “Council findings” and updates to the procedural history (Section I.D. of the proposed order). There are no proposed substantive changes recommended for the final order.

**RECOMMENDED COUNCIL ACTION**

The Department recommends Council adopt the proposed order as the final order and grant issuance of an amended site certificate.

**ATTACHMENTS:**

Attachment 1: Proposed Order on Amendment 6