



Oregon

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To: Energy Facility Siting Council

From: Sarah Esterson, Senior Policy Advisor; Duane Kilsdonk, Compliance Officer

Date: January 14, 2022

Subject: Agenda Item H (Information Item): Council Review of Golden Hills Wind Project, Construction Compliance for the January 28, 2022 EFSC Meeting

INTRODUCTION

The Oregon Department of Energy (Department) is responsible for monitoring and enforcing the requirements of site certificates issued by the Energy Facility Siting Council (Council). As part of the Siting Compliance Program, the Department conducts review of compliance documentation submitted by certificate holders and performs site inspections; and coordinates its compliance with review and local, state and tribal governments, as applicable. In addition, the Department responds to requests for site inspection and complaints.

The purpose of this staff report is to summarize the Department's review and response, as described above, to complaints received and compliance issues observed in September and December 2021 during the construction of the Golden Hills Wind Project, a 202 megawatt (MW) wind facility currently under construction in Sherman County, Oregon. The certificate holder for the Golden Hills Wind Project Site Certificate is Golden Hills Wind Farm, LLC, a subsidiary of Avangrid Renewables, LLC.

SUMMARY OF COMPLIANCE ISSUES AND RESPONSES

Compliance issues and responses presented below represent two parallel issues at the Golden Hills Wind Project, which are under review by the Department:

- 1) Issue 1 - related to excessive disturbance to agriculturally productive soils/topsoil management
- 2) Issue 2 - related to erosion and compliance with the 1200-C National Pollutant Discharge Elimination System Permit (NPDES)

While these issues are different, they are interconnected. For example, failure to adhere to the requirements of the 1200-C NPDES permit would have impacts to adjacent agricultural areas from erosion runoff, in addition to waters of the state for which the 1200-C NPDES specifically applies. Therefore, the summary below applies to both issues. Where a distinction between the issues is important, the issue is denoted in parenthesis as (Issue 1) or (Issue 2).

On August 19, 2021, Compliance Officer Duane Kilsdonk notified certificate holder via email of receipt of a phone complaint from a local farmer regarding dust, site stability and topsoil management issues at the site. Department Compliance Officer Kilsdonk requested that the certificate holder provide all compliance documentation for conditions applicable to dust control, site stabilization and topsoil management (Conditions CON-SP-01, GEN-SP-01 and PRE-LU-08). On August 24, 2021, the requested information was provided to the Department by the certificate holder.

On August 23, 2021, a formal complaint was filed by 11 tenant farmers and landowners with the Department. The complaint expressed concerns regarding excessive disturbance; and, excessive impacts to agriculturally productive soils from erosion, compaction and lack of adequate topsoil management. The complaint was provided to the certificate holder on September 1, 2021.

On September 1, 2021, Compliance Officer Duane Kilsdonk and technical consultant Ryan Lewis of Haley-Aldrich conducted a site inspection where numerous concerns of potential non-compliance with the Oregon Department of Environmental Quality's (DEQ) 1200-C permit were identified. Compliance with this permit is required per conditions: GEN-SP-01 and GEN-MC-02 (OAR 345-025-0006(3)), and was relied upon, in part, to ensure avoidance of unnecessary erosion to protect agricultural lands (Land Use standard, OAR 660-033-0130(37)(b)(B)). These concerns were provided to DEQ's Mike Kennedy for review. Department Senior Policy Advisor Sarah Esterson provided the Department's concerns via email to the certificate holder on September 8, 2021, requesting a response/corrections by September 17, 2021. On September 17, 2021, the requested information was provided to the Department by the certificate holder.

On October 4, 2021, DEQ's Mike Kennedy issued an Enforcement Action letter for failure of the certificate holder to: adequately implement wind erosion/dust control; adequately sequence the clearing and grading to reduce the acreage of disturbed area; implement a Natural Buffer; and, install protective measures at intermittent stream crossings. (Issue 2)

On November 5, 2021, Department Senior Policy Advisor Sarah Esterson conducted a site visit and met with Avangrid Senior Developer Matt Hutchinson, Construction Manager Colton Wilson, and representatives from Sherman County Soil and Water Conservation District to discuss reclamation and remediation efforts, and concerns about site stability during the winter/rainy season and significant extent of construction-related disturbance. (Issue 1)

On November 12, 2021, Department Senior Policy Advisor Sarah Esterson conducted a phone conference with Avangrid Senior Developer's Matt Hutchinson and Brian Walsh; and, Construction Manager Colton Wilson where overall issues of ongoing non-compliance related to site certificate conditions and Council's Soil Protection and Land Use standards were discussed. Senior Policy Advisor Sarah Esterson provided a verbal violation warning, where Avangrid representatives agreed to provide a response within 30-days. On December 16, 2021, the certificate holder provided a written response. The Department, in consultation with its third-party consultant from Hart Crowser, reviewed the certificate holder's response. Based on review, the Department believes the response lacked specificity related to the extent of topsoil and erosion impacts and the measures to be implemented for restoration of agriculturally

productive soils. The Department will issue notification to the certificate holder requiring that a Corrective Action Plan be submitted to address these issues. (Issue 1)

On December 8, 2021, Compliance Officer Duane Kilsdonk and technical consultant Kevin Woodhouse of Haley-Aldrich conducted a site inspection where significant concerns of potential non-compliance with the DEQ's 1200-C permit were identified. On December 13, 2021, Compliance Officer Duane Kilsdonk notified the certificate holder of potential non-compliance issues with 9 site certificate conditions, all of which rely on or require compliance with the 1200-C permit requirements. On December 14, 2021, Compliance Officer Duane Kilsdonk and DEQ's Mike Kennedy conducted a joint-agency site visit, where numerous violations of the 1200-C NPDES permit (Condition GEN-SP-01) were identified. (Issue 2)

On December 15, 2021, the certificate holder provided notification of non-compliance with site certificate requirements and described that a "Stop Work" order had been issued at the site. Certificate holder affirmed that "all construction activities under Mortenson's control will cease until erosion control issues are properly addressed." The certificate holder also committed to hiring an independent Professional Engineer or Certificate Erosion Control Lead to direct the installation and maintenance of erosion control measures. The adequacy of these corrective actions will continue to be reviewed by the Department through frequent site visits and evaluation of the certificate holder's contractor inspection records. (Issue 2)

On December 21, 2021, DEQ issued a pre-enforcement notice to the certificate holder for the following violations: discharges of sediment to Demoss Canyon; failure to stabilize slope at the construction activity at Haven Lane; failure to implement a natural buffer, failure to install best management practices to stabilize disturbed soils and control stormwater velocity flows to prevent erosion into waters of the state; failure to submit a revised Erosion Sediment Control Plan to DEQ; failure to maintain the site, failing to provide notice of discharge within 24-hour, and failing to implement corrective actions. Prior to this notice, on December 17, 2021 the certificate holder provided corrective action plans to DEQ and the Department. (Issue 2)

NEXT STEPS

The Department will continue to provide updates to Council on its evaluation of compliance with site certificate conditions and applicable state rules.