



Oregon

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To: Energy Facility Siting Council

From: Kellen Tardaewether, Senior Siting Analyst

Date: February 25, 2022

Subject: Agenda Item B (Information, Hearing and Possible Action Items):
Obsidian Solar Center – Staff Report on the Proposed Order on Application for Site Certificate (ASC) for the February 25, 2022 EFSC Meeting

Attachments:

Attachment 1: [Department's Proposed Order on Application for Site Certificate](#) (Hyperlink)

Attachment 2: Hearing Officer's Proposed Contested Case Order*

*Note: reference table presenting 9 contested case issues/issue statements is provided as Attachment 2 cover page

Attachment 3: Draft Final Order (with red-line changes)

Attachment 4: Scrivener Errors to Proposed Contested Case Order Filed by Parties

STAFF RECOMMENDATION

The Oregon Department of Energy (Department) recommends that the Energy Facility Siting Council (Council) adopt the Department's Proposed Order and Hearing Officer's Proposed Contested Case Order as the Final Order on the Application for Site Certificate (ASC) and grant issuance of a site certificate for the Obsidian Solar Center, a proposed 400 megawatt (MW) solar photovoltaic energy generation facility to be located in Lake County.

AGENDA ITEM OVERVIEW

For this agenda item, Council will:

- First, receive a presentation from the Department's Senior Siting Analyst, Kellen Tardaewether, on the Proposed Order (see Attachment 1 of this staff report). During and/or following the presentation, Council will have the opportunity to deliberate on the evaluation of compliance with Council standards and applicable rules and statutes for any issue not evaluated through the contested case process.
- Then, Council will receive a presentation from Council's counsel, Jesse Ratcliffe, Oregon Department of Justice Senior Assistant Attorney General, on: 1) the contested case proceeding; 2) reasoning and conclusions as presented in the Hearing Officer's Proposed Contested Case Order on 9 issues (see Attachment 2 of this staff report)¹; and, a 3) summary of scrivener errors to the Proposed Contested Case Order identified

¹ Reference table presenting 9 contested case issues/issue statements is provided as Attachment 2 cover page.

by the parties (see Attachment 4 of this staff report). Council will have the opportunity to deliberate on the Hearing Officer's Proposed Contested Case Order and will take an unofficial vote (straw poll) on whether to adopt, modify or reject the facts, legal opinion and conclusions presented in the Proposed Contested Case Order into the Final Order.

- Council will then review potential material changes to the Department's Proposed Order, based on the outcome of the straw-poll vote.
 - Based on staff's recommendation that Council adopt the Hearing Officer's Proposed Contested Case Order, proposed material changes are presented in a "draft" Final Order as Attachment 3 of this staff report. The draft final Order is provided as an attachment to this staff report to support the parties and limited parties in understanding the scope of the material change hearing. If Council's straw-poll modifies or rejects the Hearing Officer's Proposed Contested Case Order for any issue, material changes would either be presented at that time by Council's counsel Jesse Ratcliffe or the material change hearing would be stayed until a future hearing in order to provide the parties and limited parties an opportunity to review those changes in advance of the hearing.
- Depending on the outcome of the straw-poll vote, Council may open a hearing for limited parties and parties to provide comments on material changes to the Department's Proposed Order (see red-line changes presented in Attachment 3 of this staff report). Following the close of the hearing, Council will have the opportunity to deliberate.
- Council will then have the opportunity to adopt, modify or reject the Hearing Officer's Proposed Contested Case Order and Department's Proposed Order as the Final Order and either grant or deny issuance of a site certificate.

This format is subject to change based on Council deliberation and straw-poll vote outcomes.

PROPOSED FACILITY

The facility is proposed to include up to 400 MWs of solar photovoltaic (PV) energy generation equipment (modules, posts, inverter/transformer units, electrical collection system), to occupy or cover up to 3,590 acres (6.1 sq. miles) in north Lake County, Oregon. Proposed related or supporting facilities include approximately 2 miles of 115 kilovolt (kV) transmission line, a 34.5 kV electrical collection system, up to 4 collector substations (approximately 1 acre each), a 115/500 kV step-up substation (on approximately 3 acres), up to 2 operations and maintenance (O&M) building(s), Supervisory Control and Data Acquisition (SCADA) System, site access/gates, approximately 50 miles of internal/perimeter roads, and 7-foot tall perimeter fencing. Proposed related or supporting facilities also include centralized or dispersed battery storage systems, which include long-duration flow batteries (as opposed to lithium ion battery storage technology), cell stack, balance of plant, all contained within battery storage enclosures. The facility, if approved, may be built in phases or in its entirety upon construction commencement.

PROCEDURAL HISTORY

The process for seeking approval of an EFSC site certificate includes 7 phases comprised of applicant information requirements, public and reviewing agency comment opportunities, public issuance of recommendations to Council by the Department, informational meetings and public hearings, a contested case proceeding, Council review and final decision-making

authority. The seven phases and proceeding timeframe for this ASC are presented in Table 1 below.

Table 1: Procedural History Summary for Obsidian Solar Center ASC

Milestone	Responsible Party	Date
Phase 1		
Notice of Intent	Applicant	Jan 16, 2018
Phase 2		
Preliminary Application for Site Certificate	Applicant	Sep 25, 2018
Phase 3		
Application for Site Certificate	Applicant	Oct 30, 2019
Phase 4		
Draft Proposed Order (DPO)	Department	Mar 12, 2020
Public Hearing on the DPO	EFSC/Department	Jul 20, 2020
Review of DPO and Comments	EFSC	Aug 21, 2020
Phase 5		
Proposed Order and Notice of Contested Case	Department	Oct 9, 2020
Phase 6		
Contested Case Proceeding	Hearing Officer/Parties	Nov 9, 2020 – Jan 26, 2022
Phase 7		
Review of Proposed Order and Proposed Contested Case Order	EFSC	Feb 25, 2022
Final Decision on Approval/Denial of Site Certificate	EFSC	Feb 25, 2022 or TBD

REVIEW OF PROPOSED ORDER

Below is an overview of the Council standards, applicable laws and statutes; and, the recommended site certificate conditions as presented in the Department’s Proposed Order for the proposed facility.

IV.A. General Standard of Review: OAR 345-022-0000 (Page 20)

The Department recommends that **General Standard of Review Conditions 1 through 10** be imposed consistent with Council’s Mandatory Condition requirements at OAR 345-025-0006 and OAR 345-025-0010 and to ensure that the proposed facility would comply with all other applicable Oregon statutes and administrative rules. [OAR 345-022-0000]

IV.B. Organizational Expertise: OAR 345-022-0010 (Page 29)

The Department recommends that **Organizational Expertise Conditions 1 through 5** be imposed to ensure that the applicant fulfills its obligation to design, construct and operate the proposed facility in compliance with Council standards and all site certificate conditions, and in a manner that protects public health and safety, as well as its ability to restore the site to a useful, non-hazardous condition. [OAR 345-022-0010]

IV.C. Structural Standard: OAR 345-022-0020 (Page 32)

The Department recommends that **Structural Standard Conditions 1 through 4**, which include Mandatory Conditions OAR 345-025-0006(12 through 14), be imposed to ensure that the facility is designed, constructed and operated in a manner that would avoid dangers to human safety and the environment from seismic and non-seismic hazards. [OAR 345-022-0020]

IV.D. Soil Protection: OAR 345-022-0022 (Page 38)

The Department recommends that **Soil Protection Conditions 1 and 2** be imposed to demonstrate that, taking into account mitigation, the design, construction, and operation of the proposed facility is not likely to result in a significant adverse impact to soils.

IV.E. Land Use: OAR 345-022-0030 (Page 44)

The Department recommends that **Land Use Conditions 1 through 7** be imposed to demonstrate that the proposed facility complies with the statewide planning goals adopted by the Land Conservation and Development Commission (LCDC) and applicable substantive criteria from the Lake County Zoning Ordinance and Comprehensive Plan. Further, the Department recommends the Council find an exception to Goal 3 is justified under OAR 345-022-0030(4)(c) and ORS 469.504(2)(c).

IV.F. Protected Areas: OAR 345-022-0040 (Page 82)

Based on recommended findings in the Proposed Order, the Department recommends Council find, taking into account mitigation, that the design, construction and operation of the proposed facility are not likely to result in significant adverse impacts to any protected area as defined by OAR 345-022-0040, which includes an evaluation of impacts from noise, increased traffic, water use, wastewater disposal, visual impacts of facility structures to protected areas.

IV.G. Retirement and Financial Assurance: OAR 345-022-0050 (Page 93)

The Department recommends that **Retirement and Financial Assurance Conditions 1 through 5**, which includes Mandatory Conditions OAR 345-025-0006(7), (8), (9), and (16), be imposed to demonstrate that the proposed facility site can be restored to a useful, non-hazardous condition at the end of the facility's useful life, should either the applicant (certificate holder) stop construction or should the facility cease to operate. Further, the Department recommends that the Council find that the applicant has a reasonable likelihood of obtaining a bond or letter of credit in a form and amount satisfactory to the Council to restore the site to a useful, non-hazardous condition and comply with the Council's Retirement and Financial Assurance standard. [OAR 345-022-0050]

IV.H. Fish and Wildlife Habitat: OAR 345-022-0060 (Page 106)

The Department recommends Council impose **Fish and Wildlife Habitat Conditions 1 through 11** to demonstrate that the design, construction and operation of the proposed facility is consistent with the Oregon Department of Fish and Wildlife's (ODFW) habitat mitigation goals and standards, as set forth in OAR 635-415-0025.

IV.I. Threatened and Endangered Species: OAR 345-022-0070 (Page 121)

Based on recommended findings in the Proposed Order, the Department recommends Council find that the design, construction, and operation of the proposed facility are not likely to cause

a significant reduction in the likelihood of survival or recovery of a fish, wildlife, or plant species listed as threatened or endangered by Oregon Department of Fish and Wildlife (ODFW) or Oregon Department of Agriculture (ODA).

IV.J. Scenic Resources: OAR 345-022-0080 (Page 123)

The Department recommends Council impose **Scenic Resources Condition 1** to demonstrate that visibility of proposed facility structures, vegetation loss and landscape alterations would not cause a significant adverse impact to identified scenic resources and values.

IV.K. Historic, Cultural, and Archaeological Resources: OAR 345-022-0090 (Page 129)

The Department recommends Council impose **Historic, Cultural and Archeological Condition 1 and 2** to demonstrate that, taking into account mitigation, the proposed facility is not likely to result in significant adverse impacts to historic, cultural or archaeological resources that have been listed on, or would likely be listed on the National Register of Historic Places (NRHP); and for privately owned land, archaeological objects, as defined in ORS 358.905(1)(a), or archaeological sites, as defined in ORS 358.905(1)(c); and for public lands, archaeological sites, as defined in ORS 358.905(1)(c).

IV.L. Recreation: OAR 345-022-0100 (Page 140)

Based on the findings and conclusions provided in the Proposed Order, the Department recommends Council find that the design, construction, and operation of a facility would not likely result in significant adverse impacts to “important” recreational opportunities identified in the analysis area.

IV.M. Public Services: OAR 345-022-0110 (Page 146)

The Department recommends Council impose **Public Services Conditions 1 through 4** to demonstrate that the proposed facility is not likely to result in significant adverse impacts on the ability of public and private service providers to supply sewer and sewage treatment, water, stormwater drainage, solid waste management, housing, traffic safety, police and fire protection, health care, and schools.

IV.N. Waste Minimization: OAR 345-022-0120 (Page 163)

The Department recommends Council impose **Waste Minimization Condition 1** to demonstrate that the applicant would minimize the generation of solid waste and wastewater, and that the waste generated would be managed to minimally impact surrounding and adjacent areas.

IV.P.1. Siting Standards for Transmission Lines: OAR 345-024-0090

The proposed facility includes an approximately 2-mile 115-kV transmission line. The proposed transmission line corridor would be 60 feet in width and would extend approximately 2 miles from the proposed collector substation in Area A to the proposed 115/500 kV step-up substation in Area D. The Department recommends Council impose **Siting Standards for Transmission Lines Condition 1** to demonstrate that the limit for electric fields from transmission lines of not more than 9 kV per meter at one meter above the ground surface in areas that are accessible to the public as defined in OAR 345-024-0090(1) is met.

IV.Q.1. Noise Control Regulations: OAR 340-035-0035 (Page 170)

The Department recommends Council impose **Noise Control Condition 1** to address noise generated from construction activities. The Department also recommends **Noise Control Condition 2** which demonstrates compliance with the ambient noise degradation standard, and that facility-generated noise must not increase the ambient hourly L10 or L50 noise levels at any noise sensitive property by more than 10 dBA, with ambient noise levels established based on noise measurements taken at an appropriate noise measurement location (point on the noise sensitive property line nearest to the noise source). Based on the findings of fact and conditions in the Proposed Order, the Department recommends that the Council find that the proposed facility would comply with the Noise Control Regulations in OAR 340-035-0035(1)(b)(B).

IV.Q.2. Removal-Fill (Page 184)

Based on the findings presented in the Proposed Order, the Department recommends Council find that under Oregon Removal-Fill Law (ORS 196.795 through 196.990) and Department of State Lands (DSL) regulations (OAR 141-085-0500 through 141-085-0785), a removal-fill permit is not required because 50 cubic yards or more of material will not be removed, filled, or altered within any “waters of the state” and that no “waters of the state” would be impacted during proposed facility construction or operation.

IV.Q.3. Water Rights (Page 185)

The Department recommends Council impose **Water Rights Condition 1 and 2** to demonstrate that the proposed facility does not need a groundwater permit, surface water permit, or water right transfer under ORS Chapters 537 and 540 and OAR Chapter 690, administered water rights by the Oregon Water Resources Department (OWRD). And that Under OAR 345-022-0000(1)(b), the Council determine that the proposed facility complies with these statutes and administrative rules.

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