



Oregon

Tina Kotek, 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: Kathleen Sloan, Senior Siting Analyst

Date: January 6, 2023

Subject: Agenda Items B (Public Hearing) and H (Information Item): Oregon Trail Solar Facility: Public Hearing on the Draft Proposed Order and Council Review of Draft Proposed Order on Request for Site Certificate Amendment 1 for the January 19-20, 2023 EFSC Meeting

Attachments: Attachment 1: Draft Proposed Order on Request for Site Certificate Amendment 1
Attachment 2: Comments Received on Draft Proposed Order on Request for Site Certificate Amendment 1*
(*any comments received after the date of this staff report will be provided in Supplemental Council Packet Materials prior to January 20, 2023 meeting)

STAFF RECOMMENDATION

The Oregon Department of Energy's (Department) Draft Proposed order on Request for Amendment 1 of the Oregon Trail Solar Site Certificate recommends the Energy Facility Siting Council (EFSC or Council) approve the requested site certificate amendment and grant issuance of a first amended site certificate, subject to compliance with existing, recommended amended and new site certificate conditions.

FACILITY OVERVIEW

The Oregon Trail Solar Facility is an approved, but not yet constructed, energy generation facility to include any combination of wind and solar photovoltaic energy generation components not to exceed 41 megawatts (MW), including up to 16 wind turbines or up to 400 acres of solar photovoltaic energy generation equipment within two approved micrositing areas: 12,638 acres for wind and 1,228 acres for solar facility components.¹

¹ The Oregon Trail Solar Facility Site Certificate originated from the Montague Wind Power Facility Site Certificate, as authorized in the 2020 Final Order on Amendment 5 of the Montague Wind Power Facility Site Certificate, which allocated approved facility components into three, mirror site certificates for three facilities (Montague Wind Power, Montague Solar Facility and Oregon Trail Solar Facility).

CHANGES PROPOSED IN AMENDMENT REQUEST

The certificate holder requests to amend Condition 24 to allow an extension of the construction commencement date from August 30, 2022 to August 30, 2025. The construction completion deadline is tied to the date of construction commencement; therefore, the proposed Condition 24 amendment would also extend the completion date (three years from commencement date, as specified in Condition 25).

The certificate holder also requests to amend Condition 50(b) to adjust the circumstances for which a tribal cultural monitor will need to be on-site during facility construction.

PROCEDURAL HISTORY

On August 19, 2021, Oregon Trail Solar, LLC submitted preliminary Request for Amendment 1 of the Oregon Trail Solar Facility Site Certificate (RFA1) to the Department. Following five months of review and coordination with state, tribal and local governments on the changes proposed in the amendment request, and changes in fact or law², the Department determined RFA1 to be complete and on December 23, 2022 issued its Draft Proposed Order on Amendment 1. On the same day, the Department issued a public notice of a comment period on RFA1 and the Draft Proposed Order (DPO) extending from December 23, 2022 through January 19, 2023; and, of a January 23, 2023 hybrid (in-person/remote) public hearing where interested individuals may provide written or oral testimony on the DPO and RFA1. Following the close of the record, Council will receive a staff presentation on the DPO and issues raised in comments received, and will have an opportunity to provide comments to the Department for consideration in their drafting of the Proposed Order.

As of the date of this staff report, the Department has not received any written comments on RFA1 or the Draft Proposed Order on RFA1. Any comments that are received will be provided to the Council and certificate holder in advance of the January 19, 2023 hearing.

STAFF EVALUATION OF AMENDMENT REQUEST AND SUMMARY OF DRAFT PROPOSED ORDER

To evaluate changes in fact or law as is required for an amendment to extend construction deadlines, the certificate holder conducted literature and field surveys. For many Council standards, the literature and field surveys confirmed that no changes occurred from Council's prior analysis as presented in the 2019 Final Order on Amendment 4 and 2020 Final Order on Amendment 5 of the Montague Wind Power Facility Site Certificate. For Council and the public's reference, the DPO presents the sources reviewed by the Department and certificate holder to confirm whether any changes in fact or law had occurred, and, then incorporates/presents the prior facts related to resources protected by Council standards.

Based on review of literature and field survey results, as applicable, the Department concluded that there are no changes in fact or law that would impact Council's prior findings of fact or conclusions of law for the following standards:

² For a request for amendment to extend the deadlines for beginning or completing construction, Council must first consider any changes in fact or law since the date the current site certificate was executed to determine whether such changes would impact its prior findings of compliance with applicable laws and Council standards (OAR 345-027-0375).

- Structural OAR 345-022-0020
- Soil Protection OAR 345-022-0022
- Protected Areas OAR 345-022-0040
- Retirement and Financial Assurance OAR 345-022-0050
- Scenic Resources OAR 342-022-0080
- Recreation OAR 345-022-0100
- Public Services OAR 345-022-0110
- Waste Minimization OAR 345-022-0120
- Cumulative Effects Standard for Wind Energy Facilities OAR 345-024-0015
- Noise Control Regulations OAR 340-035-0035
- Removal Fill Law OAR 141-085-0500 through 141-085-0785
- Water Rights OAR 690 Divisions 310 and 380

Standards where there were changes in fact or law, or recommended substantive condition language changes, are presented below:

III.A. GENERAL STANDARD OF REVIEW: OAR 345-022-0000 P. **ERROR! BOOKMARK NOT DEFINED.**-13

Department recommends Council make the following new findings of fact:

- This is the first construction commencement deadline extension request for this site certificate. The certificate holder is only allowed to request one more.
- Council is authorized to grant a three-year construction commencement and completion deadline extension pursuant to OAR 345-027-0385(3)(a).

Department recommends Council amend the following conditions:

- Amend Condition 24 to authorize the construction commencement deadline extension.
- Amend Condition 25 to remove boiler-plate carry over language from older site certificates and unnecessary rule language.
- Amend Condition 27 to remove required maximum dimensions and specifications for facility components, replaced by reference to a description of facility components the site certificate.

III.B. ORGANIZATIONAL EXPERTISE: OAR 345-022-0010.....P. 13-17

Department recommends Council make the following new findings of fact:

- Certificate holder (Oregon Trail Solar, LLC) is a project-specific, member-managed LLC and relies upon the experience, expertise and access to technical and financial resources of its parent company (Avangrid Renewables, LLC) to meet the standard.
- The parent company is the sole member of the LLC; as the sole member, the parent company directs the LLC to permit, design, construct, operate and retire the facility
- Evidence of the parent company’s commitment to continue supporting the certificate holder, as an LLC, is provided via reference to similarly structured LLC-parent company certificate holders - Montague Solar Facility (currently under construction) and Montague Wind Power Facility (in operation since 2019).
 - Montague Solar Facility and Montague Wind Power Facility are currently and have maintained compliance with site certificate requirements.

- EFSC holds approximately \$14 million in bonds from Liberty Mutual Insurance Company issued to the certificate holders of Montague Solar Facility and Montague Wind Power Facility.
- Facility assets of up to \$65 million would be held by the certificate holder once the facility is constructed/operational

III.E. LAND USE: OAR 345-022-0030..... P.32-40

Department recommends Council make the following new findings of fact related to the exception to Goal 3, *Preservation of Agricultural Lands*, previously taken by Council for siting of the solar facility components in exclusive farm use-zoned land:

- Local economic benefits from facility construction that could be realized include use of up to 17 local businesses including RV parks, fuel providers, hardware stores, rock suppliers, hotels and restaurants; and, annual tax payments to Gilliam County of \$800k+
- Local economic benefits from facility construction/operation include landowner lease agreements, which have been executed and provided to Council.
- Local economic benefits from facility construction/operation also include certificate holder implementation of local programs: Pioneer Community Development Corporation and the Gilliam County Soil and Water Conservation District (estimated \$254,000 each over 15 years) to support the County in addressing a housing shortage, and fund irrigation efficiency upgrades, annual grass treatments, and fencing, to benefit local agriculture.
- Minimal impacts to agriculture include use of up to 400 acres within the 1,228 acre micrositing area, which represents less than 1 percent within Gilliam County and less than 0.05% of lands available within the subject tracts.

Department recommends Council impose the following condition:

- Recommended new Land Use condition requiring that the certificate holder demonstrate that the above-described local projects (Pioneer Community Development Corporation and the Gilliam County Soil and Water Conservation District) have been implemented and that the results of the program be reported to the Department.

III.G. RETIREMENT AND FINANCIAL ASSURANCE: OAR 345-022-0050 P.56-65

Department recommends Council make the following new findings of fact:

- Current labor rates and unit costs were used to update the previous facility retirement cost estimate for previously approved wind, solar and battery components, resulting in updated estimate of \$7 million in 2022 dollars.
- Liberty Mutual Insurance Company issued a letter dated July 12, 2022 affirming its commitment to issue a bond up to \$10 million.

III.H. FISH AND WILDLIFE HABITAT: OAR 345-022-0060 P.56-65

Department recommends Council make the following new findings of fact:

- Impacts to fish and wildlife habitat will only result if wind facility components within the wind micrositing corridors are constructed, equal to approximately 2.4 acres of Category

2, 3 and 4 habitat (solar facility components would be constructed entirely within Category 6 habitat, or agricultural lands).

- A fully executed and recorded Declaration of Conservation Easement and habitat map of available 6 acre mitigation area provided to Council.

Department recommends Council amend the following condition:

- Amend Condition 93 to clarify that the requirements of the Habitat Mitigation Plan will only apply if wind facility components are constructed.

III.I. THREATENED AND ENDANGERED SPECIES: OAR 345-022-0070..... P.70-78

Department recommends Council amend the following conditions:

- Amend Condition 94 to clarify the requirements of preconstruction surveys conducted to identify the presence of Washington ground squirrels (WGS), and follow-up checks if construction does not commence within 1-year of the preconstruction surveys, and the extent of habitat delineation (for Category 1 and 2) if WGS or WGS colonies/borrows are identified.
- Amend Condition 95 to remove a requirement for T&E plant species due to the results of both field and literature reviews included in RFA1; and, remove a requirement to complete avian use studies due to the lack of clarity in purpose/value of the results of the study in facility design, mitigation or otherwise.

III.K. HISTORIC, CULTURAL, AND ARCHAEOLOGICAL RESOURCES: OAR 345-022-0090 P.90-97

Department recommends Council make the following new findings of fact:

- 2022 records search and surveys conducted for RFA1 identified no new resources within analysis area.

Department recommends Council amend the following condition:

- Amend Condition 50(b) to provide more flexibility for how a decision to monitor, or continue to monitor, is made between the CTUIR and the certificate holder during construction.

III.N. WILDFIRE PREVENTION AND RISK MITIGATION: OAR 345-022-0115 P.112-133

Department recommends Council make the following findings of fact:

- The analysis area has a moderate risk of wildfire.
- Draft Wildfire Mitigation Plan (WMP) includes a description of procedures, standards and timeframes for inspecting facility electrical components, and a set of vegetation management procedures and other preventative actions and programs by component to reduce wildfire risk, and minimize risks to the health and safety of the public and responders and resources in the event of wildfire.

Department recommends Council amend the following condition:

- Amended Condition 60 will require the submittal of a final WMP that includes all the applicable measures include in the Draft WMP (Attachment E of the DPO) and requires certificate holder review and update every 5 years after Year 1 of operations and include in the annual report for the facility.

III.P. PUBLIC HEALTH AND SAFETY OF WIND ENERGY FACILITIES: OAR 345-024-0010..... P.136-139

Department recommends Council amend the following conditions:

- Amend Condition 67 to better address the potential impacts from structural failure of wind components, including a requirement that certificate holder develop and provide to the Department a clear protocol for safety inspections, monitoring, documentation, and adhere to the 72-hour reporting requirement.

RECOMMENDED COUNCIL ACTION

The Department recommends that the Council find, based on a preponderance of the evidence on the record, that the site certificate may be amended as requested. The Department also recommends that the Council find that the facility, with proposed RFA1 changes, complies with the General Standard of Review OAR 345-022-0000 and OAR 345-027-17 0375. For these reasons, the Department recommends Council review the Draft Proposed Order at the January 20, 2023 Council meeting and take action to either approve the DPO, or recommend changes to be incorporated into a Proposed Order to be prepared by the Department.

ATTACHMENTS:

Attachment 1: Draft Proposed Order on Request for Site Certificate Amendment 1

Attachment 2: Public Comments Received on DPO and Request for Site Certificate Amendment 1 (to be updated and provided in Supplemental Council Packet materials by January 20, 2023)