



Oregon

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To: Energy Facility Siting Council

From: Kellen Tardaewether, Senior Siting Analyst

Date: July 5, 2023

Subject: Agenda Items B (Public Hearing) and H (Information Item): Boardman to Hemingway Transmission Line: Public Hearings on the Draft Proposed Order and Possible Council Review of Draft Proposed Order on Request for Site Certificate Amendment 1 for the July 17-19, 2023 EFSC Meeting

Attachments: Attachment 1: [Draft Proposed Order on Request for Site Certificate Amendment 1](#) [hyperlink]
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 the July 19, 2023 meeting)

STAFF RECOMMENDATION

The Oregon Department of Energy's (Department) Draft Proposed Order (DPO) on Request for Amendment 1 (RFA1) of the Boardman to Hemingway Transmission Line 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.

APPROVED FACILITY OVERVIEW

The Boardman to Hemingway Transmission Line is an approved facility that includes an approximate 300 mile (275 miles in Oregon) electrical transmission line (primarily 500 kilovolt (kV)) that crosses five counties in Oregon, Morrow, Umatilla, Union, Baker, and Malheur counties. Approved related or supporting facilities include the Longhorn Substation in Boardman, Oregon, communication stations, access roads, pulling and tensioning sites and construction laydown areas.

CHANGES PROPOSED IN AMENDMENT 1 REQUEST

RFA1 seeks Council approval to (a) add alternative route corridors for the transmission line on three properties to accommodate requests by landowners to re-locate the facility on their land to minimize impacts while being able to meet design criteria; (b) add and refine of the location of roads resulting from additional design and engineering review associated with the approved

and proposed RFA1 route alternatives; (c) amend language of site certificate conditions to support implementation. Proposed RFA1 site boundary additions include approximately 8.8 miles of 500-kV transmission line alternatives, and approximately 45.9 miles of access road changes associated with the approved route and routes in RFA1, as detailed in the below table.

Table 1: RFA1 Proposed Alternative Route and Access Road Additions¹

Proposed Site Boundary Additions	County	Length of Addition – Transmission Line (miles)	Length of Addition – Access Road (miles)	Area of Addition (acres)	Description of Site Boundary Addition
Little Juniper Canyon Transmission Line Alternative ¹	Morrow	1.4	1.4	78.7	Shifted transmission line to the west to minimize impacts to proposed solar facility
Access Road Changes in Morrow County	Morrow	NA	4.2	61.9	Road design changes
Access Road Changes in Umatilla County	Umatilla	NA	3.4	71.3	Road design changes
Access Road Changes in Union County	Union	NA	1.8	36.7	Road design changes
True Blue Gulch Transmission Line Alternative ²	Baker	4.6	8.6	422.8	Adjusted transmission line to the west and south to minimize noise and visual impacts
Durbin Quarry Transmission Line Alternative ³	Baker	2.8	2.1	130.0	Shifted transmission line to avoid crossing ODOT quarry
Access Road Changes in Baker County	Baker	NA	17.0	95.5	Road design changes
Access Road Changes in Malheur County	Malheur	NA	7.4	139.1	Road design changes
TOTAL	NA	8.8	45.9	1,036.0	NA

Notes:

¹ The Little Juniper Canyon Transmission Line Alternative would be an alternative to 1.3 miles of Previously Approved transmission line.

² The True Blue Gulch Transmission Line Alternative would be an alternative to 2.9 miles of Previously Approved transmission line.

³ The Durbin Quarry Transmission Line Alternative would be an alternative to 2.8 miles of Previously Approved transmission line.

Source: B2HAMD RFA1 2023-06-08, Table 4.1-1. Proposed Site Boundary Additions

¹ The route and road additions are “additive;” certificate holder therefore would have more options and flexibility to accommodate landowner preferences and final facility design needs, however, the final facility will ultimately select one approved route, approved alternative route, or proposed routes in RFA1. Actual acreage/disturbance impacts from the facility will be significantly less than approved in the ASC and evaluated in the DPO.

Recommended Amended and New Site Certificate Condition Summary

RFA1 Attachment 6-1 presents the certificate holder's proposed changes to the description of the site boundary, approved transmission line corridors and access roads; and amendments to site certificate conditions. Based on the evaluation presented in DPO Section III. *Evaluation of Council Standards*, as applicable based on the certificate holder's proposed change, the Department's recommended changes to the site certificate and conditions are presented in the draft amended site certificate (Attachment 1 of the DPO).

Other Department-recommended changes to conditions include administrative corrections and substantive changes to support certificate holder implementation and Department review and enforcement.

PROCEDURAL HISTORY FOR RFA1

December 7, 2022 - the certificate holder submitted pRFA1. The Department reviewed pRFA1 to determine whether or not the request contained sufficient information for the Council to make findings.

December 15, 2023 - the Department issued Public Notice that pRFA1 had been received as required by OAR 345-027-0360(2).

January 27, 2023 - the Department notified the certificate holder that pRFA1 was incomplete and requested additional information.

June 8, 2023 - following receipt and review of the additional information requested, the Department notified the certificate holder that pRFA1 was complete.

June 14, 2023 - the Department posted the complete RFA1 to its project webpage and issued a Public Notice of a comment period on the complete RFA and DPO.

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 July 17-19, 2023 hearings and EFSC Meeting.

SCOPE OF COUNCIL REVIEW (OAR 345-027-0375)

For amendments to the site certificate that would add area to the site boundary, the Scope of Council Review under OAR 345-027-0375 requires that Council determine whether the preponderance of evidence on the record supports the following conclusions:

1. That the portion of the facility within the area added to the site boundary by the amendment complies with all laws and Council standards applicable to an original site certificate application; and
2. The amount of the bond or letter of credit required under OAR 345-022-0050 is adequate.

Because the certificate holder is proposing to add additional road and transmission line route options to the site boundary, the findings of fact and conclusions of law in the DPO focus on whether the portions of the facility within the area added to the site boundary by RFA1 comply

with all laws and Council standards applicable to an original site certificate application. The Scope of Council's Review for RFA1 does not include findings of fact or conclusions of law that apply to the approved facility as described in the ASC and *Final Order on ASC*, including transmission line routes and related or supporting facilities.

STAFF EVALUATION OF AMENDMENT REQUEST AND SUMMARY OF DRAFT PROPOSED ORDER

III.A. General Standard of Review: OAR 345-022-0000 p. 24-27

To issue an amended site certificate, the Council must determine that the evidence on the record, including information submitted to comply with Council-imposed site certificate conditions, demonstrates it is more probable than not that the certificate holder will comply with applicable standards for the areas added to the site boundary proposed in RFA1. The evaluation of requirements of the General Standard of Review (findings based on a preponderance of evidence on the record) are addressed in the recommended findings of facts and conclusions of law in the sections in the DPO, as summarized in this staff report. The facts and evidence in the record for RFA1, as well as the *Final Order on ASC*, are directly incorporated and or by reference in this order.

Recommended Amended Conditions as provided in Draft Amended Site Certificate, Attachment 1 of the DPO:

- General Standard of Review Condition 9, Site Certificate page 64: Monitoring/reporting under the Revegetation and Reclamation Plan is incorporated into the Noxious Weed Plan due to approved mitigation of temporary impacts treated as a permanent impact. Deleted to not conflict with overall reporting structures under the Revegetation and Reclamation Plan and Noxious Weed Plan (See also Recommended Amended Fish and Wildlife Habitat Condition 1);
- General Standard of Review Condition 11, Site Certificate page 23: Adds the proposed alternative routes to condition.

III.B. Organizational Expertise: OAR 345-022-0010 p. 28-31

Based on the recommended findings of fact in this order, there are not substantively new or different resources or impacts resulting from the proposed RFA1 site boundary additions that would necessitate a different level of organizational expertise as evaluated in the *Final Order on the ASC*. For these reasons, the Department recommends Council rely on its findings and conditions in the *Final Order on ASC*, which are summarized in DPO.

Recommended Amended Conditions as provided in Draft Amended Site Certificate, Attachment 1 of the DPO:

- Organizational Expertise Condition 7, Site Certificate page 51: Clarifying/implementation language added.

III.C. Structural Standard: OAR 345-022-0020 p. 31-40

The analysis area for the Structural Standard includes the area within the proposed RFA1 site boundary additions, or approximately 1,036 acres extending across portions of Morrow, Umatilla, Union, Baker and Malheur counties. These areas would be located in the same vicinity as the approved site boundary; therefore, the seismic and non-seismic hazards evaluated in the *Final Order on the ASC* will not significantly differ for the proposed RFA1 site boundary additions. In the DPO, the Department recommends Council rely on its findings and conditions in the *Final Order on ASC*, which are incorporated and applied to the RFA1 analysis area as well as an analysis of the site-specific information in the areas proposed in RFA2.

Recommended Amended Conditions as provided in Draft Amended Site Certificate, Attachment 1 of the DPO:

- Structural Standard Condition 1, Site Certificate page 52: Condition amendments included to support effective implementation and enforcement. Requiring that the geotechnical report identify potential blasting locations, in tabular format, is redundant and unnecessary given the requirements of the Blasting Plan.

III.D. Soil Protection: OAR 345-022-0020 p. 41-47

Of the 187 acres impacted, 129 acres would be restored and 58 acres would be permanently impacted by siting of facility infrastructure including 500 kV transmission towers and new and substantially modified access roads.

Table 2: Land Use and Cover Types within Proposed RFA1 Site Boundary Additions

County	Acres Within Analysis Area	High Value Farmland Soils within Analysis Area	Acres Impacted	Zone(s)	Land Cover Types
Morrow	140.6	73.8	23.8	Exclusive Farm Use	Agriculture; shrubland
Umatilla	71.3	59.4	11.1	Exclusive Farm Use; Grazing-Farm	Agriculture; forest/woodland; grassland; shrubland; riparian
Union	36.7	20.7	6.5	Exclusive Farm-Use; Agriculture-Grazing; Timber-Grazing	Forest/woodland; riparian; shrubland
Baker	648.3	479.1	120.6	Exclusive Farm Use	Forest/woodland; grassland; shrubland; riparian

Table 2: Land Use and Cover Types within Proposed RFA1 Site Boundary Additions

County	Acres Within Analysis Area	High Value Farmland Soils within Analysis Area	Acres Impacted	Zone(s)	Land Cover Types
Malheur	139.1	7.9	25.2	Exclusive Farm Use – Exclusive Range Use; Heavy Industrial	Agriculture; grassland; shrubland; open water

Recommended Amended Conditions as provided in Draft Amended Site Certificate, Attachment 1 of the DPO:

- Soil Protection Condition 1, Site Certificate page 25: Language of existing Soil Protection Condition 1 (Condition GEN-SP-01) could be interpreted to limit the ESCP to one version – a singular version finalized prior to construction. The existing condition also does not provide the Department the authority to require that changes be implemented in an ESCP. The Department must be given authority to require revisions to the ESCP because it is the ESCP that Council relies upon to ensure that erosion impacts are minimized, in compliance with the Soil Protection.
- Soil Protection Condition 2, Site Certificate page 25: Certificate holder requests that Council amend Soil Protection Condition 2 (Condition GEN-SP-02), to replace the SPCC Plan with a Hazardous Waste Management and Spill Response Plan (HWMSRP). Certificate holder agrees to include all prior representations of Final Order on ASC Attachment G-4 in the HWMSRP, and that the HWMSRP would continue to include the items detailed in the SPCC.
- Soil Protection Condition 4, Site Certificate page 25: The recommended condition amendment would only remove the process of final review and approval for elements of the plan for which neither the Department nor reviewing agencies have technical expertise or jurisdictional authority. The plan would still be required to be finalized prior to blasting activities; would be required to maintain all requirements described above; and would be required to be adhered to during all construction-related blasting activities.

III.E. Land Use: OAR 345-022-0030 p. 47-109

The proposed RFA1 site boundary additions would be located in the following zones:

- Morrow County: Exclusive Farm Use (EFU)
- Umatilla County: EFU; Grazing Farm (GF)
- Union County: EFU; Agricultural Grazing (A-2); Timber-Grazing (A-4)
- Baker County: EFU
- Malheur County: EFU-Exclusive Range Use (C-A1 and C-A2); Heavy Industrial (HI)

Under OAR 345-027-0375(3)(a), the proposed RFA1 site boundary additions must comply with the applicable substantive criteria from the comprehensive plans and land use regulations of these counties in effect on the date the preliminary request for amendment was submitted, December 7, 2022, the DPO recommends the Council find that the proposed RFA1 site boundary additions comply with the identified applicable substantive criteria and the directly applicable state statutes and rules and, therefore, complies with the Council's Land Use standard.

Recommended Amended Conditions as provided in Draft Amended Site Certificate, Attachment 1 of the DPO:

- Land Use Condition 2, Site Certificate page 26-27: Adds reference to a RFA1 proposed route to MCZO

III.F. Protected Areas: OAR 345-022-0040 p. 110-148

Newly Identified Protected Areas in RFA1 Analysis Area:

- Glass Hill Preserve/ State Natural Area (SNA); Oregon Natural Areas Plan/Glass Hill; Union County, Oregon;
- The Boardman Research Natural Area (RNA); Oregon Natural Areas Plan; Morrow County, Oregon;
- Boardman/Willow Creek RNA (Boardman Area, COA 154); Morrow County, Oregon;
- Birch Creek Cove RNA Oregon Natural Areas Plan/Birch Creek Cove PRNA); Umatilla County, Oregon;
- Government Draw RNA (Establishment Record); Union County, Oregon;
- Payette River Wildlife Area; State Wildlife Refuge or Management Areas (Payette River Wildlife Management Area/Payette River WMA), Malheur County, Oregon;
- Indian Creek RNA, Lands Designated in Federal Management Plan (Oregon Natural Areas Plan/Indian Creek RNA); Union County, Oregon;
- Rebecca Sand Hill RNA/ Area of Critical Environmental Concern (ACEC) (Four Rivers Field Office Draft Resource Management Plan and Draft Environmental Impact Statement); Washington County, Idaho;

To update the visual impact analyses for the road and route alternatives proposed in RFA 1, the certificate holder followed similar visual impact assessment methodology, described in ASC Exhibit L, Attachment L-3, approved by Council in the Final Order on ASC, subsequently upheld by the Oregon Supreme Court. Because the vast majority of site boundary additions in RFA1 are roads, which do not have a vertical visual component associated with them, the visual impact assessment was further defined by proximity, i.e., foreground (<0.5 miles), middleground (0.5 to 5 miles), or background distances (> 5 miles).

Department recommends that the the design, construction and operation the facility in areas added to the site boundary proposed in RFA1 are not likely to result in significant adverse impacts from noise, increased traffic, water use, wastewater disposal, visual impacts of facility structures or plumes, and visual impacts from air emissions to any protected area under OAR 345-022-0040 as defined in OAR 345-001-0010(26).

No new or amended site certificate conditions recommended.

III.G. Retirement and Financial Assurance: OAR 345-022-0050 p. 148-152

Restoring the site to a useful, nonhazardous condition for the transmission line route alternatives and roads proposed in RFA1 would involve the same activities as Council approved in the Final Order on ASC. The Council previously reviewed the applicant's cost estimate and confirmed that the site restoration tasks, unit costs, labor rates, and cost estimate assumptions constitute a reasonable site restoration cost for the facility. Council previously found that \$140,779,000 million (rounded to nearest \$1,000 and in Q3 2016 dollars) was adequate to restore the site to a useful non-hazardous condition. The proposed transmission line routes, if selected, would increase the overall distance by 1.8 miles, which is than 0.1% change in the total length of the facility. Existing site certificate conditions require the certificate holder to adjust the bonding for construction and for operation based upon final design and adjusting to current dollars.

No new or amended site certificate conditions recommended.

III.H. Fish and Wildlife Habitat: OAR 345-022-0060 p. 152-165

Fish and wildlife surveys and protocols approved in the Final Order on ASC were implemented and followed for RFA1. Surveys included: terrestrial visual encounter (TVES); pygmy rabbit; Washington ground squirrel (WAGS); avian (for target species: great gray owl, flammulated owl, northern goshawk and American three-toed woodpecker); and noxious weeds.

Construction activities would result in approximately 170 acres of temporary impacts to Category 2, 3 and 5 habitats. Siting of facility infrastructure would result in approximately 51 acres of permanent impacts to Category 2, 3 and 5 habitats.

Recommended Amended Conditions as provided in Draft Amended Site Certificate, Attachment 1 of the DPO:

Fish and Wildlife Habitat Condition 1, Site Certificate page 33: Because the certificate holder proposes to mitigate the temporal loss of habitat for all temporary impacts to Category 2, 3 and 5 by including equivalent acres within the permanent lands secured for long-term habitat mitigation, the Department recommends Council amend Fish and Wildlife Habitat Condition 1 to allow reduced monitoring if temporary impacts are otherwise mitigated through revegetation and compensatory mitigation. (See also revisions associated with General Standard of Review Condition 9, to be consistent with the mitigation representation).

Fish and Wildlife Condition 2, Site Certificate page 33-34: Condition currently requires that the Vegetation Management Plan be finalized in accordance with a formal reviewing agency process, prior to construction, and be implemented during construction and operations,

however, the Plan is actually final and does not need to be finalized. Further, the Vegetation Management Plan is applicable to operation and not to construction.

III.I. Threatened and Endangered Species: OAR 345-022-0070 p. 165-168

WAGS surveys were conducted April 4-11 and 19-27 and May 5-12 and 20-28, 2022 and included the area within a 1,000-foot buffer of suitable habitat. One WAGS colony was found within the ½-mile analysis area (the Little Juniper Canyon Alternative in Morrow County). WAGS are a state-listed endangered species. Council previously imposed T&E Species Condition 1 (Condition CON-TE-01) which precludes any ground-disturbing activities during construction to occur within WAGS-habitat. The condition also requires that if any WAGS are identified during the 3-year validity period of the surveys within areas of anticipated ground-disturbance, but after construction has commenced, that the certificate holder develop and avoidance and impact minimization plan.

T&E plant surveys were conducted at the Little Juniper Canyon Alternative and Durbin Quarry alternative. One population of Snake River goldenweed was found within the proposed RFA1 site boundary additions (the Durbin Quarry alternative). This population is located within and expands beyond a planned pulling and tensioning area. Council previously imposed T&E Species Condition 2 (Condition CON-TE-02) which precludes any ground-disturbing activities during construction from occurring within 33-feet of T&E plant species; or requires that protective matting be placed over the T&E plants if direct impacts are unavoidable.

No new or amended site certificate conditions recommended.

III.J. Scenic Resources: OAR 345-022-0080 p. 168-174

In preparation of RFA1, certificate holder reviewed the 47 applicable federal and local land use management plans or development codes within the 10-mile analysis area of the facility approved in the Final Order on ASC to determine if there had been updates to these plans that may identify new scenic resources. Based on this review of applicable land use plans, 23 of the 47 plans or codes have been updated or replaced by a new plan since the ASC. The review of these plan updates did not identify any new significant or important scenic resources and values.

Recommended Amended Conditions as provided in Draft Amended Site Certificate, Attachment 1 of the DPO:

- Scenic Resources Condition 2, Site Certificate page 36: Certificate holder proposed minor condition amendment is recommended for Scenic Resources Condition 2, changing Natina finish to patina finish.

III.K. Historic, Cultural, and Archaeological Resources: OAR 345-022-0090 p. 175-183

In preparation of RFA1, certificate holder evaluated and surveyed for cultural, historical, and archaeological resources with similar methods as was done for the ASC. Record searches were

done to identify previously recorded archaeological and historic sites for all site boundary additions proposed in RFA1, and that might be encountered during the field surveys. Phase 1 field surveys consists of completed surveys of an intensive pedestrian inventory of the entire direct analysis area to which the applicant had right of entry to access for surveys. Any additional surveys required to complete an inventory of 100 percent of the final selected route, as well as any necessary subsurface inventory or evaluation efforts, would be conducted during Phase 2. Phase 2 is anticipated to occur after the site certificate has been issued, but prior to construction, when site access has been secured for all properties as captured in Historic, Cultural, and Archaeological Resources Condition 2.

DPO Table 21: Potential Impacts to Historic, Cultural, Archeological Resources for RFA1, provides the results from the surveys conducted in preparation of RFA1, which identifies if a resource is newly identified (not identified in the ASC) or if it was previously identified, in both cases, certificate holder provides an updated impact assessment based on the proximity of the road or route segment proposed in RFA1 to each resource and proposed or update mitigation measures.

During the review of the ASC, the Department compiled all the inventoried resources, proposed avoidance and mitigation measures associated with resource type, which include more specific mitigation requirements for Oregon Trail segments in each county into tables and added them to the Historic Properties Management Plan (HPMP) as Appendix A.1 *Inventory Tables with Management under OAR 345-022-0090*. The certificate holder adds the resources identified above to the HPMP Appendix A.1 Inventory Tables in RFA1 Attachment 7-14 in redline for convenient identification. Under applicable Historic, Cultural and Archeological Resources Condition 2, the Appendix A.1 Inventory Tables would be finalized and submitted based on final design and final routes selected and submitted to the Department prior to construction of the facility, or phase or segment of the facility.

Recommended Amended Conditions as provided in Draft Amended Site Certificate, Attachment 1 of the DPO:

- Historic, Cultural and Archeological Resources Condition 2, Site Certificate page 37: changes reference from Final Order on ASC to Final Order on RFA1 for submission requirements of the HPMP.

III.L. Recreation: OAR 345-022-0100 p. 183-192

In preparation of RFA1, certificate holder evaluated online data, maps, reports, guidebooks, websites, and similar sources likely to provide site-specific information about recreational opportunities in the analysis area for the site boundary additions proposed in RFA1. Based on this assessment, certificate holder identified one new potential recreational opportunity, the Glass Hill Preserve/State Natural Heritage Area (SNHA). Because of the lack of public access (privately-owned lands), the lack of facilities on the site, as well as the conservation/research management intent of the Glass Hill Preserve, the Department recommends Council determine that the Glass Hill Preserve is not an important recreational opportunity.

The Department recommends the Council find that the design, construction and operation of the portions of the facility added to the site boundary in RFA1 are not likely to result in a significant adverse impact, including direct loss of recreational opportunities, potential visual, noise, and traffic-related impacts, to important recreational opportunities.

No new or amended site certificate conditions recommended.

III.M. Public Services: OAR 345-022-0110 p. 192-201

RFA1 does not propose any changes that would affect public service providers differently, that would introduce any new components or related or supporting facilities requiring new types of public service providers, or that would require changes to previously imposed conditions.

Recommended Amended Conditions as provided in Draft Amended Site Certificate, Attachment 1 of the DPO:

- Public Services Condition 3, Site Certificate page 37-38: Certificate holder proposal to remove of timeframe of submission of Helicopter Use Plan prior to construction for flexibility.
- Public Services Condition 6, Site Certificate page 38-39: Minor administrative changes.
- Public Services Condition 7, Site Certificate page 39: Delete condition because of new Wildfire Prevention and Risk Mitigation Condition 1, which has the same requirements.

III.N. Wildfire Prevention and Risk Mitigation: OAR 345-022-0115 p. 201-211

When Council drafted and approved its Wildfire Mitigation standard under OAR 345-022-0115(2), the Council established that it may allow for the issuance of a site certificate without making the findings under section (1) of the rule (which has wildfire evaluation and wildfire mitigation plan requirements) if Council finds that the facility is subject to a Wildfire Mitigation Plan (WMP) that has been approved by the OPUC.

- April 28, 2022 – OPUC approved Idaho Power's 2022 Wildfire Mitigation Plan (dated Dec. 2021) on the condition that by June 28, 2022 the certificate holder file a Supplement to the 2022 WMP which must include the items identified by the OPUC in its order. Order No. 22-133.
- August 26, 2022 – OPUC approved the 2022 WMP Supplement. Order No. 22-312.

In the DPO, the Department recommends Council find that it does not need to make findings under OAR 345-022-0115(1) because the facility² is subject to a Wildfire Protection Plan that

² Department notes that under OAR 860-300-0001(1), Scope and Applicability of OPUC Rules for Wildfire Mitigation Plans, states “The rules in this division prescribe the filing requirements for risk-based Wildfire Mitigation Plans filed by a Public Utility that provides electric service in Oregon pursuant to ORS 757.005.” The certificate holder is a Public Utility that provides electric service in Oregon, and therefore must comply with the Wildfire Mitigation Plan (WMP) rules. Which under OAR 860-300-0020(1)(a)(B), Wildfire Mitigation Plans and

has been approved in compliance with OPUC rules, and the OPUC has approved the certificate holder's WMP. To support this recommendation, the DPO discusses the following:

- Procedural History for Wildfire Mitigation Plans (WMP) in Oregon and Certificate Holder WMP;
- Summary of *Final Order on ASC* Findings for WMP;
- Summary of Findings for RFA1 to Support OAR 345-022-0115(2);
- Results of Wildfire Risk Assessment for Facility and OPUC-Approved WMP;
- Other Applicable Conditions Related to Operational Fire Risk.

Recommended New Conditions as provided in Draft Amended Site Certificate, Attachment 1 of the DPO:

- Recommended Wildfire Prevention and Risk Mitigation Condition 1, Site Certificate page 39: Substantively requires the same information as the previously adopted Public Services Condition 7. Requires that the WMP, consistent with OAR 860-300-0020(1)(a)(A) and (B), evaluate fire-related risks for the entire facility in all five counties in Oregon, regardless of certificate holder service territory or ownership of the facility. It also ensures that the required mitigation measures included in the WMP apply to the entire facility in all five counties in Oregon.
- Recommended Wildfire Prevention and Risk Mitigation Condition 2, Site Certificate page 68: During operation, on an annual basis consistent with the annual report under General Standard of Review Condition 4, requires certificate holder to submit the most recent OPUC approved WMP and a copy of OPUC approval.

III.O. Waste Minimization: OAR 345-022-0120 p. 211-213

The proposed RFA1 site boundary additions will not result in substantive changes to the type or amount of solid waste and wastewater generated during facility construction and operation. Therefore, the Department recommends Council rely on its findings and conditions in the Final Order on ASC.

Recommended Amended Conditions as provided in Draft Amended Site Certificate, Attachment 1 of the DPO:

- Waste Minimization Condition 1, Site Certificate page 40-41: Revisions for implementation.

III.P. Need for a Facility: OAR 345-023-0005 p. 213-217

In the Final Order on ASC, the certificate holder and the Council agreed that the certificate holder demonstrated that the facility was needed under the least-cost plan rule (OAR 345-023-

Updates, a WMP must identify areas that are subject to a heightened risk of wildfire within the service territory of the Public Utility, *and outside the service territory of the Public Utility but within the Public Utility's right-of-way for generation and transmission assets*. [Emphasis added] RFA1 Section 7.1.10 and in the 2022 WMP Section 3.2.1 and Section 3.2.2.1, certificate holder states that it included the facility, including the areas added to the site boundary proposed in RFA1, in its wildfire modeling (with a 1.2-mile buffer - 0.62 miles on both sides of ROW) and that the WMP applies to the facility.

0020) and the system reliability rule for electric transmission lines (OAR 345-023-0030). Certificate holder maintains, and the Department recommends Council concur that the proposed site boundary additions proposed in RFA1 would not alter the findings Council relied upon in the Final Order on ASC for the Need Standard. The DPO provides a summary of findings in the Final Order on ASC.

No Site Certificate Conditions under the Need Standard.

III.Q. Siting Standards for Transmission Lines: OAR 345-024-0090 p. 217-218

The proposed RFA1 site boundary additions do not alter or change anything related to the previously approved facility components, other than potential final location. The changes proposed in RFA1 would therefore not impact the Council's findings of fact and conclusions of law as presented in the Final Order on the ASC, the DPO provides a summary of previously evaluated facts. The Department recommends Council continue to find that the facility, with proposed RFA1 site boundary additions, satisfies the requirements of this standard, and existing conditions would apply to the proposed transmission line routes.

No new or amended site certificate conditions recommended.

III.R.1. Noise Control Regulations: OAR 340-035-0035 p. 219-235

Council has the authority to interpret and implement other state agency and Commission rules and statutes that are relevant to the siting of an energy facility,³ including noise rules adopted by the Environmental Quality Commission and previously administered by the Department of Environmental Quality (DEQ).^{4, 5}

Operational noise generated by a new industrial or commercial noise source to be located on a previously unused site must comply with two standards: the "maximum allowable noise standard" and the "ambient antidegradation standard." Under the ambient antidegradation standard, facility-generated noise must not increase the ambient hourly L10 or L50 noise levels at an appropriate measurement point by more than 10 dBA. For the proposed site boundary transmission line route additions that are the subject of RFA1, the certificate holder used these

³ See ORS 469.310 (stating that the legislative policy behind EFSC was to establish "a comprehensive system for the siting, monitoring and regulating of the location, construction and operation of all energy facilities in this state") and ORS 469.401(3) (giving EFSC the authority to bind other state agencies as to the approval of a facility).

⁴ The Environmental Quality Commission and the DEQ suspended their own administration of the noise program because in 1991 the state legislature withdrew all funding for implementing and administering the program. A July 2003 DEQ Management Directive provides information on DEQ's former Noise Control Program and how DEQ staff should respond to noise inquiries and complaints. The Directive states (among other items) that the Energy Facility Siting Council (EFSC), under the Department of Energy, is authorized to approve the siting of large energy facilities in the State and that EFSC staff review applications to ensure that proposed facilities meet the State noise regulations.

⁵ "We (the Oregon Supreme Court) conclude that EFSC had the authority to grant (1) an exception to the noise standards under OAR 340-035-0035(6)(a), and (2) a variance under OAR 340-035-0100 and ORS 467.060." B2HAPPDoc7 Supreme Court Decision Stop B2H Coalition v. Dept, of Energy 2023-03-09, pp 805-807.

same methods, comparing baseline ambient sound levels to the modeled predicted future sound levels at potentially affected Noise Sensitive Receptors (NSRs).

The evaluation in RFA1 was done for two NSRs, 3 and 5010, which fell within the analysis area of the one-half mile analysis area and out to a mile in an area with a low (26 dBA ambient noise level). The maximum modeled sound level would be 37 dBA, therefore, noise would not exceed the maximum allowable noise standard. The projected increase at NSR 3 would be 8 dBA, less than 10 dBA, which is allowed under the ambient antidegradation standard. The location of the True Blue Gulch Alternative route is 1,528 feet further away from NSR 5010 than the previously approved route, which would reduce the increase in the ambient baseline sound levels under foul weather conditions from 17 dBA to a 13 dBA increase in the ambient baseline sound levels.

The DPO provides a summary of the facts, findings, and conditions provided in the Final Order on ASC for the Council-approved exception and variance to the ambient antidegradation standard, which continues to apply to the facility and proposed site boundary additions in RFA1.

Recommended Amended Conditions as provided in Draft Amended Site Certificate, Attachment 1 of the DPO:

- Noise Control Condition 1, Site Certificate page 42-43: Implementation language added.
- Noise Control Condition 5, Site Certificate page 69: Noise Control Condition 5 as approved in Final Order on ASC was not the version that Council approved in its Contested Case Order (CCO). Revisions to Conditions are to make the Condition consistent with the CCO, as agreed upon from the contested case proceeding.

III.R.2. Removal-Fill OAR 141-085-0500 through 141-085-0785 p. 235-239

Wetlands and waters of the state (WOS) were evaluated using the same desktop and field wetland delineation methodologies as done for the ASC. The estimated impact to field surveyed/delineated wetland features includes 0.06 acres of total permanent impacts and 0.04 acres of total temporary impacts. The estimated impact to field surveyed/delineated non-wetland WOS includes 0.105 acres of total permanent impacts and 0.386 acres of total temporary impacts. The combined total permanent and temporary impacts to wetlands and waters of the state is 0.591 acres.

Council previously found that a removal-fill permit is necessary for the construction and operation of the facility and imposed several site certificate conditions to implement the requirements under the Department of State Lands (DSLs) rules which govern wetland delineations, removal-fill permits and wetland mitigation. Department recommends several revisions to these conditions for clarity and implementation, as summarized below.

Recommended Amended and Deleted Conditions as provided in Draft Amended Site Certificate, Attachment 1 of the DPO:

- Removal Fill Condition 3, Site Certificate page 47-48: The existing condition requires that, prior to construction, the CWNWMP be finalized. However, for previously surveyed areas, concurred by DSL, the CWNWMP is final. The components of the CWNWMP that need to be finalized are those that apply to unsurveyed areas. The Department recommends amending the Condition for clarity.
- Amend Removal Fill Condition 6 and remove Removal Fill Condition 5, Site Certificate page 48: Council previously adopted Removal-Fill Permit Condition 5, specifying that the conditions set forth in the removal-fill permit are conditions of approval in the site certificate. Additionally, Council imposed Removal-Fill Condition 6 to ensure that the removal-fill permit is updated prior to construction of the facility and any impacts to wetlands or WOS. However, Removal-Fill Condition 5 and 6 contained redundant requirements to comply with the conditions set out in the removal fill permit. To reduce redundancy and to clarify that the removal fill permit conditions apply to pre-construction, construction, and operation of the facility, including the proposed RFA1 site boundary additions, the Department recommends Council remove Removal-Fill Condition 5 and amend Removal-Fill Condition 6.

III.R.3. Water Rights p. 239-240

In the Final Order on the ASC, the Council found that the certificate holder had established that it can obtain adequate water for construction and operation of the facility from municipal water service providers in the vicinity of the facility, and would not need a groundwater permit, surface water permit, or water right transfer. The scope and extent of construction activities associated with facility components located within the proposed RFA1 site boundary additions would not change the volume of water needed for construction or require a water permit.

No Water Right Site Certificate Conditions imposed in Final Order on ASC.

III.R.4. Fish Passage: OAR 635-412-0035 p. 241

The proposed RFA1 site boundary additions will not result in stream crossings where new artificial obstructions, or substantial modifications to existing obstructions, on any waters would occur.

Council previously imposed Fish Passage Condition 1 (GEN-FP-01) requiring, in part, that the certificate holder confer with ODFW and seek concurrence on the evaluation of crossings and fish presence to ensure that if construction is required for a crossing of any fish-bearing stream, existing or historic, where review and approval has not yet occurred, that the approach review of and approval of fish passage designs is completed prior to construction.

No new or amended site certificate conditions recommended.

RECOMMENDED COUNCIL ACTION

Based on the recommended findings of fact and conclusions of law included in the DPO, under OAR 345-027-0375, the Department recommends Council find that the preponderance of evidence on the record, including RFA1 and the record of the *Final Order on ASC* which includes the record of the contested case on Proposed Order on ASC, supports the following conclusions:

1. The proposed RFA1 site boundary additions comply with the applicable substantive criteria under the Council's Land Use standard, as described in OAR 345-022-0030, from the date RFA1 was submitted.
2. The proposed RFA1 site boundary additions comply with the requirements of the Energy Facility Siting Statutes ORS 469.300 to 469.520.
3. The proposed RFA1 site boundary additions comply with all applicable standards adopted by Council pursuant to ORS 469.501.
4. The proposed RFA1 site boundary additions comply with all other Oregon statutes and administrative rules.
5. Taking into account the proposed RFA1 site boundary additions, the amount of the bond or letter of credit required under OAR 345-022-0050 is adequate.

Accordingly, the Department recommends Council find that the facility, with the proposed changes, complies with the General Standard of Review OAR 345-022-0000 and OAR 345-027-0375, that the Council approve Request for Amendment 1 of the Site Certificate, and issue the first Amended Site Certificate.

ATTACHMENTS

Attachment 1: [Draft Proposed Order on Request for Site Certificate Amendment 1](#) [hyperlink]

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 the July 19, 2023 meeting)