



Oregon

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To: Energy Facility Siting Council

From: Chase McVeigh-Walker, Senior Siting Analyst

Date: May 17, 2024

Subject: Agenda Item B (Public Hearing): Wagon Trail Solar Project, Public Hearing on the Draft Proposed Order for the May 30-31, 2024 EFSC Meeting

Attachments: Attachment 1: Draft Proposed Order
(any comments received after the date of this staff report will be provided to Council in Supplemental Council materials prior to May 30-31, 2024 meeting)

STAFF RECOMMENDATION AND PUBLIC HEARING

The Oregon Department of Energy's (Department) Draft Proposed Order (DPO) on the Complete Application for Site Certificate (ASC) for the Wagon Trail Solar Project (proposed facility) recommends that the Energy Facility Siting Council (Council) find that Wagon Trail Energy Center, LLC (applicant), a wholly owned indirect subsidiary of NextEra Energy Resources, LLC, provided sufficient evidence in the Application for Site Certificate (ASC) to demonstrate that the proposed facility, with recommended conditions, satisfies the requirements of applicable Council standards and other state statutes and local ordinance provisions. The Draft Proposed Order is provided as Attachment 1 of this staff report.

A public comment period is now open on the DPO and ASC. The comment deadline for written comments to be submitted to the Department is June 7, 2024 at 5:00 PM. The Department recommends the Council allow the record to remain open for the certificate holder to respond to public comments received until June 10, 2024 at 5:00 P.M., or later, if requested by the certificate holder.

PROJECT OVERVIEW

The proposed facility is a 500 MW solar photovoltaic energy generation facility. The facility would be located within an approximately 7,450-acre (11.64 sq. miles) site boundary in Morrow County. Other proposed components include a battery energy storage system (lithium-ion batteries); power collection system; up to two substations; operation and maintenance building; Generator Step Up (GSU) transformer; 0.6 mile overhead 230 kV transmission line; perimeter fencing, access roads and staging areas.

DRAFT PROPOSED ORDER PROCEDURAL HISTORY

The Department issued the DPO on May 7, 2024, along with a Public Notice of a 31-day comment period extending from May 7, 2024 through June 7, 2024, unless otherwise extended by Council. A public hearing on the DPO order will be held on May 30, 2024 with opportunities for remote and in-person participation. The public hearing provides interested individuals an opportunity to provide written or oral testimony on the DPO and ASC.

The Department intends to present the DPO and issues raised in comments received on the record of the DPO public hearing at the June 14, 2024 Council meeting, where Council will have the opportunity to review and deliberate potential changes in response to issues for inclusion in the proposed order Council will have the opportunity to provide comments to the Department for consideration in the Proposed Order, to be issued within 30-days following Council's review of the DPO. In conjunction with the issuance of the Proposed Order, the Department will issue a Notice of Proposed Order, notifying eligible individuals of their opportunity to request party or limited party status in the contested case proceeding.

SUMMARY OF COMMENTS RECEIVED

To date, the Department has not received any public comments or reviewing agency comments on the DPO or ASC.

REVIEW OF COUNCIL STANDARDS

The Department's evaluation and recommendations to Council on the applicant's ability to demonstrate compliance with applicable requirements is provided in the DPO (Attachment 1 of this staff report). This staff report provides an abbreviated summary of select issues and recommended conditions anticipated to be of interest to Council and members of the public.

IV.E. LAND USE: OAR 345-022-0030 (Pages 49-116)

The proposed site boundary consists of 7,450 acres of private land, located entirely within Morrow County's Exclusive Farm Use (EFU) zone. Therefore, the governing body within Morrow County (Morrow County Board of Commissioners) was appointed as the Special Advisory Group (SAG) for the proposed facility on November 20, 2020. Because the applicant elected to obtain a Council determination of compliance under ORS 469.504(1)(b), the applicable substantive criteria, as identified by the SAG, from the acknowledged comprehensive plan and land use regulations were evaluated.

The applicant evaluated compliance with the Council's Land Use standard by evaluating local applicable substantive criteria, directly applicable state statutes and rules, and the Land Conservation and Development Commission's (LCDC) administrative rules. Based on the proposed facility's exceedance of the 12 acre limit for solar photovoltaic energy generation facilities on high-value farmland, as established in the Morrow County zoning ordinance and LCDC rules, the applicant requests that Council take an exception to the statewide policy embodied in Goal 3 for Agricultural Lands. The applicant requests Council consideration of a "reasons" exception, where reasons considered appropriate by the Department include that the proposed facility and facility components would be locationally dependent, would have minimal impacts to agriculture within the subject tracts and in the surrounding area,

agricultural related economic benefit; and minimal impacts to other environmental resources protected by Council standards. After review of ASC materials, the Department recommends Council take an exception based on the specific reasons deemed appropriate.

The applicant evaluated the proposed 230 kV transmission line as an associated transmission line subject to the criteria in the Morrow County Zoning Ordinance (MCZO) Section 3.010, Subsection D.10. Based on review, the Department recommends Council find that the proposed 230 kV transmission line meets this definition and the line towers would be less than 200 feet in height (approximately 70 to 180 feet above grade depending on design and terrain). Therefore, the proposed transmission line is permitted outright in the EFU zone, subject to the criteria in MCZO 3.010.D.10.

IV.G. RETIREMENT AND FINANCIAL ASSURANCE: OAR 345-022-0050 (Pages 133-144)

The applicant evaluated compliance with the Council's Retirement and Financial Assurance standard by assessing decommissioning tasks, actions, methods, and assumptions, to provide a retirement cost estimate. The applicant estimates the proposed facility's useful life to be 50 years, and provided evidence (in the form of a letter) from an EFSC evaluated and pre-approved financial institution (Wells Fargo) to support their ability to receive an adequate bond or letter of credit in a form and amount satisfactory to restore the facility to a useful nonhazardous condition.

In its evaluation of the applicant's retirement cost estimate, the Department recommends that contingency costs for future development, administration and project management cost, and cost for maintaining a performance bond be added to the applicants estimate to find a reasonable estimate of an amount satisfactory to restore the site to a useful, nonhazardous condition. The Department's Proposed Facility Decommissioning Cost Estimate, including the adjusted contingencies is \$30.3 million (Q2 2024 dollars). Based on review of the methods and assumptions used to determine the decommissioning tasks and actions, and evidence of its ability to obtain some level of assurance of its ability to obtain a bond or letter of credit, the Department recommends Council find that the proposed facility would be consistent with the requirements of the standard.

IV.H. FISH AND WILDLIFE HABITAT: OAR 345-022-0060 (Pages 145-156)

The applicant evaluated compliance with the Council's Fish and Wildlife Habitat standard through desktop and field surveys. Based on the literature and field surveys, the proposed facility site boundary contains Category 2, 3, 4, 5, and 6 Habitat. Estimated temporary and permanent habitat impacts to habitat categories 1-5, from proposed facility construction and operation is 7.1 and 7.0 acres respectively. Estimated Category 6 temporary and permanent habitat impacts would total 3,830.5 acres.

To mitigate the temporary habitat impacts, the applicant proposes to implement a Reclamation and Revegetation Plan supported by the measures required under a Noxious Weed Control Plan, both plans to be finalized and submitted to the Department for review and approval prior to facility construction. The DPO recommends Council condition that the applicant adhere to the Reclamation and Revegetation Plan during construction, as applicable, and also operations,

to find that the revegetation methods, monitoring and success criteria are adequate to achieve restoration success of temporary impacts. Permanent habitat impacts would be mitigated through the off-site mitigation, specifically the identification and approval of a habitat mitigation area (HMA), and the implementation of enhancement actions approved in a finalized Habitat Mitigation Plan for the HMA.

IV.I. THREATENED AND ENDANGERED SPECIES: OAR 345-022-0070 (Pages 156-166)

The applicant evaluated compliance with the Council's Threatened and Endangered Species standard through desktop and field surveys, and consultation with the Oregon Department of Fish and Wildlife, the Oregon Department of Agriculture, and the Department. Based on the desktop survey, there is suitable habitat for six state-threatened, endangered, and candidate species (one mammal and five plants) within the Fish and wildlife habitat analysis area (the area within and extending 5-miles from the proposed site boundary). Of the six state-threatened, endangered, and candidate species identified as having potential to occur within the analysis area, two are known to occur within the analysis area – the Washington Ground Squirrel, and one of the five state threatened plants, Lawrence's milkvetch.

The Department recommends Council find that the applicant appropriately identified these species via protocol level surveys to inform the ASC; and, per recommended site certificate conditions, would be required to avoid previously identified habitat areas and re-evaluate all suitable habitat areas, prior to construction, and avoid and minimize all potential impacts to these species.

IV.N. WILDFIRE PREVENTION AND RISK MITIGATION: OAR 345-022-0115 (Pages 206-226)

The applicant evaluated compliance with the Council's Wildfire Prevention and Risk Mitigation standard through desktop surveys and consultation with the Morrow County Planning Department. Their evaluation found that the baseline wildfire risk within the site boundary is primarily low, but has areas of high risk. The DPO recommends Council find that the wildfire risk within the analysis area (which is the site boundary and one-half mile from the site boundary for this standard) to be low, except for areas along agricultural and residential areas, transmission and transportation corridors in the south and center of the site boundary, where the wildfire risk in these areas is moderate. The DPO recommends the Council impose four site certificate conditions that would require the certificate holder to draft, finalize, and implement a both a Construction Wildfire Mitigation Plan and an Operational Wildfire Mitigation Plan.

IV.Q. OTHER APPLICABLE REGULATORY REQUIREMENTS UNDER COUNCIL JURISDICTION (Pages 237-257)

IV.Q.1. Oregon Department of Environmental Quality (DEQ) Noise Control Regulations for Industry and Commerce: OAR 340-035-0035 (Pages 238-256)

The applicant evaluated the noise standard by conducting noise modeling of the proposed facility during operation. The modeling results indicate that proposed facility operations would exceed the maximum increases in ambient noise levels (10 decibels or 'dBA') at ten noise sensitive receptors. The DPO recommends Council find that the facility, as proposed, would not comply with the requirements of OAR 340-035-0035 without additional mitigation, including

but not limited to, changes in the final facility design. Therefore, the Department recommends Council impose Noise Control Condition 1 to require the applicant to provide the Department with; 1) Information that identifies the final design locations of all facility components to be built at the phase of development, 2) The maximum sound power level data for the facility components based on manufacturers' warranties or confirmed by other means accept; and 3) The results of the noise analysis of the final facility design performed in a manner consistent with the requirements of OAR 340-035- 0035(1)(b)(B)(iii)(IV) and (VI). The analysis will demonstrate, by phase of development, prior to construction that the total noise generated by the facility, including the transmission line, will meet the "ambient noise degradation standard" in OAR 340-035-0035(1)(b)(B)(i) and (ii) and not exceed the "maximum allowable noise standard" in OAR 340-035-0035(1)(b)(B)(i) at the appropriate measurement point for all potentially-affected noise sensitive properties.

Other Council Standards

Should any Council member like to receive an overview of any other applicable standard, please let us know in advance of June 14, 2024 and we will include that in our presentation.

DRAFT PROPOSED ORDER RECOMMENDATIONS

Based on the recommended findings of fact and conclusions of law included in the DPO, the Department recommends Council find that Wagon Trail Energy Center, LLC provided a preponderance of evidence in the ASC to demonstrate that the proposed facility, with recommended conditions, satisfies the requirements of applicable Council standards and other state statutes and local ordinance provisions.

PUBLIC COMMENT PERIOD AND NEXT STEPS

The Public Notice of the DPO initiated a public comment period on the DPO and ASC. Oral comments will be accepted at the public hearing on May 30, 2024, and written comments will be accepted through June 7, 2024 at 5:00 P.M. As explained in the Public Notice, failure to raise an issue in person or in writing prior to the close of the record of the public hearing with sufficient specificity to afford EFSC, the Department, and certificate holder an opportunity to respond to the issue precludes the Council from considering whether that issue justifies a contested case proceeding. To raise an issue with sufficient specificity, a person must present facts that support the person's position on the issue.

The Council may allow the record to remain open for the certificate holder to respond to public comments received. The Department recommends the Council direct the record to remain open for certificate holder responses until June 10, 2024 at 5:00 P.M., and authorize staff to allow further continuances if requested by the certificate holder.

Following the close of the record, the Council will review the DPO and any timely public comments received on the record of the hearing. Following Council's review of the DPO, the Department must issue a Proposed Order recommending approval, modification or denial of the request for the site certificate. The issuance of the Proposed Order will be accompanied by a public notice establishing a deadline for requests to participate in a contested case proceeding. As stated above, only those persons who comment in person or in writing on the

record of the public hearing may request to participate in a contested case proceeding on the Proposed Order.