



# 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](http://www.oregon.gov/energy)

**To:** Energy Facility Siting Council

**From:** Chase McVeigh-Walker, Senior Siting Analyst

**Date:** May 17, 2024

**Subject:** Agenda Item F (Action Item): Leaning Juniper IIA Request for Amendment 3, Council Review of Proposed Order and possible approval as Final Order for the May 30-31, 2024 EFSC Meeting

**Attachments:** Attachment 1: Proposed Order on Request for Amendment 3

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## STAFF RECOMMENDATION

1. Council Decision on Requests for Contested Case – Staff recommends Council consider any requests for contested case on the Department’s Proposed Order on Request for Amendment 3 submitted on or before May 24, 2024, at 5:00 p.m. Pacific Time; which is the deadline to submit requests. If one or more contested case requests are granted, staff recommends the Council refer the case to the Office of Administrative Hearings to initiate formal contested case proceedings.
2. Council Decision on Proposed Order – If no requests for contested case are received, or if the Council determines that no requests received identify a properly raised issue that justifies a contested case proceeding, staff recommends Council adopt the Proposed Order on Request for Amendment 3 (RFA3) as the Final Order, and issue an amended site certificate, subject to the findings, conclusions, and conditions of approval in the Proposed Order. If Council makes material changes from the Proposed Order to the Final Order, there will be a hearing on any material changes.

## BACKGROUND

On September 21, 2007, the Council issued the Site Certificate for the Leaning Juniper IIA Wind Power Facility, authorizing the construction and operation of a 279 MW wind power generation facility with up to 133 turbines, within an 8,565 acre site boundary. The facility was designed to be divided into two sections, “Leaning Juniper II North” (93 MW) and “Leaning Juniper II South” (186 MW). Since its initial approval, Council authorized two Site Certificate amendments, on November 20, 2009 and June 28, 2013.

The Final Order on Request for Amendment 1 authorized the construction and operation of up to 84 wind turbines (186 MW) and related or supporting facilities within 7,962 acres of new site boundary area, referred to as “Leaning Juniper IIB”. The previously approved facility components and site boundary became/were referred to as Leaning Juniper IIA.

The Final Order on Request for Amendment 2 authorized the division of the Leaning Juniper II Facility into two separate site certificates, the Leaning Juniper IIA Wind Power Facility and the Leaning Juniper IIB Wind Power Facility.

On February 14, 2024, Leaning Juniper Wind Power II, LLC (certificate holder), a wholly owned subsidiary of Avangrid Renewables, LLC, the U.S. division of parent company Iberdrola, S.A. filed Request for Amendment 3 of the Site Certificate for the Leaning Juniper IIA Wind Power Facility (RFA3). In RFA3, the certificate holder seeks authorization to:

- Repower 36 wind turbines (replacement of rotors, nacelles and generator; and foundation reinforcement); increase blade tip height from 404 to 453 feet.
- Temporarily disturb approximately 396.2 acres (roads, collector line, turbine pad, laydown and crane assembly areas) within a proposed micrositing corridor (herein referred to as “RFA3 repower corridor”)
- Install a new underground, 34.5 kilovolt (kV) collector line system
- Decommission two wind turbines
- New conditions (see RFA3 Attachment 1 Section VII)

### Procedural History

On September 22, 2023, the certificate holder submitted its preliminary Request for Amendment 3 (pRFA3). The Department reviewed pRFA3 to determine whether or not the request contained sufficient information for the Council to make findings.

On September 28, 2023, the Department issued Public Notice that pRFA3 had been received as required by OAR 345-027-0360(2). On November 21, 2023, the Department notified the certificate holder that the Request for Amendment was incomplete. The Department requested that the certificate holder provide additional information needed to determine compliance with several standards by December 15, 2023.

The certificate holder provided responses to the Requests for Additional Information on December 15, 2023. The Department reviewed the responses and notified the certificate holder that Request for Amendment was Complete on February 9, 2024. In the notification letter, the Department informed the certificate holder that it anticipated that the Draft Proposed Order (DPO) would be issued on or before February 29, 2024, to allow for in-person hearings to occur at the Council’s March 21-22, 2024, meeting. The Department issued the DPO and the Public Notice of the DPO on February 29, 2024.

The Public Notice of the DPO initiated a public comment period on RFA3 and the DPO, extending from February 29 through March 29, 2024. Oral comments were accepted at a public hearing held on March 21, 2024, at the Oxford Suites in Hermiston, Oregon. Council Vice-Chair Cindy Condon presided over the hearing. Council members Imes, Grail, and Beier provided

testimony during the hearing. The certificate holder also provided testimony at the public hearing. Two additional written comments were received during the public comment period; one from the Oregon Department of Aviation (a reviewing agency), and a public comment from the Oregon-California Trails Association (OCTA). However, after careful consideration, the Department determined that neither of the written comments justified changes to the findings or conditions.

The Public Notice on the DPO established March 29, 2024, as the deadline for public comments. The Council agreed to leave the record open until April 1, 2024, to allow the certificate holder an additional opportunity to respond to comments received. The certificate holder provided responses to comments on April 1, 2024. The Council reviewed the DPO and the public comments received during the public comment period at its meeting on April 19, 2024 and provided additional guidance to the Department for changes in the Proposed Order.

On April 24, 2024, the Department issued its Proposed Order recommending the Council approve RFA3, with amended recommended findings of fact and conditions of approval based on the Department's consideration of timely comments on the Draft Proposed Order, comments provided by the Council at its April 19, 2024, and additional evidence received on the record. A Public Notice of the Proposed Order was issued on the same day.

#### **STAFF EVALUATION OF AMENDMENT REQUEST AND SUMMARY OF CHANGES MADE IN PROPOSED ORDER**

The Proposed Order recommends the Council find that a preponderance of evidence on the record supports the conclusions that the proposed RFA3 changes comply with all laws and Council standards applicable to an original site certificate application; the amount of the bond or letter of credit required under OAR 345-022-0050 is adequate; and, the facility, with the proposed RFA3 changes, complies with the applicable laws or Council standards that protect a resource or interest that could be affected by the proposed change, subject to recommended conditions; and that the Council approve RFA3, subject to existing and recommended new and amended conditions.

All changes from the DPO are shown in the Proposed Order in underline/strikethrough format. Material changes include substantive changes to conditions of approval, an action, or recommendation or a reversal of an action or recommendation. Material changes do not include updated or revised findings of fact unrelated to a change in a condition. The following actions recommended in the Proposed Order differ materially from the DPO:

**Recommended Amended Site Certificate Condition 27:** The Department recommends Council amend the language of Condition 27, as reflected in the DPO, to reflect the amended Condition language for Condition 27 as reflected in the draft Third Site Certificate. (Section III.A.1., Page 21)

**Recommended Amended Site Certificate Conditions 30 and 122:** The Department recommends the Council amend both conditions by removing "appropriate" from both conditions, as it is not necessary to include to reserve the right to adjust the contingencies, and is also a subjective threshold and undefined. (Section III.G.1., Pages 64-65)

Before considering whether an issue justifies a contested case proceeding, the Council must determine that the person requesting a contested case commented in person or in writing on the record of the public hearing and properly raised each issue included in the request as provided under OAR 345-027-0371(7). After identifying the issues properly raised the Council must determine whether any properly raised issue justifies a contested case proceeding on that issue. Under OAR 345-027-0371(9), to determine that an issue justifies a contested case proceeding, the Council must find that the request raises a significant issue of fact or law that is reasonably likely to affect the Council's determination whether the facility, with the change proposed by the amendment, meets the applicable laws and Council standards included in chapter 345 divisions 22, 23 and 24. If the Council does not have jurisdiction over the issue raised in the request, the Council must deny the request.

If the Council finds that the request identifies one or more properly raised issues that justify a contested case proceeding, the Council must conduct a contested case proceeding, unless the Council finds that one or more properly raised issues could be settled in a manner satisfactory to the Council by an amendment to the proposed order, in which case the Council may deny the request as to those issues and direct the Department to amend the proposed order and issue a notice of the amended Proposed Order. If the Council finds that a request does not identify a properly raised issue that justifies a contested case proceeding, the Council must deny the request.

If no contested case requests are received, or if the Council determines that no requests identify a properly raised issue that justifies a contested case proceeding, the Council may adopt, modify, or reject the Proposed Order based on the considerations described in OAR 345-027-0375. If the Proposed Order is adopted or adopted, with modifications, the Council shall issue a Final Order granting issuance of an amended site certificate. If the Proposed Order is denied, the Council shall issue a Final Order denying issuance of the amended site certificate.

The Council's final order is subject to judicial review by the Oregon Supreme Court as provided in ORS 469.403.

### **RECOMMENDED COUNCIL ACTION**

If no requests for contested case are received, or if the Council determines that no requests received identify a properly raised issue that justifies a contested case proceeding, staff recommends Council adopt the Proposed Order on Request for Amendment 3 as the Final Order, and issue an amended site certificate, subject to the findings, conclusions, and conditions of approval in the Proposed Order. If Council makes material changes from the Proposed Order to the Final Order, there will be a hearing on any material changes.