

BEFORE THE ENERGY FACILITY SITING COUNCIL
OF THE STATE OF OREGON

In the Matter of the Site Certificate for the
Montague Wind Power Facility

REQUEST TO EXTEND CONSTRUCTION
START AND COMPLETION DEADLINE

Montague Wind Power Facility, LLC (“Montague” or “certificate holder”) holds the First Amended Site Certificate for the Montague Wind Power Facility dated June 21, 2013 and executed June 28, 2013 (“Site Certificate”). Pursuant to OAR 345-027-0030, -0050, -0060, and -0070, Montague submits for approval by the Energy Facility Siting Council (the “Council”) the following request to extend the construction start and completion deadline. Montague proposes only to extend the construction start and completion deadlines by two years (“Extension Request”). This Extension Request is organized in eight sections that address the applicable requirements set out in Chapter 345, Division 27 of the Oregon Administrative Rules to extend construction beginning and completion deadlines.

SECTION 1 INFORMATION REQUIRED UNDER OAR 345-027-0060(1)

Under OAR 345-027-0030(1), a certificate holder may request to extend the deadlines for beginning or completing construction of the facility that the Council has specified in an amended site certificate. The certificate holder shall submit a request that conforms to the requirements of OAR 345-027-0060. The following is the information required by OAR 345-027-0060(1):

- (a) *The name and mailing address of the certificate holder and the name, mailing address and phone number of the individual responsible for submitting the request.*

Response: Certificate Holder Information
Sara Parsons
Montague Wind Power Facility, LLC
c/o Iberdrola Renewables, LLC
1125 NW Couch Street, Suite 700
Portland, Oregon 97209
(503) 796-7732

(b) *A description of the facility including its location and other information relevant to the proposed change.*

Response: The facility is an electric generating facility with a generating capacity of up to 404 MWs that produces power from wind energy. The facility is located in Gilliam County, south of the town of Arlington. Section III of the First Amended Site Certificate¹ fully describes the Montague. This Extension Request does not alter the description of the facility as set forth in the First Amended Site Certificate.

(c) *A detailed description of the proposed change and the certificate holder's analysis of the proposed change under the criteria of OAR 345-027-0050(1).*

Response: Montague requests that the Council extend the construction start deadline from September 14, 2015 to September 14, 2017 and the completion deadline from September 14, 2018 to September 14, 2020. This Extension Request does not seek to change the site boundary or physical components of the Facility. Montague proposes no other changes. The certificate holder's analysis of the Extension Request under OAR 345-027-0050(1) is contained in Section 6, below.

(d) *The specific language of the site certificate, including affected conditions, that the certificate holder proposes to change, add or delete by an amendment.*

Response: The certificate holder proposes relief from the deadline contained in conditions 24 and 25 concerning construction start and completion deadlines. The Extension Request is reflected in the proposed revised conditions as set forth below, with ~~strike through~~ text indicating deletion and underlined text indicating addition:

24. The certificate holder shall begin construction of the facility by September 14, 2017~~2015~~. Under OAR 345-015-0085(9), a site certificate is effective upon execution by the Council Chair and the applicant. The Council may grant an extension of the deadline to begin construction in accordance with OAR 345-027-0030 or any successor rule in effect at the time the request for extension is submitted. [Amendment #1]

25. The certificate holder shall complete construction of the facility by September 14, 2020~~2018~~. Construction is complete when: (1) the facility is substantially complete as defined by the certificate holder's construction contract documents, (2) acceptance testing has been satisfactorily completed and (3) the energy facility is ready to begin continuous operation consistent with the site certificate. The certificate holder shall promptly notify the Department of the date

¹ First Amended Site Certificate for the Montague Wind Power Facility, pp. 2-4 (June 28, 2013).

of completion of construction. The Council may grant an extension of the deadline for completing construction in accordance with OAR 345-027-26 0030 or any successor rule in effect at the time the request for extension is submitted. [Amendment #1]

(e) *A list of the Council standards relevant to the proposed change.*

Response: Section 8, below, contains the relevant Council standards from Chapter 345, Divisions 22 and 24 of the Oregon Administrative Rules.

(f) *An analysis of whether the facility, with the proposed change, would comply with the requirements of ORS Chapter 469, applicable Council rules, and applicable state and local laws, rules and ordinances if the Council amends the site certificate as requested. For the purpose of this rule, a law, rule or ordinance is “applicable” if the Council would apply or consider the law, rule or ordinance under OAR 345-027-0070(10).*

Response: Section 8, below, demonstrates that the extension request would comply with Council siting statutes, applicable Council standards, including applicable state and local laws, rules and ordinances (see discussion of OAR 345-027-0000).

(g) *An updated list of the owners of property located within or adjacent to the site of the facility, as described in OAR 345-021-0010(1)(f).*

Response: The amendment would extend the deadlines for beginning or completing construction or change. An updated list of property owners located within 500 feet of the facility site boundary is included in Exhibit A. The list includes all property owners within 500 feet of the site boundary as required by OAR 345-021-0010(1)(f)(C) for a site located within a farm or forest zone.

The certificate holder requested up to date landowner information from Gilliam and Morrow counties for notice purposes. Dave Messenger of Gilliam County, provided Montague with the up to date landowner information via email on March 9, 2015. Lori Timmons of Morrow County provided the up to date list of property owners located within 500 feet of the site boundary via email on March 11, 2015.

SECTION 2 INFORMATION REQUIRED UNDER OAR 345-027-0060(2)

In a request to amend a site certificate, the certificate holder shall provide the information described in applicable subsections of OAR 345-021-0010(1). The certificate holder may incorporate by reference relevant information that the certificate holder has previously submitted to the Department or that is otherwise included in the Department’s administrative record on the facility.

Response: Other than the information set forth in this Extension Request, the information contained in the Application for Site Certificate, the information forming the basis for the Final Order and original Site Certificate, dated September 10 and 14, 2010

respectively, as supplemented by information forming the basis of the Final Order on Amendment #1, and the First Amended Site Certificate, dated June 21 and 28, 2013 respectively, remain relevant. Montague hereby incorporates by reference relevant information previously submitted to the Department and otherwise included in the Department's administrative record for the facility.

SECTION 3 INFORMATION REQUIRED UNDER OAR 345-027-0060(3)

Before submitting a request to amend a site certificate, the certificate holder may prepare a draft request and may confer with the Department about the content of the request. Although the Council does not require the certificate holder to prepare a draft request and confer with the Department, the Council recommends that the certificate holder follow this procedure.

Response: A representative of Montague submitted an email to the Department (Andrea Goodwin and Todd Cornett) on March 2, 2015 and conferred by telephone and by electronic mail with the Department (Eric Desmarais) on March 10, 2015 prior to submitting this Extension Request.

SECTION 4 INFORMATION REQUIRED UNDER OAR 345-027-0060(4)

(4) The certificate holder shall submit an original and two printed copies of the amendment request to the Department. Upon a request by the Department, the certificate holder must submit printed copies of the amendment request for members of the Council. In addition to the printed copies, the certificate holder shall submit the full amendment request in a non-copy-protected electronic format acceptable to the Department. The certificate holder shall provide additional copies of the amendment request to the Department upon request and copies or access to copies to any person requesting copies. If requested by the Department, the certificate holder shall send copies of the request to persons on a mailing list provided by the Department.

Response: Montague submits this Extension Request in accordance with OAR 345-027-0060(4) and will provide it in an electronic format acceptable to the Department.

SECTION 5 INFORMATION REQUIRED UNDER OAR 345-027-0030

(1) The certificate holder may request an amendment to extend the deadlines for beginning or completing construction of the facility that the Council has specified in a site certificate or an amended site certificate. The certificate holder shall submit a request that conforms to the requirements of OAR 345-027-0060 no later than six months before the date of the applicable deadline, or, if the certificate holder demonstrates good cause for the delay in submitting the request, no later than the applicable deadline.

Response: Montague has prepared this Extension Request in conformance with OAR 345-027-0060, as set forth above, and submits it with the Department before March

14, 2015, more than six months before the current construction start date of September 14, 2015.

- (2) *A request within the time allowed in subsection (1) to extend the deadlines for beginning or completing construction suspends those deadlines until the Council acts on the request.*

Response: With the submission of the Extension Request, the construction start and completion deadlines are suspended until the Council acts on the request.

- (3) *The Council shall review the request for amendment as described in OAR 345-027-0070.*

Response: Montague provides this Extension Request in accordance with the applicable requirements to facilitate the Council's review under OAR 345-027-0070. This Extension Request does not require extended review under OAR 345-027-0070(2) because the Extension Request does not propose to modify any aspect of the Site Certificate except the commencement of construction and completion dates. If the Department and the public wish to hold an optional public meeting on this request, then Montague would participate.

Under OAR 345-027-0070(10), the Council must take into account certain considerations when making a decision to grant or deny issuance of an amended site certificate. In this case, the Council must consider three factors in OAR 345-027-0070(10)(b) in addition to the factor contained in OAR 345-027-0070(10)(d). See Section 7 below for consideration of the factors required under OAR 345-027-0070(10).

- (4) *If the Council grants an amendment under this rule, the Council shall specify new deadlines for beginning or completing construction that are not more than two years from the deadlines in effect before the Council grants the amendment.*

Response:

Montague requests that the Council extend the construction start deadline from September 14, 2015 to September 14, 2017 and the completion deadline from September 14, 2018 to September 14, 2020. This Extension Request does not seek to change the site boundary or physical components of the Facility. Montague proposes no other changes.

Should the Council grant Montague's Extension Request, the Council would only be extending the construction start and completion deadlines by two years from the deadlines in effect in the First Amended Site Certificate. The Extension Request is consistent with OAR 345-027-0030(4).

- (5) *To grant an amendment extending the deadline for beginning or completing construction of an energy facility subject to OAR 345-024-0550, OAR 345-024-0590, or OAR 345-*

024-0620, the Council must find that the facility complies with the carbon dioxide standard in effect at the time of the Council's order on the amendment.

Response: This standard is not applicable to Extension Request because the Certificate is for a wind energy facility.

SECTION 6 INFORMATION REQUIRED UNDER OAR 345-027-0050(1)

Under OAR 345-027-0050(1), a certificate holder is required to submit a request to change a site certificate to design, construct, or operate an energy facility a facility in a manner different from that described in the Site Certificate if the extension request falls within OAR 345-027-0050(1)(a)-(c). Montague is obligated to submit this Extension Request as it falls within OAR 345-027-0050(1)(c), as described below.

(a) *Could result in a significant adverse impact that the Council has not addressed in an earlier order and the impact affects a resource protected by Council standards;*

Response: The Extension Request would not result in a significant adverse impact to any resource protected by applicable standards in OAR chapter 345, divisions 22 or 24.

(b) *Could impair the certificate holder's ability to comply with a site certificate condition; or*

Response: The Extension Request, if not granted, could impair Montague's ability to comply with Site Certificate conditions 24 and 25 governing construction start and completion deadlines.

(c) *Could require a new condition or a change to a condition in the site certificate.*

Response: The Extension Request does not require new conditions; it requires only relief from the deadlines in conditions 24 and 25, as discussed in the following section.

SECTION 7 CONSIDERATIONS UNDER OAR 345-027-0070(10)

In making a decision to grant or deny issuance of an amended site certificate, the Council shall apply the applicable substantive criteria, as described in OAR 345-022-0030, in effect on the date the certificate holder submitted the request for amendment and all other state statutes, administrative rules, and local government ordinances in effect on the date the Council makes its decision. The Council shall consider the following:

- (a) *For an amendment that would change the site boundary or the legal description of the site, the Council shall consider, for the area added to the site by the amendment, whether the facility complies with all Council standards;*

Response: This factor does not apply because the Extension Request would not change the site boundary or legal description of the site.

- (b) *For an amendment that extends the deadlines for beginning or completing construction, the Council shall consider:*

- (A) *Whether the Council has previously granted an extension of the deadline;*

Response: The Council previously granted an extension to the construction start and completion deadlines for Montague when it approved the First Amended Site Certificate on June 21, 2013. A second extension to the construction deadlines is warranted due to the need for additional time to implement necessary business arrangements and meet the numerous site certificate conditions that must be met prior to beginning construction.

- (B) *Whether there has been any change of circumstances that affects a previous Council finding that was required for issuance of a site certificate or amended site certificate; and*

Response: This factor does not apply to the Extension Request because no change of circumstances affecting a previous Council finding has occurred. This Extension Request does not seek to change the site boundary or physical components of the Facility. There is no change to the previously approved maximum number of turbines or maximum generating capacity of the Facility from what was originally authorized. The total number of turbines at the Facility will not exceed 269 and the total MW will not exceed 404. Accordingly, the extension request makes no changes that would alter the basis for the Council's earlier findings.

- (C) *Whether the facility complies with all Council standards, except that the Council may choose not to apply a standard if the Council finds that:*

- (i) *The certificate holder has spent more than 50 percent of the budgeted costs on construction of the facility;*

- (ii) *The inability of the certificate holder to complete the construction of the facility by the deadline in effect before the amendment is the result of unforeseen circumstances that are outside the control of the certificate holder;*
- (iii) *The standard, if applied, would result in an unreasonable financial burden on the certificate holder; and*
- (iv) *The Council does not need to apply the standard to avoid a significant threat to the public health, safety or the environment[.]*

Response: As demonstrated in Section 8, below, Montague complies with all applicable Council standards. Montague meets this criterion.

- (c) *For any amendment not described above, the Council shall consider whether the amendment would affect any finding made by the Council in an earlier order.*

Response: The Second Amendment is captured under OAR 345-027-0070(10)(b) and therefore subsection (c) does not apply.

- (d) *For all amendments, the Council shall consider whether the amount of the bond or letter of credit required under OAR 345-022-0050 is adequate.*

Response: The amount of the bond or letter of credit was reevaluated in the First Amended Site Certificate for the Montague, dated June 28, 2013 and the financial assurance is adequate to ensure restoration of the site to a useful, non-hazardous condition. This Extension Request does not seek to change the site boundary or physical components of the Facility. There is no change to the previously approved maximum number of turbines or maximum generating capacity of the Facility from what was originally authorized. The total number of turbines at the Facility will not exceed 269 and the total MW will not exceed 404. Therefore, no change in bond amount is required.

SECTION 8 COMPLIANCE WITH COUNCIL STANDARDS UNDER OAR CHAPTER 345, DIVISIONS 22 and 24

This section lists the Council standards and demonstrates that approval of this request complies with relevant standards contained in OAR chapter 345, divisions 22 and 24. Montague is an electric generating facility using wind turbine technology, therefore Division 23, which applies to nongenerating facilities, is not included herein. Similarly, inapplicable provisions of Division 24 (e.g. standards applicable to gas plants, gas storage, nongenerating facilities, etc.) are not discussed herein.

OAR 345-022-0000 General Standard of Review

OAR 345-022-0000 requires:

(1) To issue a site certificate for a proposed facility or to amend a site certificate, the Council shall determine that the preponderance of evidence on the record supports the following conclusions:

(a) The facility complies with the requirements of the Oregon Energy Facility Siting statutes, ORS 469.300 to ORS 469.570 and 469.590 to 469.619, and the standards adopted by the Council pursuant to ORS 469.501 or the overall public benefits of the facility outweigh the damage to the resources protected by the standards the facility does not meet as described in section (2);

(b) Except as provided in OAR 345-022-0030 for land use compliance and except for those statutes and rules for which the decision on compliance has been delegated by the federal government to a state agency other than the Council, the facility complies with all other Oregon statutes and administrative rules identified in the project order, as amended, as applicable to the issuance of a site certificate for the proposed facility. If the Council finds that applicable Oregon statutes and rules, other than those involving federally delegated programs, would impose conflicting requirements, the Council shall resolve the conflict consistent with the public interest. In resolving the conflict, the Council cannot waive any applicable state statute.

Response: The Council previously found that Montague complies with the requirements of the Oregon Energy Facility Siting Statutes.² The Council also previously determined compliance with all other Oregon statutes and administrative rules identified in the project order.³ The Extension Request makes no changes to the facility structures or configuration and there are no other circumstances that would alter the basis for the Council's earlier findings.

OAR 345-022-0010 Organizational Expertise

OAR 345-022-0010 requires:

(1) To issue a site certificate, the Council must find that the applicant has the organizational expertise to construct, operate and retire the proposed facility in compliance with Council standards and conditions of the site certificate. To conclude the applicant has this expertise, the Council must

² Final Order on the Montague Wind Power Facility, at p. 165 (September 10, 2010). Final Order on Amendment #1 (June 21, 2013), at p. 60.

³ Final Order on the Montague Wind Power Facility, at p. 165 (September 10, 2010). Final Order on Amendment #1 (June 21, 2013), at p. 60.

find that the applicant has demonstrated the ability to design, construct and operate the proposed facility in compliance with site certificate conditions and in a manner that protects public health and safety and has demonstrated the ability to restore the site to a useful, non-hazardous condition. The Council may consider the applicant's experience, the applicant's access to technical expertise and the applicant's past performance in constructing, operating and retiring other facilities, including, but not limited to, the number and severity of regulatory citations issued to the applicant.

- (2) *The Council may base its findings under section (1) on a rebuttable presumption that an applicant has organizational, managerial and technical expertise, if the applicant has an ISO 9000 or ISO 14000 certified program and proposes to design, construct and operate the facility according to that program.*

Response: The Council previously found that Iberdrola Renewables LLC and Montague have the organizational expertise to construct and operate Montague.⁴ There are no circumstances that would alter the basis for the Council's earlier findings.

- (3) *If the applicant does not itself obtain a state or local government permit or approval for which the Council would ordinarily determine compliance but instead relies on a permit or approval issued to a third party, the Council, to issue a site certificate, must find that the third party has, or has a reasonable likelihood of obtaining, the necessary permit or approval, and that the applicant has, or has a reasonable likelihood of entering into, a contractual or other arrangement with the third party for access to the resource or service secured by that permit or approval.*

Response: The council previously found that third party contractors have a reasonable likelihood of entering into contract arrangements with the third parties for access to the resources needed.⁵ The Extension Request makes no changes to the facility structures or configuration and there are no other circumstances that would alter the basis for the Council's earlier findings.

- (4) *If the applicant relies on a permit or approval issued to a third party and the third party does not have the necessary permit or approval at the time the Council issues the site certificate, the Council may issue the site certificate subject to the condition that the certificate holder shall not commence construction or operation as appropriate until the third party has obtained the necessary permit or approval and the applicant has a*

⁴ Final Order on the Montague Wind Power Facility, at p. 14-15. Final Order on Amendment #1, at p. 10.

⁵ Final Order on the Montague Wind Power Facility, at p. 15-17. Final Order on Amendment #1, at p. 10-11.

contract or other arrangement for access to the resource or service secured by that permit or approval.

Response: Condition 29 of the Amended Site Certificate requires the certificate holder to provide confirmation to the Department before beginning construction that the third parties have obtained the necessary permits and that the certificate holder has a contract or other arrangement with the third parties for access to the resources secured by the permits. The Extension Request seeks no changes to the facility structures or configuration and there are no other circumstances that would alter the basis for the Council's earlier findings.

OAR 345-022-0020 Structural Standard

OAR 345-022-0020 authorizes the Council to issue a site certificate without making findings with respect to the Structural Standard,⁶ but the rules also authorize the Council to impose site certificate conditions based on the requirements of OAR 345-022-0020.

Response: The Council adopted site certificate conditions to address the potential for seismic and non-seismic geologic hazards at the facility site.⁷ The Extension Request seeks no changes to the facility structures or configuration and there are no other circumstances that would alter the basis for the Council's earlier determination.

OAR 345-022-0022 Soil Protection Standard

OAR 345-022-0022 requires:

To issue a site certificate, the Council must find that the design, construction and operation of the facility, taking into account mitigation, are not likely to result in a significant adverse impact to soils including, but not limited to, erosion and chemical factors such as salt deposition from cooling towers, land application of liquid effluent, and chemical spills.

Response: The Council previously found that Montague would comply with the Soil Protection Standard.⁸ The Extension Request makes no changes to the facility structures or configuration and there are no other circumstances that would alter the basis for the Council's earlier findings.

⁶ ORS § 469.501(4).

⁷ Final Order on the Montague Wind Power Facility, at p. 114-116. Final Order on Amendment #1, at p. 12.

⁸ Final Order on the Montague Wind Power Facility, at p. 57-60. Final Order on Amendment #1, at p. 12-13.

OAR 345-022-0030 Land Use Standard

OAR 345-022-0030 requires:

(1) To issue a site certificate, the Council must find that the proposed facility complies with the statewide planning goals adopted by the Land Conservation and Development Commission.

(2) The Council shall find that a proposed facility complies with section (1) if:

(a) The applicant elects to obtain local land use approvals under ORS 469.504(1)(a) and the Council finds that the facility has received local land use approval under the acknowledged comprehensive plan and land use regulations of the affected local government; or

(b) The applicant elects to obtain a Council determination under ORS 469.504(1)(b) and the Council determines that:

(A) The proposed facility complies with applicable substantive criteria as described in section (3) and the facility complies with any Land Conservation and Development Commission administrative rules and goals and any land use statutes directly applicable to the facility under ORS 197.646(3);

(B) For a proposed facility that does not comply with one or more of the applicable substantive criteria as described in section (3), the facility otherwise complies with the statewide planning goals or an exception to any applicable statewide planning goal is justified under section (4); or

(C) For a proposed facility that the Council decides, under sections (3) or (6), to evaluate against the statewide planning goals, the proposed facility complies with the applicable statewide planning goals or that an exception to any applicable statewide planning goal is justified under section (4).

(3) As used in this rule, the “applicable substantive criteria” are criteria from the affected local government’s acknowledged comprehensive plan and land use ordinances that are required by the statewide planning goals and that are in effect on the date the applicant submits the application. If the special advisory group recommends applicable substantive criteria, as described under OAR 345-021-0050, the Council shall apply them. If the special advisory group does not recommend applicable substantive criteria, the Council shall decide either to make its own determination of the applicable substantive criteria and apply them or to evaluate the proposed facility against the statewide planning goals.

(4) The Council may find goal compliance for a proposed facility that does not otherwise comply with one or more statewide planning goals by taking an exception to the applicable goal. Notwithstanding the requirements of ORS

197.732, the statewide planning goal pertaining to the exception process or any rules of the Land Conservation and Development Commission pertaining to the exception process, the Council may take an exception to a goal if the Council finds:

(a) The land subject to the exception is physically developed to the extent that the land is no longer available for uses allowed by the applicable goal;

(b) The land subject to the exception is irrevocably committed as described by the rules of the Land Conservation and Development Commission to uses not allowed by the applicable goal because existing adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable; or

(c) The following standards are met:

(A) Reasons justify why the state policy embodied in the applicable goal should not apply;

(B) The significant environmental, economic, social and energy consequences anticipated as a result of the proposed facility have been identified and adverse impacts will be mitigated in accordance with rules of the Council applicable to the siting of the proposed facility; and

(C) The proposed facility is compatible with other adjacent uses or will be made compatible through measures designed to reduce adverse impacts.

(5) If the Council finds that applicable substantive local criteria and applicable statutes and state administrative rules would impose conflicting requirements, the Council shall resolve the conflict consistent with the public interest. In resolving the conflict, the Council cannot waive any applicable state statute.

(6) If the special advisory group recommends applicable substantive criteria for an energy facility described in ORS 469.300(10)(a)(C) to (E) or for a related or supporting facility that does not pass through more than one local government jurisdiction or more than three zones in any one jurisdiction, the Council shall apply the criteria recommended by the special advisory group. If the special advisory group recommends applicable substantive criteria for an energy facility described in ORS 469.300(10)(a)(C) to (E) or a related or supporting facility that passes through more than one jurisdiction or more than three zones in any one jurisdiction, the Council shall review the recommended criteria and decide whether to evaluate the proposed facility against the applicable substantive criteria recommended by the special advisory group, against the statewide planning goals or against a combination of the applicable substantive criteria and statewide planning goals. In making the decision, the Council shall consult with the special advisory group, and shall consider:

(a) The number of jurisdictions and zones in question;

(b) The degree to which the applicable substantive criteria reflect local government consideration of energy facilities in the planning process; and

(c) The level of consistence of the applicable substantive criteria from the various zones and jurisdictions.

Response: The Council previously concluded that Montague complies with the Land Use Standard.⁹ Based on consultation with the Gilliam County Planning Director on March 9, 2015, there have been no changes to the Zoning Ordinance since 2012. The Extension Request makes no changes to the facility structures or configuration and there are no other circumstances that would alter the basis for the Council's earlier findings.

OAR 345-022-0040 Protected Areas Standard

OAR 345-022-0040 requires that the Council find that:

(1) Except as provided in sections (2) and (3), the Council shall not issue a site certificate for a proposed facility located in the areas listed below. To issue a site certificate for a proposed facility located outside the areas listed below, the Council must find that, taking into account mitigation, the design, construction and operation of the facility are not likely to result in significant adverse impact to the areas listed below. References in this rule to protected areas designated under federal or state statutes or regulations are to the designations in effect as of May 11, 2007:

(a) National parks, including but not limited to Crater Lake National Park and Fort Clatsop National Memorial;

(b) National monuments, including but not limited to John Day Fossil Bed National Monument, Newberry National Volcanic Monument and Oregon Caves National Monument;

(c) Wilderness areas established pursuant to The Wilderness Act, 16 U.S.C. 1131 et seq. and areas recommended for designation as wilderness areas pursuant to 43 U.S.C. 1782;

(d) National and state wildlife refuges, including but not limited to Ankeny, Bandon Marsh, Baskett Slough, Bear Valley, Cape Meares, Cold Springs, Deer Flat, Hart Mountain, Julia Butler Hansen, Klamath Forest, Lewis and Clark, Lower Klamath, Malheur, McKay Creek, Oregon Islands, Sheldon, Three Arch Rocks, Umatilla, Upper Klamath, and William L. Finley;

⁹ Final Order on the Montague Wind Power Facility, at p. 57. Final Order on Amendment #1, at p. 34.

(e) National coordination areas, including but not limited to Government Island, Ochoco and Summer Lake;

(f) National and state fish hatcheries, including but not limited to Eagle Creek and Warm Springs;

(g) National recreation and scenic areas, including but not limited to Oregon Dunes National Recreation Area, Hell's Canyon National Recreation Area, and the Oregon Cascades Recreation Area, and Columbia River Gorge National Scenic Area;

(h) State parks and waysides as listed by the Oregon Department of Parks and Recreation and the Willamette River Greenway;

(i) State natural heritage areas listed in the Oregon Register of Natural Heritage Areas pursuant to ORS 273.581;

(j) State estuarine sanctuaries, including but not limited to South Slough Estuarine Sanctuary, OAR Chapter 142;

(k) Scenic waterways designated pursuant to ORS 390.826, wild or scenic rivers designated pursuant to 16 U.S.C. 1271 et seq., and those waterways and rivers listed as potentials for designation;

(l) Experimental areas established by the Rangeland Resources Program, College of Agriculture, Oregon State University: the Prineville site, the Burns (Squaw Butte) site, the Starkey site and the Union site;

(m) Agricultural experimental stations established by the College of Agriculture, Oregon State University, including but not limited to:
Coastal Oregon Marine Experiment Station, Astoria
Mid-Columbia Agriculture Research and Extension Center, Hood River
Agriculture Research and Extension Center, Hermiston
Columbia Basin Agriculture Research Center, Pendleton
Columbia Basin Agriculture Research Center, Moro
North Willamette Research and Extension Center, Aurora
East Oregon Agriculture Research Center, Union
Malheur Experiment Station, Ontario
Eastern Oregon Agriculture Research Center, Burns
Eastern Oregon Agriculture Research Center, Squaw Butte
Central Oregon Experiment Station, Madras
Central Oregon Experiment Station, Powell Butte
Central Oregon Experiment Station, Redmond
Central Station, Corvallis
Coastal Oregon Marine Experiment Station, Newport

*Southern Oregon Experiment Station, Medford
Klamath Experiment Station, Klamath Falls;*

(n) Research forests established by the College of Forestry, Oregon State University, including but not limited to McDonald Forest, Paul M. Dunn Forest, the Blodgett Tract in Columbia County, the Spaulding Tract in the Mary's Peak area and the Marchel Tract;

(o) Bureau of Land Management areas of critical environmental concern, outstanding natural areas and research natural areas;

(p) State wildlife areas and management areas identified in OAR chapter 635, Division 8.

(2) Notwithstanding section (1), the Council may issue a site certificate for a transmission line or a natural gas pipeline or for a facility located outside a protected area that includes a transmission line or natural gas or water pipeline as a related or supporting facility located in a protected area identified in section (1), if other alternative routes or sites have been studied and determined by the Council to have greater impacts. Notwithstanding section (1), the Council may issue a site certificate for surface facilities related to an underground gas storage reservoir that have pipelines and injection, withdrawal or monitoring wells and individual wellhead equipment and pumps located in a protected area, if other alternative routes or sites have been studied and determined by the Council to be unsuitable.

(3) The provisions of section (1) do not apply to transmission lines or natural gas pipelines routed within 500 feet of an existing utility right-of-way containing at least one transmission line with a voltage rating of 115 kilovolts or higher or containing at least one natural gas pipeline of 8 inches or greater diameter that is operated at a pressure of 125 psig.

Response: The Council previously found that that the proposed facility is not located in any protected area listed in OAR 345-022-0040 and that the design, construction and operation of the proposed facility, taking mitigation into account, are not likely to result in significant adverse impact to any protected area.¹⁰ The Extension Request makes no changes to the facility structures or configuration and there are no other circumstances that would alter the basis for the Council's earlier findings.

¹⁰ Final Order on the Montague Wind Power Facility, at p. 65. Final Order on Amendment #1, at p. 37.

OAR 345-022-0050 Retirement and Financial Assurance

OAR 345-022-0050 requires that the Council find that:

- (1) *The site, taking into account mitigation, can be restored adequately to a useful, non-hazardous condition following permanent cessation of construction or operation of the facility.*
- (2) *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.*

Response: The Council previously found that the Montague site, taking into account mitigation, can be resorted adequately to a useful, non-hazardous condition following permanent cessation of construction or operation of the project and that the certificate holder has demonstrated a reasonable likelihood of obtaining a bond or letter of credit.¹¹ The Extension Request proposes no changes to the facility structures or configuration and there are no other circumstances that would alter the basis for the Council’s earlier findings.

OAR 345-022-0060 Fish and Wildlife Habitat Standard

OAR 345-022-0060 requires:

To issue a site certificate, the Council must find that the design, construction and operation of the facility, taking into account mitigation, are consistent with the fish and wildlife habitat mitigation goals and standards of OAR 635-415-0025 in effect as of September 1, 2000.

Response: The Council previously found that Montague complies with the Council’s Fish and Wildlife Habitat Standard.¹² The Extension Request proposes no changes to the facility structures or configuration and there are no other circumstances that would alter the basis for the Council’s earlier findings.

OAR 345-022-0070 Threatened and Endangered Species Standard

OAR 345-022-0070 requires:

To issue a site certificate, the Council, after consultation with appropriate state agencies, must find that:

¹¹ Final Order on the Montague Wind Power Facility, at p. 22. Final Order on Amendment #1, at p. 38.

¹² Final Order on the Montague Wind Power Facility, at p. 113. Final Order on Amendment #1, at p. 40.

(1) For plant species that the Oregon Department of Agriculture has listed as threatened or endangered under ORS 564.105(2), the design, construction and operation of the proposed facility, taking into account mitigation:

(a) Are consistent with the protection and conservation program, if any, that the Oregon Department of Agriculture has adopted under ORS 564.105(3); or

(b) If the Oregon Department of Agriculture has not adopted a protection and conservation program, are not likely to cause a significant reduction in the likelihood of survival or recovery of the species; and

(2) For wildlife species that the Oregon Fish and Wildlife Commission has listed as threatened or endangered under ORS 496.172(2), the design, construction and operation of the proposed facility, taking into account mitigation, are not likely to cause a significant reduction in the likelihood of survival or recovery of the species.

Response: The Council previously determined that the proposed facility complies with the Threatened and Endangered Species Standard.¹³ The Extension Request proposes no changes to the facility structures or configuration and there are no other circumstances that would alter the basis for the Council's earlier findings.

OAR 345-022-0080 Scenic Resources Standard

OAR 345-022-0080 authorizes the Council to issue a site certificate without making findings with respect to the Scenic Resources Standard,¹⁴ but the rules also authorize the Council to impose site certificate conditions based on the requirements of the Scenic Resources Standard in OAR 345-022-0080, which requires that:

to issue a site certificate, the Council must find that the design, construction and operation of the facility, taking into account mitigation, are not likely to result in significant adverse impact to scenic resources and values identified as significant or important in local land use plans, tribal land management plans and federal land management plans for any lands located within the analysis area described in the project order.

Response: The Council previously found that Montague complies with the Scenic Resources Standard.¹⁵ The Extension Request makes no changes to the facility structures or configuration and there are no other circumstances that would alter the basis for the Council's earlier findings.

¹³ Final Order on the Montague Wind Power Facility, at p. 92. Final Order on Amendment #1, at p. 42.

¹⁴ ORS § 469.501(4).

¹⁵ Final Order on the Montague Wind Power Facility, at p. 74. Final Order on Amendment #1, at p. 43.

OAR 345-022-0090 Historic, Cultural and Archaeological Resources Standard

OAR 345-022-0090 authorizes the Council to issue a site certificate without making findings with respect to the Historic, Cultural and Archaeological Resources Standard,¹⁶ but the rules also authorize the Council to impose site certificate conditions based on the requirements of OAR 345-022-0090.

Response: The Council adopted conditions relevant to the Historic, Cultural and Archaeological Resources Standard.¹⁷ The Extension Request makes no changes to the facility structures or configuration and there are no other circumstances that would alter the basis for the Council's earlier determination.

OAR 345-022-0100 Recreation Standard

OAR 345-022-0100 requires that:

to issue a site certificate, the Council must find that the design, construction and operation of a facility, taking into account mitigation, are not likely to result in a significant adverse impact to important recreational opportunities in the analysis area as described in the project order. The Council shall consider the following factors in judging the importance of a recreational opportunity:

- (a) Any special designation or management of the location;*
- (b) The degree of demand;*
- (c) Outstanding or unusual qualities;*
- (d) Availability or rareness;*
- (e) Irreplaceability or irretrievability of the opportunity.*

Response: The Council previously found that Montague would comply with the Recreation Standard.¹⁸ The Extension Request makes no changes to the facility structures or configuration and there are no other circumstances that would alter the basis for the Council's earlier findings.

¹⁶ ORS § 469.501(4).

¹⁷ Final Order on the Montague Wind Power Facility, at p. 116-118. Final Order on Amendment #1, at p. 44.

¹⁸ Final Order on the Montague Wind Power Facility, at p. 78. Final Order on Amendment #1, at p. 45.

OAR 345-022-0110 Public Services Standard

OAR 345-022-0110 authorizes the Council to issue a site certificate without making findings with respect to the Public Services Standard,¹⁹ but the rules also authorize the Council to impose site certificate conditions based on the requirements of OAR 345-022-0110.

Response: The Council adopted site certificate conditions to address Public Services.²⁰ The Extension Request makes no changes to the facility structures or configuration and there are no other circumstances that would alter the basis for the Council's earlier determination.

OAR 345-022-0120 Waste Minimization Standard

OAR 345-022-0120 authorizes the Council to issue a site certificate without making findings with respect to the Waste Minimization Standard,²¹ but the rules also authorize the Council to impose site certificate conditions based on the requirements of OAR 345-022-0120.

Response: The Council adopted site certificate conditions to address the Waste Minimization Standard.²² The Extension Request makes no changes to the facility structures or configuration and there are no other circumstances that would alter the basis for the Council's earlier determination.

OAR 345-024-0010 Public Health and Safety Standards.

OAR 345-024-0010 requires:

To issue a site certificate for a proposed wind energy facility, the Council must find that the applicant:

(1) Can design, construct and operate the facility to exclude members of the public from close proximity to the turbine blades and electrical equipment.

(2) Can design, construct and operate the facility to preclude structural failure of the tower or blades that could endanger the public safety and to have adequate safety devices and testing procedures designed to warn of impending failure and to minimize the consequences of such failure.

¹⁹ ORS § 469.501(4).

²⁰ Final Order on the Montague Wind Power Facility, at pp. 118-123. Final on Amendment #1, at pp. 46.

²¹ ORS § 469.501(4).

²² Final Order on the Montague Wind Power Facility, at pp. 123-126. Final Order on Amendment #1, at pp. 46.

Response: The Council previously found that Montague complies with the Public Health and Safety Standards for Wind Energy Facilities.²³ The Extension Request makes no changes to the facility structures or configuration and there are no other circumstances that would alter the basis for the Council’s earlier findings.

OAR 345-024-0015 Siting Standards for Wind Energy Facilities

OAR 345-022-0015 requires:

To issue a site certificate for a proposed wind energy facility, the Council must find that the applicant can design and construct the facility to reduce cumulative adverse environmental effects in the vicinity by practicable measures including, but not limited to, the following:

- (1) Using existing roads to provide access to the facility site, or if new roads are needed, minimizing the amount of land used for new roads and locating them to reduce adverse environmental impacts.*
- (2) Using underground transmission lines and combining transmission routes.*
- (3) Connecting the facility to existing substations, or if new substations are needed, minimizing the number of new substations.*
- (4) Designing the facility to reduce the risk of injury to raptors or other vulnerable wildlife in areas near turbines or electrical equipment.*
- (5) Designing the components of the facility to minimize adverse visual features.*
- (6) Using the minimum lighting necessary for safety and security purposes and using techniques to prevent casting glare from the site, except as otherwise required by the Federal Aviation Administration or the Oregon Department of Aviation.*

Response: The Council previously found that Montague complies with the Siting Standards for Wind Energy Facilities.²⁴ The Extension Request makes no changes to the facility structures or configuration and there are no other circumstances that would alter the basis for the Council’s earlier findings.

OAR 345-024-0090 Siting Standards for Transmission Lines

²³ Final Order on the Montague Wind Power Facility, at p. 80. Final Order on Amendment #1, at p. 48.

²⁴ Final Order on the Montague Wind Power Facility, at p. 86. Final Order on Amendment #1, at p. 49.

OAR 345-024-0090 requires:

To issue a site certificate for a facility that includes any transmission line under Council jurisdiction, the Council must find that the applicant:

(1) Can design, construct and operate the proposed transmission line so that alternating current electric fields do not exceed 9 kV per meter at one meter above the ground surface in areas accessible to the public;

(2) Can design, construct and operate the proposed transmission line so that induced currents resulting from the transmission line and related or supporting facilities will be as low as reasonably achievable.

Response: The Council previously found that Montague complies with this standard.²⁵ The Extension Request makes no changes to the facility structures or configuration and there are no other circumstances that would alter the basis for the Council's earlier determination.

In sum, the Extension Request demonstrates that the proposed extensions to the construction start and completion deadlines comply with the applicable standards and will not violate any other Council standards or Site Certificate conditions. Montague therefore requests that the Council approve this request and make the requested changes to the Site Certificate for the facility.

²⁵ Final Order on the Montague Wind Power Facility, at pp. 87-88. Final Order on Amendment #1, at pp. 50.

EXHIBIT A
PROPERTY OWNER'S LIST