



Oregon

Kate Brown, Governor



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RE: Type A Review Determination on preliminary Request for Amendment 2 of the Wheatridge Wind Energy Facility Site Certificate

Dear Mr. Marshall,

On May 18, 2018, Wheatridge Wind Energy, LLC (Wheatridge or the certificate holder) submitted a preliminary Request for Amendment 2 (pRFA2) for the Wheatridge Wind Energy Facility (facility) site certificate and a request for a subsequent evaluation of the Department of Energy's (Department) April 25, 2018 Type A amendment review process determination for pRFA2 (Initial Determination). The certificate holder requests subsequent evaluation of the Type B review amendment determination request (Type B Review ADR) based on consideration of information provided in pRFA2, which had not been previously provided and therefore not considered in the Department's Initial Determination.

The proposed facility modifications in pRFA2 include construction and operation of larger wind turbines; and, installation and operation of two battery storage systems (proposed modifications), as further described below. The Department may consider, but is not limited to, the factors identified in OAR 345-027-0057(8) when determining whether to process an amendment request under Type B review. The Department's evaluation of the OAR 345-027-0057(8) factors is presented below.

Amendment Review Process

Energy Facility Siting Council (EFSC or Council) rules describe the process for Type A and Type B review of a request for amendment at OAR 345-027-0051. The table below summarizes key differences in the review phases/steps and timelines between the two processes. Council rules describe both processes in greater detail.

Review Phase/Step	Timeline	
	Type A	Type B
ODOE Issues Determination of Completeness on Preliminary Request for Amendment	Within 60 days	Within 21 days
ODOE Issues Draft Proposed Order	Within 120 days of notice of Determination of Completeness	Within 60 days of notice of Determination of Completeness
Public Hearing	At least 20 days after issuance of Draft proposed order	Not applicable
ODOE Issues Proposed Order	Within 30 days following the Public Hearing	Within 21 days of close of comment period on Draft Proposed Order
Deadline for Contested Case Requests	At least 30 days after issuance of Proposed Order	Not applicable
ODOE Review and Council Decision on Contested Case (CC) Requests	Next regularly scheduled Council meeting following deadline for CC requests	Not applicable
Contested Case Proceeding	At Council’s discretion (no specific timeline)	Not applicable
Issuance of Final Order and Amended Site Certificate	Next regularly scheduled Council meeting following deadline for CC requests	Next regularly scheduled Council meeting following issuance of PO

As presented in the above table, the key procedural difference between the Type A and Type B review is that the Type A review includes a public hearing on the draft proposed order and an opportunity for a contested case proceeding. The key timing differences between Type A and Type B review are in the maximum allowable time for the Department’s determination of completeness of the preliminary amendment request, and the issuance of the draft proposed order and proposed order. It is important to note that Council rules authorize the Department to adjust the timelines for these specific procedural requirements in both processes. Type A review is the default amendment review process, and it is the certificate holder’s burden to demonstrate whether the Type B review process is appropriate for an amendment request.

Description of Proposed Modifications

The proposed larger wind turbines would change the previously approved turbine dimensions including: increase turbine hub height (278 to 291.3 feet), increase maximum blade tip height (476 to 499.7 feet), increase maximum blade length (197 to 204.1 feet), lower the minimum aboveground clearance (83 to 70.5 feet), and increase rotor diameter (393 to 416.7 feet).

The proposed battery storage systems would consist of lithium-ion batteries contained in a building or series of modular containers and would include approximately 18 inverters and associated step-up transformers, as well as interconnecting facilities (control house, protective device and power transformer). The proposed battery storage systems may include ground-level cooling equipment, power conditioning systems, and distribution and auxiliary transformers. The proposed battery storage systems would be located adjacent to the previously approved substation and operation and maintenance building sites and would each result in up to 5 acres of new permanent disturbance. The proposed battery storage container dimensions for the 20 megawatt (MW) system would be approximately 80-feet in length by 100-feet in width by 15-feet in height; and the 30 MW system would be approximately 190-feet in length by 100-feet in width by 15-feet in height.

Considerations for Determining Whether to Process an Amendment Request as Type B Review

OAR 345-027-0057(8) provides a non-exhaustive list of factors the Department may consider in determining whether to process an amendment request under Type B review. When evaluating whether Type B review is warranted, the Department may consider these factors individually or in combination.

The listed factors are evaluated as follows:

(a) The complexity of the proposed change;

Wheatridge's Type B Review ADR requests that the Department consider the proposed modifications to be non-complex. The ADR asserts that the proposed changes in turbine dimensions are typical, technological changes within the turbine manufacturing industry and would not present any complexities not previously evaluated within the application for site certificate (ASC), as the ASC evaluated two layouts using two different turbine models. The Type B Review ADR asserts that the proposed battery storage systems would not be complex because the required footprint would be relatively small, and because the systems would have an insignificant visual impact and lesser noise output, compared to wind turbines.

The Department provides the relevant dictionary definition of “complex” as: not easy to understand or explain: not simple. A proposed change to the components of an energy facility and its related and supporting facilities may be complex. Even where a proposed change is not technologically complex, there may be complexity in conducting the regulatory applicability review if, for example, a Request for Amendment involves a new technology or a type of change that has not previously been subject to substantive analysis by the Department or the Energy Facility Siting Council (Council).

As explained in its Initial Determination, the Department considers the proposed battery storage systems to be complex because these type of systems have not been previously reviewed or approved by Council for any EFSC-jurisdictional facility. Therefore, the Department considers the evaluation necessary to determine applicable regulatory requirements and assess the certificate holder’s proposed compliance measures to be complex.

The Department acknowledges that the Council has reviewed and approved changes in wind turbine dimension specifications for other EFSC-jurisdictional facilities and does not consider the proposed changes to the components nor the regulatory applicability review to be complex. The Department, therefore, agrees with the certificate holder’s representation that the proposed larger turbines should not be considered complex.

(b) The anticipated level of public interest in the proposed change;

Wheatridge’s Type B Review ADR requests that the Department consider the nature and extent of comments received on the record for the facility and states that because the record for the facility demonstrates the majority of historic comments were in support of the facility, that the historic interest would not represent a sufficient level of public interest in the proposed modifications.

The certificate holder argues that there is no evidence that there will be sufficient interest in the proposed modifications from members of the public to warrant a Type A review process. For the evaluation of this factor, the Department does not view there to be a specific number of comments necessary to demonstrate a sufficient level of interest. The Department considers that if historic public interest demonstrates concerns relevant to the proposed modifications, then there would be an anticipated level of interest the Department views as important.

The Department agrees with the certificate holder's assessment that the nature and extent of historic comments on the record of prior facility proceedings should be considered in the evaluation of this factor. However, the proposed battery storage systems have not been previously evaluated for this facility nor by the Department or Council for any EFSC-facility. Therefore, the Department takes a conservative approach in its determination that public interest will be moderate and perhaps higher.

When assessing the public interest factor for the proposed larger turbines, the Department considers whether previous Council proceedings for the facility or other EFSC-jurisdictional wind energy generating facilities included comments raising issues related to the proposed change. Based on review of the record for the facility, the Department notes two comments expressing concern related to turbine visibility at important recreation opportunities and protected areas. Even though visual impacts of a 525-foot turbine were included in the ASC, a taller turbine than is requested in pRFA2, the Department considers this level of interest to be relevant to the proposed larger turbines. In addition, there were two individual comments expressing concern related to the impacts of Wheatridge's proposed wind turbines on aerial spraying. Further, blade tip height has been the subject of prior public comment at other EFSC-jurisdictional wind energy generating facilities. Based on prior comments specific to the visual and navigation/obstacle impacts and general public interest in the height of turbines, the Department anticipates at least a moderate level of public interest in the proposed larger turbines.

(c) The anticipated level of interest by reviewing agencies;

Wheatridge's Type B Review ADR requests that the Department consider the nature and extent of comments received on the record for the facility and states that because the record demonstrates the majority of historic comments were in support of the facility, that the historic interest would not represent a sufficient level of reviewing agency interest in the proposed modifications.

Because pRFA2 was submitted in conjunction with the Type B Review ADR, the Department initiated coordination with reviewing agencies and identified a level of interest in the proposed battery storage systems from the State Fire Marshall, and Umatilla and Morrow counties (planning department and fire departments).¹ The Department also initiated

¹ The Department clarifies that Morrow County Planning Department and Morrow County Commissioners have expressed support in pRFA2 and in processing pRFA2 under Type B review. However, the Department consulted Morrow County Planning Department regarding local requirements applicable to the proposed battery storage systems, and bases its assessment of a level of reviewing agency interest from Morrow County on the fact that there are applicable county requirements that would apply to the proposed battery storage systems, and that warrant agency consultation during the amendment review process.

coordination with reviewing agencies and identified a level of interest in the proposed larger turbines from the Oregon Department of Aviation.

(d) The likelihood of significant adverse impact;

Wheatridge's Type B Review ADR requests that the Department consider there to be no likelihood of a significant adverse impacts from the proposed modifications based on the evaluation presented in its pRFA2.

The Department initiated review of pRFA2 but has not yet completed its full evaluation of compliance with Council standards, applicable statutes, rules and ordinances. However, in its June 8, 2018 request for additional information on pRFA2, the Department identified information necessary for the compliance evaluation of the proposed battery storage systems under the Council's General Standard of Review, Organizational Expertise, and Retirement and Financial Assurance standards; and, Noise Control Regulation. The Department is not in a position at this time to confirm whether the likelihood of significant adverse impacts by the proposed battery storage systems would be minimal.

In its June 8, 2018 request for additional information on pRFA2, the Department also identified information necessary for the compliance evaluation of the proposed larger turbines under the Council's General Standard of Review and Public Health and Safety Standards for Wind Energy Facilities. On June 11, 2018, the certificate holder provided responses to the information requested specific to the proposed larger wind turbines. Based on review of these responses, the Department anticipates there to be a low likelihood of potentially significant adverse impacts from the proposed larger turbines.

(e) The type and amount of mitigation, if any.

Wheatridge's Type B Review ADR did not address whether the proposed changes would impact the type and amount of mitigation previously determined necessary for the facility. However, in its initial Type B Review ADR, received on April 9, 2018, the certificate holder stated that because the proposed modifications would be within the previously approved micro-siting corridor and site boundary, and would not result in new impacts, substantial changes to existing habitat mitigation and revegetation plans were not expected. In its Initial Determination, the Department agreed with the certificate holder's reasoning and that the proposed modifications would not be likely to result in new mitigation for temporary and permanent habitat impacts.

Amendment Type Determination

The certificate holder requests that the Department provide separate amendment review path determinations for the proposed battery storage systems and proposed larger turbines. After reviewing the Type B Review ADR and consideration of the OAR 345-027-0057(8) factors, the Department determines that RFA2, including the proposed changes together or separately, be processed under Type A review.

As presented in *Table 1: Type A Review – Factor Assessment*, the Department considers Type A review appropriate for the proposed battery storage systems because it is considered complex; there is an anticipated level of public and reviewing agency interest; and, the likelihood of a significant adverse impact is uncertain.

As presented in *Table 1: Type A Review – Factor Assessment*, the Department considers Type A review appropriate for the proposed larger turbines because there is an anticipated level of interest from members of the public and reviewing agencies.

Table 1: Type A Review – Factor Assessment		
OAR 345-027-0057(8) Factors	Battery Storage Systems	Larger Wind Turbines
(a) The complexity of the proposed change	X	
(b) The anticipated level of public interest in the proposed change	X	X
(c) The anticipated level of interest by reviewing agencies	X	X
(d) The likelihood of significant adverse impact	X	
(e) The type and amount of mitigation, if any		

The Department understands based on the May 21, 2018 email request from Mr. Pappalardo that the certificate holder preemptively requested to refer the Department's Type A review determination to Council for their concurrence, modification, or rejection. On June 14, 2018, the Department provided its Type A determination to Council and notified Council of the certificate holder's request for referral to Council. At this time, the June 29, 2018 Council agenda includes the certificate holder's Type A review determination Council referral request.

If there are any questions or comments, please feel free to contact me per the information below.

Sincerely,

A handwritten signature in black ink that reads "Sarah Esterson". The signature is written in a cursive style.

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