

PUBLIC NOTICE

Proposed Order on Application for Site Certificate for the Obsidian Solar Center

Date Notice and Proposed Order Issued:

October 9, 2020

Deadline to Request Party or Limited Party Status:

November 9, 2020, at 5:00 p.m. Pacific Standard Time (PST)

Proposal: Application for Site Certificate (ASC) from Obsidian Solar Center LLC (applicant), owned by Obsidian Renewables, LLC and Lindgren Development, Inc., for a proposed approximately 400 megawatt alternating current (MWac) photovoltaic solar energy facility on approximately 3,921 acres of nonarable land (includes a “reasons exception” request to the statewide policy embodied in Goal 3, Agricultural Lands).

Proposed Facility Location: North Lake County, approximately eight miles northwest of Christmas Valley and seven miles southeast of Fort Rock.

Purpose of Notice: This notice is provided in accordance with OAR 345-015-0230 to inform the public that the Oregon Department of Energy (Department), staff to the Energy Facility Siting Council (EFSC or Council), issued a Proposed Order on the ASC for the Obsidian Solar Center on October 9, 2020, and to notify individuals or organizations that commented on the record of the Draft Proposed Order (DPO) public hearing of their right to request to participate in the contested case proceeding, as further detailed in Attachment 1 of this notice.

Proposed Order Recommendations: The Proposed Order includes changes from the DPO in red-line format, in response to comments raised on the record of the DPO, and recommends that EFSC approve the ASC and grant a site certificate, subject to recommended conditions. Revisions to recommended site certificate conditions and findings of fact, as presented in the Proposed Order, are further detailed in Attachment 1 of this notice.

Procedural History: On October 17, 2019, the Department received a complete ASC from the

applicant seeking Council approval to construct and operate the proposed facility. The Department issued a DPO on the ASC on March 12, 2020 and accepted public comments from March 12 through July 20, 2020. The applicant’s opportunity to respond to comments on the DPO closed on July 22, 2020 – which represents the close of the record of the DPO public hearing. On July 20, the EFSC appointed Hearing Officer from the Office of Administrative Hearings, Joe Allen, conducted a public hearing on the DPO in the vicinity of the proposed facility and remotely via webinar and teleconference. Members of the public had the opportunity to comment verbally on the record of the DPO at the public hearing. EFSC reviewed the DPO and comments received at its July and August 2020 EFSC meetings.

All comments received on the record of the DPO public hearing, including transcripts from the public hearing and applicant responses to the DPO, are provided on the Department’s project website (hyperlink provided in *Additional Information* section below). Comments and issues raised on the record of the DPO, within Council jurisdiction, have been evaluated in the Proposed Order, presented in red-line format, as applicable.

Contested Case Process: Following issuance of the Proposed Order, EFSC must conduct a contested case proceeding on the ASC. Only those individuals or organizations that commented on the record of the DPO public hearing, either in person at the July 20 2020 public hearing, or in writing between March 12 and July 20, 2020 may request to participate in the contested case as a party or limited party under OAR 345-015-0016. The requirements for requesting to participate in the contested case are further described in Attachment 1 of this notice.

To raise an issue in the contested case, the issue must be within the jurisdiction of the Council and the person must have raised the issue on the record of the public hearing on the DPO, either verbally or in writing, with sufficient specificity for the Council, Department, and the applicant to respond to the

issue. If an action recommended in the Proposed Order, including any recommended conditions of approval, differs materially from the action recommended in the DPO, the person may raise new issues within the jurisdiction of the Council that are related to such differences.

Deadline to Request Party or Limited Party Status:

November 9, 2020, at 5:00 p.m. PST Requests to participate in the contested case, either as a party or limited party, must be received in writing by the Hearing Officer by the deadline, as specified in Attachment 1.

Contested Case Proceeding: Unless rescheduled by the Hearing Officer, the contested case proceeding will begin with the filing of sworn, written direct testimony on February 4, 2020 (date of the contested case hearing under ORS 469.370(4) and OAR 345-015-0230(3)(e)). The remainder of the contested case schedule will be determined by the Hearing Officer.

EFSC Decision Process: Following the contested case proceeding, the Council will issue a final order either granting or denying issuance of a site certificate for the proposed facility. The Siting Division Public Guide contains information on the EFSC process. To view this information on the Department’s website, please use the following link: <http://tinyurl.com/EFSCPublicGuide>

Receipt of this Notice: Please note that you may be receiving this notice for multiple reasons:

1. You own property within or adjacent to (within 500 feet) the property boundary on which the proposed facility would be located. You will automatically receive all future EFSC notices for this proposed facility.
2. You have requested to receive paper notices on the Obsidian Solar Center. If you wish to be removed from this mailing list, please contact Kellen Tardaewether.
3. You commented in person or in writing on the record of the DPO public hearing conducted under OAR 345-015-0220, discussed in this notice.
4. You have previously signed up via GovDelivery/ClickDimensions to receive email notices related to the Obsidian Solar Center or all EFSC project-related notices. You will automatically receive all future email notices

per your request, unless you unsubscribe via ClickDimensions or by contacting ODOE.

Additional Information: Please contact Kellen Tardaewether, the Department representative, if you have questions or would like to schedule an appointment to review materials.

The public can also receive more information about the proposed facility and updates on the review process by using the following options:

Oregon Department of Energy’s webpage

More details on the proposed Obsidian Solar Center, including the ASC, DPO and the Proposed Order, are available online at:

<https://www.oregon.gov/energy/facilities-safety/facilities/Pages/OSC.aspx>

Updates by Email/Mail: Sign-up for email updates on the proposed Obsidian Solar Center or other energy facilities under Council jurisdiction. The Department’s email update system is automated and allows interested members of the public to manage subscriptions to information received about ODOE projects and events. For more information, please visit: <https://tinyurl.com/ODOE-EFSC>.

To receive notices by U.S. Mail, please contact Michiko Mata at 503-378-3895, toll-free in Oregon at 800-221-8035, or email to michiko.mata@oregon.gov and request to be added to the hardcopy notice list.

In Hardcopy: Hard copies of the ASC, DPO, and Proposed Order are available for public inspection at the following location at no cost. Hard copies will be provided at reasonable cost upon request to the Department.

Oregon Department of Energy

550 Capitol Street NE

Salem, OR 97301

Phone: (503) 373-0214

Email: Kellen.Tardaewether@oregon.gov

Please contact the Department to arrange viewing of hard copies of the ASC, DPO, and Proposed Order.

Accessibility information: The Oregon Department of Energy is committed to accommodating people with disabilities. If you require any special physical or language accommodations, or need information in an

alternate format, please contact Michiko Mata at 503-378-3895, toll-free in Oregon at 800-221-8035, or email to michiko.mata@oregon.gov.



ATTACHMENT 1: NOTICE OF CONTESTED CASE PROCEEDING & INFORMATION FOR INDIVIDUALS ELIGIBLE TO PARTICIPATE IN CONTESTED CASE PROCEEDING

Contested Case Proceeding on Proposed Order on Application for Site Certificate (ASC): The Energy Facility Siting Council must conduct a Contested Case proceeding on the Application for Site Certificate (ASC) in accordance with the applicable provisions of ORS chapter 183, the Model Rules of Procedure for Contested Cases in OAR 137-003-0001 through 137-003-0092 and the Council’s rules in OAR 345-015-0012 through 345-015-0085. The contested case proceeding applies to the Oregon Department of Energy’s (Department) Proposed Order on an ASC, a document containing Department recommendations to Council on the ability of a proposed facility and applicant to satisfy applicable requirements. A Proposed Order on an ASC also includes the Department’s evaluation of issues of law or fact raised on the record of the Draft Proposed Order (DPO) public hearing, where the DPO represents a previous version of the Department’s recommendations to Council. Persons that commented on the record of the DPO public hearing are eligible to request party or limited party status in a contested case proceeding to contest issues of law or fact the individual raised on the record of the DPO public hearing, yet believe have not been sufficiently addressed in the Department’s Proposed Order on an ASC.

On October 9, 2020, the Department issued the *Proposed Order on the Application for Site Certificate for the Obsidian Solar Center* (Proposed Order), as required by ORS 469.370(4) and OAR 345-015-0230(2). The Proposed Order recommends that the Council grant the site certificate for the proposed facility subject to compliance with recommended conditions. The Proposed Order is available for download on the Department’s website (<https://www.oregon.gov/energy/facilities-safety/facilities/Pages/OSC.aspx>). Hard copies of the ASC, DPO, and Proposed Order are available for public inspection at Department’s office at 550 Capitol Street NE in Salem, Oregon. Hard copies will be provided at reasonable cost upon request to the Department. Revisions incorporated into the Proposed Order from the DPO are presented in red-line format, to allow easy identification of changes.

Summary of Material Changes in Proposed Order to Recommended Site Certificate Conditions: In response to issues raised with sufficient specificity on the record of the DPO public hearing, within Council jurisdiction, the following recommended site certificate conditions were materially revised in the Proposed Order: Fish and Wildlife Condition 9; Historic, Cultural and Archeological Condition 1; Public Services Condition 1; Public Services Condition 2; Water Rights Condition 1; and Water Rights Condition 2.

Persons Eligible to Request Party Status or Limited Party Status: Only Individuals and organizations that commented in person at the July 20, 2020 DPO public hearing or commented in writing on the DPO by submitting a written comment between the issuance of the DPO on March 12, 2020 and the close of the public hearings on July 20, 2020 may request to participate as a party or limited party in a contested case proceeding on an application for a site certificate. Party status or limited party status in the contested case proceeding may be requested as provided in ORS 469.370(5) and OAR 345-015-0016, described below.

To raise an issue in a contested case proceeding, the issue must be within the jurisdiction of the Council, and the person must have raised the issue in person or in writing on the record of the public hearings, unless the Department did not follow the requirements of ORS 469.370(2) or (3) or unless the action recommended in the Proposed Order, including any recommended conditions of approval, differs materially from the action recommended in the Draft Proposed Order, in which case the person may raise only new issues within the jurisdiction of the Council that are related to such differences.

If a person did not raise an issue verbally or in writing prior to the close of the record of the public hearings with sufficient specificity to afford the decision maker an opportunity to respond to the issue, the Hearing Officer shall not consider the issue in the contested case proceeding. To have raised an issue with sufficient specificity, the person must have presented facts verbally or in writing prior to the close of the record of the public hearings that support the person's position on the issue.

Contents of a Petition for Party or Limited Party Status: A petition for party or limited party status must comply with OAR 345-015-0016, and **must include**:

1. Names and addresses of the petitioner and of any organization the petitioner represents;
2. Name and address of the petitioner's attorney, if any;
3. A statement of whether the request is for participation as a party or a limited party, and, if as a limited party, the precise area or areas in which participation is sought;
4. If the petitioner seeks to protect a personal interest in the outcome of the agency's proceeding, a detailed statement of the petitioner's interest, economic or otherwise, and how such interest may be affected by the results of the proceeding;
5. If the petitioner seeks to represent a public interest in the results of the proceeding, a detailed statement of such public interest, the manner in which such public interest will be affected by the results of the proceeding, and the petitioner's qualifications to represent such public interest;
6. A statement of the reasons why existing parties to the proceeding cannot adequately represent the interest identified above;
7. A short and plain statement of the issue or issues that the person desires to raise in the contested case proceeding; and,
8. A reference to the person's comments at the public hearing showing that the person raised the issue or issues at the public hearing.

A template petition is provided as an attachment to this notice, which can be used for submission of a petition in accordance with the submittal requirements outlined in this notice.

Submittal Requirements - Petition to Request for Party or Limited Party Status: Persons eligible to request party or limited party status in the contested case proceeding must submit a written petition to the Hearing Officer which must be received no later than November 9, 2020 at 5:00 p.m. PST. Petitions may be submitted in writing via U.S. mail, email or fax before the 5:00 p.m. (PDT) deadline to the following address:

Joe Allen, Senior Administrative Law Judge
Oregon Department of Energy
550 Capitol Street NE, Salem, OR 97301
Fax: 503-373-7806
Email: OED_OAH_Referral@oregon.gov (*Please note two underscores (“_”) in email address)

Additionally, please submit an electronic copy of the petition to the Department’s Siting Analyst at:

Email: kellen.tardaewether@oregon.gov

If the Hearing Officer does not receive the petition by **5:00 pm (PST) on November 9, 2020**, the requesting person(s) will have waived any right to participate in the contested case. The petition must contain all of the information described in this notice.

Date of Prehearing Conference: Pursuant to OAR 345-015-0230(3)(a)(D), this notice must include the date of the prehearing conference. Following the Hearing Officer’s Notice of Petitions and Opportunity for Petitioners to Respond (to petitions received), a prehearing conference will be conducted by the Council-appointed Hearing Officer from the Office of Administrative Hearings, Joe Allen, by telephone at 2:00 p.m. PST on **December 3, 2020**, unless otherwise rescheduled by the Hearing Officer.

Persons requesting party status must:

- Appear at the prehearing conference, as an individual, through legal counsel or persons authorized to represent them in the contested case hearing;
- Confirm the issues they would like to address in the contested case; and,
- Raise any issues regarding the contested case process, or such issues will be waived as provided in OAR 345-015-0083.

Following the prehearing conference, the Hearing Officer will issue an Order on Requests for Party Status, followed by a Case Management Order to all those granted party status. The Hearing Officer’s Order on Requests for Party Status is final unless the requestor submits an appeal to the Council within seven days after the date of service. The Case Management Order will establish the schedule for the contested case proceeding.

Contested Case Proceeding: Unless rescheduled by the Hearing Officer through a prehearing order, the contested case proceeding will begin with the filing of sworn, written direct testimony on February 4, 2020 (date of the contested case hearing under ORS 469.370(4) and OAR 345-015-0230(3)(e)). The remainder of the contested case proceeding schedule will be determined by the Hearing Officer and will likely include submission of written rebuttal testimony and in-person cross-examination before the Hearing Officer.

Default: In accordance with ORS 469.370(6), if no one requests party status, the Proposed Order shall be forwarded to the Council and the contested case hearing shall be concluded. If a person submits a request for party status and fails to appear at the prehearing conference, the Council may issue a final order adverse to that person upon making the determinations required by ORS 469.503.

Petition Template

Notes:

1. This template was developed by the Oregon Department of Energy (Department) and is provided as a courtesy for persons seeking to participate in the contested case proceeding. Petitioners are not required to use the template, but use is recommended to ensure petitions contain required petition information and can be efficiently reviewed by Department staff and Hearing Officer.
2. Please contact the Department representative, Kellen Tardaewether, to request a Word version of the template.

Description	Explanation of Information	Petitioner Information
Petitioner Name:	Provide petitioner first and last name.	
Petitioner Address:	Provide physical mailing address and e-mail address, if available.	
Petitioner Attorney:	Provide name and address of attorney, if any.	
Authorized Representative:	Provide name of any person(s) authorized by you to represent your issue(s) or confirm your intent to act as an authorized representative for the organization you intend to represent.	
Name of Any Organization Petitioner Represents:	Confirm and provide the name of any organization(s) you represent in this proceeding, in addition to yourself.	
Party Status Requested (Limited or Full):	Confirm whether you are seeking to participate as a party or limited party and if as a limited party the precise area or areas in which you seek to participate.	

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Description	Explanation of Information	Petitioner Information
<p>If seeking to represent a personal interest:</p>	<p>Provide a detailed statement of your personal interest (economic or otherwise).</p>	
	<p>Explain how your personal interest may be affected by the results of the proceeding.</p>	
	<p>Provide reasons why existing parties to the proceeding cannot adequately represent the personal interest you have identified.</p>	
<p>If seeking to represent a public interest:</p>	<p>Provide a detailed statement of the public interest you intend to represent.</p>	
	<p>Explain how such public interest would be impacted by the outcome of the proceeding.</p>	
	<p>Provide a reference to your qualifications to represent such public interest(s).</p>	
	<p>Provide reasons why existing parties to the proceeding cannot adequately represent the public interest(s) you have identified.</p>	

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Description	Explanation of Information	Petitioner Information
Issue Information		
Instructions: Provide information for Items (1) – (2) below for each issue requested for review in the proceeding.		
Issue 1		
<p>Issue Statement:</p>	<p>Provide short and plain statement of each issue you wish to raise in the contested case, including facts or legal analysis presented in the Proposed Order or ASC believed to be at issue and provide a reference to applicable rules or statutes believed applicable to the issue.</p> <p><u>Examples:</u> Issue #1. The evaluation of XX does not comply with XX because (identify and provide explanation of facts or legal analysis believed to be at issue); OR Issue #1. I contend the applicant does not meet [cite specific Council standard or applicable law] because [provide brief explanation of why you believe applicant does not meet the cited standard or law]).</p>	
<p>Provide date of DPO comments where issue was previously cited:</p>	<p>For each issue identified in your Issue Statement(s), provide date and manner (verbal or written) in which you raised the issue(s) on the record of the Draft Proposed Order.</p>	

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2. Please contact the Department representative, Kellen Tardaewether, to request a Word version of the template.

Description	Explanation of Information	Petitioner Information
<p>Issue 2</p>		
<p>Instructions: If more than 1 issue, continue to provide responses to (1) and (2) for each additional issue requested for review in the proceeding.</p>		
<p>Issue Statement:</p>	<p>Provide short and plain statement of each issue you wish to raise in the contested case, including facts or legal analysis presented in the Proposed Order or ASC believed to be at issue and provide a reference to applicable rules or statutes believed applicable to the issue.</p> <p><u>Examples:</u> Issue #1. The evaluation of XX does not comply with XX because (identify and provide explanation of facts or legal analysis believed to be at issue); OR Issue #1. I contend the applicant does not meet [cite specific Council standard or applicable law] because [provide brief explanation of why you believe applicant does not meet the cited standard or law].</p>	
<p>Provide date of DPO comments where issue was previously cited:</p>	<p>For each issue identified in your Issue Statement(s), provide date and manner (verbal or written) in which you raised the issue(s) on the record of the Draft Proposed Order.</p>	