June 17, 2022

Lenna Cope,
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Sent via email: Lenna.Cope@pgn.com; josh.hagel@pgn.com; mari.willis@pgn.com

RE: Department Determination on Type B Review Amendment Determination Request (Type B Review ADR) for Carty Generating Station, Request for Site Certificate Amendment 3

Dear Ms. Cope,

The Oregon Department of Energy (Department) received Portland General Electric’s (certificate holder) Type B Review Amendment Determination Request (Type B Review ADR) for Request for Amendment 3 of the Carty Generating Station Site Certificate (RFA3) on February 3, 2022, along with preliminary RFA3 (pRFA3). On June 7, 2022, the Department issued its determination that pRFA3, combined with certificate holder responses to the Department information requests, was complete.

In RFA3, the certificate holder seeks Energy Facility Siting Council (Council) approval of a three year extension to both the construction commencement and completion deadlines for 50 megawatts (MW) of solar photovoltaic energy generation components which have not yet been constructed at the site. The request necessitates a condition amendment to change the construction commencement deadline from February 4, 2022 to February 4, 2025, and change the construction completion deadline from February 4, 2025 to February 4, 2028. Based on review of the Type B Review ADR and the evaluation presented below (Attachment 1), the Department determines that the certificate holder has justified that RFA3 be processed under Type B review. Council will be provided notice of this determination at the June 23-24, 2022 Council meeting.

Please feel free to contact me with any questions or comments.

Respectfully,

Kathleen Sloan, Senior Siting Analyst
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cc via e-mail distribution:
Todd Cornett, Assistant Director of Siting, Oregon Department of Energy
Sarah Esterson, Senior Policy Advisor, Oregon Department of Energy
Patrick Rowe, Assistant Senior Attorney General, Oregon Department of Justice
Attachment 1: ODOE Type B Review Determination
Introduction
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 345-027-0351. The Type A review is the standard or “default” site certificate amendment process. Under OAR 345-027-0357(3), a certificate holder may submit a request for a written determination from the Department of whether a proposed site certificate amendment justifies the Type B review process described in OAR 345-027-0351(3), but the certificate holder has the burden of justifying review under the Type B process based on an evaluation of factors identified in OAR 345-027-0357(8).

As is referenced in the pRFA3 Type B Review ADR, the certificate holder requests that the Department consider, based on review of the OAR 345-027-0357(8) factors and information contained in pRFA3, that Type B review is justified.

Changes Proposed in Request for Amendment 3
Council’s 2018 Final Order on Amendment 1 approved the construction and operation of 50 megawatts of solar photovoltaic energy generation components (herein referred to as “Carty Solar Farm”). The changes proposed in RFA3 apply to the construction commencement and completion deadlines of the Carty Solar Farm. This change would make the new construction commencement deadline February 4, 2025, and the new construction completion deadline February 4, 2028.

Evaluation – OAR 345-027-0357(8) Factors

(a) The complexity of the proposed change

The certificate holder suggests that the changes proposed in RFA3 are not complex because: there are no changes to site boundary, facility components or temporary/permanent disturbance areas; and, the deadline extension would not impact compliance with other site certificate conditions.

The Department does not dispute the certificate holder’s representations that the proposed amendment does not include physical alteration to the facility. Nonetheless, the Department believes the evaluation of complexity should be based on the scope of the amendment request – where, as a request to extend construction deadlines, the evaluation is based on the significance of changes in fact or law applicable to the facility and whether those changes, if any, would impact Council previous findings of compliance (OAR 345-027-0375(2)(b)).

Changes in Factual Circumstances

Potential factual circumstances within the analysis areas that could result in complexity include: habitat changes; new State-sensitive or Threatened and Endangered Species; new protected areas, recreational opportunities, scenic resources, and historic, cultural and archeological resources; changes in the ability of the certificate holder to obtain a bond or letter of credit for facility decommissioning; and presence new sensitive noise receptors. Based on review of pRFA3, there are no changes in facts that would impact Council’s previous evaluation of potential impacts to resources protected by an applicable standard. Therefore, the Department determines there to be no complexity resulting from changes in factual circumstances since the 2018 Final Order on Amendment 1.
**Changes in Law**

Potential changes in law that could result in complexity include new or amended rules, statutes and ordinance provisions which are applicable to the facility. Based on review of pRFA3, Morrow County Zoning Ordinance (MCZO) and the Oregon Land Conservation and Development Commission (LCDC) administrative rules, applicable to solar facilities on agricultural land, have changed since EFSC's 2018 Final Order on Amendment 1. Although the MCZO solar rules were amended in 2017, they have not been updated to reflect LCDC’s May 2019 amendment, therefore, the evaluation of proposed changes in law focuses on LCDC’s OAR 660-033-0130(38). These changes clarify acreage thresholds for solar facilities requiring a Statewide planning Goal 3 exception and establish new restrictions for solar project development on high-value farmland soils as defined in OAR 660-033-0020(8)(a). Based on the Department’s analysis, and because EFSC previously found that the site of the Carty Solar Farm would be sited on “high-value farmland” per ORS 195.300(10)(f)(C), the LCDC regulatory changes have a minimum impact on the analysis and level of impact previously evaluated. Therefore, the level of complexity from changes in law is determined not complex.

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

The certificate holder suggests that the level of public interest should be anticipated as low because there were a total of five public comments during review of RFA1 and all five of the comments were supportive of the proposed changes. The Department affirms that there has been a wide-range of public interest in the Carty Generating Station, with over 5,000 public comments received on changes related to natural-gas fired equipment and less than 5 when related to solar photovoltaic energy generation equipment. The Department considers historic support by 5 members of the public to demonstrate a reasonable low level of public interest.

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

The certificate holder suggests that the level of reviewing agency interest should be anticipated to be low. The certificate holder explains that impacts to resources would not change as a result of the construction deadline extension. Additionally, the certificate holder notes that during the review of (the revised) RFA1, six reviewing agency comments were received on the Proposed Order, and that they have already been in contact with some reviewing agencies who are likely to be interested in the project, such as the Morrow County Planning Department, the Oregon Department of Fish and Wildlife (ODFW), the State Historic Preservation Office (SHPO), and local service providers (including the Boardman Rural Fire Protection District and the Morrow County Sheriff’s Office), to discuss the proposed amendment, seek input on the request, and answer any questions or concerns raised.

During review of pRFA3, the Department solicited both review and comments from reviewing agencies. Three reviewing agencies, Morrow County Board of Commissioners, ODFW, and the Oregon Department of Environmental Quality (ODEQ) have already responded with comments. The comments from ODEQ and ODFW both acknowledged receipt of the Department’s notice of the pRFA3 receipt, and replied they did not have any concerns or comments regarding the proposed construction extension. The comment from the Morrow County Board of Commissioners requested confirmation that their understanding of pRFA3 was accurate, and clarified that the previously imposed conditions would continue to apply to the facility. The Department concludes that none of the three comments received constitute a high level of interest. While the Department anticipates additional agencies may comment in the future, including but not limited to local Tribal Governments and the Special Advisory Groups, the Department does not
anticipate these to constitute a high level of interest. Therefore, the Department determines the level of reviewing agency interest to be low.

(d) *The likelihood of significant adverse impact;*

The certificate holder describes that, given the scope of RFA3, “there is little to no likelihood of significant adverse impacts related to this request.” The Department’s evaluation of the likelihood of significant adverse impacts is based on changes in fact and law. As described above in the evaluation of the complexity of the proposed change, there are no changes in facts or substantive changes in law that would result in a likelihood of significant adverse impacts. Therefore, the Department determines that there is a low likelihood of significant adverse impacts.

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

The certificate holder states that because there are no new impacts, there would not be any mitigation resulting from the proposed amendment. The Department’s evaluation of the type and amount of mitigation, if any, represents a cumulative evaluation of all of Council’s standards and site certificate conditions. The Department notes that its evaluation of type and amount of mitigation needed, if any, wasn’t confined strictly to habitat mitigation. Mitigation to meet each standard is provided as conditions in the site certificate, in which Council’s conclusions of law in the Final Order on Amendment 1 indicate that the findings of fact and compliance with conditions allow for the Carty Solar Farm and related and supporting components to comply with respective standards. Therefore, the Department evaluated potential amendments to existing conditions and found that amendments to existing conditions would result in a significant amount or type of mitigation.

Based on review of RFA3, the Department does not anticipate any additional mitigation to be required. However, if based on its own analysis, the Department identifies potential impacts that would require additional mitigation, it is likely that additional mitigation needed would be similar to, and consistent with the mitigation previously approved by Council.

Amendment Review Process Determination

In summary, and as presented below in *Table 1: Type B Review – Factor Assessment Summary*, based on the low level of complexity, the anticipated limited level of interest from the public and reviewing agencies, and the low likelihood of significant adverse impacts or additional mitigation, the Department determines that the certificate holder has justified RFA3 be reviewed under the Type B process.

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<thead>
<tr>
<th>OAR 345-027-0357(8) Factors</th>
<th>Type A</th>
<th>Type B</th>
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<tbody>
<tr>
<td>(a) The complexity of the proposed change</td>
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<tr>
<td>(b) The anticipated level of public interest in the proposed change</td>
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<td>(c) The anticipated level of interest by reviewing agencies</td>
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