



Oregon

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To: Energy Facility Siting Council

From: Chase McVeigh-Walker, Senior Siting Analyst

Date: May 2, 2025

Subject: Agenda Item B (Action Item): Muddy Creek Energy Park – Request to Extend Expiration of the Notice of Intent, for the May 16, 2025 EFSC Meeting

Attachments: Attachment 1: Summary of the Notice of Intent Extension Request and Supplemental Information
Attachment 2: Draft Order

BACKGROUND

On March 31, 2025, the Oregon Department of Energy (Department) received a petition from Muddy Creek Energy Park, LLC (applicant) to extend the expiration date of the Notice of Intent (NOI) to File a preliminary Application for Site Certificate (pASC) from May 19, 2025 to May 19, 2026.

The Energy Facility Siting Council's (EFSC or Council) scope of review for a petition to extend the Notice of Intent expiration date includes two criteria: 1) Council must find that the petition was timely received at least 45-days prior to the expiration date established in the Project Order; and, 2) Council must find that the petition demonstrates good cause.

PROPOSED FACILITY

The applicant's proposed facility is the Muddy Creek Energy Facility, to be located within a site boundary of approximately 1,588 acres of private land zoned for Exclusive Farm Use in Linn County, Oregon. The proposed facility consists of approximately 199 MW of solar photovoltaic power generation components.

PROCEDURAL HISTORY

- On May 19, 2023 – Applicant filed the NOI.
- July 25, 2023 – Department held a public informational meeting on the NOI
- October 6, 2023 – Department issued a Project Order
- March 31, 2025 – Applicant filed NOI Extension Request.*
- April 8, 2025 – Department requested additional information to supplement NOI Extension Request (info request 1).

- April 17, 2025 – Applicant responded to info request 1.*
- April 28, 2025 – Department requested additional clarification on NOI Extension Request, and applicant’s response to info request 1 (info request 2).
- April 29, 2025 – Applicant responded to info request 2.*
- May 16, 2025 – Council review of NOI Extension Request.

*Attachment 1 of this Staff Report serves as a summary of the substantive information from the applicant’s NOI Extension Request and the responses to the Department’s information requests (1 and 2). The Department has saved and will maintain the original form (email correspondence) of the information provided in Attachment 1 as a record of the Muddy Creek Energy Park.

PROPOSED EXTENSION

Under OAR 345-020-0060, the NOI expires two years after its date of submission unless, at least 45 days before the expiration date, the applicant submits a petition to extend the expiration date. If the Council finds that the petition shows good cause, the Council may extend the expiration date for up to one year. The applicant's submission of a timely petition for an extension under this rule stays the expiration of the Notice of Intent until the Council makes its decision to grant or deny the extension. Because the applicant submitted the petition more than 45 days before the Notice of Intent expiration date, the Department recommends the Council find that it was submitted timely.

As explained in the petition, the applicant requests that the Council grant a one-year extension to the NOI expiration to allow sufficient time to complete resource studies, the agrivoltaics management plan, and to prepare and submit the pASC. In the subsequent responses to information requests, the applicant notes that the Oregon Department of State Lands (DSL) review of the August 2023 wetland delineation, and a Preliminary Jurisdictional Determination from the U.S. Army Corps of Engineers (USACE), resulted in a site visit request. The site visit was scheduled for February 29, 2024. However, due to heavy precipitation, the site visit was postponed until March 28, 2024.

During the site visit, both DSL and USACE observed significantly more wet areas than previously delineated in the August 2023 wetland delineation, prompting a request for a new wetland delineation. Between March and May 2024, additional fieldwork and landowner coordination resulted in a revised wetland delineation identifying the presence of considerably more wetlands. From June 2024 through March 2025, the applicant developed four complete redesigns of the site plan to ensure wetland impacts are minimized, potential mitigation measures are formulated, and to determine whether the project remains viable.

Part of the value of the NOI phase of the Council’s review process is for applicants to learn more information about the project area and make necessary adjustments to the project design in order to avoid or minimize impacts to important resources. The Department recommends the Council find that the unanticipated discovery of more wetlands than originally delineated, the additional time required to evaluate impacts to wetlands, including coordination with DSL and USACE, supplemental season-dependent field surveying, revising the wetland delineation,

and redesigning the project multiple times to avoid and minimize impacts to wetlands represents good cause for an extension of the Notice of Intent expiration date by one year.

PUBLIC COMMENTS

Following receipt of the applicant's NOI Extension Request, the Department received a comment from a member of the public. OAR 345-020-0060 does not include a public notice requirement, nor a public comment period and the Department is unaware of the Council ever soliciting or taking public comments on an NOI extension request. Were Council to accept and consider public comments in this instance, in fairness to the applicant, it should also provide the applicant an opportunity to respond to such comments. To remain consistent with past practices, and save time and resources by not introducing a new process step to evaluate public comments and applicant responses, , the Department recommends Council not consider any public comments submitted regarding this NOI Extension Request.

STAFF RECOMMENDATION

The Department recommends that the Council find that the applicant timely submitted a petition to extend the expiration date of the NOI for the proposed facility, and that the petition demonstrates good cause for the extension. The Department recommends Council issue an Order approving the petition. A draft Order is included as Attachment 2 of this staff report.