

**BEFORE THE
ENERGY FACILITY SITING COUNCIL
OF THE STATE OF OREGON**

In the Matter of the Request for Amendment #1 of
the Site Certificate for the Biglow Canyon Wind
Farm

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**FINAL ORDER ON
AMENDMENT #1**

November 3, 2006

BIGLOW CANYON WIND FARM:
FINAL ORDER ON AMENDMENT #1

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LIST OF ABBREVIATIONS

BCWF	Biglow Canyon Wind Farm
BPA	Bonneville Power Administration
Council	Energy Facility Siting Council
Department	Oregon Department of Energy
MW	megawatt or megawatts
O&M	Operations and maintenance
Orion	Orion Sherman County Wind Farm LLC
PGE	Portland General Electric Company

**BIGLOW CANYON WIND FARM:
FINAL ORDER ON AMENDMENT #1**

I. INTRODUCTION

1 The Oregon Energy Facility Siting Council (Council) issues this order in accordance
2 with ORS 469.405 and OAR 345-027-0100. This order addresses a request by Portland
3 General Electric Company (PGE) for a transfer of the site certificate holder for the Biglow
4 Canyon Wind Farm (BCWF).

5 On June 30, 2006, the Council issued a site certificate to Orion Sherman County Wind
6 Farm LLC (Orion) for the BCWF, a wind energy facility with a peak generating capacity of
7 approximately 337.5 megawatts (MW) to be built in Sherman County, Oregon. The facility is
8 not yet under construction.

9 The definitions in ORS 469.300 and OAR 345-001-0010 apply to terms used in this
10 proposed order, except where otherwise stated or where the context indicates otherwise.

II. PROCEDURAL HISTORY AND AMENDMENT PROCESS

11 On August 22, 2006, PGE submitted to the Oregon Department of Energy
12 (Department) a request for transfer of the site certificate. Upon approval of a request to
13 transfer a site certificate, an amended site certificate must be issued. OAR 345-027-0100(11).
14 Accordingly, the transfer request is a request for amendment (Amendment #1) of the BCWF
15 site certificate.

16 After receiving the transfer request, the Department mailed a notice of the request to
17 all persons on the Council's general mailing list and all persons on the special mailing list for
18 the facility, as required under OAR 345-027-0100(8). The notice, issued on October 4, 2006,
19 specified that comments on the proposed transfer were due by October 25 and stated that the
20 Council would hold an informational hearing on November 3, 2006.

21 On October 24, 2006, the Department sent a notice of the Council meeting to be held
22 on November 3 to all persons on the Council's general mailing list and all persons on the
23 special mailing list for the facility. The meeting notice included a notice of the informational
24 hearing on the proposed transfer of the BCWF site certificate.

25 The Department received no comments on the proposed transfer. The Council held an
26 informational hearing on November 3, 2006. There was no testimony in opposition to the
27 proposed transfer at the informational hearing. After consideration of the transfer request, the
28 Council issued this order.

III. DESCRIPTION OF THE PROPOSED AMENDMENT

29 PGE requests an amendment of the site certificate that would name PGE as the
30 certificate holder in place of Orion. PGE has not requested any other changes to the terms and
31 conditions of the site certificate.

1. Amendment Procedure

1 Under OAR 345-027-0100(10), the Council may approve a transfer of the site
2 certificate if the Council finds that:

- 3 a) PGE complies with the standards described in OAR 345-022-0010, OAR 345-022-
4 0050 and, if applicable, OAR 345-024-0710(1).¹
- 5 b) PGE is lawfully entitled to possession or control of the site or the facility described
6 in the site certificate.
- 7 c) PGE agrees to abide by all the terms and conditions of the site certificate to be
8 transferred as determined by the Council; and
- 9 d) The BCWF complies with the statutes, local government ordinances and Council
10 rules in effect on the date of the Council’s order that the Council decides should
11 apply to the transferred facility based on the transferee’s consent or upon a clear
12 showing of a significant threat to the public health, safety or the environment.

IV. THE COUNCIL’S FINDINGS AND CONCLUSIONS

1. Organizational Expertise (OAR 345-022-0010)

13 *(1) To issue a site certificate, the Council must find that the applicant has the*
14 *organizational expertise to construct, operate and retire the proposed facility in*
15 *compliance with Council standards and conditions of the site certificate. To*
16 *conclude that the applicant has this expertise, the Council must find that the*
17 *applicant has demonstrated the ability to design, construct and operate the*
18 *proposed facility in compliance with site certificate conditions and in a manner*
19 *that protects public health and safety and has demonstrated the ability to restore*
20 *the site to a useful, non-hazardous condition. The Council may consider the*
21 *applicant’s experience, the applicant’s access to technical expertise and the*
22 *applicant’s past performance in constructing, operating and retiring other*
23 *facilities, including, but not limited to, the number and severity of regulatory*
24 *citations issued to the applicant.*

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

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

¹ OAR 345-024-0710(1), which addresses the monetary path payment requirement for facilities that are subject to a carbon dioxide emissions standard, is not applicable to the BCWF.

1 (4) *If the applicant relies on a permit or approval issued to a third party and the*
2 *third party does not have the necessary permit or approval at the time the Council*
3 *issues the site certificate, the Council may issue the site certificate subject to the*
4 *condition that the certificate holder shall not commence construction or operation*
5 *as appropriate until the third party has obtained the necessary permit or approval*
6 *and the applicant has a contract or other arrangement for access to the resource*
7 *or service secured by that permit or approval.*

Findings of Fact

8 PGE provided evidence about its organizational expertise in Exhibit D of the Request
9 to Transfer the Site Certificate. PGE has experience in construction and operation of
10 generation facilities in Oregon. The Council has previously issued site certificates to PGE
11 based, in part, on the company's organizational expertise. The company is the site certificate
12 holder for the Boardman Coal Plant and Unit 1 of the natural-gas-fueled Coyote Springs
13 Cogeneration Project, which are operational.² PGE is the certificate holder for the Port
14 Westward Generating Project, a natural-gas combined cycle turbine power plant, which is
15 currently under construction. In addition, PGE is the owner of the Beaver Power Plant, a
16 multi-unit natural-gas-fueled power plant that pre-dates the site certificate requirement. PGE
17 owns the Trojan Nuclear Plant and completed decommissioning of the facility in December
18 2004.

19 PGE has not received a monetary penalty for regulatory violations at the Beaver
20 Power Plant or the Coyote Springs Cogeneration Project at any time during their operation,
21 although there have been notices of violation for instances of non-compliance with regulatory
22 requirements. In the transfer request, PGE states that these instances were considered minor
23 and were resolved to the satisfaction of the regulatory agencies involved. Two regulatory
24 violations at the Trojan facility resulted in fines of \$3,000 in 1998 (chemical container
25 violations) and \$250 in 1999 (spill of one pint of hydraulic fluid).

26 PGE has not identified specific personnel for management of the design, construction
27 and operation of the BCWF, but the company has many qualified and experienced employees.
28 PGE does not have an ISO 9000 or ISO 14000 certified program.³ PGE does not rely on a
29 permit or approval issued to a third party. PGE will rely on mitigation to meet some of the
30 standards applicable to the BCWF. Mitigation requirements for the BCWF are as described in
31 the Final Order on the Application. In the transfer request, PGE described its past and current
32 experience with environmental mitigation projects, including a 19-acre mitigation site for the
33 Port Westward Generating Project, a 10,800-acre mitigation site for the Pelton Round Butte
34 Hydroelectric Project and an 800-acre mitigation site for the Boardman Coal Plant.

35 Based on PGE's experience with construction and operation of other energy facilities
36 in Oregon and the Council's previous findings of PGE's organizational expertise in
37 connection with other site certificates, the Council finds that PGE has adequate organizational
38 expertise to construct, operate and retire the proposed BCWF.

² PGE holds the Coyote Springs site certificate jointly with Avista Corporation, which owns Unit 2. PGE operates Unit 2 under contract.

³ OAR 345-022-0010(2) does not impose a requirement that an applicant have an ISO-certified program; rather, it allows a presumption of managerial and technical expertise based on such a program.

Conclusions of Law

1 Based on the findings stated above, the Council concludes that PGE would meet the
2 Council’s Organizational Expertise Standard if Amendment #1 were approved.

2. Retirement and Financial Assurance (OAR 345-022-0050)

3 *To issue a site certificate, the Council must find that:*

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

7 *(2) The applicant has a reasonable likelihood of obtaining a bond or letter of*
8 *credit in a form and amount satisfactory to the Council to restore the site to a*
9 *useful, non-hazardous condition.*

Findings of Fact

A. Site Restoration

10 The proposed amendment would make no change to the physical layout of the BCWF.
11 In the Final Order on the Application, the Council made findings on the removal of facility
12 components (turbines, meteorological towers, substation, operations and maintenance (O&M)
13 building, aboveground transmission lines and access roads) and on grading and seeding the
14 footprint and temporarily disturbed areas.⁴ The Council concluded that the site, taking into
15 account mitigation, could be restored adequately to a useful, non-hazardous condition
16 following permanent cessation of construction or operation of the facility. The transfer of the
17 site certificate to PGE, if approved by the Council, would not affect the Council’s previous
18 finding that the site can be restored in compliance with the standard.

B. Estimated Cost of Site Restoration

19 To provide a fund that is adequate for the State of Oregon to bear the cost of site
20 restoration if the certificate holder fails to fulfill its obligations, the Council assumes
21 circumstances under which the restoration cost would be greatest. In the Final Order on the
22 Application, the Council found that the greatest site restoration cost would result from the
23 “150-turbine John Day Alternative.” Under this configuration, the certificate holder would
24 construct 150 GE 3.0-MW turbines with a 7-mile transmission line interconnecting the facility
25 with the BPA John Day Substation. The Council estimated the site restoration cost under that
26 configuration would be \$6.208 million (2005 dollars). The site certificate requires the
27 certificate holder to submit a bond or letter of credit in this amount (adjusted to present value)
28 if the certificate holder chooses to build the facility in a single phase using only GE 1.5-MW
29 turbines and GE 3.0-MW turbines.

30 To allow the certificate holder the to construct the facility in phases (without
31 amending the site certificate), the site certificate authorizes an adjustment of the financial
32 assurance amount before beginning construction of each phase, based on the facility
33 components that would be constructed in each phase. To accommodate these adjustments, the
34 certificate holder must submit to the Department the final site design of each phase, including

⁴ Final Order In the Matter of the Application for a Site Certificate for the Biglow Canyon Wind Farm (Final Order on the Application), pp. 18-19.

1 documentation in support of the quantity of the units that would apply to retirement of each
2 phase (Condition 6). The Council authorized the Department to establish the financial
3 assurance amount by applying the appropriate unit costs from a table of unit costs in the Final
4 Order on the Application (Condition 9).⁵

5 In addition, to allow the certificate holder flexibility in turbine selection (without
6 amending the site certificate), the site certificate authorizes adjustment of the financial
7 assurance amount before the beginning of construction of any configuration using turbines
8 other than GE 1.5-MW turbines and GE 3.0-MW turbines.⁶ To accommodate this adjustment,
9 the certificate holder must submit to the Department the name of the turbine manufacturer, the
10 turbine capacity, the weight of steel in the turbine and tower, the hub-height of the tower, the
11 sweep of the blade (rotor diameter) and the size of the concrete foundation. The Council
12 authorized the Department to establish the financial assurance amount based on the same
13 methodology the Department used to develop the unit costs for the GE 1.5-MW turbines and
14 GE 3.0-MW turbines (Condition 9).⁷

15 The proposed amendment to transfer the site certificate would not change the facts or
16 circumstances upon which the Council based its findings regarding the estimated site
17 restoration costs or the adjustments of the financial assurance amount approved in the Final
18 Order on the Application.

C. Ability of PGE to Obtain a Bond or Letter of Credit

19 In the transfer request, PGE provided a letter from JPMorgan Chase Bank, N.A.,
20 stating the bank's willingness to provide the financial assurance required under the site
21 certificate. The letter states that the bank has a longstanding business relationship with PGE
22 and that the bank would be willing to "furnish or arrange a letter of credit in an amount up to
23 \$10 million for a period not to exceed four years, for the purpose of ensuring that Portland
24 General Electric Co.'s obligations that the site of the proposed Biglow Canyon Wind Farm
25 Project can be restored to a useful non-hazardous condition."⁸ The Council finds that it is
26 reasonably likely that PGE can obtain a bond or letter of credit in a form and amount
27 satisfactory to the Council.

⁵ Table 5, Final Order on the Application, p. 23.

⁶ In addition, the site certificate allows construction using turbines other than GE 1.5-MW turbines and GE 3.0-MW turbines to be done in a single phase or in multiple phases.

⁷ The Department's "Facility Retirement Cost Estimating Guide" referenced in the site certificate has not yet been formally issued by the Department or approved by the Council.

⁸ In 2002, the Council found that PGE had a reasonable likelihood of obtaining a bond or letter of credit in a form and amount satisfactory to the Council to restore the site of the proposed Port Westward Generating Project. The financial assurance amount was \$8.64 million (in 2002 dollars). The Council's finding was based, in part, on a letter from a financial institution stating that it would be willing to furnish or arrange a letter of credit in an amount up to \$10 million for a period not to exceed four years. Even though the useful life of the energy facility was estimated to be 30 years and the letter committed to term of only four years, the Council concluded that PGE had a "reasonable likelihood" of obtaining a bond or letter of credit in compliance with the standard. Bonds or letters of credit are typically issued for a limited term of one or two years, subject to renewal at the end of the term. The certificate holder is required to maintain a bond or letter of credit in effect at all times. PGE is currently providing the required financial assurance for the Port Westward facility.

Conclusions of Law

1 Based on proposed findings and recommendations stated above, the Council concludes
2 that PGE would meet the Council’s Retirement and Financial Assurance Standard if
3 Amendment #1 were approved.

3. Possession or Control of the Site or Facility

4 To approve the transfer of the site certificate, the Council must find that PGE is
5 lawfully entitled to possession or control of the site or the facility described in the site
6 certificate. In a letter enclosing the transfer request, both Orion and PGE stated that “PGE has
7 purchased and acquired from Orion all of their rights, title and interest in the Biglow Canyon
8 Wind Farm project, effective August 16, 2006.”⁹ In addition, Orion’s agreements with the
9 underlying property owners have been transferred or assigned to PGE.¹⁰ Further, PGE has
10 stated that it is “lawfully entitled to possession or control of the Biglow Canyon Wind Farm
11 site and facility.”¹¹ Based on these representations, the Council finds that PGE is lawfully
12 entitled to possession or control of the BCWF site and proposed facility as described in the
13 site certificate.

4. Agreement to Abide by the Site Certificate

14 To approve the transfer of the site certificate, the Council must find that PGE agrees to
15 abide by all the terms and conditions of the site certificate to be transferred. PGE has stated its
16 agreement to be bound by the terms and conditions of the site certificate.¹² Based on this
17 statement by PGE, the Council finds that PGE agrees to abide by all the terms and conditions
18 of the site certificate for the BCWF.

5. Compliance with Other Statutes, Ordinances and Council Rules

19 OAR 345-027-0100(10)(d) addresses new statutes, local government ordinances or
20 Council rules that the Council decides should apply the transferred facility based on “the
21 transferee’s consent” or on a “clear showing of a significant threat to the public health, safety
22 or the environment.” This rule would allow the Council to apply statutes, ordinances or
23 Council rules adopted after the site certificate was issued if the transferee agreed or if the
24 Council made the required finding of “significant threat.” No new statutes have been enacted
25 since the site certificate was approved in June 2006, and the Department is not aware of any
26 new ordinances adopted by Sherman County. The Council has not adopted any new rules
27 since the site certificate was approved. Accordingly, the Council finds that there are no new
28 statutes, local government ordinances or Council needs to consider in acting on the transfer
29 request.

V. GENERAL CONCLUSION

30 The proposed amendment would transfer the site certificate from Orion to PGE but
31 would make no change to the design, construction or operation of the proposed BCWF as

⁹ Letter to the Department, signed by Jim Eisen, Orion Energy LLC for Orion Sherman County Wind Farm LLC, and Rick Tetzloff, Portland General Electric Company, August 22, 2006.

¹⁰ E-mail from Rick Tetzloff, October 11, 2006.

¹¹ Letter to the Department from Rick Tetzloff, October 16, 2006.

¹² Letter to the Department from Rick Tetzloff, October 16, 2006.

1 described in the Final Order on the Application. Based on the findings and conclusions
2 discussed above, the Council approves the transfer request and issues an amended site
3 certificate to PGE, subject to the revisions set forth below.

1. Revisions to the Site Certificate

4 New text is shown with single underline. Deletions are shown with a strikethrough.

Revision 1

5 *Page 2, lines 6-10:*

6 This site certificate for the Biglow Canyon Wind Farm (“Biglow” or the “facility”) is issued
7 and executed in the manner provided by ORS Chapter 469, by and between the State of
8 Oregon (“State”), acting by and through its Energy Facility Siting Council (the “Council”),
9 and Portland General Electric Company (“certificate holder”)~~Orion Sherman County Wind~~
10 ~~Farm LLC (“Orion” or “certificate holder”).~~ This site certificate is a binding agreement
11 between the State, acting by and through the Council, and the certificate holder~~Orion~~.
12 [Amendment #1]

Explanation

13 The revision replaces Orion with PGE as the certificate holder. The parenthetical
14 reference at the end of the paragraph follows standard practice and provides a historical
15 reference of when these changes were made to the site certificate.

Revision 2

16 *Page 2, lines 12-16:*

17 The findings of fact, reasoning and conclusions of law underlying the terms and conditions of
18 this site certificate are set forth in the following documents related to the facility, which are
19 incorporated herein by this reference: (a) the Council’s Final Order in the Matter of the
20 Application for a Site Certificate for the Biglow Canyon Wind Farm (the “Final Order on the
21 Applicationfinal order”) and (b) the Council’s Final Order on Amendment #1,~~which the~~
22 ~~Council granted and approved in final form on June 30, 2006, and which by this reference is~~
23 ~~incorporated herein.~~ [Amendment #1]

Explanation

24 The revision adds a reference in the site certificate to the findings of fact, reasoning
25 and conclusions in support of the present amendment.

Revision 3

26 *Page 2, lines 18-22:*

27 In interpreting this site certificate, any ambiguity shall be clarified by reference to the
28 following, in order of priority: (1) this First Amended Site Certificate~~site certificate~~; (2) the
29 Final Order on Amendment #1; (3) the Final Order on the Application~~final order issued on~~
30 ~~June 30, 2006; and (4) the record of the proceedings that led to the~~ Final Orders on the
31 Application and Amendment #1~~final order; and (4) the Site Certificate Application for the~~
32 ~~Biglow Canyon Wind Farm, which the Oregon Department of Energy (the “Department”)~~
33 ~~filed on March 20, 2006.~~ [Amendment #1]

Explanation

1 The revision establishes the order of priority in which the underlying documents
2 should be considered in resolving any ambiguity. The filed site certificate application is
3 considered part of the record of the proceedings on the Final Order on the Application and
4 need not be listed separately.

Revision 4

5 *Page 2, lines 40-46:*

6 C. This site certificate does not address, and is not binding with respect to, matters that were
7 not addressed in the Council's ~~final order~~ Final Orders on the Application and Amendment
8 #1. These matters include, but are not limited to: building code compliance, wage, hour
9 and other labor regulations, local government fees and charges, and other design or
10 operational issues that do not relate to siting the facility [ORS 469.401(4)] and permits
11 issued under statutes and rules for which the decision on compliance has been delegated
12 by the federal government to a state agency other than the Council. ORS 469.503(3).
13 [Amendment #1]

Explanation

14 The revision includes the Final Order on Amendment #1 in the scope of matters
15 addressed in the site certificate.

Revision 5

16 *Page 4, lines 1-10:*

17 1. Major Structures. The Biglow Canyon Wind Farm will consist of up to 225 wind turbines
18 with an aggregate nominal nameplate generating capacity of 337.5 megawatts (MW) of
19 electricity or 150 wind turbines with an aggregate nominal nameplate generating capacity
20 of 450 MW. The average electric generating capacity will be about 112.5 to 150 MW.
21 Turbines will be mounted on tubular steel towers ranging in height from 265 to 280 feet at
22 the hub with an overall height of from 400 to 445 feet including the turbine blades. The
23 turbines will be erected within up to 30 corridors and spaced to optimize the facility's
24 output. The facility will be located on private farmland that the certificate holder ~~Orion~~ has
25 leased from the affected landowners. [Amendment #1]

Explanation

26 The revision removes a reference to Orion.

Revision 6

27 *Page 21, lines 1-9:*

28 (77) Before beginning construction of the facility, the certificate holder shall develop a
29 system for monitoring state highways and local roads that would serve as transporter
30 routes for delivering equipment to the facility site for degradation, e.g., major potholes, so
31 that safe travel paths may be maintained. The monitoring system shall include site
32 inspection and photographic cataloguing of existing road conditions so that pre-
33 construction conditions can be compared with conditions after construction has been
34 completed. The certificate holder ~~Orion~~ shall coordinate monitoring methods and preferred

1 mitigation efforts with Sherman County Public Works and the Oregon Department of
2 Transportation. [Amendment #1]

Explanation

3 The revision removes a reference to Orion.

Revision 7

4 *Page 34, lines 36-43:*

5 This site certificate may be executed in counterparts and will become effective upon receipt by
6 the Oregon Department of Energy of a facsimile transmission of the signature page of this site
7 certificate with the signatures of signature by the Chair of the Energy Facility Siting Council
8 and the authorized representative of the certificate holder. the notarized signature of the person
9 duly authorized to sign on behalf of Orion Sherman County Wind Farm LLC. Such facsimile
10 signature pages shall be replaced as soon as reasonably possible, but no longer than 30 days
11 after receipt by the Oregon Department of Energy of the facsimile signature pages, with
12 signature pages containing original signatures of the authorized signers. [Amendment #1]

Explanation

13 Under OAR 345-027-0100(11), an amended site certificate is effective “upon
14 execution by the Council chair and the transferee.” The Council required a facsimile
15 transmission of the signature page (with the notarized signature of the certificate holder) in
16 the original site certificate for the Stateline Wind Project as an accommodation to the
17 applicant’s desire to begin construction immediately after the Council’s approval of the site
18 certificate. That was a special case, and the receipt of a facsimile signature page has not
19 generally been required in other site certificates. The Council finds that it is not required in
20 this case.

Revision 8

21 *Page 35, lines 1-3:*

22 **IN WITNESS WHEREOF**, this site certificate has been executed by the State of Oregon,
23 acting by and through its Energy Facility Siting Council, and by Portland General Electric
24 Company Orion Sherman County Wind Farm LLC. [Amendment #1]

Explanation

25 The revision removes a reference to Orion.

VI. ORDER

1 The Council approves Amendment #1 and issue an amended site certificate for the
2 Biglow Canyon Wind Farm, subject to the terms and conditions set forth above.

Issued this 3rd day of November, 2006.

THE OREGON ENERGY FACILITY SITING COUNCIL

By: _____
David Ripma
Council Chair

Notice of the Right to Appeal

You have the right to appeal this order to the Oregon Supreme Court pursuant to ORS 469.403. To appeal you must file a petition for judicial review with the Supreme Court within 60 days from the day this order was served on you. If this order was personally delivered to you, the date of service is the date you received this order. If this order was mailed to you, the date of service is the date it was mailed, not the day you received it. If you do not file a petition for judicial review within the 60-day time period, you lose your right to appeal.