



Oregon

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To: Energy Facility Siting Council

From: Christopher Clark, Senior Siting Analyst

Date: April 5, 2024

Subject: Agenda Item E (Information Item): Wheatridge Renewable Energy Facility East, Public Hearing on Draft Proposed Order on Request for Amendment 1 for the April 19, 2024, EFSC Meeting

Attachments: 1. Draft Proposed Order
2. Public Comments
3. Summary of Comments and Preliminary Staff Recommendations

STAFF RECOMMENDATION

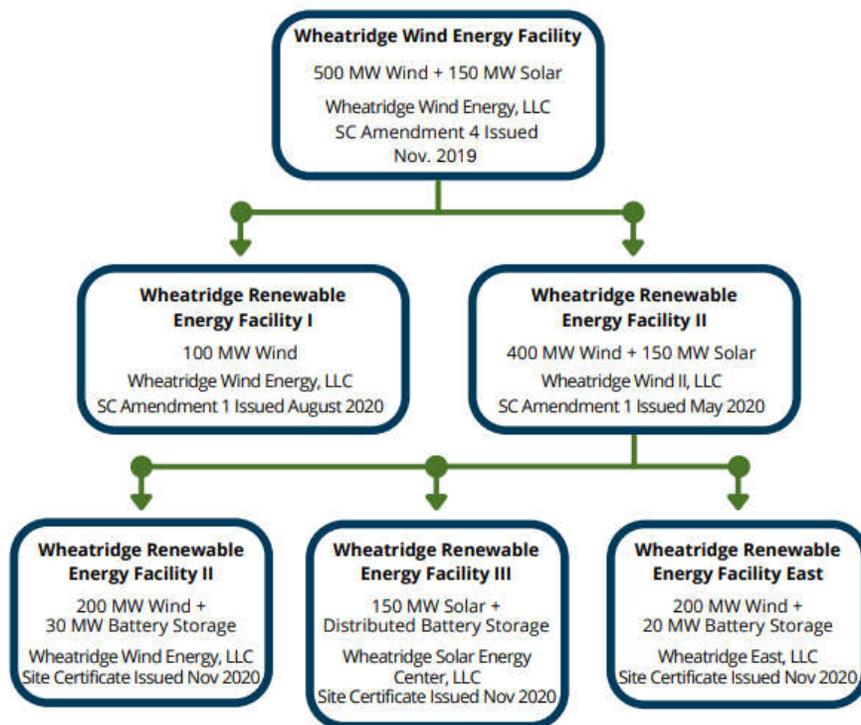
The Oregon Department of Energy (Department) recommends the Energy Facility Siting Council (EFSC or Council) approved the requested site certificate amendment and grant issuance of a first amended site certificate, subject to compliance with existing, recommended amended, and recommended new site certificate conditions.

BACKGROUND AND FACILITY OVERVIEW

On April 28, 2017, the Council issued its Final Order on Application for the Site Certificate for the Wheatridge Wind Energy Facility, authorizing the construction and operation of a 500 MW wind power generation facility with up to 292 turbines within a 13,097-acre site. The facility was designed with turbines concentrated into two geographic groups, “Wheatridge West” and “Wheatridge East,” connected by a 32-mile 230-kV “intraconnection” transmission line.

Through a series of amendments, the Council authorized the addition of solar and battery components, as well as the division of the Wheatridge Wind Energy Facility into four successor facilities: Wheatridge Renewable Energy Facility I, Wheatridge Renewable Energy Facility II, Wheatridge Renewable Energy Facility III, and Wheatridge Renewable Energy Facility East.¹ A diagram illustrating the site certificate history for all successor facilities to the Wheatridge Wind Energy Facility is presented below.

¹ Final Order on Request for Amendment 2 of the Wheatridge Wind Energy Facility Site Certificate, December 14, 2018; Final Order on Request for Amendment 4 of the Wheatridge Wind Energy Facility Site Certificate, November 22, 2019; Final Order on Request for Amendment 5 of the Wheatridge Wind Energy Facility Site Certificate, May 22, 2020, and Final Order on Request for Amendment 1 of the Site Certificate for Wheatridge Renewable Energy Facility II, November 19, 2020.



The site certificate for Wheatridge Renewable Energy Facility East authorizes the construction and operation of components associated with the original “Wheatridge East” group. The site certificate authorizes the construction and operation of up to 66 wind turbines with a combined maximum nameplate capacity of 200 MW and related or supporting facilities, including, but not limited to a 20-MW battery energy storage system and the 230-kV overhead transmission line connecting the energy facility site to the Blue Ridge Substation. The facility is approved to be constructed within an approximately 4,582-acre site in Morrow and Umatilla County. The approved facility components included in Wheatridge Renewable Energy Facility East have not yet been constructed.

PROPOSED FACILITY MODIFICATIONS

On January 30, 2024, Wheatridge East Wind, LLC (certificate holder), filed Request for Amendment 1 of the Site Certificate for the Wheatridge Renewable Energy Facility East (RFA1). In RFA1, the certificate holder seeks authorization to:

- Expand the site boundary by approximately 74,403 acres, to 78,985 acres.
- Expand the micrositing corridor by approximately 10,058 acres, to 14,640 acres.
- Construct up to 41 additional turbines, for a total of up to 107 turbines with a combined generating capacity of up to 300 MW.
- Modify proposed collection system to consist of approximately 95 miles of underground 34.5kV line.
- Expand Battery Energy Storage capacity by 10 MW, for a total of 30 MW.
- Realign 230-kV transmission line along a newly proposed corridor.

- Construct an additional 56 miles of new permanent access roads, for a total of 76 miles.
- Expand project substation to accommodate new generating capacity at one of two proposed sites.
- Utilize the existing Operation & Maintenance Building at Wheatridge Renewable Energy Facility II.
- Add a new temporary construction yard with up to 60 acres of temporary disturbance area.
- Extend the construction completion deadline by 3 years, from May 24, 2023, to May 24, 2026.

Because the certificate holder has requested an extension of the construction completion deadline, to issue an amended site certificate, the Council must find that the preponderance of evidence on the record supports the conclusion that, after considering any changes in facts or law since the date the current site certificate was executed, the entire facility, including facility components proposed to be sited in the area proposed to be added to the site boundary, complies with all laws and Council standards applicable to an original site certificate application.

STAFF EVALUATION OF REQUEST AND SUMMARY OF DRAFT PROPOSED ORDER

In accordance with OAR 345-027-0365, the Department reviewed RFA1 and issued the DPO, and the Public Notice of the DPO on February 29, 2024. As presented in the DPO, the Department recommends the Council find that with the exception of a portion of the previously proposed 230-kV transmission line corridor that extends into Umatilla County, and subject to existing and recommended conditions of approval, the preponderance of evidence on the record supports the conclusion that the facility, with the changes proposed in RFA1, would comply with the Council's general standards in OAR chapter 345, division 022, with the specific standards for wind facilities and transmission lines under OAR 345-024-0010, 345-024-0015, and 345-024-0090, and with other applicable provisions of OAR chapter 345 and ORS chapter 469.

In the DPO, the Department recommends that existing conditions, or existing conditions with minor amendments, are adequate to ensure that the facility, with the changes proposed in RFA1, complies with the following standards:

- Structural (Section III.C, p. 38-46)
- Land Use (Section III.E, p. 57-115)
- Scenic Resources (Section III.J, p. 182-188)
- Recreation (Section III.L, p. 196-205)
- Public Services (Section III.M, p. 205-221)
- Waste Minimization (Section III.O, p. 234-241)
- Public Health and Safety Standards for Wind Energy Facilities (Section III.P, p. 241-243)
- Siting Standards for Transmission Lines (Section III.R, p. 252-253)

Sections recommending significant changes in site certificate conditions are described briefly below.

General Standard of Review (Section III.A, p. 21-31)

- Condition GEN-GS-13 - Because the certificate holder no longer proposes to construct and operate a separate operation and maintenance (O&M) building, the certificate holder is required to provide evidence of a shared use agreement and provide full coverage for the O&M building at the time of decommissioning. The Department also recommends the Council amend or delete all other site certificate conditions or condition requirements that are only applicable to the previously approved O&M buildings. (DPO p. 24-28)
- Condition GEN-GS-02 - Extend the deadline for the completion of construction by two years, consistent with the requirements of OAR 345-027-0385(5)(d). (DPO p. 29)
- Condition GEN-GS-12 - Authorize the construction of the 230-kV transmission line within the certificate holder's proposed corridor. (DPO p. 30)

Organizational Expertise (Section III.B, p. 31-38)

The certificate holder continues to rely on the organizational expertise of its Parent, NextEra Energy Resources, LLC, to satisfy the standard. The DPO recommends the Council amend conditions GEN-OE-03, PRE-OE-01, PRE-OE-04, PRE-OE-05, and PRE-OE-07 to ensure that certificate holder maintains access to parent company's resources and to address parent company's regulatory performance at other facilities.

Soil Protection (Section III.D, p. 46-57)

The certificate holder proposes to expand the energy facility, electrical collector system, and access road network. The DPO recommends the Council amend conditions CON-SP-01, CON-SP-02, OPR-SP-01, and OPR-LU-06 to ensure that the potential adverse impacts on soils, including the potential for additional erosion associated with the expansion would be adequately addressed.

Retirement and Financial Assurance (Section III.G, p. 128-136)

Condition PRE-RF-02 - Require the certificate holder to provide financial assurance for the \$28.4 million estimated to be needed retire the facility, with the changes proposed in RFA1. (DPO p. 135-136)

Fish and Wildlife Habitat (Section III.H, p. 137-172)

The areas proposed to be added to the site boundary consist primarily of grassland and shrub steppe habitat. The DPO recommends the Council amend conditions PRE-FW-04, PRE-FW-05, PRE-LU-04 to incorporate revisions to the Habitat Mitigation Plan, Revegetation Plan, and Weed Control Plan to address temporary and permanent disturbances in these areas. The Department recommends the Council amend site certificate condition CON-FW-02 to incorporate the updated guidance on avoidance buffers for active ferruginous hawk nests.

Threatened and Endangered Species (Section III.I, p. 172-182)

Surveys conducted by the certificate holder in support of RFA1 identified extensive occurrences of Washington Ground Squirrel, an animal species listed by the State as Endangered, and Lawrence's Milkvetch, a plant species listed by the State as Threatened, throughout the

proposed site boundary. The DPO recommends the Council amend site certificate condition PRE-TE-03 and impose a new site certificate condition PRE-TE-04 to require mitigation for impacts to occupied Lawrence's Milkvetch habitat, including the loss of up to 2,604 plants. Mitigation would include seed collection, propagation, and planting implemented by the Oregon Department of Agriculture.

Historic, Cultural, and Archaeological Resources (Section III.K, p. 188-196)

Surveys conducted by the certificate holder in support of RFA1 identified historic and cultural resources within the proposed site boundary that are eligible for, or likely to be eligible for, listing on the National Register of Historic Places. The DPO recommends the Council amend and adopt condition PRE-HC-01 to ensure that cultural resource surveys are completed prior to ground disturbing activities; CON-HC-01 to authorize the certificate holder to conduct ground disturbing areas within 200-feet of identified cultural resources when a tribal monitor or qualified archaeologist is present, and CON-HC-02 to require the certificate holder to implement the Inadvertent Discovery Plan during construction of the facility.²

Wildfire Prevention and Risk Mitigation (Section III.N, p. 221-234)

The Council adopted its Wildfire Prevention and Risk Mitigation Standard after the approval of the site certificate. The DPO recommends the Council impose new site certificate conditions PRO-WP-01 and OPR-WP-01 requiring compliance with a Wildfire Mitigation Plan during construction and operation of the facility.

Cumulative Effects Standard for Wind Energy Facilities (Section III.Q, p. 244-252)

The certificate holder provided evidence suggesting that the cumulative effects of wind development in the Columbia Plateau Ecoregion may result in adverse population level impacts to some sensitive bird and bat species. The DPO recommends the Council amend conditions PRE-FW-02 to require bird and bat fatality thresholds be revised to address the contribution of the newly proposed wind turbines towards these potential cumulative effects and impose a new condition GEN-CE-01 to impose setback requirements based on certificate holder representations.

Other State Regulatory Requirements (Section IV, p. 255-270)

In Section IV of the DPO, the Department recommends the Council find that, subject to existing and recommended conditions of approval, the facility, with the changes proposed in RFA1, would comply with other state laws and rules identified as applicable to the siting of the facility in the project order, including the Noise Regulations for Industry and Commerce under OAR 340-035-0035, laws and the regulation of groundwater and surface water under ORS chapter 537 and OAR chapter 690. Because the certificate holder has elected to obtain a required Removal-Fill Permit directly from the Oregon Department of State Lands, the Department recommends the Council amend an existing condition to require the certificate holder to demonstrate that it has complied with the Removal-Fill law prior to beginning construction.

PUBLIC COMMENTS

The Public Notice of the DPO initiated a public comment period on RFA1 and the DPO.

² 411 acres within proposed micrositing areas have not yet been surveyed for cultural or archaeological resources.

Oral comments were accepted at a public hearing held in Hermiston Oregon on March 21. EFSC Vice-Chair, Cindy Condon, was the presiding officer for the Public Hearing. The Public Hearing was held at the Oxford Suites (Oxford Room) located in Hermiston, Oregon. The complete video/audio file available online at:

<https://www.youtube.com/playlist?list=PLIsoA8uJZ78dsM5XXaBjvYaaQyyKXXGZf>

Four members of the public, as well as Council member Imes provided testimony during the hearing. The certificate holder also appeared but did not provide substantive comments. The testimony provided is summarized below. Several commenters also provided testimony related to the Boardman to Hemingway Transmission Line and associated proceedings which is omitted from the summaries below.

Wendy King

Wendy King provided comments raising concerns about the visual impacts of turbines sited on and near Gleason Butte. Ms. King acknowledged that Gleason Butte is not designated as a protected resource by Morrow County but stated that the Butte is considered important by many local residents. Ms. King stated that turbines reaching above the peak of Gleason Butte, and their associated aviation lighting would have adverse impacts on views from her family's farm and other working properties to the North of the proposed site, and recommended that impacts be addressed by excluding all turbines whose maximum blade tip height exceeds 3,189 feet above sea level.

Ms. King also raised concerns about the potential cumulative impacts of siting facilities in Morrow County on the community, such as potential cumulative impacts on traffic safety and use of roads for agricultural operations.

Sam Myers

Sam Myers echoed Ms. King's concerns about Gleason Butte and requested that the Council treat Gleason Butte as an important scenic resource even though it's not formally listed as a landmark or protected viewshed by the County.

Mr. Myers also raised concerns regarding the potential for noxious weeds to spread during construction and operation of the facility, particularly given the proposed addition of over 50 miles of access roads in areas that are remote and difficult to access. Mr. Myers stated that the spread of weeds can result in adverse impacts to agricultural operations and that some weeds, such as kochia, could increase fire hazard at the site. Mr. Myers questioned whether the draft weed plan attached to the Draft Proposed Order was adequate to address noxious weeds.

Citing data included in the 2019 Morrow County Community Wildfire Protection Plan, Mr. Myers stated that wildfire was relatively common in the area proposed for development, and that quickly spreading grass fires in the mountainous rolling terrain of the site were difficult to fight even under fair conditions. Mr. Myers raised concerns that roads and wind turbines could increase susceptibility of the site to lightning strikes and human-caused fires. Mr. Myers raised concerns that there was not adequate infrastructure to respond to fires at the site.

James Cutsforth

James Cutsforth commented that he believed the proposed access roads would help local firefighters by providing access to areas that currently have no roads. Mr. Cutsforth recommended the certificate holder meet with the local fire districts to discuss wildfire protection plans. Mr. Cutsforth commented that his experience as a landowner in Wheatridge II, he had experience working with the certificate holder and was not concerned about weed control.

Fuji Kreider

Fuji Kreider raised general concerns about the cumulative impacts of siting the transmission lines and roads associated with multiple facilities and amendments in Morrow and Umatilla County. Ms. Kreider commented that she believed the Council's standards-based approach was too limited to help Oregon reach its decarbonization goals and ensure an adequate energy supply while safeguarding Oregon's environment, public health, and safety and recommended the Council adopt at least one additional standard to address cumulative impacts as soon as possible.

For the proposed amendment, Ms. Kreider recommended the Council require the certificate holder, and the certificate holder's for any other unbuilt facilities in the area, to communicate or coordinate to reduce cumulative impacts by co-locating transmission corridors or other means of reducing fragmentation of farms and natural resources.

Council Member Imes

In addition to public comments, Council member Imes raised concerns that the draft Wildfire Mitigation Plan did not contain sufficient information about operational procedures and inspections; the implementation of training programs, the capacity of local fire responders and how they've been engaged in the process. Council member Imes raised concerns that Wildfire Mitigation Plans for different projects were not consistent with each other.

Certificate Holder

David Lawlor (NextEra Energy Resources, LLC), Sarah Twitchell (NextEra Energy Resources, LLC), and David Filippi (Stoel Rives) appeared on behalf of the certificate holder. Mr. Lawlor explained that the certificate holder was primarily in attendance to hear public comments provided at the hearing and would provide written comments on the DPO.

Written Comments

The Public Notice on the Draft Proposed Order established April 4 as the deadline for Public Comments. The Council agreed to leave the record open until April 8 to allow the certificate holder additional an opportunity to respond to comments received. The Department received 20 written comments before the April 4 Deadline. Exact copies of all the written comments are provided as Attachment 2 of this staff report.

PROPOSED ORDER

Significant issues raised in public comments included issues related to visual impacts of proposed facility components, adequacy of the proposed Noxious Weed Control Plan and Wildfire Mitigation Plan, and potential impacts on public services, roads, and emergency service providers. A summary of all significant issues raised in the written and oral comments, and staff's preliminary recommendations for how to address the issues in the DPO will be provided as Attachment 3 to this Staff Report. The summary will be updated after Certificate Holder Responses to public comments are provided.

NEXT STEPS

No later than 30 days after the Council's review, the Department must issue a Proposed Order recommending approval, modification or denial of the request for amendment to the site certificate. The issuance of the Proposed Order will be accompanied by a public notice establishing a deadline for requests for a contested case proceeding. As stated above, only those persons who comment in person or in writing on the record of the public hearing may request a contested case proceeding on the Proposed Order for an amendment to the site certificate.

The Council may adopt, modify, or reject the Proposed Order. If the Proposed Order is adopted or adopted, with modifications, the Council will issue a Final Order granting issuance of an amended site certificate. If the Proposed Order is denied, the Council shall issue a Final Order denying issuance of the amended site certificate. The Final Order will be subject to judicial review by the Oregon Supreme Court as provided in ORS 469.403.