



Oregon

Kate Brown, Governor



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RE: Department Determination on Type B Review Amendment Determination Request (Type B Review ADR) for Boardman Solar Energy Facility, Request for Site Certificate Amendment 1

Dear Mr. Lea,

The Oregon Department of Energy (ODOE or Department) concludes that the Type B Amendment review process is justified for Boardman Solar Energy Request for Amendment 1.

On January 7, 2021, the Department received preliminary Request for Amendment 1 to the Boardman Solar Energy Facility Site Certificate (pRFA1) from Boardman Solar Energy LLC (certificate holder). The certificate holder also submitted a Type B Review ADR. On January 13, 2021, the Department posted the ADR and the pRFA1 to its website and commenced review as required by OAR 345-027-0357(5). On January 19, 2021 the Department determined that the pRFA1 was incomplete, and that additional information was needed to complete its evaluation.

The proposed amendment seeks Council approval for a three year extension to both the construction commencement and completion deadlines. This change would make the new construction commencement deadline February 23, 2024, and the new construction completion deadline February 23, 2027.

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). The Department may consider, but is not limited to, the factors identified in OAR 345-027-0357(8) when determining whether to process an amendment request under Type B review. The certificate holder provides an analysis of those factors in pRFA1 Section 1.1. A summary of that analysis, and the Department's evaluation is provided below.

(a) The complexity of the proposed change;

The certificate holder suggests that the proposed change is not complex because there will be no physical alterations to the previously approved facility, and that the construction and operation of the facility would occur in the same manner as previously approved.

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, is based on an evaluation 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 pRFA1, including the results of the certificate holder's literature reviews and the Department's consultation with reviewing agencies, there are no such changes when compared to the facts presented in the certificate holders' Application for Site Certificate (ASC). Therefore, the Department determines there to be no complexity resulting from changes in factual circumstances.

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 pRFA1, 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 the ASC. MCZO solar rules were updated, but 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, while the amended LCDC rule applies to the facility and will be evaluated in the Draft Proposed Order (DPO), the regulatory changes have a minimal impact on the facility and 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 during the initial public comment periods on the ASC, eight comments were received. Furthermore, the certificate holder states that the majority of the eight comments received during the ASC review process were supportive of the project. Lastly, the certificate holder explains that all comments raised by interested parties and reviewing agencies were addressed, and that conditions were imposed to ensure compliance with council standards.

Following review of the certificate holder's Type B Review ADR, the Department also assessed the quantity and scope of public comments received on the record of the proceedings for this facility, which is limited to the Final Order on the ASC. As noted by the certificate holder, eight comments were received on the record of the DPO Public Hearing, including 4 comments from members of the public, two comments from certificate holder/certificate holder legal counsel, and two comments from state and local reviewing agencies. Of the four public comments received, three were related to the underlying land to be used by the facility and the land use evaluation, while the remaining comment was related to various resources (cultural and fish and wildlife habitat).¹ None of the commenters requested a contested case, suggesting that issues raised on the record of the DPO were adequately resolved, as the certificate holder notes.

The Department notes that this amendment request represents the first deadline extension for an approved solar facility to be reviewed by Council, however, it is one of dozens of amendment requests to extend construction deadlines for other types of energy facilities. General public interest in amendments requesting approval to extend construction deadlines range from low to significant, depending on the type of energy facility combined with the number of deadline extensions for which the amendment request represents. Because this is the first deadline extension request for this facility, and the span of time from the original site certificate approval is relatively short (less than 5 years – approved in Feb. 23 2018), the Department does not anticipate a significant level of public interest, generally, in the amendment request.

Based on the evaluation presented above, the Department determines the level of public interest to be low to moderate

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

¹ The Department and Council previously concluded that historic interest by one member of the public or an interest group does not, in and of itself, represent a "high" level of public interest. June 28, 2018 Energy Facility Siting Council Meeting. Agenda Item F – Council Review of Department Determination on Type A Review for Wheatridge Wind Energy Facility Request for Amendment 2.

The certificate holder suggests that the level of reviewing agency interest should be anticipated to be low due to the limited scope of the amendment request. To support the anticipated low level of interest by reviewing agencies, the certificate holder explains that the combination of the proposed change in pRFA1, not physically changing the approved facility, reviewing agencies involvement in the ASC process, and because the facility was found to comply with varying regulations and standards, significant renewed interest by reviewing agencies is not expected.

During review of pRFA1, the Department solicited both review and comments from reviewing agencies. Two reviewing agencies, Oregon Department of Fish and Wildlife (ODFW) and Morrow County have already responded with comments. Neither responded with comments that the Department concludes to constitute a high level of interest. ODFW's comments were to largely agree with the Department's proposed Habitat Mitigation Plan and to confirm that no additional state threatened and endangered species are within the project area. Morrow County's related to the change in their land use regulations, which is already reflected in Section (a) above. While the Department anticipates additional agencies to comment in the near 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 impacts;

The certificate holder describes that, given the scope of RFA1, the likelihood of significant adverse impacts should be considered low. 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 indicates that mitigation efforts described in the ASC, and conditions imposed by Council were approved in the site certificate, ensuring that the mitigation would be conducted with oversight and accountability over the lifetime of the approved facility. Additionally, in pRFA1, the certificate holder states that in 2021, field surveys for WAGs were conducted, and that no burrows or occurrences were observed. The certificate holder states that they remain committed to adhering to the agreed upon mitigation efforts and conditions.

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 indicate

that the findings of fact and compliance with conditions allow for the facility to comply with respective standards. Therefore, the Department evaluated potential new conditions and amendments to existing conditions and found that neither the addition of new conditions as a result of this amendment request, nor amendments to existing conditions would result in a significant amount or type of mitigation.

Based on the scope of the proposed changes, and the Department's review of those changes, 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 and imposed at the approved facility.

In 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 and additional mitigation, the Department determines that the certificate holder has justified RFA1 be reviewed under the Type B process.

At the August 27, 2021 Council meeting, the Department will provide verbal notice of the Type B Review ADR and this determination as required by OAR 345-027-0357(6). At the request of the certificate holder or a Council member, the Department must refer its determination to the Council for concurrence, modification or rejection.

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

Respectfully,
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