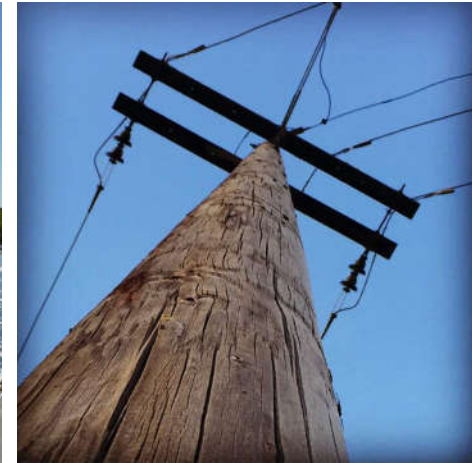


Energy Facility Siting Council Meeting

Christmas Valley Parks
and Recreation
Community Room
87345 Holly Street,
Christmas Valley

August 24, 2023



Opening Items:

- Call to Order
- Roll Call
- Announcements



Announcements:

- For those interested in providing comment during public comment period or the public hearing there are three ways to let us know you are interested:
 - In person – fill out registration card
 - On Webex – use the “Raise Your Hand”
 - On the phone - press *3
- Reminder to Council and to anyone addressing the Council to please remember to state your full name clearly, and do not use the speakerphone feature, as it will create feedback.
- Please silence your cell phones
- You may sign up for email notices by clicking the link on the agenda or the Council webpage.



Announcements continued:

- You are also welcome to access the online mapping tool and any documents by visiting our website.
- Reminder that this meeting is being held in its entirety via teleconference and webinar and will be posted to the Council's website
- Energy Facility Council meetings shall be conducted in a respectful and courteous manner where everyone is allowed to state their positions at the appropriate times consistent with Council rules and procedures. Willful accusatory, offensive, insulting, threatening, insolent, or slanderous comments which disrupt the Council meeting are not acceptable. Pursuant to Oregon Administrative Rule 345-011-0080, any person who engages in unacceptable conduct which disrupts the meeting may be expelled.



Agenda Item A (Action Item & Information Item)

Consent Calendar

- July Council Meeting Minutes
- Council Secretary Report

August 24, 2023



Agenda Item B (Action Item)

Application Phase 1 Rulemaking

August 24, 2023

Thomas Jackman, Rulemaking Coordinator, ODOE



Presentation Overview

- Background and Procedural History
- Overview of Proposed Rules
- Overview of Public feedback
- Overview of Minor Changes
- Council Consideration of the Phase 1 Application Process Review Draft Language to be Submitted as a Permanent Rulemaking Order



Background - Rulemaking Process



Background – Scope and Objectives of Phase 1

- **Scope:** Update rule language in Divisions 015 – 026 (currently only 015 – 022)
- **Objectives:**
 - Ensure that procedural rules are internally consistent and flow logically
 - Remove ambiguity about which party is responsible for various application processes
- **Outside Scope:** Substantively altering any existing process, or modifying the standards applied by the Council in determining whether to grant a site certificate



Summary of Phase 1 Draft Rules

Three Categories of Changes in Phase 1:

1. Consolidating references to Department responsibilities into Division 15
2. Modifying the structure of division 15 to be consistent across the different stages of the siting process
3. Making editorial changes to rule language throughout 15, 20, and 21 to improve clarity and consistency.



Consolidating Department Responsibilities

- Language from Division 20 and 21 directed at the Department (“**The Department must/shall**”) has been moved into Division 15.
- Example 1:
 - “The **Department must** issue public notice . . . of any amendment”)
 - Originally found at OAR 345-020-0016(2)
 - Now moved to a subsection of 345-015-0110

Consolidating Department Responsibilities

- Language from Division 20 and 21 directed at the Department (“**The Department must/shall**”) has been moved into Division 15.
- Example 2:
 - OAR 345-021-0050 (Distribution **by Department** of a preliminary application and the accompanying memorandum)
 - Removed from Division 021
 - Merged with OAR 345-015-0180 (Describing the content of the Department’s memorandum on the preliminary application)



Division 15 Better Internal Consistency

Siting process has stages:

- The notice of intent
- The project order
- The preliminary application
- Etc.



Division 15 Better Internal Consistency

Current Rules:

- The notice of intent
 - Rules organized one way
- The project order
 - Rules organized a second way
- The preliminary application
 - Rules organized a third way



Division 15 Better Internal Consistency

Proposed Rules:

- The notice of intent
 - Subset of rules
- The project order
 - Subset of rules
- The preliminary application
 - Subset of rules



Division 15 Better Internal Consistency

Current Rules:

- OAR 345-0110 – Public Notice of a Notice of Intent
 - No corresponding rule exists for the Preliminary Application or Complete Application stages
 - Notice procedures are currently in OAR 345-021-0050 and 345-015-0190



Division 15 Better Internal Consistency

PROPOSED RULES:

- OAR 345-015-0110 – Public Notice of a Notice of Intent
- OAR 345-015-0171 – Public Notice of a Preliminary Application
- OAR 345-015-0194 – Public Notice of a Complete Application for Site Certificate

Clarity and Consistency

Making rules internally consistent:

- Modifying OAR 345-015-0120(3) to add the word “time” and remove the word “agenda” to match corresponding language used in OAR 015-0110(2)(f)
 - 345-015-0120(3): “State the date, time, location, ~~agenda~~ and **purpose** of any informational meeting that the Department has scheduled on the NOI and encourage the recipient to attend and participate in the informational meeting.”
 - 345-015-0110(2)(f): “**The date, time, and location, and purpose** of any informational meeting on the NOI that the Department has scheduled”

Clarity and Consistency

Removal of now redundant references to rules that have been combined with the rules they used to reference:

- Deleting the reference “under OAR 345-021-0055” from rule language that has been combined with OAR 345-021-0055 and would now be redundant

RAC Feedback Overview

- One RAC Meeting held on April 27, 2023
- Three responses to request for feedback
- Reviewed this at June meeting



Public Feedback Overview

- Zero comments made at public hearing, which was held in July.
- Two written public comments:
 - PGE
 - Friends of the Gorge



PGE Comments

- Comment 1 – Eliminate paper and/or allow “for the Department to have control and decision over the number of printed copies necessary.”
 - Staff recommends no changes.
- Comment 2 - PGE is requesting additional language be added to clarify the intent behind the new notice requirements regarding the “land management agency or organizations with jurisdiction over the protected areas identified in the proposed order.”
 - Staff Recommends no changes.

Friends of the Gorge Comments

- Comment #1 – Requests comment deadline extension due to website date error.

Required Public Notice

- As per rule 345-001-0000(1) - Before permanently adopting, amending or repealing any rule, the Council must give notice of the proposed action:
 - (a) In the Secretary of State's Bulletin referred to in ORS 183.360 at least 21 days before the effective date of the rule;
 - (b) By sending a copy of the notice by mail or email to persons on the Council's mailing list established under ORS 183.335(8) at least 28 days before the effective date of the rule;
 - (c) By sending a copy of the notice by email to the legislators specified in ORS 183.335(15) at least 49 days before the effective date of the rule; and
 - (d) By sending a copy of the notice by mail, email, or hand delivery to the Associated Press and the Capitol Press Room.

Extension Rules

“Upon request of an interested person received before the earliest date that the rule could become effective after the giving of notice pursuant to subsection (1) of this section, the agency shall postpone the date of its intended action no less than 21 nor more than 90 days **in order to allow the requesting person an opportunity to submit data, views or arguments** concerning the proposed action.” ORS 183.335(4), emphasis added.

Friends of the Gorge

- Comment #2
 - 345-015-0180(1) be modified to read “Unless and Until the Department determines the application to be complete as described in OAR 345-015-0190 or 345-015-0310, it is a preliminary application.”
 - Staff recommends not adding the proposed language.

Friends of the Gorge

- Comment #3
- “After a determination that an application is complete, if the Department identifies a need for additional information during its review of the application **and requests such additional information,** the applicant must submit **that** additional information to the Department. Submission of such information does not constitute an amendment of the application.” OAR 345-015-0190(7) and 345-015-0310(11) (similar, but not identical).
- Staff recommends adopting the proposed language.

Friends of the Gorge

- Comment #4
- Friends requests new “rules [. . .] to ensure that the public and reviewing agencies are provided with timely notice and access to any ‘additional information’ submitted by applicants pursuant to Proposed Rules 345-015-0190(7) and 345-015-0310(11).”
 - Staff recommends rejecting this recommendation as outside the scope of this rulemaking. If Council agrees with this, staff will make a note of this request for future rulemakings.

Staff Proposes Additional Minor Change

- Staff recommends adding 345-015-0220(2)(D), which would read: “The land management agency or organization with jurisdiction over the protected areas identified in the application.”
 - This aligns with the addition of the new notice requirement found throughout the new rule update.



Staff Proposes Additional Minor Change

- Staff recommends removing OAR 345-015-0120(5) (NOPR version), which read “Should any person on the distribution list request a printed copy of all or part of the NOI, the Department will ensure that the applicant does so” and modifying rule language at OAR 345-020-0016 from:
 - “The applicant must prepare and submit additional copies of the amended NOI as required by OAR 345-020-0040” → “The applicant must provide a printed copy of all or part of the amended NOI to any person on the distribution list as directed by the Department.”
 - The added language is not needed given related language found in Division 20.



Council Options

Option 1 - Recommended

Approve the proposed
rules as presented

Option 2

Approve the proposed
rules with changes

Option 3

Take no action at this
time

Council Deliberation



Agenda Item C (Information Item)

Public Comment Period **(Time Limits May be Set)**

August 24, 2023



How to Indicate Your Interest in Commenting:

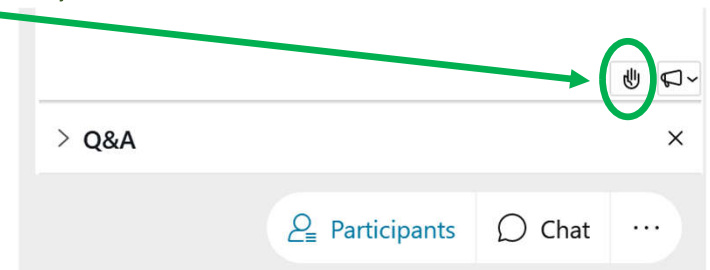
Webinar Participants

The bottom right of the main window is a set of icons:

Click on “Participants”

The bottom right of the participant window is a hand icon, click on the hand:

Clicking on it again will lower your hand.



Phone Participants

Press *3 on your telephone keypad to raise your hand.

Press *3 again on your telephone keypad to lower your hand.

Agenda Item D (Information Item)

Obsidian Solar Center Draft Proposed Order for Request for Amendment 1 of Site Certificate

August 24, 2023

Informational Presentation – Kathleen Sloan, Senior Siting Analyst, ODOE



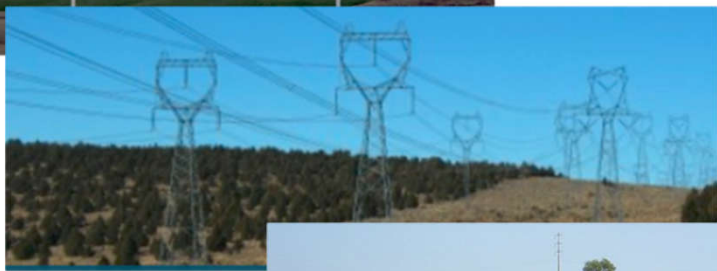
Obsidian Solar Center Request for Amendment 1: Public Hearing on Draft Proposed Order Overview

1. Facility Overview: Department overview of the siting process, approved facility components and location, the amendment request, and Draft Proposed Order.
2. Public Hearing Overview: Presiding Officer will explain the legal requirements for providing comments on the record and will facilitate the hearing.
3. Public Hearing:
 - a. The certificate holder will be provided an opportunity to provide/present on anything in the Draft Proposed Order and/or may submit additional information/evidence to supplement the record.
 - b. Members of the public will be provided an opportunity to comment on the Draft Proposed Order and/or the Request for Amendment 1.
 - c. Council will be provided an opportunity to make comments about any concerns they have related to the Draft Proposed Order and/or the Request for Amendment 1.
 - d. The certificate holder will be provided an opportunity to respond to any comments; may request that the presiding officer extend the record.

Energy Facility Siting Council (EFSC) Review



- Consolidated review and oversight of most large-scale energy facilities and infrastructure in Oregon

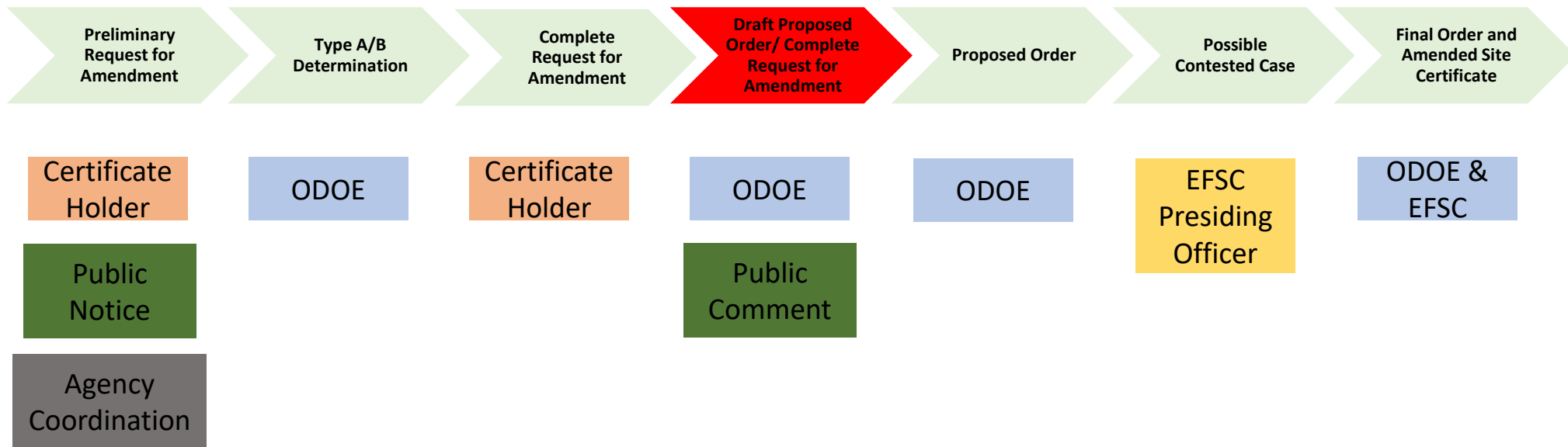


- 7 Members of EFSC
 - Governor appointed, Senate confirmed – Volunteers from around the State



- ODOE's Siting Division is staff to EFSC

Energy Facility Siting Amendment Process



Obsidian Solar Center: RFA1 Procedural History

Milestone	Responsible Party	Date
Preliminary RFA1	Cert Holder	April 12, 2023
Request for Additional Information (RAI)	ODOE	May 24, 2023
Complete RFA1	Cert Holder	July 31, 2023
Draft Proposed Order	ODOE	August 1, 2023
Draft Proposed Order Public Hearing	EFSC	August 24, 2023
EFSC Review of DPO, Public Comments, and Responses	EFSC	TBD
Proposed Order	ODOE	TBD
Final Decision	EFSC	TBD

Obsidian Solar Center Request for Amendment 1 (RFA1)

RFA1 requests Council approval to:

- amend the site boundary to include an additional 169 acres;
- construct 1 site generation step-up (GSU) substation in alternative location;
- increase the length and voltage of 115 kilovolt (kV) transmission line from 2 to 3.2 miles and from 115 to 138 kV;
- increase the voltage of the electrical collection system from 34.5 to 138 kV; and
- change structure type and height for aboveground collector system for 2.3 miles.

Obsidian Solar Center: Request for Amendment 1

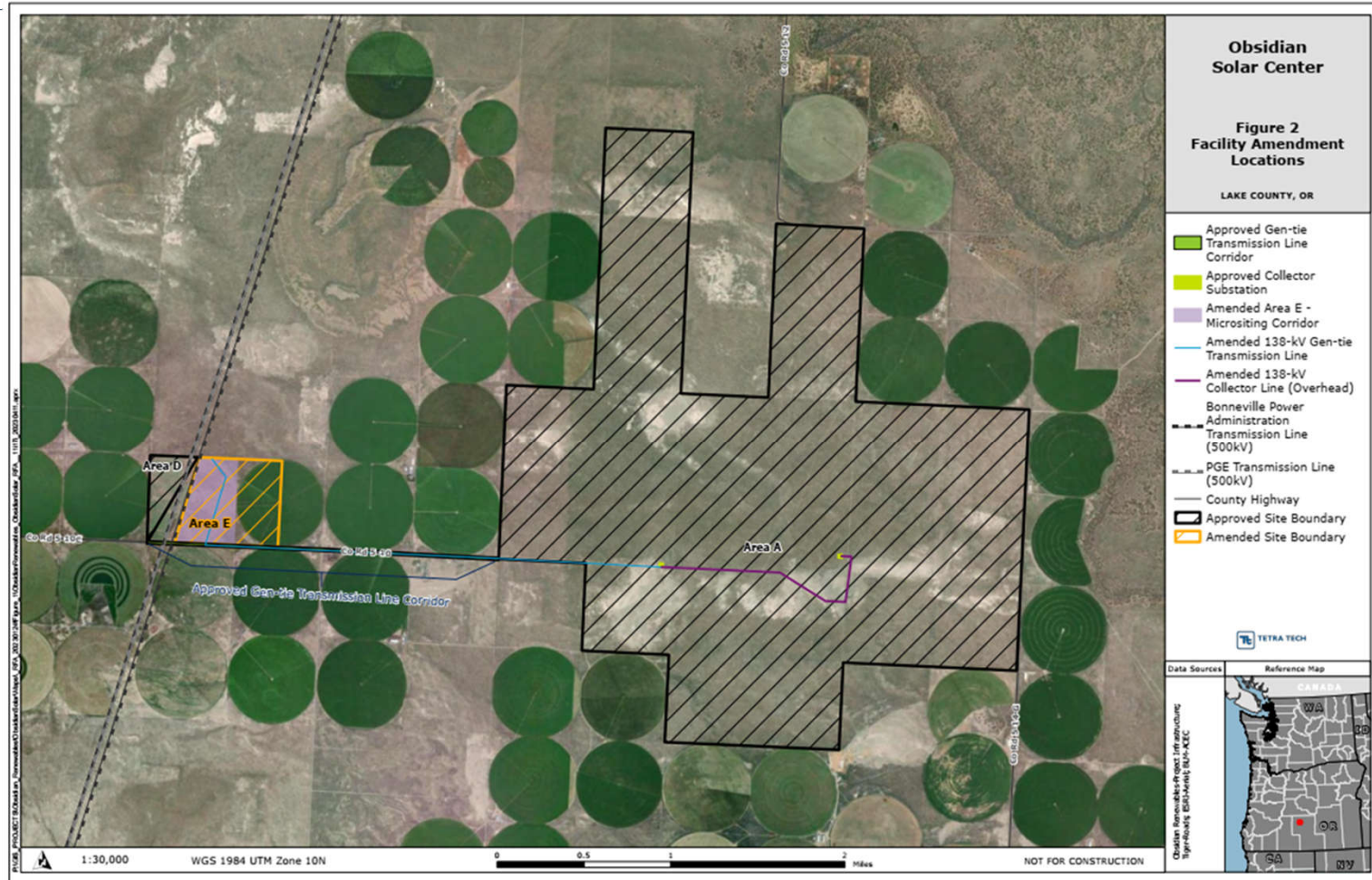
Proposed RFA1 Changes:

Increase site boundary 169 Acres

Add 84-acre micrositing area (Area E)

No more than 12 acres of disturbance within Area E.

Adds option for point of interconnection to BPA transmission line instead of PGE transmission line in Area D.



Obsidian Solar Center RFA1

Scope of Review & Comments

Scope of Council Review for Amendments – OAR 345-027-0375

- The Council must determine that the preponderance of evidence on the record supports the following conclusions:
 - to add new area to the site boundary, the portion of the facility within the area added to the site by the amendment complies with all laws and Council standards applicable to an original site certificate application and in effect on the dates described in section (3) of the rule
 - For all requests for amendment, the amount of the bond or letter of credit required under OAR 345-022-0050 is adequate

Scope of Comments

- Everything in the complete amendment request and Draft Proposed Order is eligible for comment

Obsidian Solar Center – Draft Proposed Order

Based on the Department’s review of information on proposed changes, literature reviews, consultations, and field work included in the ASC and the RFA1, the Department did not identify any substantive changes or make recommended amended or new conditions for the following Council standards:

- Structural Standard [OAR 345-022-0020]
- Soil Protection Standard [OAR 345-022-0022]
- Protected Areas Standard [OAR 345-022-0040]
- Fish and Wildlife Habitat Standard [OAR 345-022-0060]
- Threatened and Endangered Species Standard [OAR 345-022-0070]
- Scenic Resources Standard OAR 345-022-0080]
- Historic, Cultural and Archaeological Resources Standard [OAR 345-022-0090]
- Recreation Standard [OAR 345-022-0100]
- Public Services Standard [OAR 345-022-0110]
- Waste Minimization Standard [OAR 345-022-0120]
- Noise Control Regulations [OAR-035-0035]
- Removal Fill [OAR 141-085-0500 through 141-085-0785]
- Water Rights [OAR 345-022-0000(1)(b), 345-021-0010(1)(o)(F)]

Obsidian Solar Center – Draft Proposed Order

The Department issued the Draft Proposed Order (DPO) on August 1, 2023 – opening Public Comment Period

Based upon the Department’s evaluation of proposed RFA1 changes, the Department makes new and additional findings of fact, and recommended amended and/or new conditions for the following Council standards:

- GENERAL STANDARD OF REVIEW: OAR 345-022-0000
- ORGANIZATIONAL EXPERTISE: OAR 345-022-0010
- LAND USE: OAR 345-022-0030
- RETIREMENT AND FINANCIAL ASSURANCE: OAR 345-022-0050
- WILDFIRE PREVENTIONS AND RISK MITIGATION OAR-345-022-0115
- SITING STANDARDS FOR TRANSMISSION LINES : OAR 345-024-0090

Obsidian Solar Center – Draft Proposed Order

III.A. GENERAL STANDARD OF REVIEW: OAR 345-022-0000 P. 14-19.

RFA1 requests a change in transmission line corridor extending to the proposed alternate GSU substation location per OAR 345-025-0010(5), consistent with the Council’s definition of a transmission line “corridor”.

Because RFA1 includes changes to the approved corridor, the Department recommends Council amend General Standard Condition 9 (See P. 18 in DPO) to allow the certificate holder to construct a 138 kV line within an extended approved corridor in Area A to allow for a Point of Interconnection in either Area D or Area E.

Obsidian Solar Center – Draft Proposed Order

III.B. ORGANIZATIONAL EXPERTISE: OAR 345-022-0010

P. 19-22

RFA1 changes include increases in transmission line voltage from 115 to 138 kV, increase in transmission line length and extent of above-ground components, increases in GSU step-up substation transformer size, collector substation transformer size, and change in GSU step-up substation location.

To ensure qualified personnel oversee and complete the facility, and because of the changes in capacity and components, the Department recommends Council amend Organizational Expertise Condition 2 and impose new recommended Organizational Expertise Conditions 6, 7 and 8 (See P. 21-22 in DPO) requiring submittal of construction and site manager qualifications for each phase of the facility.

Obsidian Solar Center – Draft Proposed Order

II.E. LAND USE: OAR 345-022-0030

P.33-43

The addition of Area E includes adding a parcel of land currently used for irrigated agriculture with an existing water right for that purpose. In RFA1, the landowner stated their intent to transfer that water right for ongoing agricultural use (See RFA1 Attachment 4). Lake County Special Advisory Group (SAG) commented that as long as the water right for irrigation is transferred for the same use within the county, there would be no-net loss of irrigated agriculture.

To ensure no-net loss of irrigated agriculture, and consistent with the certificate holder's representations, and the SAG's comments, the Department recommends Council impose new recommended Land Use Condition 8 (See P. 43 in DPO) which requires the certificate holder to submit evidence of the water right transfer for facility impacts in Area E (if selected for construction) for similar use (irrigated agriculture) in Lake County, prior to construction.



Obsidian Solar Center – Draft Proposed Order

III.G. RETIREMENT AND FINANCIAL ASSURANCE: OAR 345-022-0050 P.50-57

RFA1 changes would result in increased costs for retirement of the facility and its components. To demonstrate its ability to receive an adequate bond or letter of credit, the certificate holder provides a June 28, 2023 letter from Heffernan Insurance Brokers, stating their likely ability to obtain a bond for up to \$40 million. The new estimate for retirements costs is \$38,108,395 in Q3 2023 dollars.

The Department recommends Council amend Retirement and Financial Assurance Condition 5 (See P. 56-57 in DPO) to reflect the adjusted bond amount based on the updated estimate of \$38.1 million Q3 2023 dollars to retire the facility, with RFA1 changes.

Obsidian Solar Center – Draft Proposed Order

III.N. WILDFIRE PREVENTIONS AND RISK MITIGATION OAR-345-022-0115

P. 86-95

Since Council's approval of the Final Order on the ASC included fire prevention measures for the facility construction and operations (Public Services Condition 4) Council adopted the Wildfire Prevention and Risk Mitigation standard. Updated fire risk assessment as part of RFA1 indicates that the addition of RFA1 is not likely to increase wildfire risk because risk is relatively low. However, the Department recommends that Council require the certificate holder to prepare updated plan(s) per new conditions under this Wildfire standard.

For these reasons, the Department recommends Council replace Public Services Condition 4 and impose new recommended Wildfire Prevention Condition 1 (replaces existing Public Services Condition 4(a) and new recommended Wildfire Prevention Condition 2 (replaces existing Public Services Condition 4(b)), to require final Wildfire Mitigation Plans for both construction and operation phases of the facility, and to require implementation and adherence to those plans, per new recommended Wildfire Prevention Conditions 3 and 4.

Obsidian Solar Center – Draft Proposed Order

III.P. SITING STANDARDS FOR TRANSMISSION LINES : OAR 345-024-0090

P.96-98

RFA1 requests changes in transmission line from 115 kV to 138 kV and includes 138kV collector lines. Existing Siting Standards for Transmission Lines Condition 1 requires notification of landowners prior to operation on potential health and safety risks associated from induced current and electric magnetic fields,

The Department recommends the Council amend Siting Standard for Transmission Lines Condition 1 (See P. 98 in DPO) to update this condition to reflect RFA1 changes to 138kV transmission and collector lines.

Conclusions and Recommendations: The Department recommends that the Council find, based on a preponderance of the evidence on the record, and with recommended new, amended and existing site certificate conditions, that the site certificate may be amended as requested. The Department also recommends that the Council find that with existing, and recommended amended and new conditions, the facility, with proposed RFA1 changes, will continue to comply with the General Standard of Review OAR 345-022-0000 and OAR 345-027- 0375.

Public Participation at DPO Phase

- The issuance of the DPO notice initiates the opportunity for public comment on the requested amendment;
- Notice opens comment period and provides details on public hearing;
- The public may submit comments by:
 - Mail, email, public comment portal, hand-delivery, or fax during the comment period;
 - Providing oral or written comments at the in-person, webinar/call-in DPO public hearing.



Public Participation at DPO Phase (cont'd)

- The Council will not accept comments on the Request for Amendment 1 or on the DPO after the close of the record at the end of the public hearing on August 24, 2023*;
- Persons commenting on DPO during the comment timeframe are eligible to request a contested case proceeding, which is not an automatic part of the amendment process;
- For consideration in the contested case, issues must:
 - Be submitted within the comment timeframe.
 - Be within the jurisdiction of the Council
 - Include sufficient specificity with facts so that the Council, the Department, and the certificate holder understand the issue raised and are afforded an opportunity to respond to the issue;

*Unless otherwise held open by Council.

Public Participation at DPO Phase (cont'd)

- Threshold for a contested case for a Type A Amendment:
 - Council must find that the request raises a significant issue of fact or law that is reasonably likely to affect the Council's determination whether the facility, with the change proposed by the amendment, meets the applicable laws and Council standards included in chapter 345 divisions 22, 23 and 24. And Council must determine whether the preponderance of evidence on the record supports that the portions of the facility within the area added to the site boundary by the amendment complies with all laws and Council standards.
- A ten-minute video describing the Type A Amendment Contested Case threshold is available on YouTube and the link was included in the Public Notice.
- Council Options on Requests for a Contested Case:
 - Hold a contested case –properly raised issue(s) could affect the Council's determination
 - Remand Proposed Order to Department - properly raised issue(s) could be addressed through new findings and/or conditions
 - Deny – request does not include properly raised issue(s)

Agenda Item D (Public Hearing)

Obsidian Solar Center Draft Proposed Order for Request for Amendment 1 of Site Certificate

August 24, 2023

Presiding Officer: Marcy Grail, EFSC Chair



Obsidian Solar Center RFA1 Draft Proposed Order: Public Hearing

A person who intends to raise any issue that may be the basis for a contested case must raise the issue:

- ➔ in person at the hearing or in a written comment submitted to the Department of Energy before the deadline stated in the notice of the public hearing (**Today, August 24, 2023**).
- ➔ with sufficient specificity to afford the Council, the Department of Energy and the certificate holder an adequate opportunity to respond, including a statement of facts that support the person's position on the issue.



Obsidian Solar Center RFA1 Draft Proposed Order: Public Hearing Oral Testimony

Order of Oral Testimony and Comments for this Public Hearing:

1. Certificate Holder (testimony or additions to record)
 - Members of Council may ask clarifying questions.
2. Members of the Public (will be called on in the following order):
 - Oral in-person testimony
 - Oral testimony via WebEx
 - Oral testimony via phone
3. Members of Council
4. Certificate Holder's Responses to Comments (optional)



Obsidian Solar Center RFA1 DPO: Public Hearing

Testimony

Prior to Testifying, state the following:

- Full name with spelling
- Name of organization or group if you are representing one
- Physical mail or email address if you wish to receive notice of the Proposed Order which includes a description of how to submit a petition to participate in the contested case

Please Note: If you do not wish to provide your mailing or email address in this format, you may email it to the Department at kathleen.sloan@energy.oregon.gov or call the following number and provide the information, including spelling, in a voicemail: 971-701-4913.



Obsidian Solar Center RFA1 DPO: Public Hearing

Certificate Holder

The certificate holder may provide/present on anything in the Draft Proposed Order and/or may submit additional information/evidence to supplement the record.

Presiding Officer or Council Members may ask clarifying questions.



Obsidian Solar Center RFA1 DPO: Public Hearing

Public

Written comments may be submitted by close of public comment period, at the close of this public hearing:

-online via Siting Comment Portal:

<https://odoe.powerappsportals.us/en-US/SitingPublicComment/>

-Via email: kathleen.sloan@energy.oregon.gov

-Handing it to one of the staff members



Obsidian Solar Center RFA1 DPO: Public Hearing

Public

Members of the public may comment on the Draft Proposed Order and/or the Request for Amendment 1.

Presiding Officer or Council Members may ask clarifying questions.

Time limits may be set depending on the number of people interested in testifying.

How to Indicate Your Interest in Commenting:

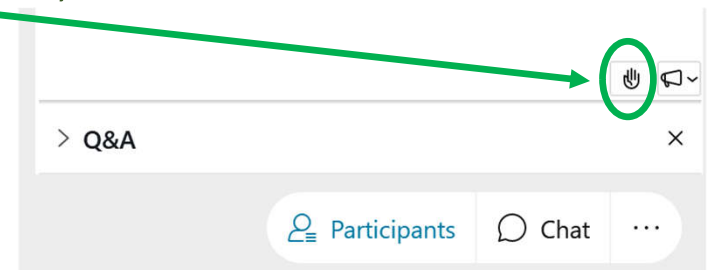
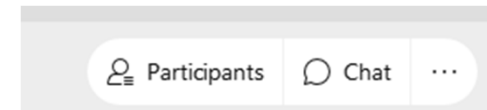
Webinar Participants

The bottom right of the main window is a set of icons:

Click on “Participants”

The bottom right of the participant window is a hand icon, click on the hand:

Clicking on it again will lower your hand.



Phone Participants

Press *3 on your telephone keypad to raise your hand.

Press *3 again on your telephone keypad to lower your hand.

Obsidian Solar Center RFA1 DPO: Public Hearing

Council

Council may comment about any concerns they have related to the Draft Proposed Order and/or the Request for Amendment 1.

Obsidian Solar Center RFA1 DPO: Public Hearing

Certificate Holder's Response to Comments

The certificate holder may respond to any comments by:

- Providing oral responses
- Submitting additional information/evidence to supplement the record
- Requesting that the Presiding Officer extend the record to submit additional information/evidence to supplement the record



Obsidian Solar Center RFA1 DPO: Public Hearing

Close of the Public Comment Period



Adjourn

