



# Oregon

Tina Kotek, Governor



550 Capitol St. NE  
Salem, OR 97301  
Phone: 503-378-4040  
Toll Free: 1-800-221-8035  
FAX: 503-373-7806  
[www.oregon.gov/energy](http://www.oregon.gov/energy)

**To:** Energy Facility Siting Council

**From:** Christopher Clark, Senior Siting Analyst

**Date:** March 8, 2024

**Subject:** Agenda Item B (Public Hearing): Wheatridge Renewable Energy Facility East, Public Hearing on Draft Proposed Order on Request for Amendment 1 for the March 21-22, 2024 EFSC Meeting

**Attachments:**

1. Draft Proposed Order
2. Public Comments (No comments have been received as of the date of publication. Any comments received prior to March 14, 2024, will be provided to the Council as Supplemental Council Packet Materials. Comments received after March 14, 2024, will be provided to the Council at a future Council meeting. All comments received within the comment period will be added to the comment portal as they are submitted.)

---

## STAFF RECOMMENDATION

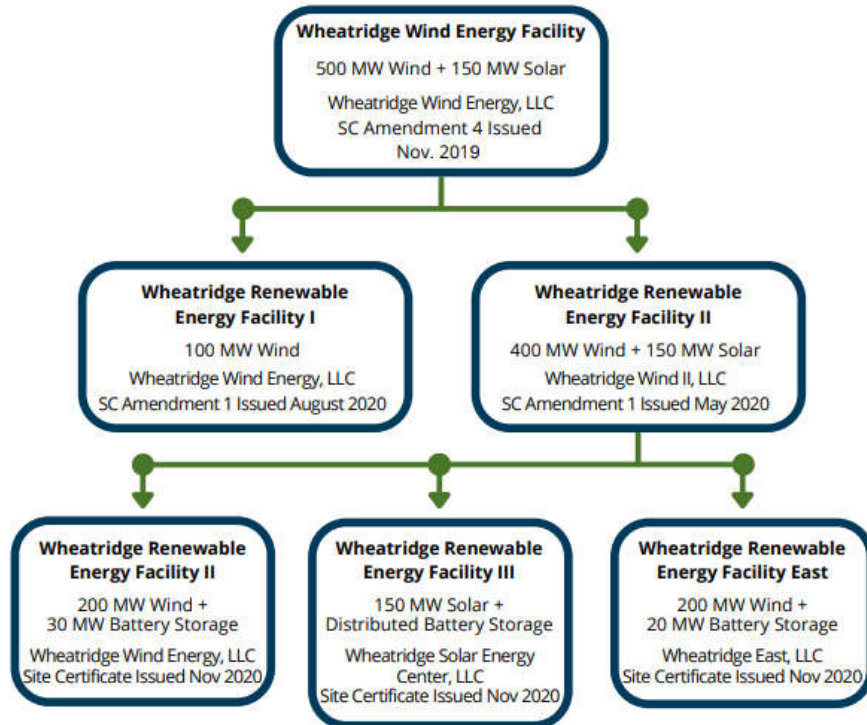
The Oregon Department of Energy (Department) recommends the Energy Facility Siting Council (EFSC or Council) approved the requested site certificate amendment and grant issuance of a first amended site certificate, subject to compliance with existing, recommended amended, and recommended new site certificate conditions. As provided in the Public Notice issued concurrently with the Draft Proposed Order (DPO), the Council will accept oral comments on RFA1 and the DPO at a public hearing on March 21, 2024, and will accept written comments until April 4, 2024. The Department recommends the Council allow the record to remain open for the certificate holder to respond to public comments received until April 8, 2024 at 5:00 P.M., or later, if requested by the certificate holder.

## 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.<sup>1</sup> A diagram illustrating the site certificate history for all successor facilities to the Wheatridge Wind Energy Facility is presented below.



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:

<sup>1</sup> 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.

- 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 AMENDMENT 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, pp. 38-46)
- Land Use (Section III.E, pp. 57-115)

- Scenic Resources (Section III.J, pp. 182-188)
- Recreation (Section III.L, pp. 196-205)
- Public Services (Section III.M, pp. 205-221)
- Waste Minimization (Section III.O, pp. 234-241)
- Public Health and Safety Standards for Wind Energy Facilities (Section III.P, pp. 241-243)
- Siting Standards for Transmission Lines (Section III.R, pp. 252-253)

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

General Standard of Review (Section III.A, pp. 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 pp. 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, pp. 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, pp. 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, pp. 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 pp. 135-136)

Fish and Wildlife Habitat (Section III.H, pp. 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, pp. 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, pp. 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.<sup>2</sup>

#### Wildfire Prevention and Risk Mitigation (Section III.N, pp. 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, pp. 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, pp. 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

---

<sup>2</sup> 411 acres within proposed micro-siting areas have not yet been surveyed for cultural or archaeological resources.

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 COMMENT PERIOD AND NEXT STEPS**

The Public Notice of the DPO initiated a public comment period on RFA1 and the DPO. Oral comments will be accepted at the public hearing on March 21, 2024, and written comments will be accepted through April 4, 2024 at 5:00 P.M. As explained in the Public Notice, failure to raise an issue in person or in writing prior to the close of the record of the public hearing with sufficient specificity to afford EFSC, the Department, and certificate holder an opportunity to respond to the issue precludes the Council from considering whether that issue justifies a contested case proceeding. To raise an issue with sufficient specificity, a person must present facts that support the person's position on the issue. As of the issuance of this staff report, no comments on the DPO have been received.

To raise an issue on the record of the Draft Proposed Order, a person must raise the issue in a written comment submitted between the date of the Public Notice of the Draft Proposed Order and April 4, 2024 at 5:00 P.M., the written comment deadline established in the Public Notice. The Council will not accept or consider public comments on the Request or on the Draft Proposed Order received after the written comment deadline. The Council may allow the record to remain open for the certificate holder to respond to public comments received if requested. Because the public comment period will end between Council meetings, the Department recommends the Council direct the record to remain open for certificate holder responses until April 8, 2024 at 5:00 P.M., and authorize staff to allow further continuances if requested by the certificate holder.

Following the close of the record, the Council will review the DPO and any timely public comments received on the record of the hearing. 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.