

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

In the Matter of the Application for a Site Certificate )  
for the Montague Wind Power Facility )  
\_\_\_\_\_ )

NOTICE OF  
CONTESTED CASE  
PROCEEDING

On August 9, 2010, the Oregon Department of Energy (ODOE) issued a Proposed Order in the Matter of the Application for a Site Certificate for the Montague Wind Power Facility, as provided in ORS 469.370(4) and OAR 345-015-0230(2). The Proposed Order recommends that the Energy Facility Siting Council (Council) grant a site certificate subject to recommended conditions. The Proposed Order is available from the ODOE website ([www.oregon.gov/ENERGY/SITING/announce.shtml](http://www.oregon.gov/ENERGY/SITING/announce.shtml)).

ODOE issues this notice under Council rule OAR 345-015-0014, which provides that following the issuance of a proposed order by ODOE on an application for a site certificate as described in OAR 345-015-0230, ODOE shall issue a contested case notice as described in OAR 137-003-0001. The statutory authority for this contested case is ORS 469.370(5). The Council has jurisdiction over this matter pursuant to ORS 469.300 and 469.320. A list of particular statutes and rules applicable to the Proposed Order is attached to this notice (Attachment A).

**Who can participate?**

You can request party status or limited party status in the contested case proceeding only if you commented on the Draft Proposed Order that ODOE issued on June 22, 2010. If you commented by speaking at the public hearing held in Arlington, Oregon, on July 22, 2010, or if you commented in writing by the comment deadline of July 23, 2010, then you may request party or limited party status.

OAR 345-015-0016(3) provides:

- Only those persons who have commented in person or in writing on the record of the public hearing described in OAR 345-015-0220 may request to participate as a party or limited party in a contested case proceeding on an application for a site certificate.
- To raise an issue in a contested case proceeding, the issue must be within the jurisdiction of the Council, and the person must have raised the issue in person or in writing on the record of the public hearing, unless the Department of Energy did not follow the requirements of ORS 469.370(2) or (3) or unless the action recommended in the proposed order described in OAR 345-015-230, including any recommended conditions of approval, differs materially from the action recommended in the draft proposed order, in which case the person may raise only new issues within the jurisdiction of the Council that are related to such differences.
- If a person has not raised an issue at the public hearing with sufficient specificity to afford the decision maker an opportunity to respond to the issue, the hearing officer shall not consider the issue in the contested case proceeding. To have raised an issue with sufficient specificity, the person must have presented facts at the public hearing that support the person's position on the issue.

## How to Request Party Status

Persons eligible to request party or limited party status in the contested case proceeding must send a written petition to the hearing officer: Mr. John Burgess, The Equitable Center, Suite 700, 530 Center St. NE, Salem OR 97301-3740. You must submit the petition for party status or limited party status by first class or certified mail by the deadline stated below. You may submit the petition by fax before the deadline, but the fax must be followed by mailing the request. The fax number is (503) 585-1006.

You must submit two copies of the petition to the hearing officer. In addition, please submit one copy of the petition to John White, Oregon Department of Energy, 625 Marion St. NE, Salem, OR 97301-3737, (fax: 503-373-7806), and one copy to Elaine R. Albrich, Stoel Rives LLP, 900 SW Fifth Ave, Suite 2600, Portland, OR 97204-1268 (fax: 503-220-2480).

### Deadline to Request Party Status

**The hearing officer must receive the petition by 5:00 PM on Tuesday, August 24, 2010.** If the request is not received within the time stated, the requesting person(s) will have waived any right to a hearing. The petition must contain all of the information described below.

### Contents of a Petition for Party Status

A petition for party or limited party status must comply with the requirements of OAR 345-015-0016(5) and OAR 137-003-0005(3).

OAR 345-015-0016(5) provides:

In a petition to request party or limited party status, the person requesting such status shall include:

- (a) The information required under OAR 137-003-0005(3).
- (b) A short and plain statement of the issue or issues that the person desires to raise in the contested case proceeding.
- (c) A reference to the person's comments at the public hearing showing that the person raised the issue or issues at the public hearing.
- (d) A detailed description of the person's interest in the contested case proceeding and how that interest may be affected by the outcome of the proceeding.

OAR 137-003-0005(3) provides that a petition to request party status must include the following: (a) Names and addresses of the petitioner and of any organization the petitioner represents; (b) Name and address of the petitioner's attorney, if any;

- (c) A statement of whether the request is for participation as a party or a limited party, and, if as a limited party, the precise area or areas in which participation is sought;
- (d) If the petitioner seeks to protect a personal interest in the outcome of the agency's proceeding, a detailed statement of the petitioner's interest, economic or otherwise, and how such interest may be affected by the results of the proceeding;
- (e) If the petitioner seeks to represent a public interest in the results of the proceeding, a detailed statement of such public interest, the manner in which such public interest will be affected by the results of the proceeding, and the petitioner's qualifications to represent such public interest;
- (f) A statement of the reasons why existing parties to the proceeding cannot adequately represent the interest identified in subsection (3)(d) or (e) of this rule.

## **Response to the Petition**

The hearing officer will decide whether to grant party status based on the above factors and the following factors, as provided under OAR 137-003-0005(7):

- (a) Whether the petitioner has demonstrated a personal or public interest that could reasonably be affected by the outcome of the proceeding;
- (b) Whether any such affected interest is within the scope of the agency's jurisdiction and within the scope of the notice of contested case hearing;
- (c) When a public interest is alleged, the qualifications of the petitioner to represent that interest;
- (d) The extent to which the petitioner's interest will be represented by existing parties.

The applicant, Montague Wind Power Facility LLC, is a party as provided under ORS 469.370(5). ODOE will participate in the contested case with all of the rights of a party as provided under OAR 345-015-0080(3).

### **Default**

In accordance with ORS 469.370(6), if no one requests party status, the Proposed Order shall be forwarded to the Council and the contested case hearing shall be concluded. If a person is granted party status and fails to appear at the hearing, the Council may issue a final order adverse to that person upon making the determinations required by ORS 469.503. The record compiled in this proceeding to date, including the application for site certificate, any additional information provided by the applicant and the ODOE and EFSC files, are included in the contested case record.

### **Representation by Counsel**

Parties may be represented by counsel. Legal aid organizations may be able to assist parties with limited financial resources.

### **Date of Pre-hearing Conference**

The pre-hearing conference is scheduled for September 13, 2010, at 10:00 A.M. at the Oregon Department of Energy, 625 Marion St. NE, Salem, Oregon.

**Failure to raise an issue in the prehearing conference constitutes waiver of that issue in the contested case as provided in OAR 345-015-0083.**

### **Date of Contested Case**

The contested case will begin with filing of written testimony. The hearing officer must receive your written testimony by 5:00 PM on October 13, 2010. The hearing date and location for the contested case is subject to change by order of the hearing officer.

August 9, 2010

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Thomas M. Stoops  
Oregon Department of Energy

Please direct any questions about this notice to John White, telephone: 503-378-3194; email: [john.white@state.or.us](mailto:john.white@state.or.us)

**Attachment A: LIST OF STATUTES AND RULES PURSUANT TO ORS 183.415**

**OREGON ENERGY FACILITY SITING**

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**Statutes**

ORS 469.010  
ORS 469.300 to ORS 469.570  
ORS 469.590 to ORS 469.619

**Administrative Rules**

|                              |                              |                              |
|------------------------------|------------------------------|------------------------------|
| OAR Chapter 345, Division 1  | OAR 345-022-0020             | OAR Chapter 345, Division 26 |
| OAR 345-001-0010             | OAR 345-022-0022             | OAR 345-026-0048             |
| OAR Chapter 345, Division 15 | OAR 345-022-0030             | OAR 345-026-0080             |
| OAR 345-015-0085             | OAR 345-022-0040             | OAR 345-026-0105             |
| OAR 345-015-0110             | OAR 345-022-0050             | OAR 345-026-0170             |
| OAR 345-015-0120             | OAR 345-022-0060             | OAR Chapter 345, Division 27 |
| OAR 345-015-0190             | OAR 345-022-0070             | OAR 345-027-0020             |
| OAR 345-015-0200             | OAR 345-022-0080             | OAR 345-027-0023             |
| OAR 345-015-0210             | OAR 345-022-0090             | OAR 345-027-0028             |
| OAR 345-015-0220             | OAR 345-022-0100             | OAR 345-027-0030             |
| OAR 345-015-0230             | OAR 345-022-0110             | OAR 345-027-0050             |
| OAR Chapter 345, Division 21 | OAR 345-022-0120             | OAR 345-027-0100             |
| OAR 345-021-0010             | OAR Chapter 345, Division 24 | OAR 345-027-0110             |
| OAR 345-021-0050             | OAR 345-024-0010             | OAR Chapter 345, Division 29 |
| OAR 345-021-0055             | OAR 345-024-0015             |                              |
| OAR 345-021-0100             | OAR 345-024-0090             |                              |
| OAR Chapter 345, Division 22 | OAR 345-024-0590             |                              |
| OAR 345-022-0000             | OAR 345-024-0630             |                              |
| OAR 345-022-0010             |                              |                              |

**LAND USE**

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**Statutes**

ORS 30.930  
ORS 195.300  
ORS 197.646  
ORS 197.732  
ORS 215.203  
ORS 215.213  
ORS 215.243  
ORS 215.275  
ORS 215.283  
ORS 215.296  
ORS 215.700  
ORS 215.710

**Administrative Rules**

OAR Chapter 660, Division 4  
OAR 660-012-0065  
OAR Chapter 660, Division 33  
OAR 660-033-0020  
OAR 660-033-0120  
OAR 660-033-0130  
OAR 660-033-0160

**Statewide Planning Goals**

Goal 3: Agricultural Lands  
Goal 5: Open Space, Scenic and  
Historic Areas, and Natural  
Resources  
Goal 13: Energy Conservation

**Gilliam County Zoning and Land**

**Development Ordinance**

GCZO § 4.020(A)  
GCZO § 4.020(D)(14)  
GCZO § 4.020(D)(29)  
GCZO § 4.020(D)(34)  
GCZO § 4.020(H)  
GCZO § 4.020(J)  
GCZO § 7.010  
GCZO § 7.020(T)  
GCZO § 9.030

**Gilliam County Comprehensive Plan**

Part 3, Policy #1  
Part 5

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**OREGON DEPARTMENT OF FISH AND WILDLIFE (Habitat Standard, T&E Species Standard)**

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**Statutes**ORS 496.004  
ORS 496.172**Administrative Rules**OAR 635-100-0040  
OAR 635-415-0005  
OAR 635-415-0025

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**OREGON DEPARTMENT OF AGRICULTURE (T&E Species Standard)**

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**Statutes**ORS 564.100  
ORS 564.105**Rules**

OAR 603-073-0002

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**OREGON PARKS AND RECREATION DEPARTMENT (Scenic Resources, Archaeology)**

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**Statutes**ORS 97.745  
ORS 358.905  
ORS 358.920  
ORS 390.805 to ORS 390.925**Administrative Rules**

OAR 736-051-0070

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**OREGON DEPARTMENT OF STATE LANDS (Removal/Fill Permit)**

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**Statutes**

ORS 196.795 to ORS 196.990

**Administrative Rules**

OAR 141-085-0500 through -0785

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**OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY (Noise)**

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**Administrative Rules**OAR 340-035-0015  
OAR 340-035-0035

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**OREGON WATER RESOURCES DEPARTMENT (Water Use)**

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**Statutes**ORS Chapters 537 and 540  
ORS 537.505 to ORS 537.796**Administrative Rules**

OAR Chapter 690

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**OREGON DEPARTMENT OF TRANSPORTATION**

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**Administrative Rules**OAR Chapter 734, Division 51  
OAR Chapter 734, Division 55  
OAR 734-032-0000 through -0070

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**OREGON DEPARTMENT OF AVIATION**

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**Statutes**

ORS 836.530

**Administrative Rules**

OAR Chapter 738, Division 70

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**PROTECTED AREAS**

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**Statutes**ORS 273.581  
ORS 390.826**Administrative Rules**OAR Chapter 142  
OAR Chapter 635, Division 8

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**OREGON PUBLIC UTILITY COMMISSION**

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ORS 757.035

OAR Chapter 860, Division 24

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**FEDERAL RULES**

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16 U.S.C. 1131 *et seq.*  
16 U.S.C. 1242  
16 U.S.C. 1244  
16 U.S.C. 125116 U.S.C. 1271 *et seq.*  
16 U.S.C. 1273  
16 U.S.C. 1531 *et seq.*  
43 U.S.C. 1782