

OREGON DEPARTMENT OF ENERGY

Regarding Statutes, Administrative Rules and)
Other Requirements Applicable to the Proposed)
Montague Wind Power Facility)
_____)

PROJECT ORDER

1 On November 9, 2009, Iberdrola Renewables, Inc., (the applicant) submitted a Notice of
2 Intent (NOI) for a Site Certificate for the Montague Wind Power Facility (MWPF). The
3 proposed facility is a wind energy facility consisting of up to 269 wind turbines and related
4 facility components with a peak generating capacity of approximately 404 megawatts.

5 On November 17, 2009, the Department sent a public notice of the NOI to persons on the
6 general mailing list of the Oregon Energy Facility Siting Council (Council), to persons on the
7 special list set up for the project and to property owners identified in the NOI, as required under
8 OAR 345-015-0110.

9 On November 18, 2009, the applicant sent copies of the NOI to a list of reviewing
10 agencies provided by the Oregon Department of Energy (Department) together with a
11 memorandum from the Department as described in OAR 345-015-0120.

12 On November 19, 2009, the Department published notice of the NOI in the *East*
13 *Oregonian*. On November 25, the Department published notice of the NOI in the *Condon Times-*
14 *Journal*.

15 On December 9, 2009, in Arlington, Oregon, the Department held a public information
16 meeting about the proposed MWPF and the site certificate process. At the meeting, the applicant
17 announced that the proposed facility would be built entirely on private lands located in Gilliam
18 County.¹ The Department accepted public comment on the NOI through December 21, 2009.

19 Under ORS 469.330, the Department must issue a project order following review of a
20 notice of intent and any public comments received in response to the notice of intent. Under
21 OAR 345-015-0160, the Department must send the project order to the applicant following the
22 review and any public information meeting. OAR 345-015-0160(1) requires, in relevant sections,
23 that the Department issue a project order that establishes the following:

- 24 (a) All state statutes and administrative rules containing standards or criteria that must be
25 met for the Council to issue a site certificate for the proposed facility, including
26 applicable standards of OAR Chapter 345, Divisions 22, 23 and 24.
- 27 (b) All local government ordinances applicable to the Council's decision on the proposed
28 facility.
- 29 (c) All application requirements in OAR 345-021-0010 applicable to the proposed
30 facility.

¹ Confirmed by email from Sara Parsons, December 9, 2009. The NOI project description had included a portion of the proposed project to be located in Morrow County.

- 1 (d) All state and local permits necessary to the construction and operation of the
2 proposed facility and the name of each agency with the authority to issue such
3 permits.
- 4 (e) Any other data and information that must be included in the application for a site
5 certificate to allow the Council to determine whether the proposed facility will
6 comply with applicable statutes, administrative rules and local government
7 ordinances.
- 8 (f) The analysis areas for the proposed facility.
- 9 (g) Public concerns that address matters within the jurisdiction of the Council that the
10 applicant shall consider and discuss in the application for a site certificate, based on
11 comments from the public and reviewing agencies.
- 12 (h) The expiration date of the notice of intent.

13 ORS 469.401(4) provides that a site certificate does not govern certain matters. This
14 project order does not address matters that are outside the Council's jurisdiction. The applicant
15 must nevertheless comply with all statutes, regulations and local ordinances applicable to the
16 proposed facility. This includes, but is not limited to, employee health and safety regulations,
17 building code compliance, labor regulations and local government fees or charges.

18 As provided in ORS 469.330(4), the Department or the Council may amend this project
19 order at any time. The definitions in ORS 469.300 and OAR 345-001-0010 apply to the terms
20 used in this project order, except where otherwise stated or where the context indicates
21 otherwise.

22 THEREFORE, the Department orders as follows:

I. STATUTES, ADMINISTRATIVE RULES, RELATED PERMITS OR OTHER APPROVALS AND DISCUSSION OF SPECIFIC INFORMATION

23 This section identifies the Oregon statutes and administrative rules that the applicant must
24 address in the application and identifies related state permits and approvals. This section
25 discusses specific information to be included in the application.

1. Energy Facility Siting Council

26 **Statute and Rule References:** ORS 469.300 to ORS 469.507; OAR Chapter 345,
27 Divisions 1, 21, 22, 24, 26 and 27.

28 **Permit:** An energy facility site certificate is required before construction or operation.

29 **Discussion:** Section V below describes specific application requirements under OAR 345-
30 021-0010.

31 All general standards in OAR Chapter 345, Division 22, apply to the proposed facility.
32 For a wind energy facility, the Council need not make findings on the standards described
33 in OAR 345-022-0020 (Structural), OAR 345-022-0090 (Historic, Cultural and
34 Archaeological Resources), OAR 345-022-0110 (Public Services) and OAR 345-022-
35 0120 (Waste Minimization). Nevertheless, the applicant should address these standards in
36 the application because the Council may apply the requirements of the standards to
37 impose conditions in the site certificate.

1 If the Council issues a site certificate for the proposed facility, the certificate holder must
2 implement a compliance plan, as described in OAR 345-026-0048. The site certificate will
3 contain the mandatory conditions, applicable site-specific conditions and monitoring
4 conditions described in OAR 345-027-0020, -0023 and -0028.

2. Oregon Department of Agriculture – Plant Conservation

5 **Statute and Rule References:** ORS Chapter 564; OAR Chapter 603, Division 73.

6 **Permit:** None required.

7 **Discussion:** The Oregon Department of Agriculture (ODA) provides technical review and
8 recommendations regarding compliance with the Council’s threatened and endangered
9 species standard (OAR 345-022-0070) as it relates to plant species.

10 The State list of threatened and endangered plant species is contained in OAR 603-073-
11 0070. In addition, OAR 603-073-0080 gives ODA the authority to designate candidate
12 plants. If the applicant finds any State-listed threatened or endangered plant species that
13 could be adversely affected by the proposed facility, then the applicant must address the
14 information requirements of OAR 603-073-0090(5)(d)(A)-(E) in the application.

15 The applicant should include in its application a list of both State-listed and federally-
16 listed threatened, endangered and candidate plant species that have potential to occur in
17 the analysis area. The applicant should identify these species based on a review of
18 literature, consultation with knowledgeable individuals and reference to the list of species
19 published by the Oregon Natural Heritage Information Center.²

20 The applicant should include in its application a description and the results of a field
21 survey for the listed plant species performed by qualified survey personnel during the
22 season or seasons appropriate to the detection of threatened, endangered and candidate
23 plant species. The field survey report should include written descriptions of the survey
24 methods and areas surveyed. The applicant should consult with the ODA Native Plant
25 Conservation Program regarding field survey methods, appropriate survey seasons and
26 qualifications of field survey personnel.

3. Department of Environmental Quality – Water Quality

27 **Statute and Rule References:** ORS Chapter 468B; OAR Chapter 340, Divisions 40, 45
28 and 71.

29 **Permits:** National Pollutant Discharge Elimination System (NPDES), Water Pollution
30 Control Facilities (WPCF) permits and on-site sewage disposal construction-installation
31 permits.

32 **Discussion:** Under OAR 345-021-0000(7), the Department may not find a site certificate
33 application complete unless the applicant has submitted to the Department a copy of each

² OAR 345-022-0070 applies only to state-listed plant and animal species. Nevertheless, OAR 345-021-0010(1)(q) requires applicants to consider plant and animal species listed as endangered or threatened under either State or federal law. This requirement applies because the Council, in making its decision, must be mindful of possible adverse impacts to federally listed species. Note also that OAR 345-022-0070 applies to all lands affected by a proposed facility including state, federal and private lands.

1 federally-delegated permit application. The applicant must provide a letter or other
2 indication from the Oregon Department of Environmental Quality (DEQ) stating that the
3 agency has received a permit application from the applicant, identifying any additional
4 information the agency needs from the applicant and estimating the date when the agency
5 will complete its review and issue a permit decision.

6 Storm Water

7 The U.S. Environmental Protection Agency has delegated authority to DEQ to issue
8 NPDES Storm Water Discharge permits. The Council does not have jurisdiction over the
9 federally-delegated NPDES permits, but the Council may rely on the determinations of
10 compliance and the conditions in the federally-delegated permits in making its
11 determination about whether other standards and requirements under the Council's
12 jurisdiction are met.

13 Septic System

14 The applicant requests authority to construct two Operations & Maintenance (O&M)
15 buildings on the site. Wastewater from water uses at the O&M buildings would be
16 discharged to septic systems. DEQ may require a WPCF permit or an on-site sewage
17 disposal construction permit for these systems. In the site certificate application, the
18 applicant should provide information demonstrating that the proposed septic systems are
19 exempt from the WPCF permit requirement or, if not exempt, that they meet the
20 requirements for a permit. The substantive requirements for WPCF permits and on-site
21 sewage construction permits are set forth in OAR Chapter 340, Division 71. The specific
22 regulations for WPCF permits are set forth in OAR Chapter 340, Division 45,
23 "Regulations Pertaining to NPDES and WPCF Permits."

4. Department of Environmental Quality – Hazardous Materials

24 **Statute and Rule References:** ORS Chapters 465 and 466; OAR Chapter 340, Divisions
25 100 through 122.

26 **Permit:** None required.

27 **Discussion:** The applicant must include in the application a list of all hazardous materials
28 that potentially would be stored or used at the facility site during construction and
29 operation. The applicant must comply with DEQ regulations concerning the use, clean up
30 and disposal of hazardous materials.

5. Department of Environmental Quality – Noise Control Regulations

31 **Statute and Rule References:** ORS 467.020 and ORS 467.030; OAR 340-035-0035

32 **Permit:** None required.

33 **Discussion:** The proposed facility must comply with the noise control regulations
34 applicable to wind energy facilities. The requirement is incorporated in the general
35 standard of review, OAR 345-022-0000. The applicant must include a noise analysis in
36 the application. The analysis must contain information to support a finding by the Council
37 that the proposed facility could comply with the requirements of OAR 340-035-0035. The
38 analysis must:

- 1 • Identify the locations of all noise sensitive properties that might receive noise
2 levels potentially exceeding applicable limits from MWPF turbines.
- 3 • Identify all potential noise sources from facility components (for example, wind
4 turbines and substation transformers).
- 5 • Identify all turbine locations used in performing the analysis.
- 6 • Provide manufacturer’s warranted sound power levels and uncertainty ranges,
7 including octave band data, for all turbine types that might be used at the MWPF
8 (if specific turbine types are not known, the applicant must provide the maximum
9 sound power level and octave band data that would not be exceeded by any
10 turbine type used at the MWPF).
- 11 • Identify all input parameters used in performing noise modeling.
- 12 • Provide noise modeling output data.

6. Oregon Department of Fish and Wildlife

13 **Statute and Rule References:** ORS Chapters 496, 498, 506 and 509; OAR Chapter 635,
14 Divisions 100 and 415.

15 **Permit:** None required.

16 **Discussion:** The Oregon Department of Fish and Wildlife (ODFW) provides technical
17 review and recommendations on compliance with Council standards. ODFW will base its
18 review and recommendations on state wildlife policy (ORS 496.012), threatened and
19 endangered species policy (ORS 496.171 - .192), statutes regarding screening and bypass
20 devices for water diversions or obstructions (ORS 498.301 - .346), protection and
21 propagation of fish statute (ORS 506.036), food fish management policy (ORS 506.109),
22 the statute on placing explosives in water (ORS 509.140), fish passage statutes and
23 requirements (ORS 509.580 - .910), State Sensitive Species and State Threatened and
24 Endangered Species rules (OAR Chapter 635, Division 100) and habitat mitigation goals
25 and standards (OAR Chapter 635, Division 415).

26 OAR Chapter 635, Division 100, provides authority for adoption of the state sensitive
27 species list and the Wildlife Diversity Plan and contains the State list of threatened and
28 endangered wildlife species. The applicant should include in its application a list of both
29 State-listed and federally-listed threatened and endangered wildlife species and State
30 Sensitive Species that have potential to occur in the analysis area. The applicant should
31 identify these species based on a review of literature, consultation with knowledgeable
32 individuals and reference to the list of species published by the Oregon Natural Heritage
33 Information Center.

34 The applicant should consult with ODFW regarding field survey methods, appropriate
35 survey seasons and qualifications of field survey personnel. The applicant should include
36 in its application a description of a field survey for the listed wildlife species performed by
37 qualified survey personnel during the season or seasons appropriate to the detection of
38 these species. The field survey report should include written descriptions of the survey
39 methods and areas surveyed. The report should include an analysis of the findings of the
40 field survey.

1 OAR Chapter 635, Division 415, describes six habitat categories and establishes a
2 mitigation goal for each category. In the application, the applicant must identify the
3 appropriate habitat category for all areas affected by the proposed facility (temporary and
4 permanent impacts) and explain the basis for each category designation. The applicant
5 must show how the facility would comply with the habitat mitigation goals and standards
6 by appropriate monitoring and mitigation.

7. Department of Geology and Mineral Industries

7 **Statute and Rule References:** OAR 345-022-0020.

8 **Permit:** None required.

9 **Discussion:** The Department of Geology and Mineral Industries (DOGAMI) provides
10 technical review and recommendations on compliance with the Council's structural
11 standard, OAR 345-022-0020. In the application, the applicant must include the
12 information required by OAR 345-021-0010(1)(h) and OAR 345-021-0010(1)(i).

13 The Department understands that wind developers typically do not perform the detailed
14 geotechnical exploration described in engineering geological reports and site-specific
15 seismic hazard reports until they have identified exact turbine sites. If the applicant plans
16 to defer some of the site-specific geotechnical work pending completion of facility design,
17 then the application must include evidence of personal consultation with DOGAMI staff
18 regarding the appropriate level of site-specific geotechnical investigation that the
19 application should address.

8. Oregon Parks and Recreation Department

20 **Statute and Rule References:** ORS 97.745, 358.920, 390.010 and 390.235; OAR
21 Chapter 736, Division 51.

22 **Permit:** An archaeological permit may be required to conduct archaeological
23 investigations of the site.

24 **Discussion:** The Oregon Parks and Recreation Department provides technical review and
25 recommendations on compliance with Council standards.

26 The State Historic Preservation Office (SHPO) within the Oregon Parks and Recreation
27 Department provides technical review and recommendations in reference to the Council's
28 Historic, Cultural and Archaeological Resources Standard (OAR 345-022-0090). The
29 application should include an archaeological and cultural survey conducted by a qualified
30 archaeologist. The applicant should work as early as possible with the SHPO to ensure
31 that the application includes required information in SHPO's preferred formats.

32 **Note:** Information concerning the location of archaeological sites or objects may be
33 exempt from public disclosure under ORS 192.501(11). Please do not include specific
34 location information in the text of site certificate application. Such sensitive information,
35 including archaeological survey reports, should be provided separately after consultation
36 with the Department.

9. Oregon Department of State Lands

1 **Statute and Rule References:** ORS 196.795 through 196.990; OAR Chapter 141,
2 Division 85.

3 **Permit:** Removal/Fill Authorization.

4 **Discussion:** The applicant should include information in the application to demonstrate
5 whether a removal-fill authorization is needed. The application should include a
6 delineation of potentially jurisdictional wetlands and waters in all areas to be affected by
7 the proposed facility. If a removal-fill authorization is needed, the application must
8 include the information described in OAR 141-085-0550.

9 **Note:** If the delineation report required by the Department of State Lands or the U.S.
10 Army Corps of Engineers contains information concerning the location of archaeological
11 sites or objects, such sensitive information should be extracted from the delineation report
12 and provided to the Department of Energy separately after consultation with the
13 Department.

10. Water Resources Department – Water Rights Division

14 **Statute and Rule References:** ORS Chapters 537 and 540; OAR Chapter 690, Divisions
15 200 through 240, 310, 340 and 380.

16 **Permit:** Water right.

17 **Discussion:** The applicant should include information in the application to support
18 findings on whether a water right is needed. The application must identify the sources of
19 water that could be used by the facility during construction and operation, the water rights
20 under which the water would be provided, the quantity of water needed and the means of
21 disposal of all water discharges from the facility.

22 If the applicant will need to obtain a new water right or water right transfer, the
23 application must include information demonstrating that the requirements for issuing a
24 permit are met. These requirements are found in ORS Chapter 537 (for a groundwater or
25 surface water permit) and ORS Chapter 540 (for transfer of a water use). In the
26 application, the applicant should include a discussion and evaluation of all relevant
27 factors, including those factors listed in ORS 537.153(2) and (3), ORS 537.170(8) and
28 OAR Chapter 690, Divisions 310 and 380. If a permit or transfer is needed, the Council
29 will make the issuing decision in consultation with the Water Resources Department.

30 The applicant proposes to construct water wells near the O&M buildings. The wells would
31 provide no more than 5,000 gallons of water per day for use during facility operation. The
32 application should include information demonstrating that water use from the wells would
33 be exempt from water right permitting under ORS 537.545. SB 788 (2009) amended ORS
34 537.545 to require the owner of land on which an exempt well is drilled to provide a map
35 to WRD showing the exact location of the well and to file the exempt water use with
36 WRD for recording with submittal of a fee.

11. Oregon Department of Aviation

37 **Statute and Rule References:** ORS Chapters 836; OAR Chapter 738, Division 70.

1 **Permit:** None required.

2 **Discussion:** Both the Federal Aviation Administration (FAA) and the Oregon Department
3 of Aviation are responsible for determining whether any wind turbine tower presents a
4 hazard to aviation in Oregon. ORS 836.530 authorizes the Oregon Department of Aviation
5 to adopt rules to “define physical hazards to air navigation and determine whether specific
6 types or classes of objects or structures constitute hazards.” The agency has adopted rules
7 in OAR Chapter 738, Division 70, regarding physical hazards to air safety. The applicant
8 should discuss aviation safety in the site certificate application in reference to the Public
9 Health and Safety Standards for Wind Energy Facilities (OAR 345-024-0010).

II. TRIBES

10 **Permit:** None required.

11 **Discussion:** The application should include evidence of consultation with affected tribes,
12 including the Confederated Tribes of Umatilla Indian Reservation and the Confederated
13 Tribes of Warm Springs, regarding archaeological and cultural sites and materials within
14 the site boundary. The affected tribes provide technical review and recommendations in
15 reference to the Council’s Historic, Cultural and Archaeological Resources Standard
16 (OAR 345-022-0090).

III. APPLICABLE LOCAL GOVERNMENT ORDINANCES

17 **Local Governments:** Gilliam County.

18 **Statute and Rule References:** Applicable substantive criteria from the Gilliam County
19 codes and comprehensive plans.

20 **Permit:** Conditional Use Permit.

21 **Discussion:** In the application, the applicant may elect to request a Council determination
22 regarding land use in accordance with ORS 469.504(1)(b) or to seek land use approval
23 from the applicable local governments. In the NOI, the applicant has indicated the
24 intention to seek a Council determination regarding land use.

25 The Council must consider the applicable substantive criteria from Gilliam County. On
26 November 20, 2009, the Council appointed the Gilliam County Board of Commissioners
27 as the Special Advisory Group, as required under ORS 469.480. The applicable
28 substantive criteria, as defined by ORS 469.504(1)(b)(A), are those criteria identified by
29 the Special Advisory Group that are required by the statewide planning goals and in effect
30 on the date the Preliminary Application is submitted (see OAR 345-021-0000(10)). In a
31 comment letter dated December 17, 2009, Susie Anderson, Gilliam County Planning
32 Director, provided the applicable substantive criteria for wind energy facilities in Gilliam
33 County.

34 In addition, the application must identify any Land Conservation and Development
35 Commission administrative rules and goals and any land use statutes that are not
36 implemented in the counties’ comprehensive plans and that are therefore directly
37 applicable to the facility under ORS 197.646. The applicant should demonstrate how the
38 proposed facility would comply with OAR 660-033-0130(37), if applicable.

1 In the application, the applicant should discuss each land use ordinance and
2 comprehensive plan policy that contains substantive criteria and should demonstrate how
3 the proposed facility complies with those criteria. If the proposed facility does not comply
4 with one or more of the criteria, the applicant must demonstrate how the proposed facility
5 complies with the applicable statewide planning goal. If the proposed facility does not
6 comply with the goal, the applicant must demonstrate that an exception is justified under
7 ORS 469.504(2).

8 The applicant should contact the Gilliam County Planning Director to discuss the
9 requirements for a Conditional Use Permit (CUP) and any other land use permits that may
10 be required for the proposed MWPF and to discuss the procedure required to obtain the
11 CUP and other permits once the Council has issued a final order granting a site certificate.
12 As provided in ORS 469.401(3), if the Council issues a site certificate, the County will be
13 bound to issue local land use permits, subject only to the conditions set forth in the site
14 certificate. Therefore, the applicant should request that the Planning Director identify the
15 conditions that the County would include in the CUP. The Planning Director may identify
16 the conditions by providing a draft CUP.

IV. OTHER CONSTRUCTION-RELATED REGULATIONS

17 If the Council issues a site certificate, the certificate holder must comply with
18 construction-related regulations that apply to the proposed facility. As provided under ORS
19 469.401(4), the site certificate does not address these regulations.

V. APPLICABLE REQUIREMENTS FROM OAR CHAPTER 345, DIVISION 21

20 The application should include the information described in OAR 345-021-0010(1),
21 including but not limited to the information discussed below. In addition, the applicant must
22 submit the information required by OAR 345-021-0000, particularly the information in sections
23 (6) and (7) regarding the status of non-federally-delegated and federally delegated permits. The
24 applicant should provide sufficient information under OAR 345-021-0010(1) to demonstrate that
25 the proposed facility would comply with the Council standards described in OAR Chapter 345,
26 Divisions 22 and 24.

(a) Exhibit A – General Information about the Applicant

28 Paragraphs (A) through (D) apply. Note that paragraph (B) calls for a list of
29 “participating persons, other than individuals.” “Person” is defined in OAR 345-001-
30 0010(45). If the applicant is a limited liability company (LLC), the applicant must
31 provide information about the LLC similar to the information listed in the rule for
32 corporations (OAR 345-021-0010(1)(a)(C)). The applicant must include in the
33 application information about all third-party entities (persons other than individuals) that
34 are important to the project.

(b) Exhibit B – General Information about the Proposed Facility

36 All paragraphs apply except (A)(vi), (A)(vii), (A)(viii) and (D).

37 The applicant must provide specifications on all turbine types that might be used at the
38 facility. If specific turbine types are not known, the applicant must provide information
39 on the range of turbine types that might be used. Specifications include: peak generating

1 capacity, turbine hub height in meters, rotor diameter in meters, maximum sound power
2 level (and octave band data) for all equipment associated with the turbine, overall weight
3 of metals in the tower and nacelle per turbine in net (U.S.) tons, estimated cubic yards of
4 concrete per turbine in the tower foundation and transformer pad to a depth of three feet
5 below grade (that is, the concrete in the foundation above that depth including any
6 portion above grade) and the maximum diameter of the foundation. The applicant must
7 state the maximum number of turbines that would be built and the maximum combined
8 peak generating capacity of the facility as a whole.

9 The application must include a physical description of all components of the facility and
10 their proposed locations including, but not limited to, turbines, met towers, new access
11 roads, modifications of existing roads, transmission lines (including collector lines),
12 substations, interconnection facilities and O&M buildings.

13 (c) Exhibit C – Location

14 All paragraphs apply.

15 Maps included in Exhibit C should provide enough information for property owners
16 potentially affected by the facility to determine whether their property is within or near
17 the site. Major roads should be named. Maps should identify the locations of other wind
18 energy facilities that border the proposed MWPF site.

19 The application should identify lands enrolled in the Conservation Reserve Program and
20 lands currently used for commercial agriculture. If OAR 660-033-0130(37) is applicable,
21 the application should include maps showing the location of “high-value farmland soils”
22 within the site boundary.

23 Maps should show the location of the site boundary as defined in OAR 345-001-
24 0010(53). The proposed turbine string layout should be indicated. The application should
25 include alternative layouts if the use of different turbine sizes would result in different
26 turbine string alignments.

27 Although a legal description of the site is not required under paragraph (B), the
28 application must include a written description of the micrositing corridors in addition to a
29 map. A legal description of the site will be needed if a site certificate is issued. See OAR
30 345-027-0020(2). The applicant is advised to anticipate the need for a legal description
31 when deciding where to draw the boundary lines of the micrositing corridors for the
32 purposes of the application (for example, straight boundary lines are easier to describe
33 than curved or intricate boundaries).

34 (d) Exhibit D – Organizational Expertise

35 All paragraphs apply.

36 (e) Exhibit E – Permits

37 All paragraphs apply.

38 (f) Exhibit F – Property Owners

39 The entire site is within a farm zone in Gilliam County. Accordingly, the distance in
40 paragraph (C) applies (500 feet from the site boundary).

1 (g) Exhibit G – Materials Analysis

2 All paragraphs apply.

3 (h) Exhibit H – Geology

4 All paragraphs apply.

5 (i) Exhibit I – Soils

6 All paragraphs apply. The application should include information describing the impact
7 of construction and operation of the proposed facility on soil productivity in farm zones.
8 Describe all measures proposed to maintain soil productivity during construction and
9 operation and measures to mitigate erosion and compaction. The applicant should consult
10 with local farmers, landowners and soil conservation districts regarding mitigation of
11 impacts to farmland. The application should include a description of accepted farm
12 practices on surrounding lands devoted to farm use.

13 (j) Exhibit J – Jurisdictional Waters

14 All paragraphs apply. If a removal/fill authorization is likely to be needed, the applicant
15 should engage a qualified expert to survey the site and prepare a wetlands and waters
16 delineation report. The report should be submitted to the Department of State Lands as
17 early as possible for review and possible concurrence. This can be done in advance of
18 submitting the Preliminary Application.

19 **Note:** The Department of State Lands has amended the rules in OAR Chapter 141,
20 Division 85. The definition of “waters of this state” is now found in OAR 141-085-0510.
21 Removal/fill authorizations are described in OAR 141-085-0540.

22 (k) Exhibit K – Land Use (Statewide Planning Goals)

23 Paragraphs A and C apply. Paragraphs B and D do not apply. The application should
24 include a discussion of whether the proposed facility would be compatible with farm use,
25 would not seriously interfere with accepted farm practices and would not significantly
26 increase the cost of accepted farm practices. See further discussion under Part III above.

27 (l) Exhibit L – Protected Areas

28 All paragraphs apply.

29 (m) Exhibit M – Financial Capability

30 All paragraphs apply.

31 (n) Exhibit N – Need for the Facility

32 Exhibit N does not apply.

33 (o) Exhibit O – Water Use

34 All paragraphs apply except (D).

35 (p) Exhibit P – Fish and Wildlife Habitat

36 All paragraphs apply. The applicant should consult with the Oregon Department of Fish
37 and Wildlife regarding the classification of habitat within the site boundary. The
38 applicant should accurately classify all habitat within the micro-siting areas. Complete

1 habitat classification will identify areas of high-value habitat that should be avoided in
2 the final design layout. The application should include a table showing the quantity of
3 habitat (in acres) that would be affected temporarily during construction and permanently
4 (by placement of facility components) broken down by habitat category and habitat
5 subtype. The application should include tables for both the expected or typical facility
6 layout and for a “maximum habitat impacts” layout. The maximum habitat impacts table
7 should be based on a buildable project layout with all components hypothetically located
8 where they would affect the greatest quantity of higher-value habitat within the
9 micro-siting area (but avoiding proposed exclusion areas, such as Category 1 habitat). The
10 maps required under paragraph (C), must be of sufficient scale to show details (a scale of
11 1 inch = 2,000 feet is suggested).

12 The application must include a proposed Wildlife Monitoring and Mitigation Plan, a
13 proposed Revegetation Plan and a proposed Habitat Mitigation Plan.

14 (q) Exhibit Q – Threatened and Endangered Species

15 All paragraphs apply.

16 (r) Exhibit R – Scenic Resources

17 All paragraphs apply. Copies of the local, tribal and federal plans (or relevant excerpts)
18 that identify scenic resources as significant or important should be included as
19 attachments to the exhibit (or, if the documents are available on-line, the application
20 should include the website address). Zone of Visual Influence modeling or photo-
21 simulations may be included to help demonstrate compliance with the Council standard
22 (OAR 345-022-0080).

23 (s) Exhibit S – Historic, Cultural and Archaeological Resources

24 All paragraphs except (C) apply.

25 Information concerning the location of archaeological sites or objects may be exempt
26 from public disclosure under ORS 192.502(4) or ORS 192.501(11). The applicant should
27 submit such information separately, clearly marked as “confidential” with a written
28 request that the Department and the Council keep the information confidential to the
29 extent permitted by law.

30 (t) Exhibit T – Recreation

31 All paragraphs apply.

32 (u) Exhibit U – Public Services

33 All paragraphs apply. Include an analysis of estimated facility-related traffic during
34 construction and operation and the potential impact on traffic safety.

35 The application should include a discussion of the transportation of heavy equipment and
36 large facility components to the site during construction. The applicant should describe
37 the transporter routes from the nearest Interstate Highway to the construction areas and
38 should determine whether any alterations of public roads would be needed along these
39 routes. The applicant should consult with the Oregon Department of Transportation and
40 county public works departments regarding transporter routes. The application must

1 describe any alterations of public rights-of-way or adjacent lands that will be necessary
2 during facility construction.

3 (v) Exhibit V – Solid Waste and Wastewater

4 All paragraphs apply.

5 (w) Exhibit W – Facility Retirement

6 All paragraphs apply. The Department recommends estimating site restoration costs
7 based on determining the unit costs for removal of facility components and reclamation
8 of the affected lands. The applicant should review recent Siting Council orders as a guide
9 to the level of detail required in the cost estimate. The Siting Council does not allow any
10 deduction for the salvage or scrap value of wind turbines or turbine towers.

11 (x) Exhibit X – Noise

12 All paragraphs apply. The applicant should engage a qualified expert to conduct a noise
13 modeling analysis demonstrating that the proposed facility could be built in compliance
14 with the applicable noise regulations (see OAR 340-035-0035(1)(b)(B)(iii)(IV) and (VI)).
15 Include a map showing the location of potentially affected noise sensitive properties and
16 data demonstrating the contribution of each noise source to the predicted noise levels at
17 those properties. The application should specify any waivers that the applicant would
18 need from affected property owners if the predicted noise levels would exceed the
19 ambient degradation standard. If such waivers have been negotiated, the applicant should
20 include copies of the waivers (with proof of recording in the real property records of the
21 county). If waivers have not been negotiated, the applicant should inform the affected
22 property owners of the potential noise levels at the affected residences and request the
23 waivers. If a waiver that is necessary to achieve compliance for the desired facility layout
24 cannot be negotiated with the landowner, the applicant will have to re-design the facility
25 layout to achieve compliance without the waiver.

26 (y) Exhibit Y – Carbon Dioxide Emissions

27 Exhibit Y does not apply.

28 (z) Exhibit Z – Cooling Tower Impacts

29 Exhibit Z does not apply.

30 (aa) Exhibit AA – Electric and Magnetic Fields

31 All paragraphs apply to the transmission lines that are components of the facility,
32 including aboveground and underground collector cables.

33 (bb) Exhibit BB – Other Information

34 Any information requested in this project order that is not addressed in any other exhibit.

35 (cc) Exhibit CC – Other Law

36 Exhibit CC applies.

37 (dd) Exhibit DD – Specific Standards

38 Paragraphs (A) and (C) apply.

VI. ANALYSIS AREAS FOR THE PROPOSED FACILITY

1 The analysis areas are the minimum areas that the applicant must study for potential
2 impacts from the construction and operation of the proposed facility. The analysis areas
3 described in this project order do not limit the applicant’s responsibility to assess the potential
4 impacts of the facility. Analysis areas are the areas in which significant adverse impacts from the
5 proposed facility, if any, are likely to occur. If significant impacts could occur beyond the
6 analysis areas described herein, then the applicant must assess those impacts in the application
7 and show how the facility would comply with the applicable standards with regard to the larger
8 area where impacts could occur.

9 For all potential impacts, the analysis area includes all the area within the site boundary.
10 “Site boundary” means “the perimeter of the site of a proposed energy facility, its related or
11 supporting facilities, all temporary laydown and staging areas and all corridors and micro-siting
12 corridors proposed by the applicant.” (OAR 345-001-0010(53)). In the application, the applicant
13 must specifically describe the site boundary and provide a map showing the proposed site
14 boundary and the boundaries of the analysis areas. The analysis areas are as follows:

<u>Affected Standard or Resource</u>	<u>Exhibit</u>	<u>Analysis Area</u>
Structural Standard	H	The area within the site boundary.
Soils	I	The area within the site boundary.
Wetlands and Waters	J	The area within the site boundary.
Land Use	K	The area within the site boundary and one-half mile from the site boundary.
Protected Areas	L	The area within the site boundary and 20 miles from the site boundary, including areas outside the state.
Fish and Wildlife Habitat	P	The area within the site boundary and one-half mile from the site boundary.
Threatened and Endangered Species	Q	The area within the site boundary and 5 miles from the site boundary.
Scenic Resources	R	The area within the site boundary and 10 miles from the site boundary.
Historic, Cultural and Archaeological Resources	S	The area within the site boundary.
Recreation	T	The area within the site boundary and 5 miles from the site boundary.
Public Services	U	The area within the site boundary and 10 miles from the site boundary.

VII. PUBLIC AND REVIEWING AGENCY CONCERNS

15 The Department received comments on the NOI from the following reviewing agencies
16 and members of the public.³ The Department has sent copies of all written comments to the
17 applicant. The applicant responded to questions raised in person at the public information

³ The Department identifies the Oregon Historic Trails Advisory Council, the Oregon Department of Human Services (Public Health Division) and the U.S. Fish and Wildlife Services as “reviewing agencies” for this application, as allowed under OAR 345-001-0010(50).

1 meeting on December 9, 2009. The application requirements discussed above cover all issues
2 discussed at the information meeting that are not otherwise addressed in the summary below.

3 In the application, the applicant should respond to the issues raised in the comments
4 summarized below. The Department notes that recommendations expressed in the comments
5 summarized below reflect the commenter's opinions and do not necessarily represent the
6 Department's own recommendations. If additional comments are received during the review
7 process, the Department may request that the applicant respond to those comments and provide
8 additional information.

1. Reviewing Agency Comments

9 The Department received the following comments on the NOI from reviewing agencies:
10 Steve Cherry, Oregon Department of Fish and Wildlife (email and attached letter, 12/14/09):

- 11 • The application should include a map that shows the different vegetation
12 classifications for the project area.
- 13 • The applicant should conduct Washington ground squirrel surveys in suitable
14 habitat within 1,000 feet of all ground disturbing activities.
- 15 • The applicant should conduct raptor nest surveys within a 2 mile radius of the
16 project area. ODFW recommends that no construction occur within a half mile of
17 active raptor nests during the nesting season.
- 18 • The applicant should conduct surveys for any Sensitive species (burrowing owls,
19 loggerhead shrikes, long-billed curlews, white-tailed jack rabbits, grasshopper
20 sparrows and sage sparrows) within the project area and provide a map showing
21 the locations of the different species in respect to the proposed activities.
- 22 • The application should include a detailed monitoring plan for the project. ODFW
23 recommends that the certificate holder monitor all known raptor nest sites in the
24 project area for the life of the project. ODFW requests permission to conduct
25 wildlife surveys on the project area that might help ODFW better understand the
26 long-term effects of the wind farm on the native wildlife.
- 27 • The application should include a mitigation package that addresses the loss of
28 habitat as a result of the construction of the proposed facility. ODFW
29 recommends that the certificate holder acquire a "conservation easement" to
30 protect and enhance habitat that is similar to the habitat that is altered or degraded
31 by the proposed project. The "conservation easement" should include provisions
32 for monitoring as well as management activities including habitat improvement as
33 well as potential wildlife surveys or research activities.
- 34 • The application should include a revegetation plan. The plan should outline how
35 the areas that are temporarily disturbed will be rehabilitated and returned to their
36 pre-construction functionality.

37 Susie Anderson, Gilliam County (letter, 12/17/09, with attachments):

- 38 • The Gilliam County Planning Director identified the applicable substantive
39 criteria. Copies of appropriate ordinances and plans were attached.

- 1 • The applicant should address the criteria in OAR 660-033-0130(37).
- 2 • The application should show the location of the facility entirely within Gilliam
- 3 County, including appropriate maps and identification of landowners.

4 Wendell Baskins, State Historic Preservation Office, Oregon Historic Trails Advisory
5 Council (letter, 12/18/09):

- 6 • The applicant should apply the processes and protections for a trail eligible for the
- 7 National Register of Historic Places and named a National Historic Trail.
- 8 • The certificate holder should avoid any intrusion upon the Oregon Trail route or
- 9 remains.
- 10 • The certificate holder should minimize impact on the viewshed.
- 11 • The applicant should involve the Oregon Historic Trails Advisory Council (or its
- 12 designee) in mitigation for any intrusion upon the Oregon Trail route or remains.

13 Sujata Joshi/Gail Shibley, Oregon Department of Human Services, Public Health Division
14 (email and letter, 12/21/09):

- 15 • The Public Health Division notes its concerns regarding health effects and
- 16 disturbance from noise generated by wind turbines, including potential generation
- 17 of low-frequency sound or infrasound, health effects and disturbance from
- 18 shadow flicker from turbine blades, health effects from electromagnetic fields
- 19 generated by transmission lines, and effects of environmental pollution during
- 20 construction.
- 21 • The application should include an assessment of health risks that includes: (1) an
- 22 evaluation of whether the maximum noise levels specified by OAR 340-035-0035
- 23 are sufficiently protective of human health, (2) measured or modeled data on
- 24 noise levels at nearby buildings, and (3) collection of health concerns from
- 25 residents living on or near the development.

26 Jerry Cordova/Nancy Gilbert, U.S. Fish and Wildlife Service (email and letter, 12/21/09):

- 27 • The Service encourages the use of the 2008 Oregon Columbia Plateau Ecoregion
- 28 Wind Energy Siting and Permitting Guidelines (Guidelines).
- 29 • The Service would like to assist in pre-project assessment, monitoring,
- 30 micro-siting, post-project monitoring, and mitigation phases of the project to
- 31 ensure any identified wildlife and habitat impacts are addressed and mitigated.
- 32 • The application should provide information on the available data on wildlife
- 33 impacts associated with existing wind projects and activities within the general
- 34 area of the project and the anticipated cumulative impacts of the project. The
- 35 project's cumulative impacts assessment should include information on previous
- 36 habitat loss, fragmentation, degradation, wildlife displacement and mortality data
- 37 from adjacent wind projects and an estimation of the additional cumulative impact
- 38 of the proposed project on a limited number of key species that could be adversely
- 39 affected by additional mortality or are highly sensitive to disturbances or habitat
- 40 loss.

- 1 • The applicant should conduct a survey to determine presence of Washington
2 ground squirrels in the project area within 1,000 feet of all ground-disturbing
3 activities. The applicant should use a “two-survey system” (two surveys
4 conducted in a perpendicular pattern during the same year between March 20 and
5 June 1). Surveyors should look for burrows, scat, sightings, vocal alarms, and
6 burrows without scat. Surveys should be conducted in all potential habitats.

- 7 • The applicant should conduct two years of bat acoustic surveys or sampling using
8 a combination of Pettersson bat detectors and AnaBat bat detectors in a manner
9 that will not only help determine bat migratory patterns, but also any patterns in
10 local movements through the project area. The hoary bat and silver-haired bat
11 should be the main bat species surveyed. The Service recommends that bat studies
12 be conducted at a minimum of ten sites within the proposed project area.

- 13 • Conduct one full year (including at least one spring migration season and one fall
14 migration season) of avian and bat radar studies using marine surveillance radar.
15 These studies will provide information on passage rates, flight directions, flight
16 paths, and altitude of nocturnal bats and birds. We recommend month-long radar
17 studies be conducted mid-April through mid-May and in the months of September
18 and October. These studies should be conducted at a minimum of two sites within
19 the proposed project area.

- 20 • The applicant should conduct a portion of surveys for birds and bats near water
21 sources in the project corridor that are near any proposed turbine strings.

- 22 • The applicant should complete two years of pre-project assessment to obtain
23 baseline information on: eagle nest productivity; use of feeding, roosting, nesting
24 or wintering areas; eagle movements in relation to each proposed turbine location
25 (including an analysis of spatial use in relation to rotor swept zone); numbers of
26 eagles moving through the project area; movements in relation to meteorological
27 conditions; and phenology of movements. Eagle movement studies should include
28 more intense observations (at least 20 days for two years during nesting season
29 when adult eagles and their fledged young are most active). Information on
30 migrating eagles should be collected as part of raptor migration surveys.

31 Prior to micro-siting wind turbines, the certificate holder should analyze the
32 information collected on eagle migration and movement data to develop a
33 quantitative risk assessment of the likelihood of incidental take of bald and golden
34 eagles. If the quantitative risk assessment suggests that incidental take of eagles is
35 likely, the certificate holder should employ micro-siting measures for the wind
36 turbines to fully avoid any incidental take of eagles. If the risk assessment
37 suggests that incidental take of eagles is not likely, but important eagle feeding,
38 roosting, nesting or wintering areas are nearby or migratory eagles frequent the
39 project area, then monitoring of eagle nests and any turbine-related injury or
40 mortality is recommended throughout the life of the facility to periodically
41 reassess risk to eagles as protected under the Bald and Golden Eagle Protection
42 Act. The Service is in the process of developing implementation guidance on final
43 regulations to authorize the limited take of bald eagles and golden eagles under
44 the BGEPA.

- 1 • The applicant should conduct raptor nest surveys to help assess project impacts
2 and potential conservation measures necessary to maintain nest viability within
3 the project area. Surveys should include areas where updrafts utilized by raptors
4 are prevalent.
- 5 • The Service recommends that, in the final project design, the certificate holder
6 should incorporate the micro-siting considerations and recommendations outlined
7 in the Guidelines as well as the pre-project assessment surveys and mapping
8 information.
- 9 • The Service recommends that the Council implement the ODFW Habitat
10 Mitigation Policy.

2. Public Comments

11 Johnson Meninick, Confederated Tribes and Bands of the Yakama Nation (letter, 11/30/09):

- 12 • Although this project is located on private land, the proposed wind turbines are
13 going to be connected to Bonneville Power Administration transmission lines and
14 substations. The applicant should follow federal guidelines outlined in the
15 National Historic Preservation Act and consult with Tribes (the Yakama,
16 Confederated Tribes and Bands of the Warm Springs, Confederated Tribes and
17 Bands of the Umatilla, and Nez Perce) in order to comply with the Native
18 American Religious Freedoms Act.
- 19 • The Yakama recommend that the applicant have a professional archaeologist or
20 Tribal representative survey access roads, staging areas and proposed turbine
21 tower locations for cultural material and prepare a report to be reviewed by all
22 interested parties.

23 David Welch, Oregon-California Trails Association (email and letter, 12/18/09):

- 24 • The maps provided as part of the NOI are inadequate with regard to assessing the
25 location or impacts to the Oregon National Historic Trail (ONHT). Surveys of the
26 trail's location and status must be documented on the equivalent of a USGS
27 topographic quad or better (1:24,000 or 1:12,000). The Oregon-California Trails
28 Association (OCTA) requests that the applicant use OCTA's Mapping Emigrant
29 Trails (MET) Manual to assess impacts to the trail. The Manual provides a
30 classification system for documenting the condition of the trail.
- 31 • The certificate holder should avoid direct impacts to OCTA MET Class 1, Class 2
32 and Class 3 segments.
- 33 • The applicant's archaeological survey should include an historical archaeologist
34 familiar with emigrant trails and their remaining signatures.
- 35 • The applicant should consult with OCTA regarding mitigation for impacts to the
36 trail. Mitigation should include improved signage and interpretation at selected
37 sites in or near the project area.
- 38 • Except where it has already been improved, the identified route of the ONHT
39 should not be used as an access road before, during or after construction.

- 1 • All excavations across or near the trail route should be monitored by a qualified
2 archaeologist.
- 3 • Trail crossings regardless of the visual appearance should be designed to
4 minimize impacts to the trail resource.
- 5 • Visibility of turbines and infrastructure should be minimized as viewed from high
6 quality segments of the ONHT. OCTA recommends a 0.25-mile setback from the
7 trail. The applicant should conduct a visibility analysis as seen by a person on the
8 trail.
- 9 • OCTA believes that this project is a “federal undertaking,” based on the list of
10 federal permits on page E-1 of the NOI, and that Section 106 of the National
11 Historic Preservation Act applies. Mitigation of adverse effects will be required.

VIII. EXPIRATION

12 OAR 345-020-0060 provides that an NOI expires two years after the date the applicant
13 submits the NOI to the Department. Accordingly, the NOI submitted by Iberdrola Renewables
14 will expire on November 9, 2011, unless the applicant submits a timely petition to extend the
15 expiration date. If the applicant does not submit a Preliminary Application for a site certificate
16 before the expiration of the NOI or any extension period granted by the Council, the applicant
17 must submit a new NOI to satisfy ORS 469.330.

IX. AMENDMENT AND COMPLETENESS

18 The Council or the Department may amend this project order at any time (ORS
19 469.330(4)). Amendment may include changes to the analysis areas. To issue a site certificate,
20 the Council must determine that the proposed facility complies with the Oregon statutes and
21 administrative rules that this project order identifies as applicable (ORS 469.503(3)).

22 Under OAR 345-015-0190(5), when the Department determines the application contains
23 adequate information for the Council to make findings on all applicable Council standards, the
24 Department may determine that the application is complete, whether or not the application
25 contains all information required under OAR 345-021-0000 and OAR 345-021-0010. After a
26 determination that an application is complete, the Department may require the applicant to
27 submit additional information if the Department identifies a need for that information during its
28 review of the application. OAR 345-015-0190(9).

X. APPLICABILITY

- 1 Failure to include an applicable statute, rule, ordinance, permit or other requirement in
- 2 this project order does not render that statute, rule, ordinance, permit or other requirement
- 3 inapplicable nor in any way relieve applicant from the duty to comply with the same.

OREGON DEPARTMENT OF ENERGY

Thomas M. Stoops, Siting Manager
Oregon Department of Energy

Date of Issuance: January 5, 2010