

Hannah Elliott

From: Brent Bybee
Sent: Friday, September 2, 2022 9:37 AM
To: Hannah Elliott
Subject: FW: Avangrid/Empire - Redline Conditions of Approval
Attachments: Empire_Conditions of Approval_REDLINE_MH.docx



CROOK COUNTY
AUG 30 2022
PLANNING DEPT



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From: Hutchinson, Matthew <matthew.hutchinson@avangrid.com>
Sent: Tuesday, August 30, 2022 3:44 PM
To: Brent Bybee <Brent.Bybee@co.crook.or.us>
Cc: Walker, Rachel <rachel.walker@avangrid.com>; Elaine Albrich <ElaineAlbrich@dwt.com>; Hicks, Paul <paul.hicks@tetrattech.com>
Subject: Avangrid/Empire - Redline Conditions of Approval

Brent,

Thanks for chatting with us a few weeks ago about the Empire Solar conditions approval. As a follow up, please see the attached redline version of conditions of approval with our comments.

Comments:

- Minor tweaks to wording for clarity
- Use of "prior to construction"
- Lumping wildlife items into a single condition.

Thanks for your consideration and we are happy to discuss any questions.

Later,
Matt



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I. CONDITIONS OF APPROVAL

The Conditions of Approval identified below are the original conditions from decision 217-16-000373-PLNG, as well additional conditions necessary for the proposed modification. The original conditions have been edited to reflect any necessary changes with ~~strikethroughs~~ and underlines. Newly proposed conditions are also underlined.

1. The Applicant shall sign and record in the deed records for Crook County, prior to receipt of any building permits, a document binding the Project owner and the Project owner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming practices as defined in ORS 30.930(2). (Non-remonstrance agreement)
2. The Applicant shall acquire all necessary building permits prior to construction.
3. The Applicant agrees to provide an annual report, ~~upon request on a yearly basis~~, to the County including:
 - A summary of changes to the facility that do not require amendments
 - A summary of the wildlife monitoring plan
 - Employment impacts during and after construction
 - Success or failure of weed control practices
 - Status of decommissioning bond or other financial mechanism
 - A summary of the operational status of the facility, including any changes to the design or operation of the facility over the last year. The Applicant shall describe any unusual events, such as earthquakes, extraordinary windstorms, major accidents or the like that occurred during the year and that had a significant adverse impact on the facility. ~~comments of any problems with the project, any adjustments needed, or any suggestions.~~
4. The Applicant shall meet all requirements of Crook County Code 18.161.010(2)(d) regarding amendments to the facility including those changes that would:
 - Require an expansion of the established facility boundaries;
 - Increase the footprint of the photovoltaic system by more than 20%;
 - Increase generator output by more than 25% relative to the generation capacity authorized by the initial permit due to the repowering or upgrading of power generation capacity.
 - Change any road or access points

Notification by the facility owner/operator to the Crook County Planning Department of changes not requiring an amendment is encouraged, but not required.

5. The solar field and connector line will be placed within the approved site boundary on the site plan submitted with the application. It is possible that the exact configuration of the solar field array and accessory structures (e.g., substation, operation and maintenance building) may change as the Project design is finalized. If the Applicant opts to construct ~~at the~~ modified Project design within the approved site

Commented [HM1]: These conditions use "prior to construction" and "prior to grading" and "prior to grading/clearing" as milestones for permit compliance. Suggest using a similar term throughout. See revisions below.

Commented [HM2]: Suggest paraphrasing the annual facility reporting requirements from OARs 345-026-0080 that is used for EFSC projects.

~~boundary (Option B), the proposed modification shall be subject to review by the Crook County Planning Commission as an amendment to the existing conditional use permit. Otherwise, a revised site plan shall be filed with and approved by the Crook County Community Development Department. The Applicant will provide a final site plan showing the location of project components, including the gen-tie line, prior to beginning site clearing and grading construction.~~

Commented [HM3]: Option B is now part of the whole project, so this condition should simply be about filing a final site plan with the county.

6. The Applicant agrees that the Project materials selected will be in substantial conformance to those submitted with the applicant's "burden of proof" statement.
7. The Applicant agrees to establish a bond, letter of credit or other financial assurance, as required by CCC 18.161.010(2)(xvi). Implementation of final decommissioning and financial assurance will be provided entirely at the cost of ~~Avangrid~~ **the Applicant**. The financial assurance will be one of the following: an irrevocable letter of credit, a surety bond or a trust fund in accordance with the approved financial assurances to guarantee the deconstruction work will be completed in accord with the decommissioning plan.
8. The decommissioning plan and financial assurance shall be submitted to the Crook County Council for review and approval. County Council approval of the decommissioning plan, including the financial assurance, shall not be unreasonably withheld and shall be required prior to the start of ground-breaking on the Project site. The financial assurance shall give consideration to the cost estimate and phasing schedule in the decommissioning plan, shall provide adequate funding to restore the site, regardless of when construction or operation ends, and shall be maintained for the life of the facility and adjusted annually to account for inflation.
9. The solar field enclosure will be completely fenced at a minimum height of 8 feet. A secured gate will be in place at entrances to the Project from both the primary access and the secondary access. ~~The fence shall be a chain link fence, without slats. Extra gates to be~~ **Corner gates will be provided** ~~corners~~ to allow removal of wildlife trapped within the enclosed area.
10. The Applicant ~~shall implement the~~ **has submitted a** Wildlife Impact and Monitoring Plan ~~provided as Attachment [X] that was~~ prepared in cooperation with ODFW, USFWS and Crook County in alignment with the County Comprehensive Plan. ~~Prior to construction, the Applicate shall provide written notice to the County documenting implementation of the selected mitigation option. Mitigation payments shall be made to the third-party mitigation provider prior to the start of construction and will include inflation adjustments to the mitigation payment as described in the Wildlife Impact and Monitoring Plan. and the mitigation options would occur within Crook County. The Applicant and ODFW are cooperatively developing the fundamentals of final mitigation options. The Applicant has agreed to formally implement the plan in consultation with ODFW and USFWS.~~ Any modifications to the Plan shall be submitted to Crook County prior to groundbreaking on the Project site unless an extension is agreed to by all parties. Any payment in-lieu of mitigation will be made ~~to the Oregon Department of Fish and Wildlife~~ prior to ~~the start of Project c~~ **construction and before site clearing and grading occurs** ~~the initial clearing and grading of the site.~~

Commented [HM4]: The bond will be held by the project entity, not Avangrid.

Commented [HM5]: Insert reference to WIMP that's attached to the County's decision document.

~~The Applicant may remove trees from the~~ Project area ~~prior to providing the mitigation payment, but if is cleared of vegetation ahead of a final, executed wildlife implementation and monitoring plan and~~ the Project is not constructed, the applicant will revegetate the site such that functional equivalency or better is returned in areas of temporary impact and temporary impacts will be mitigated.

11. The Applicant shall notify Crook County Community Development in writing of a change in ownership of the facility, including, but not limited to, a transfer of title or lease ~~for a term of years.~~
12. Prior to initiation of clearing and grading, the Applicant shall consult with the Crook County Road Master. If required, the applicant will enter into a road use agreement with the Crook County Road Master prior to the start of clearing/grading.
13. The road approach permit for the secondary access road from Millican Road shall be applied for and approved prior to the start of construction.
14. The Applicant will submit a ~~copy of the final~~ stormwater management/erosion and sediment control plan, as provided to the Department of Environmental Quality for the National Pollutant Discharge Elimination System 1200-C permit, to the Crook County Community Development prior to the start of clearing and grading the Project site.
15. Prior to ~~the~~ commencement of ~~any~~ decommissioning work, all necessary permits shall be obtained, (e.g., ~~Crook County Land Use Permits,~~ road access and other permits from the Crook County Road master and the Oregon Department of Transportation; or other entities).
16. The Applicant shall provide evidence of a signed "Large Generator interconnection Agreement" from PacifiCorp prior to any clearing/grading of the site.
17. This approval authorizes the Applicant to ~~interconnect with and use~~ construct the existing 2.6 mile 115 kV gen-tie line as a component of the proposed project, if necessary. ~~This construction shall be done in a manner that ensures that the acreage of permanent disturbance does not exceed 320 acres.~~
18. County approval of the Goal 3 exception for the Project shall be obtained prior to construction in order to exceed 320 acres of development on nonarable land.
19. The Applicant shall adhere to the "Bird Avoidance and Mitigation Measures" within Attachment 8 of the application submitted.
20. ~~if~~ The cable collector system is to be installed underground it will be at a minimum depth of three feet, where practicable.
21. The salvage value of materials shall not be incorporated into the final cost to decommission the facility. Prior to any development construction, the applicant shall submit an amended Retirement and Site Restoration Plan that excludes the cost of scrap

Commented [HM6]: Suggest using DEQ's name for this erosion control plan here.

Commented [HM7]: Avangrid understand that the CUP approval to build the project also grants the ability to decommission the facility. Suggest deleting CUP from the parenthetical reference.

Commented [HM8]: Deleted as no longer applicable.

Commented [HM9]: Slightly revised this wording here, as Avangrid understood the prior text to be limitation on aboveground wiring. National electric code requires collection lines to be buried at least 3 ft below ground.

~~value from the proposal, and identifies the required financial assurance without that component. This applies to all financial assurances submitted to the county as well.~~

~~22. A summary of any as built changes in the facility from the original plan, shall be provided by the Applicant owner/operator to the Crook County Community Development Department prior to within 90 days of the facility being connected to the grid for power production.~~

Commented [HM10]: Think this should be a new condition number – was merged into prior condition.

~~22-23. The Applicant shall provide a legal description of the Project Site, including the transmission corridor prior to issuance of building permits. Necessary easements shall be acquired and recorded for the gen-tie line prior to any clearing and grading.~~

Commented [HM11]: Avangrid understands that filing of Memorandums of Lease for each parcel will satisfy this condition. Memos of lease will include legal description of the project area.

~~23-24. Upon receipt of a reasonable cost estimate from the State Department of Fish and Wildlife, the State Historic Preservation Office or any affected federally recognized tribes, or the State Department Energy, the county, applicant, and state agency or tribe shall enter into a cost reimbursement agreement administered by the county regarding the cost of receiving comments.~~

Commented [HM12]: Deleted as this relates to pre-permit work with agencies. Plus this is written in statute and doesn't need to be repeated in permit text.

~~24-25. The Applicant shall submit a Final Emergency Management Plan and site plan to letter from Crook County Fire and Rescue approving the Emergency Management Plan prior to the start of clearing and grading construction the Project site.~~

~~25-26. The Applicant shall submit a vegetation removal and management plan prior to the start of clearing and grading the Project site site preparation and clearing. The Applicant shall work with area Natural Resource agencies to evaluate options for disposing of vegetation (e.g., juniper) removed from the site.~~

Commented [HM13]: Suggest that is the plan is needed prior to "clearing and grading" verses "prior to construction" like most other conditions.

~~26-27. The Applicant shall coordinate with the Crooked River Watershed Council for the use of trees removed from the project site at prior to the removal of any juniper trees at the facility site, or the mitigation sites. The Applicant shall allow the watershed council to utilize any juniper trees wanted for rehabilitation projects throughout the county. at no cost.~~

~~27-28. Any oOn-site lighting during construction and operation will be illuminated only when people are present on the site and will be directed downward and shielded, where practicable. Motion-detection lighting will be used where appropriate. Lighting on the substation will meet required safety standards.~~

~~28. Habitat mitigation as described in the Habitat Impact and Mitigation Plan shall Any mitigation which occurs through proposed Option 1 or 2 shall only occur within the boundaries of Crook County.~~

Commented [HM14]: Suggest that this condition is not needed because both of Empire's mitigation options are in Crook County. And to use another site, we'd have to come back to the County for its approval.

~~29. Mitigation to occur up until the end of decommissioning.~~

~~30-29. The Applicant shall coordinate with the Crook County Counsel's office to determine an acceptable schedule in which the Applicant would pProvide the financial assurances for retirement and site restoration of the facility.~~

Commented [HM15]: Suggest deleting because this already accounted for in mitigation plan.

~~31. The mitigation fee will be adjusted in the same percentage as the increase, if any, in the~~

Commented [HM16]: Can the Planning Commission delegate this?

~~Consumer Price Index (the "Index") published by the United States Department of Labor, Bureau of Labor Statistics. The increase will be computed by comparing the schedule entitled "U.S. City Average, All Items, All Urban Consumers, 1982-84=100" for the year and month of the Approval Date and the latest figures preceding the Payment Date. All comparisons will be made using Index figures derived from the same base period. If the Index cited above is revised or discontinued during the Term, then the Index that is designated to replace it by BOMA Oregon will be used.~~

Commented [HM17]: The WIMP already includes price adjustment for inflation. Suggest deleting this condition and relying on the revisions to Condition 10.