

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

In the Matter of the Request for Amendment #3 of
the Site Certificate for the Stateline Wind Project

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**FINAL ORDER ON
AMENDMENT #3**

June 20, 2005

STATELINE WIND PROJECT:
FINAL ORDER ON AMENDMENT #3

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LIST OF ABBREVIATIONS

Council	Energy Facility Siting Council
Department	Oregon Department of Energy
dBA	The “A-weighted” sound pressure level. The sound pressure level in decibels as measured on a sound level meter using the A-weighted filter network. The A-weighted filter de-emphasizes the very low and very high frequency components of the sound in a manner similar to the frequency response of the human ear and correlates well with subjective reactions to noise.
DEQ	Oregon Department of Environmental Quality
EFU	land zoned for “exclusive farm use”
FPL	FPL Energy Vansycle LLC
FPL Energy	FPL Energy LLC, parent company of FPL
kV	kilovolt or kilovolts
LCDC	Land Conservation and Development Commission
mph	miles per hour
MW	megawatt or megawatts
m/s	meters per second
ODFW	Oregon Department of Fish and Wildlife
Stateline	Stateline Wind Project
Stateline 1	The Stateline facility approved by the original site certificate issued September 14, 2001
Stateline 2	The expansion of Stateline approved by Amendment #1
Stateline 3	The proposed expansion of Stateline that is the subject of this Amendment #2
WGS	Washington ground squirrel(s)

**STATELINE WIND PROJECT:
FINAL ORDER ON AMENDMENT #3**

I. INTRODUCTION

The Oregon Energy Facility Siting Council (Council) issues this order in accordance with ORS 469.405 and OAR 345-027-0070. This order addresses a request by the certificate holder for amendment of the site certificate for the Stateline Wind Project (Stateline). The certificate holder is FPL Energy Vansycle, LLC (FPL).

On September 14, 2001, the Council issued a site certificate for an 83.8-megawatt (MW) wind energy facility in Umatilla County, Oregon (referred to in this proposed order as “**Stateline 1**”¹). FPL began construction of Stateline 1 on September 17, 2001, and completed construction on December 20, 2001. The facility began commercial operation on December 21, 2001.

On May 17, 2002, the Council issued its Final Order in the Matter of the Request for Amendment #1 of the Site Certificate for the Stateline Wind Project (“Final Order on Amendment #1”). Amendment #1 authorized FPL to expand the Stateline facility by the construction of 60 additional turbines and related or supporting facilities (referred to in this proposed order as “**Stateline 2**”²). FPL completed construction of these turbines on December 15, 2004.

On June 6, 2003, the Council issued its Final Order on Amendment #2. Amendment #2 authorized FPL to expand the Stateline facility by the construction of 279 additional turbines and related facilities (referred to in this proposed order as “**Stateline 3**”³). Amendment #2 increased the permitted peak electric generation capacity of the facility by 184 MW. None of the facilities approved by Amendment #2 have been built. Currently, the Stateline wind facility includes 186⁴ operating turbines in Oregon with a combined electrical generating capacity of approximately 123 MW.

The definitions in ORS 469.300 and OAR 345-001-0010 apply to terms used in this order.

II. PROCEDURAL HISTORY AND AMENDMENT PROCESS

FPL submitted a request to amend the site certificate to the Oregon Department of Energy (Department) on March 28, 2005. As required under OAR 345-027-0070, the Department sent copies of the request to the appropriate officers, agencies and tribes listed in OAR 345-020-0040 within 15 days after receiving the request. The Department requested comments by May 6, 2005. Also as required under the rule, the Department sent notice of the amendment request to all persons on the Council’s mailing list and to persons on a list of

¹ Described in the Council’s Final Order in the Matter of the Application for a Site Certificate for the Stateline Wind Project (“Final Order on the Application”), pages 9-13.

² Described in the Council’s Final Order on Amendment #1, page 3.

³ Described in the Council’s Final Order on Amendment #2, pages 4-5.

⁴ The site certificate authorized FPL to construct 127 Stateline 1 turbines. Based on site considerations, FPL elected to build 126 Stateline 1 turbines.

1 property owners supplied by FPL. On April 7, 2005, the Department notified FPL that the
2 proposed order would be issued no later than June 7, 2005.

3 The Department issued a proposed order on May 19, 2005. The Department issued
4 public notice of the proposed order in accordance with OAR 345-027-0070(4). The deadline
5 for comments or requests for a contested case was 12:00 noon on June 20, 2005. The
6 Department did not receive any comments or contested case requests by the deadline.

7 The Council took final action on the amendment request at a meeting on June 20,
8 2005, after the comment period deadline.

9 **III. DESCRIPTION OF THE PROPOSED AMENDMENT**

10 FPL requested two changes to the site certificate:

- 11 1. Extending the construction deadlines in Condition 106: The proposed amendment
12 would extend the deadline to begin construction of Stateline 3 to June 23, 2007,
13 and the deadline to complete construction of Stateline 3 to December 31, 2007.
- 14 2. Modifying Condition 105: As adopted by the Council in 2003, Condition 105
15 requires the certificate holder to enter into “no-occupation agreement” with the
16 landowner of a property within the general area of the Stateline 2 turbines. Under
17 the agreement, the property must not be used for a residence during construction
18 and operation of Stateline 2 “unless, based on noise studies during operation, the
19 certificate holder demonstrates to the satisfaction of the Office of Energy that
20 turbine noise measured at the property is within the range allowed for a sensitive
21 noise receptor under OAR 340-035-0035.” The proposed amendment would
22 remove the requirement of a “non-occupation agreement” and would modify
23 Condition 105 according to new noise regulations that were adopted by the Oregon
24 Environmental Quality Commission after the Council issued the Second Amended
25 Site Certificate. The new regulations allow the owner of a noise sensitive property
26 to waive the 10-dBA limit on the increase in ambient statistical noise caused by
27 the facility.

28 **1. Procedure Regarding Extension of Deadlines**

29 Under OAR 345-027-0030, a certificate holder may request an extension of the
30 deadlines for beginning and completing construction. The Council may grant an extension of
31 no more than two years from the current deadline. The Council rule requires the certificate
32 holder to submit the request “no later than six months before the date of the applicable
33 deadline, or, in the case of circumstances beyond the control of the certificate holder and
34 described in the request, no later than the applicable deadline.” Under the Second Amended
35 Site Certificate, the deadline to begin construction of Stateline 3 is June 23, 2005.

36 FPL submitted this request to extend the deadline for beginning construction
37 approximately three months before the deadline; however, FPL had previously notified the
38 Department that it was considering an amendment request to modify the design of Stateline 3
39 and to extend the construction deadlines in one amendment proceeding. FPL has not
40 completed its evaluation of a redesign of the Stateline 3 facility. With the advice of the
41 Department, FPL is filing this amendment to extend the construction deadlines “in order to
42 maintain the site certificate in good standing while facility modifications are being

1 evaluated.”⁵ The Council accepts this amendment request to extend the construction deadlines
2 as timely filed under the circumstances described.

3 Under OAR 345-027-0070(9), for an amendment that extends the deadlines for
4 beginning or completing construction, the Council must consider: (a) whether the Council has
5 previously granted an extension of the deadline; (b) whether there has been any change of
6 circumstances that affects a previous Council finding that was required for issuance of a site
7 certificate or amended site certificate; and (c) whether the facility complies with all Council
8 standards.

9 The Council has not previously granted an extension of the construction deadlines for
10 Stateline 3. The Council has previously granted an extension of the deadline for completing
11 construction for five of the 60 approved Stateline 2 turbines.⁶ In approving Amendment #2,
12 the Council extended the construction completion deadline for the five turbines from March 1,
13 2003, to March 1, 2005. FPL completed construction of these five turbines in December 2004.

14 With regard to the proposed site of the Stateline 3 facilities, FPL proposes no change
15 to the design or location of the turbines or other facilities at this time. Although there has been
16 no change of circumstances affecting the proposed site or the potential impacts of Stateline 3,
17 there have been two changes to applicable state and local law. The Oregon Environmental
18 Quality Commission amended the state noise control regulations applicable to wind energy
19 facilities, effective June 11, 2004, and Umatilla County amended several sections of the
20 Umatilla County Development Code (UCDC) to include specific conditional use standards for
21 wind power generation facilities, effective May 20, 2003. These changes to applicable laws
22 are a change of circumstances that would affect the Council’s previous findings.

23 Sections IV and V below address compliance of the facility with Council standards as
24 required under OAR 345-027-0070(9), including compliance with new law.

25 **2. Procedure Regarding Modification of Condition 105**

26 Under OAR 345-027-0050(1), the certificate holder must request a site certificate
27 amendment “to design, construct, operate or retire a facility in a manner different from the
28 description in the site certificate” if the proposed change “could require a new condition or a
29 change to a condition in the site certificate.” The proposed application of new state noise
30 control regulations that were adopted after the effective date of the Second Amended Site
31 Certificate would change the operation of the facility by removing the obligation to maintain a
32 “no-occupation agreement” with the affected landowner. The proposed change would require
33 a change to a condition in the site certificate. Accordingly, the Council finds that amendment
34 of the site certificate is required to apply the new noise control regulations.

35 OAR 345-027-0070(9)(c) applies to the proposed modification of Condition 105. The
36 Council must consider “the effects of the amendment on any finding required by Council
37 standards for issuance of a site certificate.” Sections IV and V below address the effects of the
38 proposed amendment on the findings required for issuance of a site certificate.

⁵ *Certificate Holder’s Request for Third Amendment to the Stateline Wind Project Site Certificate* (Request for Amendment #3), p. 2.

⁶ Construction of the remaining 55 Stateline 2 turbines had been completed before the extension request.

1 **3. Changes to the Site Certificate as Proposed by FPL**

2 In its request for Amendment #3, FPL proposed the following amendments to the site
3 certificate. Additions are double-underlined and deletions have a strikethrough.

4 *At page 1, lines 7-12:*

5 The findings of fact, reasoning and conclusions of law underlying the terms and conditions of
6 this site certificate are set forth in the following documents, incorporated herein by this
7 reference: (a) the Council’s Final Order in the Matter of the Application for a Site Certificate
8 for the Stateline Wind Project (“Final Order on the Application”), issued on September 14,
9 2001, (b) the Council’s Final Order in the Matter of the Request for Amendment #1 of the Site
10 Certificate for the Stateline Wind Project (“Final Order on Amendment #1”), ~~and~~ (c) the
11 Council’s Final Order in the Matter of the Request for Amendment #2 of the Site Certificate
12 for the Stateline Wind Project (“Final Order on Amendment #2”), ~~and~~ (d) the Council’s Final
13 Order in the Matter of the Request for Amendment #3 of the Site Certificate for the Stateline
14 Wind Project (“Final Order on Amendment #3”). [Amendments #1, ~~and~~ #2, ~~and~~ #3]

15 In interpreting this site certificate, any ambiguity will be clarified by reference to the
16 following, in order of priority: this Third Amended Site Certificate, the Final Order on
17 Amendment #3, ~~Second Amended Site Certificate,~~ the Final Order on Amendment #2, the
18 Final Order on Amendment #1, the Final Order on the Application and the record of the
19 proceedings that led to the Final Orders on the Application and Amendments #1, ~~and~~ #2, ~~and~~
20 #3. [Amendments #1, ~~and~~ #2, ~~and~~ #3]

21 *At page 1, lines 31-37:*

22 3. This site certificate does not address, and is not binding with respect to, matters that were
23 not addressed in the Council’s Final Orders on the Application and Amendments #1, ~~and~~
24 #2, and #3. These matters include, but are not limited to: building code compliance, wage,
25 hour and other labor regulations, local government fees and charges and other design or
26 operational issues that do not relate to siting the facility (ORS 469.401(4)) and permits
27 issued under statutes and rules for which the decision on compliance has been delegated
28 by the federal government to a state agency other than the Council. 469.503(3).
29 [Amendments #1, ~~and~~ #2, ~~and~~ #3]

30 *At page 11, line 33, to page 12, line 14*

31 (37) To reduce the visual impact of the facility, the certificate holder shall:

32 * * *

33 (i) Design and construct the operation and maintenance building to be generally
34 consistent with the character of similar buildings used by commercial farmers or ranchers.
35 Upon retirement of the energy facility, the operations and maintenance building must be
36 removed or converted to farm use. [Amendment #3]

37 *At page 24, lines 39-43 and page 25, lines 1 and 2*

38 (105) ~~The certificate holder shall enter into an agreement with the landowner of a property~~
39 ~~identified as 84301 Stockman Road, Helix, Oregon, requiring that the structure remain~~
40 ~~uninhabited during construction. The certificate holder shall continue the no-occupation~~
41 ~~agreement during operation for the life of the Stateline 2 facility unless, based on noise~~
42 ~~studies during operation, the certificate holder demonstrates to the satisfaction of the~~
43 ~~Office of Energy that turbine noise measured at the property is within the range allowed~~

1 for a sensitive noise receptor under OAR 340-035-0035. The certificate holder shall enter
2 into a legally effective easement or real covenant with the owner of the property
3 identified as 84301 Stockman Road, Helix, Oregon, pursuant to which the owner
4 authorizes the Stateline 2 facilities to increase ambient statistical noise levels L10 and
5 L50 on the respective properties by more than 10 dBA at the appropriate measurement
6 point. A legally effective easement or real covenant shall: include a legal description of
7 the burdened property (the noise sensitive property); be recorded in the real property
8 records of the county; expressly benefit the certificate holder; expressly run with the
9 land and bind all future owners, lessees or holders of any interest in the burdened
10 property; and not be subject to revocation without the certificate holder's written
11 approval. The certificate holder shall maintain such easement or real covenant in effect
12 until the retirement of the Stateline 2 facility, unless the certificate holder demonstrates
13 to the satisfaction of the Office of Energy, based on modeling or measurements
14 performed in compliance with OAR 340-035-0035, that an easement or real covenant is
15 not necessary to comply with those regulations. [Amendment #3].

16 *Page 25, lines 12-20*

17 **1. General Conditions**

18 (106) The certificate holder shall begin construction of Stateline 3 by June 23, 2007~~within~~
19 ~~twenty four months after the effective date of the Second Third Amended Site~~
20 ~~Certificate.~~ The certificate holder shall complete construction of Stateline 3 before
21 December 31, 2005~~7~~. Under OAR 345-027-0070, an amended site certificate is effective
22 upon execution by the Council Chair and the applicant. Completion of construction
23 occurs upon the date commercial operation of the facility begins. The Council may grant
24 an extension of the construction beginning or completion deadlines in accordance with
25 OAR 345-027-0030 or any successor rule in effect at the time the request for extension
26 is submitted [Amendment #3].

27 *Page 26, line 29*

28 (111A) Prior to constructing any turbine within 5,000 feet of the property identified as 81876
29 Gerking Flat Road, Athena, Oregon, the certificate holder shall enter into a legally
30 effective easement or real covenant pursuant to which the owner of the property
31 authorizes the Stateline 3 facilities to increase ambient statistical noise levels L10 and
32 L50 by more than 10 dBA at the appropriate measurement point. The 5,000-foot
33 distance shall be measured from the appropriate measurement point as determined
34 pursuant to OAR 340-035-0035. A legally effective easement or real covenant shall:
35 include a legal description of the burdened property (the noise sensitive property); be
36 recorded in the real property records of the county; expressly benefit the certificate
37 holder; expressly run with the land and bind all future owners, lessees or holders of any
38 interest in the burdened property; and not be subject to revocation without the certificate
39 holder's written approval. The certificate holder shall maintain such easement or real
40 covenant in effect until the retirement of the Stateline 3 facility, unless the certificate
41 holder demonstrates to the satisfaction of the Office of Energy, based on modeling or
42 measurements performed in compliance with OAR 340-035-0035, that an easement or
43 real covenant is not necessary to comply with those regulations. [Amendment #3]

44 **IV. THE COUNCIL'S SITING STANDARDS: FINDINGS AND CONCLUSIONS**

45 In accordance with OAR 345-027-0070(9), in making findings on the Land Use
46 standard, the Council applies the applicable substantive criteria in effect on the date the

1 certificate holder submitted the request for amendment. In making findings on all other
2 standards, the Council applies any applicable state statutes, administrative rules and local
3 government ordinances that are in effect on the date the Council makes its decision.⁷

4 **1. General Standard of Review**

5 **OAR 345-022-0000**

6 *(1) To issue a site certificate for a proposed facility or to amend a site certificate,*
7 *the Council shall determine that the preponderance of evidence on the record*
8 *supports the following conclusions:*

9 *(a) The facility complies with the requirements of the Oregon Energy Facility*
10 *Siting statutes, ORS 469.300 to ORS 469.570 and 469.590 to 469.619, and the*
11 *standards adopted by the Council pursuant to ORS 469.501 or the overall public*
12 *benefits of the facility outweigh the damage to the resources protected by the*
13 *standards the facility does not meet as described in section (2);*

14 *(b) Except as provided in OAR 345-022-0030 for land use compliance and except*
15 *for those statutes and rules for which the decision on compliance has been*
16 *delegated by the federal government to a state agency other than the Council, the*
17 *facility complies with all other Oregon statutes and administrative rules identified*
18 *in the project order, as amended, as applicable to the issuance of a site certificate*
19 *for the proposed facility. If the Council finds that applicable Oregon statutes and*
20 *rules, other than those involving federally delegated programs, would impose*
21 *conflicting requirements, the Council shall resolve the conflict consistent with the*
22 *public interest. In resolving the conflict, the council cannot waive any applicable*
23 *state statute.*

24 ***

25 This order addresses the requirements of OAR 345-022-0000 in the findings of fact,
26 reasoning and conclusions of law discussed in the sections that follow. In Section VII below,
27 the Council makes conclusions regarding compliance with the General Standard of Review
28 based on consideration of all of the evidence in the record.

29 **2. Standards about the Applicant**

30 (a) Organizational Expertise

31 **OAR 345-022-0010:**

32 *(1) To issue a site certificate, the Council must find that the applicant has the*
33 *organizational expertise to construct, operate and retire the proposed facility in*
34 *compliance with Council standards and conditions of the site certificate. To*
35 *conclude that the applicant has this expertise, the Council must find that the*
36 *applicant has demonstrated the ability to design, construct and operate the*
37 *proposed facility in compliance with site certificate conditions and in a manner*

⁷ The Council is not authorized to determine compliance with regulatory programs that the federal government has delegated to another state agency (ORS 469.503(3)). The Council has no jurisdiction over design or operational issues that do not relate to siting, such as matters relating to employee health and safety, building code compliance, wage or hour or other labor regulations, or local government fees and charges (ORS 469.401(4)).

1 *that protects public health and safety and has demonstrated the ability to restore*
2 *the site to a useful, non-hazardous condition. The Council may consider the*
3 *applicant’s experience, the applicant’s access to technical expertise and the*
4 *applicant’s past performance in constructing, operating and retiring other*
5 *facilities, including, but not limited to, the number and severity of regulatory*
6 *citations issued to the applicant.*

7 *(2) The Council may base its findings under section (1) on a rebuttable*
8 *presumption that an applicant has organizational, managerial and technical*
9 *expertise, if the applicant has an ISO 9000 or ISO 14000 certified program and*
10 *proposes to design, construct and operate the facility according to that program.*

11 *(3) If the applicant does not itself obtain a state or local government permit or*
12 *approval for which the Council would ordinarily determine compliance but*
13 *instead relies on a permit or approval issued to a third party, the Council, to issue*
14 *a site certificate, must find that the third party has, or has a reasonable likelihood*
15 *of obtaining, the necessary permit or approval, and that the applicant has, or has*
16 *a reasonable likelihood of entering into, a contractual or other arrangement with*
17 *the third party for access to the resource or service secured by that permit or*
18 *approval.*

19 *(4) If the applicant relies on a permit or approval issued to a third party and the*
20 *third party does not have the necessary permit or approval at the time the Council*
21 *issues the site certificate, the Council may issue the site certificate subject to the*
22 *condition that the certificate holder shall not commence construction or operation*
23 *as appropriate until the third party has obtained the necessary permit or approval*
24 *and the applicant has a contract or other arrangement for access to the resource*
25 *or service secured by that permit or approval.*

26 Findings of Fact

27 In the Final Order on the Application, the Final Order on Amendment #1 and the Final
28 Order on Amendment #2, the Council found that FPL has the organizational, managerial and
29 technical expertise to construct and operate Stateline. The proposed amendment does not
30 affect the Council’s previous findings. This amendment does not involve any change in FPL’s
31 organization or personnel, nor does it alter the scope of the project in a way that might require
32 different expertise or experience. FPL has constructed 186 of the 466 wind turbines
33 authorized by the site certificate and has otherwise complied with the terms and conditions of
34 the site certificate. There have been no reported regulatory citations imposed on FPL. There
35 has been no other change of circumstances or underlying facts that affects the Council’s
36 findings under this standard.

37 In the Final Order on Amendment #2, the Council found that the certificate holder has
38 a reasonable likelihood of entering into a contractual or other arrangement with the City of
39 Helix for access to 10 million gallons of water under the city’s water right (a third-party
40 permit) needed during construction of Stateline 3. There has been no change of circumstances
41 affecting that finding.

1 Conclusions of Law

2 Based on the findings stated above, the Council concludes that FPL would meet the
3 Council's Organizational Expertise Standard if Amendment #3 were approved. In addition,
4 the Council concludes that no new conditions are required.

5 (b) Retirement and Financial Assurance

6 **OAR 345-022-0050:**

7 *To issue a site certificate, the Council must find that:*

8 *(1) The site, taking into account mitigation, can be restored adequately to a useful,*
9 *non-hazardous condition following permanent cessation of construction or*
10 *operation of the facility.*

11 *(2) The applicant has a reasonable likelihood of obtaining a bond or letter of*
12 *credit in a form and amount satisfactory to the Council to restore the site to a*
13 *useful, non-hazardous condition.*

14 Findings of Fact

15 In the Final Order on the Application, the Council found that FPL demonstrated that it
16 could adequately restore the site to a useful, nonhazardous condition. The Council found that
17 a bond or letter of credit in the amount of \$1,161,120 (in 2001 dollars) was satisfactory to
18 ensure site restoration of Stateline 1 after completion of construction and restoration of areas
19 temporarily disturbed during construction.

20 In the Final Order on Amendment #1, the Council found that a bond or letter of credit
21 in the amount of \$559,920 (in 2002 dollars) was satisfactory to ensure site restoration of
22 Stateline 2 after completion of construction and restoration of areas temporarily disturbed
23 during construction.

24 In the Final Order on Amendment #2, the Council found that a bond or letter of credit
25 in the amount of \$3,322,900 (in 2002 dollars) was satisfactory to ensure site restoration of
26 Stateline 3 during construction and that a bond or letter of credit in the amount of \$3,392,900
27 (in 2002 dollars) would ensure site restoration of Stateline 3 facility after completion of
28 construction and restoration of areas temporarily disturbed during construction.

29 Amendment #3 does not increase the scope or cost of site restoration for any part of
30 Stateline. There has been no change in FPL's ability to obtain the necessary bonds or letters of
31 credit.

32 Conclusions of Law

33 Based on the findings stated above, the Council concludes that the proposed
34 amendment does not affect FPL's ability to meet the Retirement and Financial Assurance
35 standard or the conditions associated with it. The Council concludes that FPL would meet the
36 Council's Retirement and Financial Assurance Standard if Amendment #3 were approved. In
37 addition, the Council concludes that no new conditions are required.

1 **3. Standards about Impacts of Construction and Operation**

2 (a) Land Use

3 FPL has elected to have the Council make the land use determination. Accordingly,
4 the following parts of OAR 345-022-0030 apply:

5 **OAR 345-022-0030**

6 *(1) To issue a site certificate, the Council must find that the proposed facility*
7 *complies with the statewide planning goals adopted by the Land Conservation and*
8 *Development Commission.*

9 *(2) The Council shall find that a proposed facility complies with section (1) if:*

10 *****

11 *(b) The applicant elects to obtain a Council determination under ORS*
12 *469.504(1)(b) and the Council determines that:*

13 *(A) The proposed facility complies with applicable substantive criteria as*
14 *described in section (3) and the facility complies with any Land Conservation and*
15 *Development Commission administrative rules and goals and any land use statutes*
16 *directly applicable to the facility under ORS 197.646(3);*

17 *(B) For a proposed facility that does not comply with one or more of the*
18 *applicable substantive criteria as described in section (3), the facility otherwise*
19 *complies with the statewide planning goals or an exception to any applicable*
20 *statewide planning goal is justified under section (4); or*

21 *(C) For a proposed facility that the Council decides, under sections (3) or (6), to*
22 *evaluate against the statewide planning goals, the proposed facility complies with*
23 *the applicable statewide planning goals or that an exception to any applicable*
24 *statewide planning goal is justified under section (4).*

25 *(3) As used in this rule, the "applicable substantive criteria" are criteria from the*
26 *affected local government's acknowledged comprehensive plan and land use*
27 *ordinances that are required by the statewide planning goals and that are in effect*
28 *on the date the applicant submits the application. If the special advisory group*
29 *recommends applicable substantive criteria, as described under OAR 345-021-*
30 *0050, the Council shall apply them. If the special advisory group does not*
31 *recommend applicable substantive criteria, the Council shall decide either to make*
32 *its own determination of the applicable substantive criteria and apply them or to*
33 *evaluate the proposed facility against the statewide planning goals.*

34 *(4) The Council may find goal compliance for a proposed facility that does not*
35 *otherwise comply with one or more statewide planning goals by taking an*
36 *exception to the applicable goal. Notwithstanding the requirements of ORS*
37 *197.732, the statewide planning goal pertaining to the exception process or any*
38 *rules of the Land Conservation and Development Commission pertaining to the*
39 *exception process, the Council may take an exception to a goal if the Council*
40 *finds:*

1 (a) *The land subject to the exception is physically developed to the extent that the*
2 *land is no longer available for uses allowed by the applicable goal;*

3 (b) *The land subject to the exception is irrevocably committed as described by the*
4 *rules of the Land Conservation and Development Commission to uses not allowed*
5 *by the applicable goal because existing adjacent uses and other relevant factors*
6 *make uses allowed by the applicable goal impracticable; or*

7 (c) *The following standards are met:*

8 (A) *Reasons justify why the state policy embodied in the applicable goal should not*
9 *apply;*

10 (B) *The significant environmental, economic, social and energy consequences*
11 *anticipated as a result of the proposed facility have been identified and adverse*
12 *impacts will be mitigated in accordance with rules of the Council applicable to the*
13 *siting of the proposed facility; and*

14 (C) *The proposed facility is compatible with other adjacent uses or will be made*
15 *compatible through measures designed to reduce adverse impacts.*

16 * * *

17 Findings of Fact

18 In the Final Order on the Application, the Council found that Stateline 1 complied
19 with the applicable substantive criteria of Umatilla County. The Council applied one
20 provision of the Land Conservation and Development Commission (LCDC) administrative
21 rules directly applicable to the facility under ORS 197.646(3) that pertains to protection of
22 agricultural lands and implements Statewide Planning Goal 3 (Agricultural Lands). The
23 Council found that Stateline 1 met the standards for an exception to the goal under OAR 345-
24 022-0030(4)(c). The proposed Amendment #3 would make no change to the Stateline 1
25 facilities or otherwise affect the Council's land use findings regarding Stateline 1.

26 In the Final Order on Amendment #1, the Council found that Stateline 2 complied
27 with the applicable substantive criteria of Umatilla County and with all directly applicable
28 provisions of the LCDC administrative rules. The Council analyzed directly applicable land
29 use requirements for the protection of agricultural lands (ORS 215.283 and applicable
30 regulations) and found that no exception to Goal 3 was needed. The proposed Amendment #3
31 would make no change to the Stateline 2 facilities or otherwise affect the Council's land use
32 findings regarding Stateline 2.

33 In the Final Order on Amendment #2, the Council found Stateline 3 complied with the
34 applicable substantive criteria of Umatilla County and with all directly applicable provisions
35 of the LCDC administrative rules. The Council analyzed the directly applicable land use
36 requirements for the protection of agricultural lands (ORS 215.283 and applicable
37 regulations) and found that no exception to Goal 3 was needed.

38 Amendment #3 would extend the construction deadlines for Stateline 3. In the
39 amendment request, FPL does not propose any change in the location or facilities for Stateline
40 3. Under OAR 345-027-0070(9)(b), for an amendment that extends the deadlines for
41 beginning or completing construction, the Council must consider whether the facility (that
42 part of the Stateline facility for which construction has not begun) complies with all Council

1 standards. In making this decision, the Council applies the applicable substantive criteria in
2 effect on the date the certificate holder submitted the request for amendment.

3 The Stateline 3 facility lies entirely within an Exclusive Farm Use (EFU) zone. In the
4 Final Order on Amendment #2, the Council applied Umatilla County Development Code
5 (UCDC) § 152.060(F), which provides that “commercial utility facilities for the purpose of
6 generating power for public use by sale” are a conditional use in an EFU zone. On May 20,
7 2003, Umatilla County adopted conditional use standards applicable to the siting of “wind
8 power generation facilities” in EFU zones. These criteria were not in effect when FPL
9 submitted its request for Amendment #2, and, therefore, the Council did not make findings on
10 the new criteria in the Final Order on Amendment #2.

11 Under the new local ordinance (Ordinance No. 2002-02), the specific conditional use
12 standards of UCDC § 152.616(HHH) are cross-referenced in UCDC § 152.060(F) for
13 application to wind power generation facilities. In particular, to approve Amendment #3, the
14 Council must analyze the Stateline 3 facility under the applicable substantive criteria that are
15 found in UCDC § 152.616(HHH)(5)-(12). Umatilla County has reviewed FPL’s amendment
16 request. The County supports Council approval of the proposed amendment.⁸ The criteria
17 contained in UCDC § 152.616(HHH) are set forth below in italics, followed by FPL’s
18 response and the Council’s findings.

19 *(5) The following requirements and restrictions apply to the siting of a facility:*

20 *(A) The Wind Power Generation Facility shall be on property zoned EFU/GF or*
21 *NR, and no portion of the facility shall be within 3,520 feet of properties zoned*
22 *residential use or designated on the Comprehensive Plan as residential. (For*
23 *clarification purposes of this section, EFU/GF/NR zones are not considered zoned*
24 *for residential use.)*

25 **FPL’s Response**

26 Stateline 3 will be located entirely on land zoned EFU, and no portion of the facility is located
27 within 3,520 feet of properties zoned for residential use or designated in the Umatilla County
28 Comprehensive Plan as residential.

29 **Findings**

30 The Council adopts the findings expressed in FPL’s response.

31 *(B) Reasonable efforts shall be made to blend the wind facility’s towers with the*
32 *natural surrounding in order to minimize impacts upon open space and the natural*
33 *landscape.*

34 **FPL’s Response**

35 The Council addressed compliance with its Scenic and Aesthetic Values standard in Section
36 V.3(d) of the Final Order for Amendment #2. In addition, Condition 37 of the Second
37 Amended Site Certificate requires compliance with several specific standards “to reduce the
38 visual impact of the facility.” The standards include the following:

- 39 • “Group the turbines in strings of 2 to 37 turbines, each spaced approximately 250 feet
40 from the next.”

⁸ Letter from the Umatilla County Board of Commissioners, dated April 13, 2005.

- 1 • “Construct each turbine to be approximately 165 feet tall at the turbine hub and with a
2 total height of approximately 242 feet with the nacelle and blades mounted.”
- 3 • “Mount nacelles on smooth, hollow steel towers, approximately 14 feet in diameter at the
4 base.”
- 5 • “Paint all towers west of Butler Grade Road uniformly in a neutral light gray color. Paint
6 towers east of Butler Grade Road a neutral white color to blend in with the color of towers
7 in the Vansycle Project.
- 8 • “Not allow any advertising to be used on any part of the facility or on any signs posted at
9 the facility, except that the turbine manufacturer’s logo may appear on turbine nacelles.”
- 10 • “Use only the minimum lighting on its turbine strings required by the Federal Aviation
11 Administration, except:
12 * * *
- 13 (ii) Low-impact lighting may be used for occasional nighttime repairs, operations or
14 maintenance at the substation (at other times this lighting would be turned off).”
- 15 • “Use only those signs required for facility safety or required by law.”
- 16 Compliance with Condition 37 will satisfy the requirement of UCDC § 152.616(HHH)(5)(B)
17 to “blend the wind facility’s towers with the natural surrounding.”

18 **Findings**

19 The Council finds that compliance with Condition 37 satisfies the requirements of
20 UCDC § 152.616(HHH)(5)(B).

21 *(C) Reasonable efforts shall be taken to protect and to preserve existing trees,
22 vegetation, water resources, wildlife habitat or other significant natural resources.*

23 **FPL’s Response**

24 Sections V.3(b), V.4(a), V.4(b) and V.5 of the Final Order for Amendment #2 specifically
25 address measures to avoid, minimize and mitigate for impact to natural resources on the
26 facility site. Numerous conditions in the Second Amended Site Certificate address erosion
27 control, weed control, minimizing impacts to vegetation, protection of wildlife and habitat
28 through preconstruction surveys, avoidance, and mitigation, and monitoring the success of
29 mitigation measures. These include Conditions 29, 30, 39, 52-56, 60-65, 68-70, 89-94, 111,
30 112, and 114-118. These conditions comply with the requirement of UCDC §
31 152.616(HHH)(5)(C) that “reasonable efforts shall be taken” to protect significant natural
32 resources.

33 **Findings**

34 The Council finds that compliance with site certificate conditions will ensure that
35 “reasonable efforts” are taken “to protect and to preserve existing trees, vegetation, water
36 resources, wildlife habitat or other significant natural resources” as required by UCDC §
37 152.616(HHH)(5)(C).

38 *(D) The turbine towers shall be designed and constructed to discourage bird
39 nesting and wildlife attraction.*

40 **FPL’s Response**

41 Pursuant to Condition 70(c) of the Second Amended Site Certificate, the certificate holder is
42 required to use monopole design for all turbine and permanent meteorological towers.

1 Monopole design minimizes the potential for the turbine towers to provide nesting, perching
2 or shelter locations that may attract birds or other wildlife. Condition 70(c) ensures
3 compliance with UCDC § 152.616(HHH)(5)(D).

4 **Findings**

5 The Council adopts the findings expressed in FPL’s response.

6 *(E) The turbine towers shall be of a size and design to help reduce noise or other*
7 *detrimental effects.*

8 **FPL’s Response**

9 In Section VI.1(a) of the Final Order for Amendment #2, the Council found that Stateline 3
10 complied with the Oregon Department of Environmental Quality (DEQ) noise regulations in
11 effect at that time. As discussed in the body of the Request for Amendment #3, the
12 Environmental Quality Commission adopted new noise regulations for proposed and operating
13 wind energy facilities; those new regulations took effect on June 11, 2004. Section 1.6.1 of
14 this amendment request explains how Stateline 3 can satisfy those regulations.

15 The turbine towers are also designed to reduce other potentially detrimental effects.
16 Specifically, Condition 103 of the Second Amended Site Certificate requires that the turbines,
17 towers and pads be constructed of fire retardant material, and that the turbines include built-in
18 fire prevention measures.

19 The turbine towers, as proposed and subject to the conditions of the Site Certificate, comply
20 with UCDC § 152.616(HHH)(5)(E).

21 **Findings**

22 Analysis of compliance of the facility with the noise control regulations in OAR 340-
23 035-0035 is discussed below at page 35. Based on the findings in that discussion, the Council
24 finds that the facility complies with the requirement in UCDC § 152.616(HHH)(5)(E) that the
25 turbine towers “be of a size and design to help reduce noise.” The Council adopts the findings
26 expressed in FPL’s response regarding reduction of “other detrimental effects.”

27 *(F) Private access roads shall be gated to protect the facility and property owners*
28 *from illegal or unwarranted trespass, and illegal dumping and hunting.*

29 **FPL’s Response**

30 Condition (35)(a) of the Second Amended Site Certificate requires that the certificate holder
31 maintain “fences and access gates around dangerous equipment or portions of the site as
32 feasible.” Condition (38) provides: “To restrict public access to turbine towers, the certificate
33 holder shall install locked access doors accessible only to authorized project staff.” For
34 Stateline 3, any new access roads from County roads will be gated, provided that the property
35 owner agrees to placement of a gate.

36 **Findings**

37 The Department asked Umatilla County Planning Director Tamra Mabbott to
38 comment on whether UCDC § 152.616(HHH)(5)(F) would require construction of a gate on a
39 private access road despite the possible objection of the landowner. Mabbott responded by

1 stating that the landowner could request a waiver of the requirement. Based on advice of
2 County Counsel, Mabbott suggested the following revision to site certificate Condition 38:⁹

3 (38) To restrict public access to turbine towers, the certificate holder shall install locked access
4 doors accessible only to authorized project staff. For Stateline 3, any new access roads
5 from county roads will be gated, unless the property owner requests that the requirement
6 to place a gate be waived.

7 The Department recommended that the Council revise Condition 35, rather than
8 Condition 38, because the latter condition addresses access to the interior of turbine towers,
9 and Condition 35 specifically addresses access gates to the site. The Council adopts the
10 following revisions to Condition 35 (see page 46):

11 (35) The certificate holder shall take steps to protect the facility and property from
12 unauthorized access and to reduce the risk of accidental injury during construction and
13 operations ~~would be minimized~~ by (App U-25, 26):
14 (a) Maintaining access gates on private access roads to Stateline 3 facilities in accordance
15 with Umatilla County Development Code § 152.616(HHH)(5)(e), unless Umatilla County
16 has allowed a waiver upon a request by the landowner, and otherwise M~~maintaining~~
17 fencing and access gates around dangerous equipment or portions of the site as feasible

18 * * *

19 The revision to the introductory sentence of Condition 35 includes protection of the
20 facility and property from unauthorized access as part of the basis for the condition. Guarding
21 against unauthorized access is the object of the County standard in UCDC
22 § 152.616(HHH)(5)(F). The deletion of the phrase, “would be minimized,” corrects a
23 typographical error. The new text in subparagraph (a) incorporates Umatilla County’s
24 recommended language and clarifies that the waiver would need to be “allowed” before it
25 could effectively relieve the certificate holder and the property owner from the requirement of
26 gated access. With these revisions, the Council finds that compliance with Condition 35
27 would satisfy the requirements of UCDC § 152.616(HHH)(5)(F).

28 *(G) Where practicable the electrical cable collector system shall be installed*
29 *underground, at a minimum depth of 3 feet; elsewhere the cable collector system*
30 *shall be installed to prevent adverse impacts on agriculture operations.*

31 **FPL’s Response**

32 As described in Section IV of the Final Order for Amendment #2, Stateline 3 would include a
33 collector system consisting of both underground and overhead 34.5-kV electric cables.
34 Stateline 3 would include about 30.5 miles of new underground cables, which would be buried
35 directly in the soil approximately 3-4 feet below ground surface. Condition 62 of the Second
36 Amended Site Certificate requires that underground electrical and communications cables be
37 placed a minimum of 3 feet below grade. Stateline 3 would include about 17 miles of
38 aboveground collector cables. As explained in the Final Order for Amendment #2, the
39 collector system approved for Stateline 3 includes both northerly and southerly aboveground
40 34.5-kV segments from proposed strings BG-A, BG-B and BG-C to allow for flexibility in
41 construction (see Final Order, fn 8).

⁹ Personal conversation and e-mail from Tamra Mabbott, Umatilla County Planning Director, dated May 17, 2005, regarding the Stateline 3 amendment.

1 Condition 113(b) of the Second Amended Site Certificate requires that 34.5-kV aboveground
2 collector lines be attached to “single-pole wood structures that are typically 42 feet high and
3 with minimum design ground clearance of 25 feet to the lowest conductor.” The use of single-
4 pole structures will minimize impacts to agricultural operations, and the minimum design
5 ground clearance of 25 feet will prevent the aboveground collector cables from interfering
6 with the use of farm equipment on the facility site.

7 **Findings**

8 In the Final Order on Amendment #2, the Council approved the Stateline 3 facilities,
9 including 30.5 miles of underground collector lines and 17 miles of aboveground collector
10 lines. Condition 62 requires that all underground lines be installed at a minimum depth of
11 three feet below grade. During the review of the request for Amendment #2, the Department
12 was concerned about the use of aboveground collector line. In the request for Amendment #2,
13 FPL explained why it was not practicable to eliminate all aboveground collector lines:
14 “because operational experience from Stateline 1 has shown that unanticipated design
15 parameters in certain locations have resulted in a reduction in carrying capacity for individual
16 underground cables, some of these collectors will be aboveground to allow for increased
17 carrying capacity.”¹⁰ In answer to the Department’s request for additional information, FPL
18 assured the Department that the cumulative length of aboveground lines had been reduced as
19 much as possible. Condition 52 requires the use of underground lines except where limitations
20 in carrying capacity of underground lines make the use of overhead collector lines
21 unavoidable.

22 Where underground collector lines cannot be used, the aboveground lines would be
23 designed “to prevent adverse impacts on agriculture operations.” Condition 113 requires
24 aboveground lines to be installed on single-pole wood structures that are typically 42 feet high
25 and to be installed with minimum design ground clearance of 25 feet to the lowest conductor.
26 Compliance with this condition will avoid adverse impacts to agricultural operations. In
27 addition, Condition 40 requires the certificate holder to make reasonable efforts not to disturb
28 the farming and ranching activities on lands adjacent to the facility.

29 The Council finds that the certificate holder would use underground collector lines to
30 the extent practicable and would install such lines at a minimum depth of 3 feet below grade.
31 The Council finds that the aboveground collector system would be installed “to prevent
32 adverse impacts on agriculture operations.”

33 *(H) Required permanent maintenance/operations buildings shall be located off-site*
34 *in one of Umatilla County’s appropriately zoned areas, except that such a building*
35 *may be constructed on-site if (1) the building is designed and constructed*
36 *generally consistent with the character of similar buildings used by commercial*
37 *farmers or ranchers, and (2) the building will be removed or converted to farm use*
38 *upon decommissioning of the Wind Power Generation Facility consistent with the*
39 *provisions of §152.616(HHH)(7).*

40 **FPL’s Response**

41 An operation and maintenance building was approved as part of Stateline 1 but has not been
42 constructed. It would be a satellite to the primary O&M facility located in Washington, and

¹⁰ Revised Application to Amend Site Certificate, Amendment 2, p.6.

1 would be located along Butler Grade Road south of Gardena and just south of the state line.
2 In order to ensure that the satellite O&M building, if constructed, complies with UCDC §
3 152.616(HHH)(5)(H), the certificate holder is proposing to revise Condition (37) to add a
4 requirement that the satellite O&M building be designed and constructed to be generally
5 consistent with the character of similar buildings used by commercial farmers or ranchers, and
6 that it be removed or converted to farm use upon retirement of the facility.

7 **Findings**

8 The Council finds that the facility would comply with the requirements of with UCDC
9 § 152.616(HHH)(5)(H), subject to the amendment to Condition 37 proposed by FPL. The
10 Council finds that a cross-reference to Condition 98 should be added to the proposed
11 condition language (see page 46). This clarifies that retirement of the facility would be subject
12 to a retirement plan approved by the Council and that the disposition of any structure would
13 be subject to Council review and public comment at that time.

14 *(I) A Wind Power Generation Facility shall comply with the Specific Safety*
15 *Standards for Wind Facilities delineated in OAR 345-024-0010 (as adopted at*
16 *time of application)."*

17 **FPL's Response**

18 In Section V.3(f) of the Final Order for Amendment #2, the Council found that Stateline 3
19 complies with the requirements of OAR 345-024-0010. The certificate holder is not
20 proposing any changes in the location, design or operation of Stateline 3. In addition, the
21 standards in OAR 345-024-0010 have not changed since the Council made those findings.
22 Therefore, the Council's findings in the Final Order for Amendment #2 establish compliance
23 with UCDC § 152.616(HHH)(5)(I).

24 **Findings**

25 The Council adopts the findings expressed in FPL's response.

26 *(6) To the extent feasible, the county will accept information presented by an*
27 *application for an EFSC proceeding in the form and on the schedule required by*
28 *EFSC.*

29 **FPL's Response**

30 This Attachment 3 provides the land use analysis required both by the Council and Umatilla
31 County.

32 **Findings**

33 The Council finds that FPL's request for Amendment #3 has provided information
34 regarding compliance with the Umatilla County ordinance by "an application for an EFSC
35 proceeding in the form and on the schedule required by EFSC."

36 *(7) The applicant's dismantling of uncompleted construction and/or*
37 *decommissioning plan for the Wind Power Generation Facility shall include the*
38 *following information:*

39 *(A) A plan for dismantling and/or decommissioning that provides for completion of*
40 *dismantling or decommissioning of the facility without significant delay and*
41 *protects public health, safety and the environment in compliance with the*
42 *restoration requirements of this section.*

1 (B) A description of actions the facility owner proposes to take to restore the site
2 to a useful, non-hazardous condition, including options for post-dismantle or
3 decommission land use, information on how impacts on fish, wildlife and the
4 environment would be minimized during the dismantling or decommissioning
5 process, and measures to protect the public against risk or danger resulting from
6 post-decommissioning site conditions in compliance with the requirements of this
7 section.

8 (C) A current detailed cost estimate, a comparison of that estimate with present
9 funds set-aside for dismantling or decommissioning, and a plan for assuring the
10 availability of adequate funds for completion of dismantling or decommissioning.
11 The cost estimate will be reviewed and be updated by the facility owner/operator o
12 a 5 year basis.

13 (D) Restoration of the site shall consist of the following:

14 (1) Dismantle turbines, towers, pad-mounted transformers, meteorological
15 towers and related aboveground equipment. All concrete turbine pads shall be
16 removed to a depth of at least three feet below the surface grade.

17 (2) The underground collection and communication cables need not be
18 removed if at a depth of three feet or greater. These cables at a depth of three feet
19 or greater can be abandoned in place if they are deemed not a hazard or
20 interfering with agricultural use or other consistent resource uses of the land.

21 (3) Gravel shall be removed from areas surrounding turbine pads.

22 (4) Access roads shall be removed by removing gravel and restoring the
23 surface grade and soil.

24 (5) After removal of the structures and roads, the area shall be graded as close
25 as reasonably possible to its original contours and the soils shall be restore to a
26 condition compatible with farm uses or consistent with other resource uses. Re-
27 vegetation shall include planting by applicant of native plant seed mixes, planting
28 by applicant of plant species suited to the area, or planting by landowner of
29 agricultural crops, as appropriate, and shall be consistent with the weed control
30 plan approved by Umatilla County.

31 (6) Roads, cleared pads, fences, gates, and improvements may be left in place if
32 a letter form the land owner is submitted to Umatilla County indicating said land
33 owner will be responsible for, and will maintain said roads and/or facilities for
34 farm or other purposes as permitted under applicable zoning.

35 (E) The applicant (facility owner/operator) shall submit to Umatilla County a
36 bond or letter of credit acceptable to the County, in the amount of the
37 decommissioning fund naming Umatilla county and the landowner as beneficiary
38 or payee.

39 (1) The calculation of present year dollars shall be made using the U.S. Gross
40 Domestic Product Implicit Price Deflator as published by the U.S. Department of
41 commerce, Bureau of Economic Analysis, or any successor agency (the "Index").
42 The amount of the bond or letter of credit account shall be increased at such time

1 when the cumulative percentage increase in the Index exceeds 10 percent from the
2 last change, and then the amount shall be increased by the cumulative percentage
3 increase. If at any time the Index is no longer published, Umatilla County and the
4 applicant shall select a comparable calculation of present year dollars. The
5 amount of the bond or letter of credit account shall be pro-rated within the year to
6 the date of decommissioning.

7 (2) The decommissioning fund shall not be subject to revocation or reduction
8 before decommissioning of the Wind Power Generation Facility.

9 (3) The facility owner/operator shall describe the status of the
10 decommissioning fund in the annual report submitted to the Umatilla County.

11 (F) If any disputes arise between Umatilla County and the landowner on the
12 expenditure of any proceeds from the bond or the letter of credit, either party may
13 request non-binding arbitration. Each party shall appoint an arbitrator, with the
14 two arbitrators choosing a third. The arbitration shall proceed according to the
15 Oregon statutes governing arbitration. The cost of the arbitration (excluding
16 attorney fees) shall be shared equally by the parties.

17 (G) For projects sited by EFSC, compliance with EFSC's financial assurance and
18 decommissioning standards shall be deemed to be in compliance with the
19 dismantling and decommissioning requirements of this Section 152.616 (HHH)(7).

20 **FPL's Response**

21 As provided in UCDC § 152.616(HHH)(7)(G), compliance with the Council's financial
22 assurance and decommissioning standards "shall be deemed to be ... compliance with the
23 dismantling and decommissioning standards of Section 152.616(HHH)(7). In Section V.2.b of
24 the Final Order for Amendment #2, the Council found that Stateline 3, with conditions
25 imposed by the Council, would comply with the Council's retirement and financial assurance
26 standard. The Council's standard has not changed and the certificate holder is not proposing
27 any changes to the facility that will affect compliance with the retirement and financial
28 assurance standard. Therefore, the requirements of UCDC § 152.616(HHH)(7) are satisfied
29 through compliance with the Council's standard.

30 **Findings**

31 The Council adopts the findings expressed in FPL's response.

32 (8) A bond or letter of credit shall be established for the dismantling of
33 uncompleted construction and/or decommissioning of the facility. (See §
34 152.616(HHH)(7)) For projects being sited by the State of Oregon's Energy
35 Facility Siting Council (EFSC), the bond or letter of credit required by EFSC will
36 be deemed to meet this requirement.

37 **FPL's Response**

38 OAR 345-027-0020(8) requires, as a mandatory site certificate condition, that such a bond or
39 letter of credit be provided prior to beginning construction of the facility. Condition 109 of the
40 Second Amended Site Certificate establishes this requirement for Stateline 3 and thereby
41 satisfies the requirement of UCDC § 152.616(HHH)(8).

42 **Findings**

43 The Council adopts the findings expressed in FPL's response.

1 (9) *The actual latitude and longitude location or Stateplane NAD 83(91)*
2 *coordinates of each turbine tower, connecting lines, and transmission lines, shall*
3 *be provided to Umatilla County once commercial electrical production begins.*

4 **FPL's Response**

5 Condition 84 of the Seconded [sic] Amended Site Certificate requires that prior to beginning
6 operation, the certificate holder must provide to both the Office of Energy and the Umatilla
7 County Planning Department "legal descriptions" of "the actual location of each turbine and
8 all connecting lines." As stated in Section VII of the Second Amended Site Certificate, most
9 conditions listed in Sections IV, V and VI (including Condition 84) apply to Stateline 3.
10 "Legal description" is defined in Condition 84 as "a description by reference to a map and
11 geographic information system (GIS) data that clearly and specifically identifies the physical
12 location of all parts of the facility." Compliance with Condition 84 satisfies the requirement of
13 UCDC § 152.616(HHH)(9).

14 **Findings**

15 The Council adopts the findings expressed in FPL's response.

16 (10) *A summary of as built changes in the facility from the original plan, if any,*
17 *shall be provided by the owner/operator.*

18 **FPL's Response**

19 As discussed with respect to UCDC § 152.616(HHH)(9), Condition (84) of the Second
20 Amended Site Certificate requires that prior to beginning operation, the certificate holder must
21 provide to both the Office of Energy and the Umatilla County Planning Department legal
22 descriptions of the actual locations of each turbine and all connecting lines. In addition, the
23 annual report required by Condition (8) includes a "summary of changes to the facility that the
24 certificate holder has determined do not require a site certificate amendment in accordance
25 with OAR 345-027-0050." These site certificate conditions ensure that changes in the facility
26 will be reported, satisfying UCDC § 152.616(HHH)(10).

27 **Findings**

28 The Council adopts the findings expressed in FPL's response.

29 (11)(A) *The Wind Power Generation Facility requirements shall be facility*
30 *specific, but can be amended as long as the facility does not exceed the boundaries*
31 *of the Umatilla County conditional use permit where the original facility was*
32 *constructed.*

33 **FPL's Response**

34 The certificate holder is not proposing to expand the facility beyond the location approved in
35 the Second Amended Site Certificate.

36 **Findings**

37 The Council adopts the findings expressed in FPL's response.

38 (B) *An amendment to the conditional use permit shall be required if proposed*
39 *facility changes would: (1) Increase the land area taken out of agricultural*
40 *production by an additional 20 acres or more; (2) Increase the land area taken out*
41 *of agricultural production sufficiently to trigger taking a Goal 3 exception; (3)*
42 *Require an expansion of the established facility boundaries; (4) Increase the*
43 *number of towers; (5) Increase generator output by more than 25 percent relative*

1 to the generation capacity authorized by the initial permit due to the repowering
2 or upgrading of power generation capacity. Notification by the facility
3 owner/operator to the Umatilla County Planning Department of changes not
4 requiring an amendment are encouraged, but not required. An amendment to a
5 Site Certificate issued by EFSC will be governed by the rules for amendments
6 established by EFSC.

7 **FPL's Response**

8 As provided in this subsection of the UCDC, this amendment request is under the jurisdiction
9 of the Council and therefore is “governed by the rules for amendments established by EFSC.”

10 **Findings**

11 The Council finds that UCDC § 152.616(HHH) (11)(B) provides that amendment of
12 the site certificate is “governed by the rules for amendments established by EFSC.” In
13 addition, the ordinance language establishes when an amendment of the County’s conditional
14 use permit would be required. FPL’s request for Amendment #3 does not meet any of the
15 criteria listed in the ordinance, and so it does not appear that amendment of the conditional
16 use permit would be necessary.

17 (12) *Within 120 days after the end of each calendar year the facility*
18 *owner/operator shall provide Umatilla County an annual report including the*
19 *following information:*

20 (A) *Energy production by month and year.*

21 (B) *Non-proprietary information about wind conditions. (e.g. monthly averages,*
22 *high wind events, bursts*

23 (C) *A summary of changes to the facility that do not require facility requirement*
24 *amendments.*

25 (D) *A summary of the avian monitoring program – bird injuries, casualties,*
26 *positive impacts on area wildlife and any recommendations for changes in the*
27 *monitoring program.*

28 (E) *Employment impacts to the community and Umatilla County during and after*
29 *construction.*

30 (F) *Success or failures of weed control practices.*

31 (G) *Status of the decommissioning fund.*

32 (H) *Summary comments – any problems with the projects, any adjustments needed,*
33 *or any suggestions.*

34 *The annual report requirement may be discontinued or required at a less frequent*
35 *schedule by the County. The reporting requirement and/or reporting schedule*
36 *shall be reviewed, and possibly altered, at the request of the facility*
37 *owner/operator. For facilities under EFSC jurisdiction and for which an annual*
38 *report is required, the annual report to EFSC satisfies this requirement.”*

1 **FPL's Response**

2 Condition 8 of the Second Amended Site Certificate requires that the certificate holder submit
3 an annual report to the Council. Condition 8 applies to Stateline 3, as provided in Section VII
4 of the Second Amended Site Certificate. The annual report required under Condition 8
5 satisfies the annual reporting requirement of UCDC § 152.616(HHH)(12).

6 **Findings**

7 The Council adopts the findings expressed in FPL's response.

8 Based on the foregoing discussion and the described amendments to site certificate
9 conditions 35 and 37, the Council finds that the facility would comply with the applicable
10 substantive criteria that are found in UCDC § 152.616(HHH)(5)-(12). In addition, the Council
11 finds that the modification of Condition 105 as adopted by this order would not affect any
12 land use findings required by Council standards. The Council finds that the Stateline facility
13 would comply with the applicable substantive criteria of Umatilla County and all LCDC
14 administrative rules and goals and any land use statutes directly applicable to the facility
15 under ORS 197.646(3) if the Council approves the proposed extension of the construction
16 deadlines for Stateline 3.

17 **Conclusions of Law**

18 Based on the findings stated above, the Council concludes that Stateline would comply
19 with the Council's Land Use Standard if Amendment #3 were approved. In addition, the
20 Council adopts amendments to Conditions 35 and 37 as described herein.

21 (b) Soil Protection

22 **OAR 345-022-0022**

23 *To issue a site certificate, the Council must find that the design, construction,*
24 *operation and retirement of the facility, taking into account mitigation, are not*
25 *likely to result in a significant adverse impact to soils including, but not limited to,*
26 *erosion and chemical factors such as salt deposition from cooling towers, land*
27 *application of liquid effluent, and chemical spills.*

28 **Findings of Fact**

29 In the Final Order on Amendment #2, the Council found that the design, construction
30 and operation of the proposed Stateline 3 facilities, taking into account mitigation and subject
31 to the conditions stated in the order, would not likely cause a significant adverse impact to
32 soils. Conditions 29, 32, 60, 61, 62, 68, 92 and 98 relate to the Council's findings on soil
33 protection.

34 Since the time of the Council's Final Order on Amendment #2, the Council amended
35 OAR 345-022-0022 by adding the reference to "retirement." This change ensures
36 consideration of potential soil impacts during retirement and the need to mitigate any such
37 impacts. In the Final Order on Amendment #2, the Council addressed potential impacts on
38 soils in its findings on the Retirement and Financial Assurance Standard. The Council found
39 that retirement would include "restoring the soil to a condition compatible with farm use or
40 consistent with other resource uses such as wildlife habitat or land conservation." The Council
41 found that soil contamination was unlikely. Retirement would include removal of structures to

1 a depth of three feet below grade, restoring soils and re-grading the area “as close as
2 reasonably possible to its original contours.” The Council found that retirement of access
3 roads would involve “removing gravel and restoring the surface grade and soil to a condition
4 useful for either agriculture or wildlife habitat.” Retirement of aboveground transmission and
5 collector lines would include removal of the supporting poles, refilling the holes and
6 backfilling with topsoil. Before restoring the site, the certificate holder would be required to
7 submit a final retirement plan for Council approval. The retirement plan would describe the
8 activities necessary to retire the site, including the protection of soils.

9 In the amendment request, FPL does not propose any change in the location or
10 facilities for Stateline. The Council finds that the design, construction, operation and
11 retirement of the Stateline facility, taking into account mitigation, would not likely result in a
12 significant adverse impact to soils. In addition, the Council finds that modification of
13 Condition 105 as adopted by this order would not affect any soil protection findings required
14 by Council standards.

15 Conclusions of Law

16 The Council concludes that Stateline would comply with the Council’s Soil Protection
17 Standard if Amendment #3 were approved. In addition, the Council concludes that no new
18 conditions are required.

19 (c) Protected Areas

20 **OAR 345-022-0040**

21 *(1) Except as provided in sections (2) and (3), the Council shall not issue a site*
22 *certificate for a proposed facility located in the areas listed below. To issue a site*
23 *certificate for a proposed facility located outside the areas listed below, the*
24 *Council must find that, taking into account mitigation, the design, construction*
25 *and operation of the facility are not likely to result in significant adverse impact to*
26 *the areas listed below. Cross-references in this rule to federal or state statutes or*
27 *regulations are to the version of the statutes or regulations in effect as of August*
28 *28, 2003:*

29 *(a) National parks, including but not limited to Crater Lake National Park and*
30 *Fort Clatsop National Memorial;*

31 *(b) National monuments, including but not limited to John Day Fossil Bed*
32 *National Monument, Newberry National Volcanic Monument and Oregon Caves*
33 *National Monument;*

34 *(c) Wilderness areas established pursuant to The Wilderness Act, 16 U.S.C. 1131*
35 *et seq. and areas recommended for designation as wilderness areas pursuant to 43*
36 *U.S.C. 1782;*

37 *(d) National and state wildlife refuges, including but not limited to Ankeny,*
38 *Bandon Marsh, Baskett Slough, Bear Valley, Cape Meares, Cold Springs, Deer*
39 *Flat, Hart Mountain, Julia Butler Hansen, Klamath Forest, Lewis and Clark,*
40 *Lower Klamath, Malheur, McKay Creek, Oregon Islands, Sheldon, Three Arch*
41 *Rocks, Umatilla, Upper Klamath, and William L. Finley;*

- 1 (e) National coordination areas, including but not limited to Government Island,
2 Ochoco and Summer Lake;
- 3 (f) National and state fish hatcheries, including but not limited to Eagle Creek and
4 Warm Springs;
- 5 (g) National recreation and scenic areas, including but not limited to Oregon
6 Dunes National Recreation Area, Hell's Canyon National Recreation Area, and
7 the Oregon Cascades Recreation Area, and Columbia River Gorge National
8 Scenic Area;
- 9 (h) State parks and waysides as listed by the Oregon Department of Parks and
10 Recreation and the Willamette River Greenway;
- 11 (i) State natural heritage areas listed in the Oregon Register of Natural Heritage
12 Areas pursuant to ORS 273.581;
- 13 (j) State estuarine sanctuaries, including but not limited to South Slough Estuarine
14 Sanctuary, OAR Chapter 142;
- 15 (k) Scenic waterways designated pursuant to ORS 390.826, wild or scenic rivers
16 designated pursuant to 16 U.S.C. 1271 et seq., and those waterways and rivers
17 listed as potentials for designation;
- 18 (L) Experimental areas established by the Rangeland Resources Program, College
19 of Agriculture, Oregon State University: the Prineville site, the Burns (Squaw
20 Butte) site, the Starkey site and the Union site;
- 21 (m) Agricultural experimental stations established by the College of Agriculture,
22 Oregon State University, including but not limited to:
23 Coastal Oregon Marine Experiment Station, Astoria
24 Mid-Columbia Agriculture Research and Extension Center, Hood River
25 Agriculture Research and Extension Center, Hermiston
26 Columbia Basin Agriculture Research Center, Pendleton
27 Columbia Basin Agriculture Research Center, Moro
28 North Willamette Research and Extension Center, Aurora
29 East Oregon Agriculture Research Center, Union
30 Malheur Experiment Station, Ontario
31 Eastern Oregon Agriculture Research Center, Burns
32 Eastern Oregon Agriculture Research Center, Squaw Butte
33 Central Oregon Experiment Station, Madras
34 Central Oregon Experiment Station, Powell Butte
35 Central Oregon Experiment Station, Redmond
36 Central Station, Corvallis
37 Coastal Oregon Marine Experiment Station, Newport
38 Southern Oregon Experiment Station, Medford
39 Klamath Experiment Station, Klamath Falls;
- 40 (n) Research forests established by the College of Forestry, Oregon State
41 University, including but not limited to McDonald Forest, Paul M. Dunn Forest,
42 the Blodgett Tract in Columbia County, the Spaulding Tract in the Mary's Peak
43 area and the Marchel Tract;

1 (o) Bureau of Land Management areas of critical environmental concern,
2 outstanding natural areas and research natural areas;

3 (p) State wildlife areas and management areas identified in OAR chapter 635,
4 Division 8.

5 * * *

6 Findings of Fact

7 In the Final Order on Amendment #2, the Council found that the Stateline 3 facilities
8 would not be located in any protected area as defined by OAR 345-022-0040(1) and that the
9 design, construction and operation of Stateline 3 would not be likely to result in significant
10 adverse impact to any protected area, taking into account mitigation and subject to the
11 conditions stated in the order. The Council found that indirect effects of noise, traffic and
12 visual impact from Stateline 3 would not have any significant impact on protected areas.

13 Since the time of the Council's Final Order on Amendment #2, the Council amended
14 OAR 345-022-0040 by changing the cross-reference date at the end of paragraph (1). Under
15 the former rule, the cross-reference was to "the version of the statutes or regulations in effect
16 as of March 29, 2002." The current rule updates the cross-reference to August 28, 2003. The
17 Department has no information regarding the establishment of any new protected areas under
18 the statutes and regulations referenced in the rule between March 29, 2002 and August 28,
19 2003. Research by FPL's legal counsel concluded that no new protected areas had been
20 established within that time period within the analysis area.¹¹

21 Because Amendment #3 would not involve a change in the size or location of facility
22 components, the Council finds that there has been no change of circumstances that would
23 affect the Council's earlier findings regarding Stateline 3. Further, the finds that the
24 modification of Condition 105 as adopted by this order would not affect any protected area
25 findings required by Council standards.

26 Conclusions of Law

27 The Council concludes that Stateline would comply with the Council's Protected
28 Areas Standard if Amendment #3 were approved. In addition, the Council concludes that no
29 new conditions are required.

30 (d) Scenic and Aesthetic Values

31 **OAR 345-022-0080**

32 *(1) Except for facilities described in section (2), to issue a site certificate, the*
33 *Council must find that the design, construction, operation and retirement of the*
34 *facility, taking into account mitigation, are not likely to result in significant*
35 *adverse impact to scenic and aesthetic values identified as significant or important*
36 *in applicable federal land management plans or in local land use plans in the*
37 *analysis area described in the project order.*

38 ***

¹¹ Memorandum from Richard Allan, attorney for FPL, May 19, 2005.

1 Findings of Fact

2 In the Final Order on Amendment #2, the Council found that the design, construction,
3 operation and retirement of the proposed Stateline 3 facilities would not be likely to result in
4 significant adverse impact to scenic and aesthetic values identified as significant or important
5 in applicable federal land management plans or in the local land use plans in the analysis area,
6 taking into account mitigation and subject to the conditions stated in the order. Because
7 Amendment #3 would not involve any change in the size or location of facility components,
8 the Council finds that there has been no change of circumstances that would affect the
9 Council’s earlier findings regarding Stateline 3. Further, the Council finds that the
10 modification of Condition 105 as adopted by this order would not affect any findings required
11 by Council standards regarding scenic or aesthetic values.

12 Conclusions of Law

13 The Council concludes that Stateline would comply with the Council’s Scenic and
14 Aesthetic Values Standard if Amendment #3 were approved. In addition, the Council
15 concludes that no new conditions are required.

16 (e) Recreation

17 **OAR 345-022-0100**

18 *(1) Except for facilities described in section (2), to issue a site certificate, the*
19 *Council must find that the design, construction and operation of a facility, taking*
20 *into account mitigation, are not likely to result in a significant adverse impact to*
21 *important recreational opportunities in the analysis area as described in the*
22 *project order. The Council shall consider the following factors in judging the*
23 *importance of a recreational opportunity:*

24 *(a) Any special designation or management of the location;*

25 *(b) The degree of demand;*

26 *(c) Outstanding or unusual qualities;*

27 *(d) Availability or rareness;*

28 *(e) Irreplaceability or irretrievability of the opportunity.*

29 ***

30 Findings of Fact

31 In the Final Order on Amendment #2, the Council found that the design, construction,
32 operation and retirement of the proposed Stateline 3 facilities would not be likely to result in
33 significant adverse impact to important recreational opportunities in the analysis area, taking
34 into account mitigation and subject to the conditions stated in the order. Because Amendment
35 #3 would not involve any change in the size, location or operation of the facility, the Council
36 finds that there has been no change of circumstances that would affect the Council’s earlier
37 findings regarding the impacts of Stateline 3 on recreational opportunities. Further, the
38 Council finds that the modification of Condition 105 as adopted by this order would not affect
39 any findings required by Council standards regarding recreation.

1 Conclusions of Law

2 The Council concludes that Stateline would comply with the Council’s Recreation
3 Standard if Amendment #3 were approved. In addition, the Council concludes that no new
4 conditions are required.

5 (f) Public Health and Safety Standards for Wind Energy Facilities

6 **OAR 345-024-0010**

7 * * *

8 *(2) To issue a site certificate for a proposed wind energy facility, the Council must*
9 *find that the applicant:*

10 *(a) Can design, construct and operate the facility to exclude members of the public*
11 *from close proximity to the turbine blades and electrical equipment;*

12 *(b) Can design, construct and operate the facility to preclude structural failure of*
13 *the tower or blades that could endanger the public safety and to have adequate*
14 *safety devices and testing procedures designed to warn of impending failure and to*
15 *minimize the consequences of such failure.*

16 Findings of Fact

17 In the Final Order on Amendment #2, the Council found the certificate holder could
18 design, construct and operate the proposed Stateline 3 facilities to exclude members of the
19 public from close proximity to the turbine blades and electrical equipment, to preclude
20 structural failure of the tower or blades that could endanger the public safety and to have
21 adequate safety devices and testing procedures. The Council included conditions 36, 38, 95,
22 103 and 113 in the site certificate to protect public safety. Because Amendment #3 would not
23 involve any change in the design, size or location of facility components or any change in the
24 conditions relating to public safety, the Council finds that there has been no change of
25 circumstances that would affect the Council’s earlier findings regarding Stateline 3. Further,
26 the Council finds that the modification of Condition 105 as adopted by this order would not
27 affect any findings required by OAR 345-024-0010.

28 Conclusions of Law

29 The Council concludes that Stateline would comply with the Council’s Public Health and
30 Safety Standards for Wind Energy Facilities if Amendment #3 were approved. In addition, the
31 Council concludes that no new conditions are required.

32 (g) Siting Standards for Wind Energy Facilities

33 **OAR 345-024-0015**

34 *To issue a site certificate for a proposed wind energy facility, the Council must*
35 *find that the applicant:*

36 *(1) Can design and construct the facility to reduce visual impact by methods*
37 *including, but not limited to:*

38 *(a) Not using the facility for placement of advertising, except that advertising does*
39 *not include the manufacturer's label or signs required by law;*

1 (b) Using the minimum lighting necessary for safety and security purposes and
2 using techniques to prevent casting glare from the site, except as otherwise
3 required by the Federal Aviation Administration or the Oregon Department of
4 Transportation, Transportation Development Branch, Aeronautics Section; and

5 (c) Using only those signs necessary for facility operation and safety and signs
6 required by law;

7 (2) Can design and construct the facility to restrict public access by the following
8 methods:

9 (a) For a horizontal-axis wind energy facility with tubular towers, using locked
10 access sufficient to prevent unauthorized entry to the interior of the tower;

11 (b) For a horizontal-axis wind energy facility with lattice-type towers:

12 (A) Removal of wind facility tower climbing fixtures to 12 feet from the
13 ground;

14 (B) Installation of a locking, anti-climb device on the wind facility tower; or

15 (C) Installation of a protective fence at least 6 feet high with a locking gate; or

16 (c) For a vertical-axis wind energy facility, installation of a protective fence at
17 least 6 feet high with a locking gate;

18 (3) Can design and construct facility to reduce cumulative adverse environmental
19 impacts in the vicinity to the extent practicable by measures including, but not
20 limited to, the following, where applicable:

21 (a) Using existing roads to provide access to the facility site, or if new roads are
22 needed, minimizing the amount of land used for new roads and locating them to
23 reduce adverse environmental impacts;

24 (b) Combining transmission lines and points of connection to local distribution
25 lines;

26 (c) Connecting the facility to existing substations, or if new substations are
27 needed, minimizing the number of new substations; and

28 (d) Avoiding, to the extent practicable, the creation of artificial habitat for raptors
29 or raptor prey. Artificial habitat may include, but is not limited to:

30 (A) Above-ground portions of foundations surrounded by soil where weeds can
31 accumulate;

32 (B) Electrical equipment boxes on or near the ground that can provide shelter
33 and warmth; and

34 (C) Horizontal perching opportunities on the towers or related structures.

35 Findings of Fact

36 In the Final Order on Amendment #2, the Council found that the certificate holder
37 could design and construct the Stateline 3 facilities to reduce visual impact, to restrict public
38 access and to reduce cumulative adverse environmental impacts in the vicinity to the extent
39 practicable. The Council included conditions 30, 37, 38, 44, 60, 61, 64, 65, 103, 114 and 115

1 in the site certificate to ensure compliance with the Siting Standards for Wind Energy
2 facilities. Because Amendment #3 would not involve any change in the design, size or
3 location of facility components, the Council finds that there has been no change of
4 circumstances that would affect the Council's earlier findings regarding Stateline 3. Further,
5 the Council finds that the modification of Condition 105 as adopted by this order would not
6 affect any findings required by OAR 345-024-0015.

7 Conclusions of Law

8 The Council concludes that Stateline would comply with the Council's Siting
9 Standards for Wind Energy Facilities if Amendment #3 were approved. In addition, the
10 Council concludes that no new conditions are required.

11 (h) Siting Standards for Transmission Lines

12 **OAR 345-024-0090**

13 *To issue a site certificate for a facility that includes any high voltage transmission*
14 *line under Council jurisdiction, the Council must find that the applicant:*

15 *(1) Can design, construct and operate the proposed transmission line so that*
16 *alternating current electric fields do not exceed 9 kV per meter at one meter above*
17 *the ground surface in areas accessible to the public;*

18 *(2) Can design, construct and operate the proposed transmission line so that*
19 *induced currents resulting from the transmission line and related or supporting*
20 *facilities will be as low as reasonably achievable.*

21 Findings of Fact

22 The proposed Stateline 3 facility would include about 30.5 miles of underground
23 34.5-kV transmission lines (collector lines) and 17 miles of aboveground 34.5-kV collector
24 lines. In addition, the facility would include an 8.5-mile aboveground 115-kV or 230-kV
25 transmission line from a proposed new substation to the Washington border. The site
26 certificate requires the certificate holder to design and construct transmission lines to meet the
27 standards for electric fields and induced currents that are incorporated in OAR 345-024-0090
28 and to design transmission lines in compliance with applicable codes and standards after
29 consultation with the Oregon Public Utility Commission. Because Amendment #3 would not
30 involve any change in the design, size or location of transmission lines, the Council finds that
31 there has been no change of circumstances that would affect the Council's earlier findings
32 regarding Stateline 3. Further, the Council finds that the modification of Condition 105 as
33 adopted by this order would not affect any findings required by OAR 345-024-0090.

34 Conclusions of Law

35 The Council concludes that Stateline would comply with the Council's Siting
36 Standards for Transmission Lines if Amendment #3 were approved. In addition, the Council
37 concludes that no new conditions are required.

1 **4. Standards to Protect Wildlife**

2 (a) Threatened and Endangered Species

3 **OAR 345-022-0070**

4 *To issue a site certificate, the Council, after consultation with appropriate state*
5 *agencies, must find that:*

6 *(1) For plant species that the Oregon Department of Agriculture has listed as*
7 *threatened or endangered under ORS 564.105(2), the design, construction,*
8 *operation and retirement of the proposed facility, taking into account mitigation:*

9 *(a) Are consistent with the protection and conservation program, if any, that the*
10 *Oregon Department of Agriculture has adopted under ORS 564.105(3); or*

11 *(b) If the Oregon Department of Agriculture has not adopted a protection and*
12 *conservation program, are not likely to cause a significant reduction in the*
13 *likelihood of survival or recovery of the species; and*

14 *(2) For wildlife species that the Oregon Fish and Wildlife Commission has listed*
15 *as threatened or endangered under ORS 496.172(2), the design, construction,*
16 *operation and retirement of the proposed facility, taking into account mitigation,*
17 *are not likely to cause a significant reduction in the likelihood of survival or*
18 *recovery of the species.*

19 Findings of Fact

20 In the Final Order on Amendment #2, the Council found that there are no protection
21 and conservation programs adopted under ORS 564.105(3) for threatened or endangered plant
22 species in the Stateline 3 area. The Council found that the construction and operation of
23 Stateline 3 is not expected to adversely affect any Oregon endangered or threatened plant
24 species.

25 The Council found, based on the analysis done for Stateline 1, that there are three
26 threatened or endangered wildlife species that might be affected by the Stateline facilities.
27 The *Washington ground squirrel* (WGS) is a state endangered and federal candidate species
28 that occupies shrub-steppe habitat. Parts of the proposed Stateline 3 site contain grassland
29 habitat suitable for the WGS. Construction and operation of the proposed Stateline 3 facilities
30 would directly affect an estimated 12.3 acres of known WSG habitat. In the Second Amended
31 Site Certificate, the Council adopted Condition 107, which requires FPL to implement the
32 *Resource Impact Avoidance and Mitigation Plan*¹² to reduce and mitigate the impacts to WGS
33 habitat. Based on the small area of direct impact on WGS habitat, the existence of the WGS in
34 other suitable habitat throughout the Stateline project area and the measures required by
35 Condition 107, the Council found that the construction, operation and retirement of the
36 proposed Stateline 3 facilities are not likely to cause a significant reduction in the likelihood
37 of survival or recovery of the WGS.

38 The *bald eagle* is listed as threatened by both state and federal wildlife agencies. Bald
39 eagles nest in trees or on cliffs and occasionally forage on small mammals and carrion in

¹² Attachment C to the Final Order on Amendment #2.

1 upland areas. The Council found that the presence of this species in the Stateline area is
2 extremely rare and therefore that it is unlikely that the construction and operation of the
3 proposed Stateline 3 would have any adverse effect.

4 The *peregrine falcon* is listed as endangered in Oregon but was recently removed from
5 the federal endangered species list. The Council found that construction and operation of the
6 proposed Stateline 3 facilities are not likely to have an adverse effect on the species, because
7 the nearest known nest site is about six miles from the closest Stateline 3 turbine string and
8 because little prey is available for the falcons in the area near the turbines.

9 Based on these findings in the Final Order on Amendment #2, the Council found that
10 the design, construction, operation and retirement of the proposed Stateline 3 facilities would
11 not be likely to cause a significant reduction in the likelihood of survival or recovery of any
12 threatened or endangered species listed under Oregon law, taking into account mitigation and
13 subject to the conditions stated in the order. Because Amendment #3 would not involve any
14 change in the design, size or location of the approved Stateline 3 facilities, the Council finds
15 that there has been no change of circumstances that would affect the Council's earlier findings
16 regarding Stateline 3. Further, the Council finds that the modification of Condition 105 as
17 adopted by this order would not affect any findings required by the Threatened and
18 Endangered Species Standard.

19 Conclusions of Law

20 The Council concludes that Stateline would comply with the Council's Threatened and
21 Endangered Species Standard if Amendment #3 were approved. In addition, the Council
22 concludes that no new conditions are required.

23 (b) Fish and Wildlife Habitat

24 **OAR 345-022-0060**

25 *To issue a site certificate, the Council must find that the design, construction,*
26 *operation and retirement of the facility, taking into account mitigation, are*
27 *consistent with the fish and wildlife habitat mitigation goals and standards of OAR*
28 *635-415-0025 in effect as of September 1, 2000.*

29 Findings of Fact

30 In the Final Order on Amendment #2, the Council made detailed findings on the
31 potential impact of Stateline 3 on wildlife habitat.¹³ Many of the site certificate conditions
32 require mitigation of direct and indirect habitat impacts.¹⁴ In summary, the Council found that
33 the design, construction, operation and retirement of the proposed Stateline 3 facilities would
34 be consistent with the fish and wildlife habitat mitigation goals and standards of OAR 635-
35 415-0025, taking into account mitigation and subject to the conditions stated in the order,
36 except for the impacts on Category 1 habitat used by the WGS.

¹³ Final Order on Amendment #2, pp. 75-84.

¹⁴ Conditions 7, 8, 14, 52, 63, 65, 68, 82, 89, 90, 91, 93, 94, 98, 101, 104, 112, 114, 115, 116 and 117 relate to protection of wildlife habitat.

1 Condition 93 requires the certificate holder to conduct post-construction monitoring to
2 evaluate the impacts of the facility on avian and bat species. The monitoring requirements are
3 described in the *Oregon Wildlife Monitoring Plan* (OWMP). Extending the construction
4 deadlines for Stateline 3 would necessitate changes in the monitoring schedules described in
5 the OWMP. Accordingly, the Council adopts revisions to the OWMP as shown in Attachment
6 A.

7 Because the Council found that Stateline 3 did not comply fully with the Habitat
8 Standard, the Council applied its authority under ORS 469.501(3) to balance the overall
9 public benefits of the facility against the damage to Category 1 habitat. After consideration of
10 all of the factors set out in OAR 345-022-0000(2) as well as the measures to be implemented
11 under the *Resource Impact Avoidance and Mitigation Plan*, the Council found that the overall
12 public benefits outweighed the damage to the resource.

13 To approve an amendment to extend the construction deadlines, the Council must
14 consider whether the facility complies with all Council standards in effect on the date the
15 Council makes its decision (OAR 345-027-0070(9)). After issuing the Final Order on
16 Amendment #2, the Council amended the balancing rule (OAR 345-022-0000(2)).
17 Accordingly, if there are direct impacts that would result in a loss of Category 1 habitat, the
18 Council must apply the amended balancing rule.

19 FPL is considering a modification of the design of Stateline 3. That modification could
20 involve changes to the turbine strings proposed to be sited in the area that was classified as
21 Category 1 at the time of the Council's decision on Amendment #2. When its plans for facility
22 modification are completed, FPL will request further amendment of the site certificate to
23 request Council approval of the proposed changes. In the meantime, FPL has proposed no
24 disturbance of the previously identified Category 1 habitat. The Department recommended
25 new Condition 121 that would require FPL to avoid any construction activities affecting that
26 habitat, pending a future site certificate amendment proceeding (see page 48). When the
27 Council considers that future amendment request, the Council would determine the impact of
28 the redesigned facility on Category 1 habitat and, if the Council determines balancing to be
29 appropriate, apply the balancing rule in effect at that time.

30 In comments submitted on the present amendment request, the Oregon Department of
31 Fish and Wildlife (ODFW) did not object to deferring Council consideration of impacts on
32 Category 1 habitat under the amended balancing rule until a future amendment proceeding.
33 ODFW expressed an interest in reviewing and commenting on such future amendment.

34 Under the recommended condition, no impact on Category 1 habitat would result from
35 the construction of Stateline 3 facilities. Therefore, the Council finds that approval of an
36 extension of the construction deadlines as requested in Amendment #3 is consistent with the
37 fish and wildlife habitat mitigation goals and standards of OAR 635-415-0025. Further, the
38 Council finds that the modification of Condition 105 as adopted by this order would not affect
39 any findings required by the Fish and Wildlife Habitat Standard.

40 Conclusions of Law

41 The Council concludes, subject to new Condition 121, that Stateline would comply
42 with the Council's Fish and Wildlife Habitat Standard if Amendment #3 were approved.

1 **5. Standards Not Applicable to Site Certificate Eligibility**

2 Under ORS 469.501(4)¹⁵, the Council may issue a site certificate without making the
3 findings required by the standards discussed in this section. Nevertheless, the Council may
4 impose site certificate conditions based on the requirements of these standards.

5 (a) Structural Standard

6 **OAR 345-022-0020**

7 *(1) Except for facilities described in sections (2) and (3), to issue a site certificate,*
8 *the Council must find that:*

9 *(a) The applicant, through appropriate site-specific study, has adequately*
10 *characterized the site as to seismic zone and expected ground motion and ground*
11 *failure, taking into account amplification, during the maximum credible and*
12 *maximum probable seismic events; and*

13 *(b) The applicant can design, engineer, and construct the facility to avoid dangers*
14 *to human safety presented by seismic hazards affecting the site that are expected to*
15 *result from all maximum probable seismic events. As used in this rule "seismic*
16 *hazard" includes ground shaking, landslide, liquefaction, lateral spreading,*
17 *tsunami inundation, fault displacement, and subsidence;*

18 *(c) The applicant, through appropriate site-specific study, has adequately*
19 *characterized the potential geological and soils hazards of the site and its vicinity*
20 *that could, in the absence of a seismic event, adversely affect, or be aggravated by,*
21 *the construction and operation of the proposed facility; and*

22 *(d) The applicant can design, engineer and construct the facility to avoid dangers*
23 *to human safety presented by the hazards identified in subsection (c).*

24 *(2) The Council may issue a site certificate for a facility that would produce power*
25 *from wind, solar or geothermal energy without making the findings described in*
26 *section (1). However, the Council may apply the requirements of section (1) to*
27 *impose conditions on a site certificate issued for such a facility.*

28 * * *

29 Proposed Conditions

30 In the Final Order on Amendment #2, the Council included findings regarding the site-
31 specific characterization of seismic, geologic and soil hazards for Stateline 3. Because
32 Amendment #3 would not involve any change in the design, size or location of Stateline 3
33 facilities, the Council finds that there has been no change of circumstances that would affect
34 the Council's earlier findings regarding Stateline 3. Further, the Council finds that the

¹⁵ This statute provides that the Council may not impose certain standards "to approve or deny an application for an energy facility producing power from wind." ORS 469.300 defines an "application" as "a request for approval of a particular site or sites for the construction and operation of an energy facility or the construction and operation of an additional energy facility upon a site for which a certificate has already been issued, filed in accordance with the procedures established pursuant to ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992." Although ORS 469.501(4) does not explicitly refer to a request for a site certificate amendment, we assume that the Legislature intended it to apply.

1 modification of Condition 105 as adopted by this order would not affect any findings required
2 by the Structural Standard. In addition, the Council concludes that no new conditions are
3 required.

4 (b) Historic, Cultural and Archaeological Resources

5 **OAR 345-022-0090**

6 *(1) Except for facilities described in sections (2) and (3), to issue a site certificate,*
7 *the Council must find that the construction, operation and retirement of the*
8 *facility, taking into account mitigation, are not likely to result in significant*
9 *adverse impacts to:*

10 *(a) Historic, cultural or archaeological resources that have been listed on, or*
11 *would likely be listed on the National Register of Historic Places;*

12 *(b) For a facility on private land, archaeological objects, as defined in ORS*
13 *358.905(1)(a), or archaeological sites, as defined in ORS 358.905(1)(c); and*

14 *(c) For a facility on public land, archaeological sites, as defined in ORS*
15 *358.905(1)(c).*

16 *(2) The Council may issue a site certificate for a facility that would produce power*
17 *from wind, solar or geothermal energy without making the findings described in*
18 *section (1). However, the Council may apply the requirements of section (1) to*
19 *impose conditions on a site certificate issued for such a facility.*

20 * * *

21 Proposed Conditions

22 In the Final Order on Amendment #2, the Council made findings regarding potential
23 impacts on cultural resources. The site certificate includes conditions that ensure avoidance of
24 adverse impacts to the identified resources and to resources discovered during construction.
25 Because Amendment #3 would not involve any change in the design, size or location of
26 Stateline 3 facilities, the Council finds that there has been no change of circumstances that
27 would affect the Council's earlier findings regarding Stateline 3. Further, the Council finds
28 that the modification of Condition 105 as adopted by this order would not affect any findings
29 required by the Historic, Cultural and Archaeological Resources Standard. In addition, the
30 Council concludes that no new conditions are required.

31 (c) Public Services

32 **OAR 345-022-0110**

33 *(1) Except for facilities described in sections (2) and (3), to issue a site certificate,*
34 *the Council must find that the construction and operation of the facility, taking*
35 *into account mitigation, are not likely to result in significant adverse impact to the*
36 *ability of public and private providers within the analysis area described in the*
37 *project order to provide: sewers and sewage treatment, water, storm water*
38 *drainage, solid waste management, housing, traffic safety, police and fire*
39 *protection, health care and schools.*

1 (2) *The Council may issue a site certificate for a facility that would produce power*
2 *from wind, solar or geothermal energy without making the findings described in*
3 *section (1). However, the Council may apply the requirements of section (1) to*
4 *impose conditions on a site certificate issued for such a facility.*

5 * * *

6 Proposed Conditions

7 In the Final Order on Amendment #2, the Council made detailed findings on the
8 potential impact of Stateline 3 on public services.¹⁶ Many of the site certificate conditions are
9 related to mitigation or avoidance of adverse impacts on public services.¹⁷ Because
10 Amendment #3 would not involve any change in the design, size or location of Stateline 3
11 facilities, the Council finds that there has been no change of circumstances that would affect
12 the Council’s earlier findings regarding Stateline 3. Further, the Council finds that the
13 modification of Condition 105 as adopted by this order would not affect any findings required
14 by the Public Services Standard. In addition, the Council concludes that no new conditions are
15 required.

16 (d) Waste Minimization

17 **OAR 345-022-0120**

18 (1) *Except for facilities described in sections (2) and (3), to issue a site certificate,*
19 *the Council must find that, to the extent reasonably practicable:*

20 (a) *The applicant’s solid waste and wastewater plans are likely to minimize*
21 *generation of solid waste and wastewater in the construction, operation, and*
22 *retirement of the facility, and when solid waste or wastewater is generated, to*
23 *result in recycling and reuse of such wastes;*

24 (b) *The applicant’s plans to manage the accumulation, storage, disposal and*
25 *transportation of waste generated by the construction and operation of the facility*
26 *are likely to result in minimal adverse impact on surrounding and adjacent areas.*

27 (2) *The Council may issue a site certificate for a facility that would produce power*
28 *from wind, solar or geothermal energy without making the findings described in*
29 *section (1). However, the Council may apply the requirements of section (1) to*
30 *impose conditions on a site certificate issued for such a facility.*

31 * * *

32 Proposed Conditions

33 In the Final Order on Amendment #2, the Council found that the waste generated by
34 construction and operation of Stateline 3 would be similar in type but proportionately greater
35 in volume compared to Stateline 1 and 2. The Council imposed conditions regarding waste
36 minimization and disposal for Stateline 3. Because Amendment #3 would not involve any
37 change in the design, size or location of Stateline 3 facilities, the Council finds that there has

¹⁶ Final Order on Amendment #2, pp. 95-98.

¹⁷ Conditions 31, 32, 33, 34, 35, 45, 48, 58, 60, 61, 71, 72, 73, 74, 77, 81, 85, 86, 87, 88, 96 and 103 relate to reducing adverse impacts on public services.

1 been no change of circumstances that would affect the Council’s earlier findings regarding
2 Stateline 3. Further, the Council finds that the modification of Condition 105 as adopted by
3 this order would not affect any findings required by the Waste Minimization Standard. In
4 addition, the Council concludes that no new conditions are required.

5 **V. OTHER APPLICABLE REGULATORY REQUIREMENTS: FINDINGS AND**
6 **CONCLUSIONS**

7 **1. Requirements under Council Jurisdiction**

8 Under ORS 469.503(3) and under the Council’s General Standard of Review (OAR
9 345-022-0000, the Council must determine that the proposed facility complies with “all other
10 Oregon statutes and administrative rules identified in the project order, as amended, as
11 applicable to the issuance of a site certificate for the proposed facility.” Applicable Oregon
12 statutes and administrative rules that are not otherwise addressed in section IV of this order
13 include the noise control regulations adopted by the Environmental Quality Commission, the
14 Division of State Lands’ regulations for disturbance to wetlands, the Water Resources
15 Department’s (WRD) regulations for appropriating groundwater and the Council’s statutory
16 authority to consider protection of public health and safety.

17 (a) Noise Control Regulations

18 Noise control regulations applicable to wind energy facilities are found in OAR 340-
19 035-0035. After the Council issued its Final Order on Amendment #2, the Oregon
20 Environmental Quality Commission amended OAR 340-035-0035, adopting new regulations
21 that apply to wind energy facilities. For the request to extend the construction deadlines, the
22 amendment of OAR 340-035-0035 is a change of circumstances that would affect the
23 Council’s previous findings regarding compliance of Stateline 3 with applicable noise
24 regulations. Condition 105 directly addresses compliance with the noise control regulations,
25 and the Council must apply the amended OAR 340-035-0035 in considering the request to
26 modify the condition.

27 The applicable noise control regulations, as amended, are as follows:

28 **OAR 340-035-0035**

29 **Noise Control Regulations for Industry and Commerce**

30 *(1) Standards and Regulations:*

31 * * *

32 *(b) New Noise Sources:*

33 * * *

34 *(B) New Sources Located on Previously Unused Site:*

35 *(i) No person owning or controlling a new industrial or commercial noise source*
36 *located on a previously unused industrial or commercial site shall cause or permit*
37 *the operation of that noise source if the noise levels generated or indirectly caused*
38 *by that noise source increase the ambient statistical noise levels, L10 or L50, by*
39 *more than 10 dBA in any one hour, or exceed the levels specified in Table 8, as*

1 *measured at an appropriate measurement point, as specified in subsection (3)(b)*
2 *of this rule, except as specified in subparagraph (1)(b)(B)(iii).*

3 *(ii) The ambient statistical noise level of a new industrial or commercial noise*
4 *source on a previously unused industrial or commercial site shall include all*
5 *noises generated or indirectly caused by or attributable to that source including*
6 *all of its related activities. Sources exempted from the requirements of section (1)*
7 *of this rule, which are identified in subsections (5)(b) - (f), (j), and (k) of this rule,*
8 *shall not be excluded from this ambient measurement.*

9 *(iii) For noise levels generated or caused by a wind energy facility:*

10 *(I) The increase in ambient statistical noise levels is based on an assumed*
11 *background L50 ambient noise level of 26 dBA or the actual ambient background*
12 *level. The person owning the wind energy facility may conduct measurements to*
13 *determine the actual ambient L10 and L50 background level.*

14 *(II) The "actual ambient background level" is the measured noise level at the*
15 *appropriate measurement point as specified in subsection (3)(b) of this rule using*
16 *generally accepted noise engineering measurement practices. Background noise*
17 *measurements shall be obtained at the appropriate measurement point,*
18 *synchronized with windspeed measurements of hub height conditions at the*
19 *nearest wind turbine location. "Actual ambient background level" does not include*
20 *noise generated or caused by the wind energy facility.*

21 *(III) The noise levels from a wind energy facility may increase the ambient*
22 *statistical noise levels L10 and L50 by more than 10 dBA (but not above the limits*
23 *specified in Table 8), if the person who owns the noise sensitive property executes*
24 *a legally effective easement or real covenant that benefits the property on which*
25 *the wind energy facility is located. The easement or covenant must authorize the*
26 *wind energy facility to increase the ambient statistical noise levels, L10 or L50 on*
27 *the sensitive property by more than 10 dBA at the appropriate measurement point.*

28 *(IV) For purposes of determining whether a proposed wind energy facility*
29 *would satisfy the ambient noise standard where a landowner has not waived the*
30 *standard, noise levels at the appropriate measurement point are predicted*
31 *assuming that all of the proposed wind facility's turbines are operating between*
32 *cut-in speed and the wind speed corresponding to the maximum sound power level*
33 *established by IEC 61400-11 (version 2002-12). These predictions must be*
34 *compared to the highest of either the assumed ambient noise level of 26 dBA or to*
35 *the actual ambient background L10 and L50 noise level, if measured. The facility*
36 *complies with the noise ambient background standard if this comparison shows*
37 *that the increase in noise is not more than 10 dBA over this entire range of wind*
38 *speeds.*

39 *(V) For purposes of determining whether an operating wind energy facility*
40 *complies with the ambient noise standard where a landowner has not waived the*
41 *standard, noise levels at the appropriate measurement point are measured when*
42 *the facility's nearest wind turbine is operating over the entire range of wind speeds*
43 *between cut-in speed and the windspeed corresponding to the maximum sound*

1 power level and no turbine that could contribute to the noise level is disabled. The
2 facility complies with the noise ambient background standard if the increase in
3 noise over either the assumed ambient noise level of 26 dBA or to the actual
4 ambient background L10 and L50 noise level, if measured, is not more than 10
5 dBA over this entire range of wind speeds.

6 (VI) For purposes of determining whether a proposed wind energy facility
7 would satisfy the Table 8 standards, noise levels at the appropriate measurement
8 point are predicted by using the turbine's maximum sound power level following
9 procedures established by IEC 61400-11 (version 2002-12), and assuming that all
10 of the proposed wind facility's turbines are operating at the maximum sound
11 power level.

12 (VII) For purposes of determining whether an operating wind energy facility
13 satisfies the Table 8 standards, noise generated by the energy facility is measured
14 at the appropriate measurement point when the facility's nearest wind turbine is
15 operating at the windspeed corresponding to the maximum sound power level and
16 no turbine that could contribute to the noise level is disabled.

17 * * *

18 Findings of Fact

19 Request to Extend Construction Deadlines

20 In the Final Order on Amendment #2, the Council made detailed findings on the
21 potential impact of Stateline 3 on noise sensitive properties.¹⁸ The Council found that the
22 Stateline 3 facility would meet the “Table 8” test.¹⁹ The Council based that finding on the
23 noise levels predicted using CADNA/A, a commercial noise modeling program, assuming
24 that the Stateline 3 wind turbines were operating under conditions of maximum turbine noise.
25 Predicted noise levels did not exceed the hourly L₅₀ nighttime noise level of 50 dBA required
26 by Table 8. The analysis addressed three noise sensitive properties in Oregon located closest
27 to the proposed Stateline 3 turbines.

28 In addition, the Council found that the Stateline 3 facility would meet the “ambient
29 degradation” test.²⁰ The Council based that finding on a “worst-case” analysis. The Council
30 assumed that the “worst case” would be during low wind speed conditions when the ambient
31 noise level is likely to be the lowest but when there is sufficient wind speed to produce noise
32 from the operation of the wind turbines (the “cut-in” speed). Based on information from FPL,
33 the Council found cut-in speed to be about 9 mph at the turbine hub height (50 meters above
34 ground). The Council applied the ambient degradation test at the three noise sensitive

¹⁸ Final Order on Amendment #2, pp. 99-106.

¹⁹ Compliance under former OAR 340-035-0035(1)(b)(B), then in effect, required that noise levels generated by a noise source not exceed “levels specified in Table 8, as measured at an appropriate measurement point.”

²⁰ Compliance under former OAR 340-035-0035(1)(b)(B), then in effect, required that noise levels generated by a noise source not “increase the ambient statistical noise levels, L10 or L50, by more than 10 dBA in any one hour.”

1 properties closest to any Stateline 3 turbines. These properties were identified as “M-1,” “R-
2 7” and “M-2” in FPL’s request for Amendment #2.²¹

3 At M-1, the ambient background noise includes noise produced by turbines at the
4 Vansycle Ridge Wind Project, which are closer to M-1 than the nearest Stateline 3 turbine
5 would be. Based on FPL’s calculations, the Council found that the cumulative noise from
6 Stateline 1, 2 and 3 turbines at the cut-in speed would increase the background noise level at
7 M-1 by less than 1 dBA.

8 The Council found that operation of the Stateline 3 turbines would not cause any
9 increase in ambient statistical noise levels at M-2 above the predicted noise from Stateline 1
10 and 2 turbines. In the Final Orders on the Application and on Amendment #1, the Council
11 found that the noise from Stateline 1 and 2 would meet the ambient degradation test at M-2.

12 For R-7, FPL provided measured data on the ambient background noise, and
13 Department’s consultant, Kerrie G. Standlee, P.E., analyzed the FPL data. Based on
14 Standlee’s analysis, the Council found that the ambient background noise level at R-7 was 26
15 dBA when the wind speed at turbine hub-height is at or near the cut-in speed. The Council
16 found that the operation of Stateline 3 would not cause the ambient hourly L₅₀ noise level to
17 increase by more than 10 dBA and that, therefore, the ambient degradation test was met.

18 To approve the request to extend the construction deadlines for Stateline 3, the
19 Council must find that the facility would comply with the noise control regulations currently
20 in effect (quoted above). Under the new noise control regulations, a wind energy facility must
21 still comply with the “Table 8” test, but the method of determining compliance of a “proposed
22 facility” is specified in OAR 340-035-0035(1)(b)(B)(iii)(VI): “noise levels at the appropriate
23 measurement point are predicted by using the turbine’s maximum sound power level
24 following procedures established by IEC 61400-11 (version 2002-12), and assuming that all
25 of the proposed wind facility’s turbines are operating at the maximum sound power level.”

26 In Attachment 5 to FPL’s request for Amendment #3, FPL’s consultant, Mark
27 Bastasch, P.E., stated that the analysis under the new rule would be based on an assumption
28 that all turbines were operating at “maximum sound power level.” Bastasch notes that the new
29 analysis would use the “same sound power level” as was used previously in the modeling that
30 was done for Amendment #2, which assumed a windspeed of 56 mph. Because sound power
31 level “is the only variable that would make a difference in the modeling outcome,” Bastasch
32 concluded that the Council’s previous findings regarding compliance with Table 8 are “still
33 valid.” The Department consulted with Kerrie Standlee regarding FPL’s analysis regarding
34 the Table 8 test, and Standlee concurred with Bastasch’s conclusion. Therefore, the Council
35 finds that operation of Stateline 3 would comply with the Table 8 test under the current noise
36 regulations.

37 With respect to the ambient degradation test, the new regulations provide for a waiver
38 of the test if the person who owns the noise sensitive property executes “a legally effective

²¹ “R-7” is the property identified as “81876 Gerking Flat Road, Athena, Oregon” in FPL’s request for Amendment #3.

1 easement or real covenant” that authorizes the wind energy facility to increase the ambient
2 statistical noise levels by more than 10 dBA.²²

3 If the landowner does not provide a waiver, the new regulations specify the method of
4 determining compliance of a “proposed facility” with the ambient degradation test. An
5 ambient background level of 26 dBA may be assumed.²³ To determine compliance, noise
6 levels at the appropriate measurement point are predicted “assuming that all of the proposed
7 wind facility’s turbines are operating between cut-in speed and the wind speed corresponding
8 to the maximum sound power level established by IEC 61400-11 (version 2002-12).” A
9 proposed facility complies with the regulation if the predicted increase over the ambient
10 background level “is not more than 10 dBA over this entire range of wind speeds.”

11 The Department’s consultant, Kerrie Standlee, reviewed the noise data and analysis
12 for Stateline 3 that formed the basis for the Council’s findings in the Final Order on
13 Amendment #2. In addition, Standlee reviewed information supplied by FPL from Vestas, the
14 wind turbine manufacturer, on the sound power level for the V47-660 turbine, which is the
15 type proposed for use at Stateline 3. Standlee determined that the noise level at R-7 would be
16 38 dBA “when the wind speed at the turbines first reaches that point on the wind/sound level
17 curve associated with the maximum sound output (approximately 11 meters per second).”²⁴
18 Compared to an assumed ambient background level of 26 dBA allowed under the new
19 regulation, a noise level of 38 dBA at the windspeed corresponding to the maximum sound
20 power level of the Stateline 3 turbines would exceed the 10 dBA increase allowed under the
21 current noise control regulations by 2 dBA.

22 The closest Stateline 3 turbine location approved under Amendment #2 is about 4,000
23 feet from R-7. Standlee determined that Stateline 3 would comply with the current ambient
24 degradation test if no turbines were operated within 5,000 feet of R-7. Alternatively, FPL
25 could establish an ambient background noise level at R-7 of 28 dBA or higher by providing
26 adequate measurement data.

27 To support a Council finding of compliance with the ambient degradation test for
28 Amendment #3, FPL proposed a new site certificate condition (“111A”) that would prohibit
29 construction of any turbine within 5,000 feet of R-7 unless the landowner has provided a
30 legally effective easement or real covenant authorizing the certificate holder “to increase
31 ambient statistical noise levels L₁₀ and L₅₀ by more than 10 dBA at the appropriate
32 measurement point.” The Council adopts new site certificate condition 122 (see page 48)
33 recommended by the Department. The recommended condition is essentially the same as
34 condition “111A” proposed by FPL. The Department recommended editorial changes in the
35 proposed text and numbering the condition as “122” to be consistent with past practice. Based
36 on the findings stated above, the Council finds that Stateline 3 complies with the current noise
37 control regulations applicable to the facility, subject to the conditions of the site certificate,
38 including new Condition 122.

²² OAR 340-035-0035(1)(b)(B)(iii)(III).

²³ The owner of the wind facility may conduct measurements to establish a higher level of ambient background noise.

²⁴ E-mail from Kerrie Standlee dated March 18, 2005, regarding “Stateline 3 Wind Farm Noise Issues.” Standlee determined also that Stateline 3 would comply with the current ambient degradation test at M1 and M2.

1 **Request to Modify Condition 105**

2 The Council added Condition 105 to the site certificate under the Final Order on
3 Amendment #1. Condition 105 concerns a property located within the Stateline 2 area (the
4 Williams residence). The Williams residence is “within 2,000 feet” of the nearest Stateline 2
5 turbine.²⁵ In its request for Amendment #1, instead of providing a showing that Stateline 2
6 would comply with the noise control regulations at the Williams residence, FPL proposed an
7 agreement with the landowner requiring that the residence remain unoccupied.²⁶ The
8 agreement would remain in place during construction and operation until FPL could show, by
9 appropriate noise studies, that Stateline 2 complied with the applicable noise control
10 regulations. That agreement became the basis for Condition 105. The condition reads as
11 follows:

12 (105) The certificate holder shall enter into an agreement with the landowner of a property
13 identified as 84301 Stockman Road, Helix, Oregon, requiring that the structure remain
14 uninhabited during construction. The certificate holder shall continue the no-occupation
15 agreement during operation for the life of the Stateline 2 facility unless, based on noise
16 studies during operation, the certificate holder demonstrates to the satisfaction of the
17 Office of Energy that turbine noise measured at the property is within the range allowed
18 for a sensitive noise receptor under OAR 340-035-0035.

19 FPL complied with this condition during construction and continues to maintain the
20 “no-occupation” agreement. FPL has not demonstrated to the satisfaction of the Department
21 that turbine noise measured at the property is “within the range allowed” under the applicable
22 noise control regulations.

23 In the request for Amendment #3, FPL proposes a modification of Condition 105 to
24 require that the certificate “enter into a legally effective easement or real covenant” with the
25 owner of the Williams residence that conforms to the requirements for a landowner waiver of
26 the ambient degradation standard under OAR 340-035-0035(1)(b)(B)(iii)(III). Under the noise
27 control regulations currently in effect, the waiver would allow the operation of the Stateline
28 facility to increase the ambient statistical noise levels at the Williams residence by more than
29 10 dBA.

30 Under the modification of Condition 105 as proposed by FPL, the certificate holder
31 would maintain the “legally effective easement or real covenant” in effect until “retirement of
32 the Stateline 2 facility” or until the certificate holder “demonstrates to the satisfaction of the
33 Office of Energy, based on modeling or measurements performed in compliance with OAR
34 340-035-0035, that an easement or real covenant is not necessary to comply with those
35 regulations.”

36 The Council’s procedure for retirement contemplates the retirement of a facility as a
37 whole (OAR 345-027-0110). Accordingly, the Council does not anticipate retirement “of the
38 Stateline 2 facility.” The Council finds, therefore, that Condition 122 should require the
39 legally effective easement or real covenant to remain in effect until retirement of the Stateline
40 facility as a whole or until the certificate holder demonstrates that compliance with the
41 regulations can be achieved without such easement or covenant (see page 46).

²⁵ FPL’s request for Amendment #1, p. 42.

²⁶ Non-occupancy would remove the property from the definition of a “noise sensitive property” under OAR 340-035-0015(38).

1 The proposed “legally effective easement or real covenant” provides for a waiver of
2 only the ambient degradation element of the noise regulations. To facility must also comply
3 with the Table 8 test at the Williams residence.

4 The current noise control regulations specify the method for determining compliance
5 of an operating wind energy facility with Table 8. OAR 340-035-0035(1)(b)(B)(iii)(VI)
6 requires measurement of the noise level at the appropriate measurement point “when the
7 facility's nearest wind turbine is operating at the windspeed corresponding to the maximum
8 sound power level and no turbine that could contribute to the noise level is disabled.”

9 FPL provided a memorandum from its consultant, Mark Bastasch, as a basis for the
10 Council to find compliance with Table 8.²⁷ The memorandum included data on noise level
11 measurements taken when, according to FPL, “no turbine that could contribute to the noise
12 level” was disabled. The nearest Stateline wind turbine is identified as “HGS-45.” The data
13 show windspeeds at HGS-45 and corresponding measured L₅₀ noise levels near the Williams
14 residence at the appropriate measurement point. Bastasch notes that it was likely that wind
15 noise at the microphone was contributing to the measured noise levels so that the data
16 probably “overstate the noise emanating from the wind turbines.”

17 The Bastasch memorandum states that the “maximum sound power level” for the
18 V47-660 turbine is 103.5 dBA, based on information from Vestas, the turbine manufacturer.
19 According to this information, maximum sound power level is reached at a windspeed of
20 about 11 m/s at the IEC 61400-11 reference height of 10 meters. The measured data included
21 noise levels when the wind speed at the turbine hub height ranged from 10.9 to 11.6 m/s,
22 which would be equivalent to windspeeds of 8.6 to 9.1 m/s at the 10-meter reference height,
23 according to Bastasch and verified by supporting information provided by FPL. The
24 information from Vestas indicates that windspeeds in this range correspond to a sound power
25 level of approximately 102.5 dBA from a V47-660 turbine, or 1 dBA below the maximum
26 sound power level. Bastasch notes: “Such a small difference (1 dBA) would typically be
27 considered indistinguishable and negligible.”

28 To account for the difference between maximum turbine sound power level (103.5
29 dBA) and the sound power level during the measurement period (102.5 dBA), Bastasch added
30 1 dBA to the measured noise levels. For the measured hours of 15:00, 16:00 and 17:00, the
31 resulting noise levels at the Williams residence were “up to 3 dBA less than the Table 8 limit
32 of 50 dBA.”

33 The Department’s consultant, Kerrie Standlee, has reviewed the analysis submitted by
34 FPL. Standlee noted that the data during one hour (14:00) showed a measured noise level of
35 50 dBA when the windspeed at the turbine was measured at 11.4 m/s. The addition of 1 dBA
36 to the measured noise level (to account for the difference between measured windspeed and
37 the windspeed corresponding to the maximum sound power level) would result in a noise
38 level of 51 dBA, or 1 dBA over the Table 8 limit.

39 Nevertheless, Standlee concurs with the conclusion that the 50 dBA noise level
40 measured at 14:00 was “likely influenced by noise...generated by some other source” in
41 addition to noise from the turbines.²⁸ The Department notes that the data include a measured

²⁷ Request for Amendment #3, Attachment 4.

²⁸ Letter from Kerrie Standlee, of Daly, Standlee & Associates, dated May 18, 2005, regarding the request for

1 noise level (at 17:00) of 46 dBA at the same windspeed of 11.4 m/s and a measured noise
2 level (at 16:00) of 48 dBA when the windspeed was 11.6 m/s (higher than the windspeed at
3 14:00). These noise levels comply with the Table 8 standard. The data suggest that the
4 measured noise level at 14:00 was influenced by factors other than turbine noise, which
5 generally increases with windspeed. Standlee concluded that the facility complies with the
6 Table 8 test at the Williams residence:

7 It is however possible that noise generated by other sources could influence the measured data
8 so it is difficult to state exactly what source may have influenced the measurement. Other
9 possible sources include birds, wind blowing through trees or even an increase in aircraft
10 traffic in the area during that hour. Thus, based on the noise data presented in Attachment 4 by
11 Mr. Bastasch and based on the sound power data presented by the wind turbine manufacturer,
12 I believe it can be concluded that the maximum noise radiating from the Stateline wind
13 turbines to the Williams residence will be at or less than the DEQ 50 dBA nighttime limit at
14 all times.

15 Based on the analysis above, the Council finds that the facility complies Table 8 at the
16 Williams residence and that compliance with the ambient degradation test can be met by a
17 “legally effective easement or real covenant” from the owner of the Williams residence that
18 conforms to the requirements of OAR 340-035-0035(1)(b)(B)(iii)(III). As of the date of this
19 proposed order, FPL had not entered into a legally effective easement or real covenant with
20 the landowner. Therefore, the Council finds that Condition 105 should retain the reference to
21 a “no-occupation” agreement and require that the certificate holder continue that agreement
22 unless the certificate holder demonstrates to the satisfaction of the Department that the facility
23 complies with the ambient degradation test under OAR 340-035-0035, which could be done
24 by verifying that a legally effective easement or real covenant is in place (see page 46).

25 Conclusions of Law

26 Based on the findings above, the Council finds that the proposed Stateline 3 wind
27 turbines would comply with the applicable noise control regulations, OAR 340-035-0035, as
28 amended in 2004, subject to new Condition 122.

29 In addition, the Council finds that the certificate holder may discontinue the “no-
30 occupation agreement” described in Condition 105 if the landowner provides a “legally
31 effective easement or real covenant” in accordance with OAR 340-035-0035(1)(b)(B)(iii)(III).
32

33 The Council concludes that Stateline would comply with applicable noise control
34 regulations if Amendment #3 were approved, subject to new Condition 122 and the adopted
35 changes to Condition 105.

36 (b) Wetlands

37 Findings of Fact

38 In the Final Order on Amendment #2, the Council made detailed findings on ORS
39 196.810 and the Division of State Lands Removal-Fill rules (OAR Chapter 141, Division

Amendment #3.

1 85).²⁹ The Council concluded that a removal/fill permit was not required. Because
2 Amendment #3 would not involve any change in the design, size or location of Stateline 3
3 facilities, the Council finds that there has been no change of circumstances that would affect
4 the Council's earlier findings regarding Stateline 3. Further, the Council finds that the
5 modification of Condition 105 as adopted by this order would not affect any findings
6 regarding wetlands.

7 Conclusions of Law

8 The Council concludes that Stateline would comply with applicable regulations
9 pertaining to wetlands if Amendment #3 were approved and that no removal/fill permit is
10 required. In addition, the Council concludes that no new conditions are required.

11 (c) Water Rights

12 Findings of Fact

13 In the Final Order on Amendment #2, the Council made detailed findings on the
14 provisions of the Ground Water Act of 1955, ORS 537.505 to 537.796 and OAR Chapter
15 690.³⁰ The Council concluded that the proposed use of ground water for the construction and
16 operation of Stateline 3 would comply with the Ground Water Act of 1955 and the rules of the
17 Water Resources Department, subject to the conditions stated in the order. Because
18 Amendment #3 would not involve any change in the design, size, location or operation of
19 Stateline 3 facilities, the Council finds that there has been no change of circumstances that
20 would affect the Council's earlier findings regarding Stateline 3. Further, the Council finds
21 that the modification of Condition 105 as adopted by this order would not affect any findings
22 regarding water right.

23 Conclusions of Law

24 Based on the findings above, the Council concludes that Stateline would comply with
25 applicable regulations pertaining to water rights if Amendment #3 were approved. In addition,
26 the Council concludes that no new conditions are required.

27 (d) Public Health and Safety

28 Findings of Fact

29 In the Final Order on Amendment #2, the Council made detailed findings regarding
30 public health and safety; the Council made specific findings regarding potential impacts from
31 electric and magnetic fields and coordination with the Oregon Public Utility Commission's
32 Safety and Reliability Section.³¹ The Council concluded that the siting, construction and
33 operation of the proposed Stateline 3 facilities would be consistent with protection of public
34 health and safety, subject to the conditions stated in the order.³² Because Amendment #3
35 would not involve any change in the design, size, location or operation of Stateline facilities,
36 the Council finds that there has been no change of circumstances that would affect the

²⁹ Final Order on Amendment #2, pp. 106-107.

³⁰ Final Order on Amendment #2, pp. 107-108.

³¹ Final Order on Amendment #2, pp. 108-111.

³² Conditions 2, 6, 21, 22, 36, 38, 62, 95, 108, 110 and 113 relate to protection public health and safety.

1 Council’s earlier findings regarding Stateline 3. Further, the Council find that the
2 modification of Condition 105 as adopted by this order would not affect any findings
3 regarding public health and safety.

4 Conclusions of Law

5 Based on the findings above, the Council concludes that Stateline would comply with
6 requirements to protect public health and safety if Amendment #3 were approved. In addition,
7 the Council concludes that no new conditions are required.

8 **2. Requirements That Are Not Under Council Jurisdiction**

9 (a) Federally-Delegated Programs

10 Under ORS 469.503(3), the Council does not have jurisdiction for determining
11 compliance with statutes and rules for which the federal government has delegated the
12 decision on compliance to a state agency other than the Council. Nevertheless, the Council
13 may rely on the determinations of compliance and the conditions in the federally-delegated
14 permits issued by these state agencies in deciding whether the proposed facility meets other
15 standards and requirements under its jurisdiction.

16 (b) Requirements That Do Not Relate to Siting

17 Under ORS 469.401(4), the Council does not have authority to preempt the
18 jurisdiction of any state agency or local government over matters that are not included in and
19 governed by the site certificate or amended site certificate. Such matters include
20 design-specific construction or operating standards and practices that do not relate to siting.
21 Nevertheless, the Council may rely on the determinations of compliance and the conditions in
22 the permits issued by these state agencies and local governments in deciding whether the
23 facility meets other standards and requirements under its jurisdiction.

24 **VI. GENERAL APPLICATION OF CONDITIONS**

25 The conditions referenced in this order include conditions that are specifically required
26 by OAR 345-027-0020 (Mandatory Conditions in Site Certificates), OAR 345-027-0023 (Site
27 Specific Conditions), OAR 345-027-0028 (Monitoring Conditions) or OAR Chapter 345,
28 Division 26 (Construction and Operation Rules for Facilities). The conditions referenced in
29 this order, or added to the site certificate by this order, include conditions based on
30 representations in the request for amendment and the supporting record that the Council
31 deems to be binding commitments made by the certificate holder. Also included are
32 conditions that the Council finds necessary to ensure compliance with the siting standards of
33 OAR Chapter 345, Divisions 22 and 24, or to protect public health and safety.

34 The references to specific conditions are included in sections IV and V of this order
35 for convenience only. Such references do not relieve the certificate holder from the obligation
36 to comply with all site certificate conditions.

37 In addition to all other conditions referenced or included in this order, the site
38 certificate holder is subject to all conditions and requirements contained in the rules of the
39 Council and in local ordinances and state law in effect on the date the amended site certificate

1 is executed.³³ Under ORS 469.401(2), upon a clear showing of a significant threat to the
2 public health, safety or the environment that requires application of later-adopted laws or
3 rules, the Council may require compliance with such later-adopted laws or rules.

4 The Council recognizes that many specific tasks related to the design, construction,
5 operation and retirement of the facility will be undertaken by the certificate holder’s agents or
6 contractors. Nevertheless, the certificate holder is responsible for ensuring that all agents and
7 contractors comply with all provisions of the site certificate.

8 **VII. GENERAL CONCLUSION**

9 The proposed amendment would extend the construction beginning and completion
10 deadlines for Stateline 3 and would modify Condition 105 consistent with the OAR 340-035-
11 0035 as amended in 2004. In addition, the Council finds that new site certificate conditions
12 121 and 122, revisions to conditions 35 and 37 and revisions to the *Oregon Wildlife*
13 *Monitoring Plan* (Attachment A) would be needed if the Council approves the proposed
14 amendment.

15 Based on the findings and conclusions discussed above regarding the proposed
16 amendment, the Council makes the following findings:

- 17 1. The proposed Amendment #3 complies with the requirements of the Oregon
18 Energy Facility Siting statutes, ORS 469.300 to ORS 469.570 and 469.590 to
19 469.619.
- 20 2. The proposed Amendment #3 complies with the standards adopted by the Council
21 pursuant to ORS 469.501.
- 22 3. The proposed Amendment #3 complies with all other Oregon statutes and
23 administrative rules applicable to the amendment of the site certificate for the
24 Stateline Wind Project and within the Council’s jurisdiction.

25 Accordingly, the Council finds that the facility complies with the General Standard of
26 Review (OAR 345-022-0000). The Council concludes, based on a preponderance of the
27 evidence on the record, that the site certificate may be amended as proposed by FPL and set
28 forth in Section III.3 above at page 4, subject to the revisions recommended by the
29 Department and set forth below and in Attachment A. In addition, the Council adopts the
30 following site certificate language to clarify references to Attachments A, B and C:

31 *At page 1, following line 15*

32 Where this site certificate refers to attachments “to the final order,” the applicable final orders
33 are as follows:

- 34 · Attachment A: Final Order on Amendment #3
- 35 · Attachment B: Final Order on Amendment #2
- 36 · Attachment C: Final Order on Amendment #2 [Amendment #3]

³³ With regard to land use, the applicable local criteria are those in effect on the date the certificate holder submitted the request for amendment.

1 **1. The Department’s Recommended Revisions**

2 The text as proposed by FPL is shown without special markings. Revised text
3 proposed by the Department is underlined and deletions have a strikethrough.

4 Revision 1

5 *At page 11, line 15*

6 (35) The certificate holder shall take steps to protect the facility and property from
7 unauthorized access and to reduce the risk of accidental injury during construction and
8 operations ~~would be minimized~~ by (App U-25, 26) [Amendment #3]:

9 (a) Maintaining access gates on private access roads to Stateline 3 facilities in accordance
10 with Umatilla County Development Code § 152.616(HHH)(5)(e), unless Umatilla County
11 has allowed a waiver upon a request by the landowner, and otherwise M~~maintaining~~
12 fencing and access gates around dangerous equipment or portions of the site as feasible
13 [Amendment #3]

14 * * *

15 Explanation

16 The unmarked text shows the current text of Condition 35. The revision to the
17 introductory sentence of Condition 35 includes protection of the facility and property from
18 unauthorized access as part of the basis for the condition. The deletion of the phrase, “would
19 be minimized,” corrects a typographical error. The new text in subparagraph (a) incorporates
20 language that Umatilla County suggested for placement in Condition 38 and clarifies that the
21 waiver would need to be “allowed” before it could effectively relieve the certificate holder
22 and the property owner from the requirement of gated access. The changes to Condition 35
23 are not intended to change the site certificate requirements with regard to Stateline 1 and
24 Stateline 2 facilities.

25 Revision 2

26 *At page 11, line 33, to page 12, line 14*

27 (37) To reduce the visual impact of the facility, the certificate holder shall:

28 * * *

29 (i) Design and construct the operation and maintenance building to be generally
30 consistent with the character of similar buildings used by commercial farmers or ranchers.
31 Upon retirement of the energy facility, the operations and maintenance building must be
32 removed or converted to farm use, in accordance with Condition 98. [Amendment #3]

33 Explanation

34 The Council adopts the addition of a reference to Condition 98 to the language
35 proposed by FPL. Condition 98 requires that retirement proceed according to a final
36 retirement plan approved by the Council.

37 Revision 3

38 *At page 24, lines 39-43 and page 25, lines 1 and 2*

1 (105) The certificate holder shall enter into an agreement with the landowner of a property
2 identified as 84301 Stockman Road, Helix, Oregon, requiring that the structure remain
3 uninhabited during construction. The certificate holder shall continue the no-occupation
4 agreement until retirement of the facility unless the certificate holder demonstrates to the
5 satisfaction of the Department that the facility complies with the applicable noise control
6 regulations under OAR 340-035-0035. The certificate holder may demonstrate
7 compliance with the regulations as to the increase in ambient statistical noise levels by
8 ~~shall enter~~ entering into a legally effective easement or real covenant with the owner of
9 the property identified as 84301 Stockman Road, Helix, Oregon, pursuant to which the
10 owner authorizes the ~~Stateline 2 facilities~~ certificate holder's operation of the facility to
11 increase ambient statistical noise levels L10 and L50 ~~on the respective properties~~ by
12 more than 10 dBA at the appropriate measurement point. A legally effective easement or
13 real covenant shall: include a legal description of the burdened property (the noise
14 sensitive property); be recorded in the real property records of the county; expressly
15 benefit the certificate holder; expressly run with the land and bind all future owners,
16 lessees or holders of any interest in the burdened property; and not be subject to
17 revocation without the certificate holder's written approval. ~~The certificate holder shall~~
18 ~~maintain~~ If such easement or real covenant is not in effect until the retirement of the
19 ~~Stateline 2 facility, unless, then~~ the certificate holder shall demonstrates to the
20 satisfaction of the ~~Office of Energy~~ Department, based on modeling or measurements
21 performed in compliance with OAR 340-035-0035, that an easement or real covenant is
22 not necessary to comply with those regulations. [Amendment #3].

23 Explanation

24 The first part of the revision restores the existing language of Condition 105 regarding
25 the “no-occupation agreement.” The second sentence revises the current Condition 105 and
26 requires the no-occupation agreement to be continued until retirement of the Stateline facility
27 unless the certificate holder demonstrates to the satisfaction of the Department that the facility
28 complies with the noise regulations. To demonstrate compliance with the Table 8 test at the
29 Williams residence, the certificate holder may rely on a final order by the Council that
30 includes a finding that the facility complies with that test. Compliance with the ambient
31 degradation test can be demonstrated by verification that a “legally effective easement or real
32 covenant” is in place. If such agreement is not in effect, then the certificate holder must
33 demonstrate compliance with the ambient degradation test “based on modeling or
34 measurements performed in compliance with OAR 340-035-0035.”

35 The Council adopts editorial changes to the language proposed by FPL, including
36 replacing references to “Stateline 2” with references to “the facility” to avoid ambiguity and
37 to clarify that the facility as a whole must comply with the applicable noise regulations.

38 Revision 4

39 *Page 26, line 29*

40 *Page 28, line 5*

41 **VIII. CONDITIONS ADDED BY AMENDMENT #3**

42 The conditions in this section apply to the facility as a whole. [Amendment #3]

1 (121) The certificate holder shall not construct any Stateline 3 facilities in areas identified as
2 Category 1 habitat in the Final Order on Amendment #2 or otherwise disturb that habitat
3 unless the Council specifically authorizes such construction or other disturbance in a
4 future site certificate amendment proceeding. In a future proceeding, the Council may
5 consider proposed changes in the location of Stateline 3 facilities in the affected area,
6 may re-evaluate whether some or all of the affected area qualifies as Category 1 habitat
7 and, if appropriate, may apply its balancing authority under OAR 345-022-0000(2).
8 [Amendment #3]

9 ~~(111A.122)~~ (122) Prior to constructing any turbine within 5,000 feet of the property identified as
10 81876 Gerking Flat Road, Athena, Oregon, the certificate holder shall enter into a
11 legally effective easement or real covenant pursuant to which the owner of the property
12 authorizes the ~~Stateline 3 facilities~~ certificate holder's operation of the facility to increase
13 ambient statistical noise levels L10 and L50 by more than 10 dBA at the appropriate
14 measurement point. The 5,000-foot distance shall be measured from the appropriate
15 measurement point as determined pursuant to OAR 340-035-0035. A legally effective
16 easement or real covenant shall: include a legal description of the burdened property (the
17 noise sensitive property); be recorded in the real property records of the county;
18 expressly benefit the certificate holder; expressly run with the land and bind all future
19 owners, lessees or holders of any interest in the burdened property; and not be subject to
20 revocation without the certificate holder's written approval. ~~The certificate holder shall~~
21 ~~maintain~~ If such easement or real covenant is not in effect until the retirement of the
22 ~~Stateline 3 facility, unless, then~~ the certificate holder shall demonstrate to the
23 satisfaction of the ~~Office of Energy Department~~, based on modeling or measurements
24 performed in compliance with OAR 340-035-0035, that an easement or real covenant is
25 not necessary to comply with those regulations. [Amendment #3]

26 Explanation

27 FPL proposed new condition "111A" to be inserted in the site certificate on page 26
28 following Condition 111. The Council adopts, instead, a new section "VIII" following
29 Condition 120 on page 28. This maintains consistency in the established numbering system
30 for conditions and in the practice of adding conditions by amendment at the end of the list of
31 previously adopted conditions.

32 The Council adopts new Condition 121 to document FPL's "understanding" that
33 "permission for disturbance within Category 1 habitat would require findings by the Council
34 under the revised balancing standard."³⁴

35 New Condition 122 is the language proposed by FPL as condition "111A" with a few
36 editorial changes. The Council adopts replacement of references to "Stateline 3" with
37 references to "the facility" to avoid ambiguity and to clarify that the facility as a whole must
38 comply with the applicable noise regulations. Revisions in the final sentence reflect the advice
39 of the Department of Justice to ensure compliance with the noise regulations in the event a
40 "legally effective easement or real covenant" is not in effect for any reason.

³⁴ Request for Amendment #3, p. 7.

1 **VIII. PROPOSED ORDER**

2 The Council approves Amendment #3 and issuance of an amended site certificate for
3 the Stateline Wind Project, subject to the terms and conditions set forth above.

Issued this 20th day of June, 2005.

THE OREGON ENERGY FACILITY SITING COUNCIL

By: /s/ Karen H. Green

Karen H. Green
Chair, Oregon Energy Facility Siting Council

Attachments

Attachment A: *Oregon Wildlife Monitoring Plan (Revised)*

Notice of the Right to Appeal

You have the right to appeal this order to the Oregon Supreme Court pursuant to ORS 469.405. To appeal you must file a petition for judicial review with the Supreme Court within 60 days from the day this order was served on you. If this order was personally delivered to you, the date of service is the date you received this order. If this order was mailed to you, the date of service is the date it was mailed, not the day you received it. If you do not file a petition for judicial review within the 60-day time period, you lose your right to appeal.