

BEFORE THE ENERGY FACILITY SITING COUNCIL  
OF THE  
STATE OF OREGON

IN THE MATTER OF THE REQUEST FOR  
AMENDMENT #1 OF THE SITE CERTIFICATE  
FOR THE STATELINE WIND PROJECT

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FINAL ORDER ON  
AMENDMENT #1

May 17, 2002

STATELINE WIND PROJECT  
FINAL ORDER ON AMENDMENT #1

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**STATELINE WIND PROJECT**  
**FINAL ORDER ON AMENDMENT #1**

**I. INTRODUCTION**

The 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 Stateline, an 83.8-megawatt wind energy facility in Umatilla County, Oregon. FPL began construction on September 17, 2001, and completed construction on December 19, 2001. The facility began commercial operation before December 31, 2001. The Council's Final Order on the site certificate application<sup>1</sup> describes the facility in more detail. FPL requests an amendment (#1) that would allow an expansion of Stateline by adding turbines and increasing the electric generating capacity of the facility. Condition (26) of the site certificate requires an amendment "if the proposed change would increase the electrical generation capacity of the facility and would increase the number of wind turbines or the dimensions of existing wind turbines." Accordingly, FPL cannot expand the facility to add turbines unless the Council approves an amendment of the site certificate.

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 Office of Energy (Office) on January 22, 2002. As required under OAR 345-027-0070, within 15 days after receiving the request, copies of the request were sent to the appropriate officers, agencies and tribes listed in OAR 345-020-0040. The Office requested comments by February 22. Also as required under the rule, the Office sent notice of the amendment request to all persons on the Council's mailing list and on a list of property owners supplied by FPL. On February 5, 2002, the Office notified FPL that the proposed order would be issued by April 5. On April 5, the Office notified FPL that it needed additional time to prepare the proposed order and explained the circumstances justifying the delay, as allowed under OAR 345-027-0070(4).

After issuing the proposed order on April 11, 2002, the Office sent the notice required under OAR 345-027-0070(4). The deadline for public comment or requests for contested case was May 13. The Office received no public comments or contested case requests.

Because the proposed amendment would enlarge the site of the facility, the Council considers, within the area added to the site by the amendment, whether the facility complies with all Council standards (OAR 345-027-0070(9)). The Council applies the applicable substantive land use criteria in effect on the date the certificate holder submitted the request for amendment and all other state statutes, administrative rules and local government ordinances in effect on the date the Council makes its decision.

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<sup>1</sup> Final Order dated September 14, 2001.

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

2 The amendment would allow FPL to expand the existing Stateline facility<sup>2</sup> (referred to  
3 in this order as “**Stateline 1**”) by the construction<sup>3</sup> of 60 additional turbines and related or  
4 supporting facilities in Oregon (referred to in this order as “**Stateline 2**”). The new turbines  
5 would increase the electrical generating capacity of the facility by approximately 39.6  
6 megawatts. After the proposed expansion, Stateline would comprise 186<sup>4</sup> turbines in Oregon  
7 with a combined electrical generating capacity of approximately 122.8 megawatts. In  
8 addition, the amendment would allow the construction of two permanent meteorological (met)  
9 towers. After the proposed expansion, the Stateline facility would have a total of six  
10 permanent met towers.<sup>5</sup> The proposed expansion would include construction of approximately  
11 6.5 miles of new access roads and improvement of approximately 1.5 miles of existing farm  
12 roads.

13 The proposed Stateline 2 turbines would be Vestas V-47 660-kW turbines, the same as  
14 are currently operating at Stateline 1. The new turbines would be located in strings to the  
15 southeast of existing Stateline 1 turbine strings along slopes southwest of Vansycle Canyon in  
16 Township 6 North, Range 32 East.<sup>6</sup> The turbines would be located on privately-owned land  
17 for which the FPL has negotiated wind energy leases. Stateline 2 would permanently occupy  
18 approximately 30 acres, and an additional area of approximately 103 acres would be  
19 temporarily disturbed during construction.<sup>7</sup> Access for construction and operation would be  
20 from North Fork Juniper Canyon Road and Stockman Road.

21 The new turbines would be approximately 165 feet tall at the turbine hub. With the  
22 nacelle and blades mounted, the total height of the wind turbine would be approximately 242  
23 feet including the turbine blades. Turbines and turbine towers would be painted a uniform  
24 light gray color, similar to the Stateline 1 turbines.

25 Energy from each new turbine would be transmitted by 34.5 kV underground collector  
26 cables connected to an underground collector circuit near string HG-L of the Stateline 1  
27 facilities. That underground collector circuit connects to the substation in Washington that  
28 FPL constructed for Stateline 1 (known as the 9-Mile Substation). No overhead transmission  
29 would be constructed.

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

31 FPL proposed the following amendments to the site certificate. Additions are double-  
32 underlined and deletions have a strikethrough.

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<sup>2</sup> As described in the Final Order on the site certificate application, pages 9-13.

<sup>3</sup> Notwithstanding the definition in ORS 469.300, for the purpose of this amendment and as used in this order, “construction” means any work performed on the site regardless of cost but excluding surveying, exploration or other activities to define or characterize the site.

<sup>4</sup> The site certificate authorized FPL to construct 127 Stateline 1 turbines. However, FPL elected to build 126 due to site conditions. If all 60 Stateline 2 turbines are built, Stateline would have a total of 186 turbines.

<sup>5</sup> The Final Order on the site certificate application described the four Stateline 1 met towers as “guyed masts set in concrete foundations” (Final Order page 12). However, FPL now plans to use unguyed, concrete met towers for both Stateline 1 and 2.

<sup>6</sup> Two maps of the Stateline 2 location are included in the Request to Amend Site Certificate (Exhibit 3, Figure 1, and Exhibit 4, Figure 2) and are incorporated herein by this reference.

<sup>7</sup> Details of the areas permanently occupied and temporarily disturbed are shown in the Request to Amend Site Certificate, page 5, Tables 1 and 2, incorporated herein by this reference.

1 At page 2, lines 21-30:

2 **1. The Facility**

3 (a) Major Structures

4 The Stateline Wind Project (“facility”) consists of ~~127~~ 187 Vestas V47-660-  
5 kilowatt (KW) wind turbines with a total a nominal electric generating capacity of  
6 ~~83.8~~ 123.4 MW (~~127~~ 187 turbines, each with a capacity of 0.66 MW). Each wind  
7 turbine is connected to the next by a 34.5-kilovolt (kV) collector system. The wind  
8 turbines are grouped in “strings” of ~~5~~ 4 to 37 turbines, each turbine spaced  
9 approximately 250 feet from the next, generally slightly downwind of the crest of  
10 ridges. Underground 34.5-kV cables connected to a substation in Washington collect  
11 the electrical output of each Oregon turbine string. Major facility structures are  
12 further as described in the final order.

13 At page 11, lines 22-26:

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

15 (a) Design, construct and operate a facility consisting of ~~127~~ 187 Vestas V47-  
16 660-kilowatt (kW) wind turbines (App B-2, Table B-3)

17 (b) Group the turbines in strings of ~~5~~ 4 to 37 turbines, each spaced  
18 approximately 250 feet from the next (Table B-3, App B-11)

19 At page 12, lines 19-27:

20 (43) The certificate holder shall submit to the State of Oregon through the  
21 Council a bond or letter of credit in the amount of ~~\$1,459,000~~ \$872,000 (in ~~2001~~ 2002  
22 dollars) naming the State of Oregon, acting by and through the Council, as beneficiary  
23 or payee.

24 (a) The calculation of ~~2001~~ 2002 dollars shall be made using the U.S. Gross  
25 Domestic Product Implicit Price Deflator as published by the U. S. Department of  
26 Commerce, Bureau of Economic Analysis, or any successor agency (the “Index”). The  
27 amount of the bond or letter of credit account shall increase annually by the  
28 percentage increase in the Index and shall be pro-rated within the year to the date of  
29 retirement. If at any time the Index is no longer published, the Council shall select a  
30 comparable calculation of ~~2001~~ 2002 dollars.

31 At page 17, lines 20-36:

32 (67) To mitigate for the permanent elimination of approximately ~~48~~ 49 acres of  
33 Category 3 habitat, the certificate holder shall control weeds and enhance habitat on an  
34 equal area of weed-infested land in the project vicinity. The certificate holder shall  
35 carry out enhancement activities as described for habitat improvement areas in the  
36 Revegetation Plan included in the final order as Attachment B. The certificate holder  
37 shall acquire the legal right to create and maintain the enhancement area for the life of  
38 the facility by means of an outright purchase, conservation easement or similar  
39 conveyance and shall provide a copy of the documentation to the Office of Energy.  
40 The certificate holder shall determine the location of this habitat enhancement area in  
41 consultation with ODFW and landowners. (App P-44)

1 (68) To minimize impacts to temporarily disturbed ~~Category 6~~ habitat areas,  
2 the certificate holder shall use measures including but not limited to the following  
3 (App P-45):

- 4 (a) Replacing agricultural topsoil to its pre-construction condition  
5 (b) Using best management practices to prevent loss of topsoil during  
6 construction  
7 (c) Reseeding native habitats with a native seed mix that includes at least some  
8 seed collected from the area as described for temporarily disturbed habitats in the  
9 Revegetation Plan included in the final order as Attachment B  
10 (d) Controlling noxious weeds in areas disturbed by construction activities

11 *At page 19, lines 13-24:*

12 (80) The certificate holder shall submit to the State of Oregon through the  
13 Council a bond or letter of credit in the amount of ~~\$1,161,120~~ \$1,704,240 (in ~~2001~~  
14 2002 dollars) naming the State of Oregon, acting by and through the Council, as  
15 beneficiary or payee (the “retirement fund”).

16 (a) The calculation of ~~2001~~ 2002 dollars shall be made using the Index  
17 described in Condition (43).

18 (b) The certificate holder shall use a form of retirement fund approved by the  
19 Council.

20 (c) The certificate holder shall use an issuer of the bond or letter of credit  
21 approved by the Council.

22 (d) The retirement fund shall not be subject to revocation or reduction before  
23 retirement of the energy facility.

24 (e) The certificate holder shall describe the status of the retirement fund in the  
25 annual report submitted to the Council under Condition (8).

## 26 **2. Changes to the Site Certificate Approved Under This Order**

27 The Council approves the amendment request in principle. However, the changes to  
28 the site certificate as proposed by FPL do not address all site certificate modifications made  
29 necessary by the addition of new turbines to the Stateline facility. The Council approves  
30 amendment of the site certificate as described in this section.

31 *At page 1, lines 7-13:*

32 The findings of fact, reasoning and conclusions of law underlying the terms  
33 and conditions of this site certificate are set forth in the following documents,  
34 incorporated herein by this reference: (a) the Council's Final Order in the Matter of the  
35 Application for a Site Certificate for the Stateline Wind Project (“final order”), which  
36 by this reference is incorporated herein. The Council issued the final order on  
37 September 14, 2001-; and (b) the Council’s Final Order in the Matter of the Request  
38 for Amendment #1 of the Site Certificate for the Stateline Wind Project (“Final Order  
39 [Amendment #1]

40 In interpreting this site certificate, any ambiguity will be clarified by reference  
41 to the following, in order of priority: this First Amended Site Certificate~~site certificate,~~  
42 the Final Order on Amendment #1, the final order issued on September 14, 2001, and

1 the record of the proceedings ~~which~~that led to the final order and the Final Order on  
2 Amendment #1. [Amendment #1]

3 *At page 1, lines 25-31:*

4 3. This site certificate does not address, and is not binding with respect to,  
5 matters that were not addressed in the Council's final order or the Final Order on  
6 Amendment #1. These matters include, but are not limited to: building code  
7 compliance, wage, hour and other labor regulations, local government fees and  
8 charges and other design or operational issues that do not relate to siting the facility  
9 (ORS 469.401(4)) and permits issued under statutes and rules for which the decision  
10 on compliance has been delegated by the federal government to a state agency other  
11 than the Council. 469.503(3). [Amendment #1]

12 *At page 2, lines 21-30:*

13 **1. The Facility**

14 (a) Major Structures

15 The Stateline Wind Project (“facility”) consists of:

- 16 • Stateline 1: 127 Vestas V47-660-kilowatt (KW) wind turbines authorized  
17 for construction, of which 126 were built, having ~~with~~ a total a nominal  
18 electric generating capacity of ~~83.883.2~~ MW (~~127~~126 turbines, each with a  
19 capacity of 0.66 MW) as described further in the final order.
- 20 • Stateline 2: 60 Vestas V47-660-kilowatt (KW) wind turbines with a total a  
21 nominal electric generating capacity of 39.6 MW (60 turbines, each with a  
22 capacity of 0.66 MW) as described further in the Final Order on  
23 Amendment #1.

24 Each wind turbine is connected to the next by a 34.5-kilovolt (kV) collector system.  
25 The wind turbines are grouped in “strings” of ~~5~~ 4 to 37 turbines, each turbine spaced  
26 approximately 250 feet from the next, generally slightly downwind of the crest of  
27 ridges. Underground 34.5-kV cables connected to a substation in Washington collect  
28 the electrical output of each Oregon turbine string. Major facility structures are  
29 further as described in the final order and in the Final Order on Amendment #1.  
30 [Amendment #1]

31 *At page 3, lines 1-8:*

32 Access Roads

33 County roads that extend south from Highway 12 in Washington (e.g., Hatch Grade  
34 Road and Butler Grade Road) and north from Oregon Highway 11 (e.g., Vansycle  
35 Canyon Road and Butler Grade Road) are the primary routes of access to the facility  
36 site. From the county roads, a web of private farm roads provides access to most of the  
37 ridges upon which the facility is located. Additional access roads are located along the  
38 length of each turbine string and connecting each turbine string to the next. Access  
39 roads are further as described in the final order and in the Final Order on Amendment  
40 #1. [Amendment #1]

1 At page 3, lines 9-19:

2 Collector System

3 The proposed wind turbines generate power at 690 volts. A transformer adjacent to  
4 each tower transform the power to 34.5 kV. From there, power is transmitted via  
5 underground 34.5-kV electric cables buried directly in the soil approximately 3 to 4  
6 feet below the ground surface. In some cases, trenches run from the end of one turbine  
7 string to the end of an adjacent turbine string to link the turbines via the underground  
8 network. There are no aboveground 34.5-kV transmission lines in Oregon. The  
9 underground collector system links the facility's turbines to a substation located in  
10 Washington. Overhead transmission lines, located entirely within Washington,  
11 connect the substation to a BPA 115-kV transmission line north of the Walla Walla  
12 River and to a PacifiCorp substation just north of Highway 12. The collector system is  
13 further as described in the final order and in the Final Order on Amendment #1.  
14 [Amendment #1]

15 At page 3, lines 20-24:

16 Meteorological Towers

17 The facility includes six permanent meteorological (met) towers to measure wind  
18 conditions. ~~Four permanent met towers are located in Oregon. These towers are guyed~~  
19 ~~masts set in concrete foundations approximately 40 inches in diameter and 8 feet deep.~~  
20 ~~The met towers are 165 feet tall. The met towers may be guyed or unguied towers.~~  
21 The met towers are ~~further~~otherwise as described in the final order and in the Final  
22 Order on Amendment #1. [Amendment #1]

23 At page 3, lines 30-34:

24 **2. Location of the Proposed Facility**

25 The facility is located in Umatilla County, north and east of Helix, Oregon.  
26 The towns closest to the facility are Helix, Oregon, and Touchet, Washington. The  
27 wind turbines would be located on ridges east of the Columbia River and south of the  
28 Walla Walla River. The location of the facility is further as described in the final order  
29 and in the Final Order on Amendment #1. [Amendment #1]

30 At page 3, lines 35-39, and page 4, lines 1-2:

31 **IV. CONDITIONS FOR STATELINE 1 REQUIRED BY COUNCIL RULES**

32 This section lists conditions specifically required by OAR 345-027-0020  
33 (Mandatory Conditions in Site Certificates), OAR 345-027-0023 (Site Specific  
34 Conditions), OAR 345-027-0028 (Monitoring Conditions) and in OAR Chapter 345,  
35 Division 26 (Construction and Operation Rules for Facilities). These conditions  
36 should be read together with the additional specific facility conditions ~~recommended~~  
37 in section V to ensure compliance with the siting standards of OAR Chapter 345,  
38 Divisions 22 and 24 and to protect the public health and safety. These conditions apply  
39 to Stateline 1. [Amendment #1]

1 At page 9, lines 21-25:

2 **V. SPECIFIC FACILITY CONDITIONS FOR STATELINE 1**

3 The conditions listed in this section include conditions based on  
4 representations in the site certificate application and supporting record. The Council  
5 deems these representations to be binding commitments made by the applicant. These  
6 conditions are required under OAR 345-027-0020(10). These conditions apply to  
7 Stateline 1. [Amendment #1]

8 At page 11, lines 22-26:

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

10 (a) Design, construct and operate a facility consisting of:

11 (i) Stateline 1: Not more than 127 Vestas V47-660-kilowatt (kW) wind  
12 turbines (App B-2, Table B-3)

13 (ii) Stateline 2: 60 Vestas V47-660-kW wind turbines [Amendment #1]

14 (b) Group the turbines in strings of ~~5~~ 4 to 37 turbines, each spaced  
15 approximately 250 feet from the next (Table B-3, App B-11) [Amendment #1]

16 At page 12, lines 4-12:

17 (41) If the certificate holder elects to use a bond to meet the requirements of  
18 Conditions (43), ~~or (80)~~, or (102), the certificate holder shall assure that the surety is  
19 obligated to comply with the requirements of applicable statutes, Council rules and  
20 this site certificate when the surety exercises any legal or contractual right it may have  
21 to assume construction, operation or retirement of the energy facility. The certificate  
22 holder shall also assure that the surety is obligated to notify the Council that it is  
23 exercising such rights and to obtain any Council approvals required by applicable  
24 statutes, Council rules and this site certificate before the surety commences any  
25 activity to complete construction, operate or retire the energy facility. [Amendment #1]

26 At page 17, lines 1-3 (Condition(65)):

27 (e) Restoring temporarily disturbed sites to pre-construction condition or better  
28 with native seed mixes as described for temporarily disturbed habitats in the  
29 Revegetation Plan included in the final order as Attachment B and as revised from  
30 time to time. [Amendment #1]

31 At page 17, lines 11-19:

32 (66) To mitigate for the permanent elimination of one-half acre of Category 2  
33 habitat, the certificate holder shall control weeds and enhance habitat of one acre of  
34 weed-infested upland habitat with native plants. The certificate holder shall carry out  
35 enhancement activities as described for habitat improvement areas in the Revegetation  
36 Plan included in the final order as Attachment B and as revised from time to time. The  
37 certificate holder shall acquire the legal right to create and maintain the enhancement  
38 area for the life of the facility by means of an outright purchase, conservation  
39 easement or similar conveyance and shall provide a copy of the documentation to the  
40 Office of Energy. The certificate holder shall determine the location of this habitat  
41 enhancement area in consultation with ODFW and landowners. (App P-44) [Amendment  
42 #1]

1 At page 17, lines 20-28:

2 (67) To mitigate for the permanent elimination of approximately 48 acres of  
3 Category 3 habitat, the certificate holder shall control weeds and enhance habitat on an  
4 equal area of weed-infested land in the project vicinity. The certificate holder shall  
5 carry out enhancement activities as described for habitat improvement areas in the  
6 Revegetation Plan included in the final order as Attachment B and as revised from  
7 time to time. The certificate holder shall acquire the legal right to create and maintain  
8 the enhancement area for the life of the facility by means of an outright purchase,  
9 conservation easement or similar conveyance and shall provide a copy of the  
10 documentation to the Office of Energy. The certificate holder shall determine the  
11 location of this habitat enhancement area in consultation with ODFW and landowners.  
12 (App P-44) [Amendment #1]

13 At page 17, lines 33-35 (Condition (68)):

14 (c) Reseeding native habitats with a native seed mix that includes at least some  
15 seed collected from the area as described for temporarily disturbed habitats in the  
16 Revegetation Plan included in the final order as Attachment B and as revised from  
17 time to time. [Amendment #1]

18 At page 19, lines 34-42, and page 20, lines 1-6:

19 (84) For the purposes of this site certificate, the term “legal descrip  
20 a description of location by reference to a map and geographic information system  
21 (GIS) data that clearly and specifically identifies the physical location of all parts of  
22 the facility, including but not limited to turbine towers, meteorological towers, roads  
23 and underground collection cables. Notwithstanding OAR 345-027-0020(2), for the  
24 purposes of this site certificate, wind turbine tower locations are analogous to location  
25 of permanent rights-of-way for pipelines or transmission lines as described in OAR  
26 345-027-0023(6). The Council approves the corridor described in the final order for  
27 construction of turbine strings. Before beginning operation of the facility, the  
28 certificate holder shall submit to the Office of Energy a legal description of the  
29 location where the certificate holder has built turbine towers and other parts of the  
30 facility. Before beginning operation of any turbines that are added to the facility by  
31 amendment of the site certificate, the certificate holder shall submit to the Office of  
32 Energy a legal description of the location of any additional turbine towers and related  
33 or supporting facilities allowed by the amendment. ~~The Office shall append the legal~~  
34 ~~description to the site certificate.~~ The site of the facility is the area identified by ~~that~~  
35 the legal descriptions required by this condition. By means of the legal descriptions,  
36 the certificate holder shall provide to the Office of Energy and the Umatilla County  
37 Planning Department the actual location of each turbine and all connecting lines.  
38 (OAR 345-027-0020(3)) [Amendment #1]

39 At page 20, lines 21-24:

40 (88) If the turbine blades need to be washed, the certificate holder shall use no  
41 more than 500 gallons of water per turbine, trucked to the site by a contractor and  
42 purchased from a source with a valid water right. The certificate holder shall use high-  
43 pressure cold water only and shall not use chemicals or additives in the wash water.  
44 (App O-2) [Amendment #1]

1 At page 21, lines 15-18:

2 (93) The certificate holder shall conduct wildlife monitoring as described in the  
3 Oregon Wildlife Monitoring Plan, included in the final order as Attachment A and as  
4 revised from time to time. Subject to approval by the Office of Energy as to  
5 professional qualifications, the certificate holder shall hire qualified wildlife  
6 consultants to carry out the monitoring. (OAR 345-022-0060) [Amendment #1]

7 At page 21, following line 36:

8 **VI. SPECIFIC FACILITY CONDITIONS FOR STATELINE 2** [This section added  
9 by Amendment #1]

10 The conditions listed in this section include conditions based on  
11 representations in the request for Amendment #1 and supporting record. The Council  
12 deems these representations to be binding commitments made by the applicant. These  
13 conditions are required under OAR 345-027-0020(10). These conditions apply to  
14 Stateline 2. Conditions (98), (99), (100) and (103) also apply to Stateline 1.

15 In addition to the conditions listed in this section, all conditions in sections  
16 IV and V also apply to Stateline 2, except Conditions (11), (15), (19), (24), (27), (39),  
17 (42), (43), (53), (54), (55), (56), (66) and (80).

18 **1. General Conditions**

- 19 (97) The certificate holder shall begin construction of Stateline 2 within six months  
20 after the effective date of the First Amended Site Certificate. The certificate  
21 holder shall complete construction of Stateline 2 before March 1, 2003. Under  
22 OAR 345-027-0070, an amended site certificate is effective upon execution by  
23 the Council Chair and the applicant. Completion of construction occurs upon the  
24 date commercial operation of the facility begins. The Council may grant an  
25 extension of the construction beginning or completion deadlines in accordance  
26 with OAR 345-027-0030 or any successor rule in effect at the time the request  
27 for extension is submitted.
- 28 (98) The certificate holder shall retire the facility if the certificate holder permanently  
29 ceases construction or operation of the facility. The certificate holder shall retire  
30 the facility according to a final retirement plan approved by the Council, as  
31 described in OAR 345-027-0110. The certificate holder shall pay the actual cost  
32 to restore the site to a useful, non-hazardous condition at the time of retirement,  
33 notwithstanding the Council's approval in the site certificate of an estimated  
34 amount required to restore the site.
- 35 (99) Before any transfer of ownership of the facility or ownership of the site  
36 certificate holder, the certificate holder shall inform the Office of Energy of the  
37 proposed new owners. The requirements of OAR 345-027-0100 apply to any  
38 transfer of ownership that requires a transfer of the site certificate.
- 39 (100) If the Council finds that the certificate holder has permanently ceased  
40 construction or operation of the facility without retiring the facility according to a  
41 final retirement plan approved by the Council, as described in OAR 345-027-  
42 0110, the Council shall notify the certificate holder and request that the  
43 certificate holder submit a proposed final retirement plan to the Office within a

1 reasonable time not to exceed 90 days. If the certificate holder does not submit a  
2 proposed final retirement plan by the specified date, the Council may direct the  
3 Office to prepare a proposed a final retirement plan for the Council’s approval.  
4 Upon the Council’s approval of the final retirement plan, the Council may draw  
5 on the bond or letter of credit described in section (8) to restore the site to a  
6 useful, non-hazardous condition according to the final retirement plan, in  
7 addition to any penalties the Council may impose under OAR Chapter 345,  
8 Division 29. If the amount of the bond or letter of credit is insufficient to pay the  
9 actual cost of retirement, the certificate holder shall pay any additional cost  
10 necessary to restore the site to a useful, non-hazardous condition. After  
11 completion of site restoration, the Council shall issue an order to terminate the  
12 site certificate if the Council finds that the facility has been retired according to  
13 the approved final retirement plan.

14 **2. Conditions That Must Be Met Before Construction Begins**

15 (101) The certificate holder shall not engage in construction activities, including the  
16 movement of heavy trucks and equipment, within a ¼ mile buffer around an  
17 identified ferruginous hawk nest tree during the nesting season from (March 1 to  
18 August 15), except as provided in this condition. The certificate holder shall use  
19 a protocol approved by the Oregon Department of Fish and Wildlife (ODFW) to  
20 determine whether the nest is occupied. The certificate holder may begin  
21 construction activities before August 15, 2002, if the nest is not occupied. If the  
22 nest is occupied, the certificate holder shall use a protocol approved by ODFW to  
23 determine when the young are fledged (independent of the core nest site). With  
24 the approval of ODFW, the certificate holder may begin construction before  
25 August 15, 2002, if the young are fledged.

26 (102) In addition to the requirements of Condition (80), the certificate holder shall  
27 submit to the State of Oregon through the Council a bond or letter of credit in the  
28 amount of \$899,200 (in 2002 dollars) naming the State of Oregon, acting by and  
29 through the Council, as beneficiary or payee. In lieu of submitting a separate  
30 bond or letter of credit in the amount required under this condition, the certificate  
31 holder may submit a bond or letter of credit that includes the amount required  
32 under this condition and the amount required under Condition (80)

33 (a) The calculation of 2002 dollars shall be made using the U.S. Gross  
34 Domestic Product Implicit Price Deflator as published by the U. S. Department  
35 of Commerce, Bureau of Economic Analysis, or any successor agency (the  
36 “Index”). The amount of the bond or letter of credit account shall increase  
37 annually by the percentage increase in the Index and shall be pro-rated within the  
38 year to the date of retirement. If at any time the Index is no longer published, the  
39 Council shall select a comparable calculation of 2002 dollars.

40 (b) The certificate holder shall use a form of bond or letter of credit approved  
41 by the Council.

42 (c) The certificate holder shall use an issuer of the bond or letter of credit  
43 approved by the Council.

44 (d) The certificate holder shall describe the status of the bond or letter of credit  
45 in the annual report submitted to the Council, as required by Condition (8).

1           (e) After restoration of the temporary laydown and staging areas, as required  
2 by Conditions (20) and (68), the certificate holder may reduce the amount of the  
3 bond or letter of credit required under this condition to \$559,920 (in 2002  
4 dollars).

5           (f) The bond or letter of credit shall not be subject to revocation or reduction,  
6 except as allowed by paragraph (e), before retirement of the Stateline 2 site.

7 **3. Conditions That Apply During Construction**

8 (103) To minimize the risk of fire, the certificate holder shall:

9 (a) Construct turbines, towers and pads of fire retardant materials

10 (b) Bury electrical cables

11 (c) Use enclosed, locked pad-mounted transformer structures

12 (d) Include built-in fire prevention measures in turbines

13 (e) Not store combustible materials at the Stateline site.

14 (104) To mitigate for the permanent elimination of approximately 1 acre of Category  
15 3 and 4 habitat, the certificate holder shall enlarge the habitat enhancement area  
16 described in Condition (67) by 1 acre (making a total area of 49 acres).

17 **3. Conditions That Must Be Met During Operation**

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

26 *At page 21, line 37:*

27 **~~VII.~~ VII. SUCCESSORS AND ASSIGNS**

28 *At page 22, lines 1-7:*

29 **~~VII.~~ VIII. SEVERABILITY AND CONSTRUCTION**

30           If any provision of this agreement and certificate is declared by a court to be  
31 illegal or in conflict with any law, the validity of the remaining terms and conditions  
32 shall not be affected, and the rights and obligations of the parties shall be construed  
33 and enforced as if the agreement and certificate did not contain the particular provision  
34 held to be invalid. In the event of a conflict between the conditions contained in the  
35 site certificate and the Council's final order or the Final Order on Amendment #1, the  
36 conditions contained in this site certificate shall control. [Amendment #1]

37 *At page 22, line 8:*

38 **~~VIII.~~ IX. GOVERNING LAW AND FORUM**

1 At page 23, lines 1-7:

2 **IX, X. EXECUTION**

3 This site certificate may be executed in counterparts and will become effective  
4 upon receipt by the Oregon Office of Energy of a facsimile transmission of the  
5 signature page of this site certificate with the signatures of the signature by the Chair  
6 of the Energy Facility Siting Council and the ~~notarized signature of the person duly~~  
7 authorized representative of the certificate holder to sign on behalf of FPL. ~~Such~~  
8 ~~facsimile signature pages shall be replaced as soon as reasonably possible, but no~~  
9 ~~longer than 30 days, with signature pages containing original signatures of the~~  
10 ~~authorized signers.~~ [Amendment #1]

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

12 **1. General Standard of Review**

13 Under OAR 345-022-0000(1), to amend a site certificate, the Council must determine  
14 that a preponderance of the evidence on the record supports the following conclusions:

- 15 1. The proposed facility complies with the standards adopted by the Council pursuant  
16 to ORS 469.501.  
17 2. Except as provided in ORS 469.504 for land use compliance and except for those  
18 statutes and rules for which the decision on compliance has been delegated by the  
19 federal government to a state agency other than the Council, the facility complies  
20 with all other Oregon statutes and administrative rules identified in the project  
21 order as applicable to the issuance of a site certificate for the proposed facility.  
22 3. The facility complies with the statewide planning goals adopted by the Land  
23 Conservation and Development Commission.

24 Further, the Council must impose conditions for the protection of the public health and  
25 safety, for the time of commencement and completion of construction, and to ensure  
26 compliance with the standards, statutes and rules addressed in this order. ORS 469.401(2).  
27 The Council is not authorized to determine compliance with regulatory programs that have  
28 been delegated to another state agency by the federal government. ORS 469.503(3). The  
29 Council has no jurisdiction over design or operational issues that do not relate to siting, such  
30 as matters relating to employee health and safety, building code compliance, wage or hour or  
31 other labor regulations, or local government fees and charges. ORS 469.401(4). Some of these  
32 non-siting regulations are listed in section V.2(b). The Council may, however, consider these  
33 programs in the context of its own standards to ensure public health and safety, resource  
34 efficiency and protection of the environment as discussed below.

35 **2. Standards about the Applicant**

36 (a) Organizational Expertise

37 **OAR 345-022-0010:**

38 *(1) To issue a site certificate, the Council must find that the applicant has the*  
39 *organizational expertise to construct, operate and retire the proposed facility in*  
40 *compliance with Council standards and conditions of the site certificate. To*  
41 *conclude that the applicant has this expertise, the Council must find that the*

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

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

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

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

## 28           Findings of Fact

### 29           Applicant's Expertise (Sections 1 and 2)

30           In the Final Order on the site certificate application, the Council found that FPL had  
31           the organizational, managerial and technical expertise to construct and operate the Stateline 1  
32           facilities. Since that time, FPL has built Stateline 1 as described in that order and in  
33           compliance with the terms and conditions of the site certificate. In the request for amendment,  
34           FPL states that neither FPL nor FPL Energy has had any regulatory citations to report.<sup>8</sup> In  
35           constructing and operating the proposed expansion, FPL would continue to have access to the  
36           resources, expertise and personnel of FPL Energy (Condition (28)). FPL proposes to use the  
37           same prime contractors for Stateline 2 as it used for construction of Stateline 1. FPL has no  
38           ISO programs, and therefore section (2) does not apply.

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<sup>8</sup> OAR 345-021-0010(1)(d) requires reporting of any regulatory citations in constructing or operating a facility, type of equipment, or process similar to the proposed facility.

1           Third-Party Permits (Sections 3 and 4)

2           The City of Helix will be able to provide all water necessary for construction of the  
3 facility.<sup>9</sup> The water right has already been issued, and no further action or approval from the  
4 Department of Water Resources is required because municipal water rights may be used for  
5 such industrial use.

6           The construction contractors would obtain certain permits that are typically obtained  
7 by and issued to construction contractors, such as building permits and oversize load  
8 movement permits. These permits do not relate to siting and are not under Council jurisdiction  
9 (see ORS 469.401(4)).

10           Conclusions of Law

11           The Council concludes that the certificate holder, subject to the conditions stated in  
12 this order, has demonstrated that it has the organizational expertise to construct, operate and  
13 retire the proposed Stateline 2 facilities in compliance with Council standards and conditions  
14 of the site certificate. The Council further concludes that the certificate holder has a  
15 reasonable likelihood of entering into a contractual or other arrangement with the City of  
16 Helix for access to water under the city’s water right (a third-party permit). Conditions (28)  
17 and (46) relate to the Council’s organizational expertise standard as it applies to Stateline 2.

18           (b) Retirement and Financial Assurance

19           **OAR 345-022-0050:**

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

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

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

27           Findings of Fact

28           Retirement

29           Section (1) of the standard ensures that the facility site can be restored to a useful,  
30 non-hazardous condition. For the purpose of the standard, a “useful, non-hazardous  
31 condition” is a condition consistent with the applicable local comprehensive land use plan and  
32 land use regulations. The proposed Stateline 2 site is located on land zoned for exclusive farm  
33 use in Umatilla County. To satisfy the standard, it must be feasible and possible to restore the  
34 site to an non-hazardous condition suitable for farm use.

35           Before restoring the site, the certificate holder would be required to submit a final  
36 retirement plan for Council approval. The retirement plan would describe the activities  
37 necessary to retire the site (Condition (98)). After Council approval of the plan, the certificate

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<sup>9</sup> Request to Amend Site Certificate, Exhibit 6.

1 holder would obtain the necessary authorization from the appropriate regulatory agencies to  
2 proceed with restoration of the site.

3 In general, restoring the site to a useful, non-hazardous condition upon retirement  
4 would require removing the roads and structures and restoring the soil to a condition  
5 compatible with farm use or consistent with other resource uses such as wildlife habitat or  
6 land conservation. The proposed Stateline 2 does not include underground storage tanks,  
7 long-term storage or on-site disposal of hazardous wastes. However, lubricants, vehicle fuel  
8 and herbicides might be transported over and across the site, and leaks, spills and improper  
9 handling of these materials could occur. However, given the small amounts of such materials  
10 used on the site, the soil contamination is unlikely.<sup>10</sup>

11 Retirement of the Stateline 2 would require dismantling the turbines, towers, pad-  
12 mounted transformers, met towers and related aboveground equipment allowed under the  
13 amendment. Turbine towers, nacelles and pad-mounted transformers would have salvage  
14 value for use or as scrap. All unsalvageable material would be removed and transported to  
15 authorized disposal locations off-site.

16 All concrete turbine pads would be removed to a depth of at least three feet below the  
17 soil surface. The underground collection and communication cables would not require  
18 removal because they would be at a depth of three feet or greater (Condition (62)). These  
19 cables could be abandoned in place without being a hazard or interfering with agricultural use  
20 or other consistent resource uses of the land (Condition (4)). Gravel would be removed from  
21 areas surrounding turbine pads.

22 After removal of the structures, soils would be restored and the area would be graded  
23 as close as reasonably possible to its original contours. Re-vegetation would include the use of  
24 native plant seed mixes or agricultural crops, as appropriate, and would be consistent with a  
25 weed control plan approved by the county.

26 Retirement of access roads would involve removing gravel and restoring the surface  
27 grade and soil to a condition useful for either agriculture or wildlife habitat. Roads could be  
28 left in place based on landowner preference, without violating the standard of leaving the site  
29 in a useful, non-hazardous condition. As described above, the actions required to restore the  
30 site are both feasible and possible. Restoration of the facility site to a useful, non-hazardous  
31 condition could be accomplished, assuming availability of sufficient funds to complete the  
32 work.

### 33 Estimated Cost of Site Restoration

34 Section (2) of the standard addresses the possibility that the certificate holder is unable  
35 or unwilling to restore the site if the certificate holder permanently ceases construction or  
36 operation of the facility at any time. A bond or letter of credit provides a site restoration  
37 remedy to protect the State of Oregon and its citizens if the certificate holder fails to perform  
38 its obligation to restore the site under any circumstances. For the purpose of providing a fund  
39 for the State of Oregon to pay site restoration costs if the certificate holder fails to perform its

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<sup>10</sup> Because of the low probability of soil contamination, we have not included an additional cost for site remediation in the estimate of site restoration costs below.

1 obligation, the Council assumes circumstances under which the restoration cost would be  
2 greatest.

3 In the Final Order on the original site certificate, the Council found the following  
4 estimated costs to be reasonable for restoring the areas of permanent disturbance<sup>11</sup>: \$5,800 per  
5 turbine for turbine demolition, foundation removal, and grading and reseeded; \$3,200 per  
6 acre for access road removal and regrading (but not including reseeded); and \$500 per acre  
7 for reseeded areas disturbed by equipment operation in the course of the turbine pad  
8 demolition and road removal.<sup>12</sup> The Council found it reasonable to assume that equipment  
9 operation during turbine pad demolition and road removal would disturb an additional area  
10 equal in size to the affected area. Applying these estimates to the additional turbines and road  
11 areas that would be added by the proposed expansion, results in an estimated cost of  
12 \$466,600.

**Cost Estimate for Restoring Areas of Permanent Disturbance**

Turbine demolition, foundation removal, grading and reseeded @ \$5,800 per turbine	60 turbines	\$ 348,000
Access road removal and grading @ \$3,200 per acre	28 acres	89,600
Reseeded road areas @ \$500 per acre	28 acres	14,000
Reseeded area disturbed during restoration work @ \$500 per acre	30 acres	15,000
<b>Total</b>		<b>\$ 466,600</b>

13 If a site restoration remedy were needed when construction is substantially complete  
14 but before the certificate holder has restored temporary laydown and staging areas, the cost of  
15 site restoration would be greater, because it would include the cost of restoring 103 acres of  
16 temporarily disturbed areas. In the Final Order on the site certificate application, the Council  
17 found that the cost of removing and regrading temporarily disturbed areas would be similar to  
18 the cost of road removal (\$3,200 per acre). Assuming equipment operation would disturb an  
19 area equal to the restoration area, full site restoration would include reseeded a total of 206  
20 acres at a cost of \$500 per acre. The additional cost for restoring the laydown and staging  
21 areas would be \$432,600, and the total estimated restoration cost for Stateline 2 would be  
22 \$899,200.

**Added Cost Estimate for Restoring Laydown and Staging Areas**

Temporary area removal and grading @ \$3200 per acre	103 acres	\$ 329,600
Reseeded temporary areas @ \$500 per acre	103 acres	51,500
Reseeded area disturbed during restoration work @ \$500 per acre	103 acres	51,500
<b>Total</b>		<b>\$ 432,600</b>

23 In contrast, if restoration were needed at the end of the facility's useful life (assumed  
24 to be at least 30 years), there would be no temporarily disturbed areas to restore.<sup>13</sup> However,  
25 to protect the state from uncertainties in the estimate as well as unforeseen additional costs  
26 over the course of the assumed 30-year life of the facility, it is reasonable to add a 20-percent

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<sup>11</sup> Areas occupied by turbines, turbine pads, met towers and access roads.

<sup>12</sup> The Council found these cost estimates reasonable when it approved the site certificate on September 14, 2001. For the purpose of this amendment request submitted less than six months after issuance of the site certificate, it is reasonable to assume that the estimates are still valid.

<sup>13</sup> Condition (20) requires restoration of temporarily disturbed areas before operation begins.

1 contingency to the cost of restoring the areas permanently affected by the proposed  
2 expansion. The additional estimated cost for the contingency would be \$93,320, and the total  
3 estimated restoration cost for the expansion area would be \$559,920.

4 These costs must be added to the estimated cost of restoring the Stateline 1 site to  
5 estimate of the full cost of site restoration of the entire Stateline Wind Project site.

6 Ability of the Certificate Holder to Obtain a Bond or Letter of Credit

7 The Council finds that the value of the financial assurance bond or letter of credit for  
8 restoring the Stateline 2 site should be \$899,200 during construction of Stateline 2. This bond  
9 or letter of credit should remain in force until the certificate holder has fully restored the  
10 temporarily disturbed areas and has a replacement bond or letter of credit in place. The value  
11 of the replacement bond or letter of credit for the restoration of the Stateline 2 site should be  
12 \$559,920. This bond or letter of credit should remain in force until the certificate holder has  
13 fully restored the site, as required under Condition (98). The amounts stated in this paragraph  
14 are in 2002 dollars and should be adjusted annually as described in Condition (102).

15 FPL was able, in fact, to obtain letters of credit in the amounts required by the current  
16 site certificate. FPL proposes provide a temporary letter of credit during construction of  
17 Stateline 2. After construction is complete, FPL proposes to amend or replace the long-term  
18 letter of credit required for Stateline 1<sup>14</sup> to include the additional amount needed to restore  
19 Stateline 2. A letter First Union National Bank dated February 21, 2002, states that the bank  
20 would “reasonably be likely to issue” letters of credit “in an aggregate amount at any one time  
21 outstanding of not to exceed \$1,000,000 (not including the \$1,161,120 letter of credit  
22 issued...on December 21, 2001).”

23 It is customary for a performance bond to contain provisions allowing the surety to  
24 complete construction of a project in order to reduce its potential liability. However, Oregon  
25 law and Council rules allow only a site certificate holder to construct or operate an energy  
26 facility. ORS 469.320(1); OAR 345-027-0100(1). The Council requires the certificate holder  
27 to assure that the surety has agreed to comply with all applicable statutes, Council rules and  
28 site certificate conditions if the surety retains the right to complete construction, operate or  
29 retire the energy facility. In addition, the Council requires that surety seek Council approval  
30 before commencing construction, operation or retirement activities.

31 Conclusions of Law

32 The Council concludes that the Stateline 2 site, taking into account mitigation, can be  
33 restored adequately to a useful, non-hazardous condition following permanent cessation of  
34 construction or operation of the facility. The Council concludes that \$899,200 (in 2002  
35 dollars) is a reasonable estimate of the cost to restore the proposed Stateline 2 site to a useful,  
36 non-hazardous condition if the certificate holder permanently ceases construction or operation  
37 of the proposed expansion before restoring the temporarily disturbed areas. The Council  
38 further concludes that \$559,920 (in 2002 dollars) is a reasonable estimate of the cost to restore  
39 the proposed Stateline 2 site to a useful, non-hazardous condition if the certificate holder  
40 permanently ceases construction or operation of the proposed expansion after having restored

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<sup>14</sup> Conditions (19) and (80) require a bond or letter of credit in the amount of \$1,161,120 (in 2001 dollars) during operation of Stateline 1. The amount is adjusted annually based on the Index described in Condition (43).

1 the temporarily disturbed areas. The Council further concludes that the certificate holder,  
2 subject to the conditions stated in this order, has demonstrated a reasonable likelihood of  
3 obtaining a bond or letter of credit, satisfactory to the Council, in an amount adequate to  
4 restore the site to a useful, non-hazardous condition. Conditions (15), (19), (41), (80) and  
5 (102) relate to the Council's financial assurance standard as it applies to Stateline 2.

### 6 3. Standards about Impacts of Construction and Operation

#### 7 (a) Land Use

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

#### 10 OAR 345-022-0030

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

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

15 \*\*\*

16 *(b) The applicant elects to obtain a Council determination under ORS*  
17 *469.504(1)(b) and the Council determines that:*

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

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

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

30 *(3) As used in this rule, the "applicable substantive criteria" are criteria from the*  
31 *affected local government's acknowledged comprehensive plan and land use*  
32 *ordinances that are required by the statewide planning goals and that are in effect*  
33 *on the date the applicant submits the application. If the special advisory group*  
34 *recommends applicable substantive criteria, as described under OAR 345-021-*  
35 *0050, the Council shall apply them. If the special advisory group does not*  
36 *recommend applicable substantive criteria, the Council shall decide either to make*  
37 *its own determination of the applicable substantive criteria and apply them or to*  
38 *evaluate the proposed facility against the statewide planning goals.*

39 *(4) The Council may find goal compliance for a proposed facility that does not*  
40 *otherwise comply with one or more statewide planning goals by taking an*

1 *exception to the applicable goal. Notwithstanding the requirements of ORS*  
2 *197.732, the statewide planning goal pertaining to the exception process or any*  
3 *rules of the Land Conservation and Development Commission pertaining to the*  
4 *exception process, the Council may take an exception to a goal if the Council*  
5 *finds:*

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

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

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

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

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

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

21 \*\*\*

22 Findings of Fact

23 The proposed Stateline 2 facilities would lie entirely on privately-owned land zoned  
24 for Exclusive Farm Use (EFU) within the land use jurisdiction of Umatilla County. The  
25 Council applies the Umatilla County land use ordinances in effect on January 22, 2002, the  
26 date the amendment request was submitted. The land use ordinances in effect then were the  
27 same land use ordinances that the Council applied in making land use findings in the Final  
28 Order on the site certificate application.<sup>15</sup>

29 Under OAR 345-022-0030(2)(b)(A), quoted above, the facility must also comply with  
30 Land Conservation and Development Commission (LCDC) administrative rules and goals and  
31 any land use statutes directly applicable to the facility under ORS 197.646(3). The statute  
32 makes a new or amended goal, rule or statute directly applicable to the local government's  
33 land use decisions if the local government has not yet amended its comprehensive plan and  
34 land use regulations to implement the new provision.

35 The Umatilla County Board of Commissioners found the proposed Stateline 2 to be  
36 "consistent with all applicable county land use standards, including those found in the  
37 Comprehensive Plan and the Development Ordinance."<sup>16</sup> This conclusion was contingent on

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<sup>15</sup> The Council identified the "applicable substantive criteria" in the Final Order on the site certificate application, beginning on page 20.

<sup>16</sup> Letter from the Commissioners, February 20, 2002.

1 incorporation of the County’s conditional use permit criteria and other recommended  
2 conditions in the final approval of the site certificate amendment. The Commissioners’  
3 finding was based on the Umatilla County Planning Department’s Staff Findings and  
4 Conclusions, dated February 20, 2002 (“Findings”).

5 Based on the analysis below, the Council finds that Stateline 2 would comply with the  
6 applicable substantive criteria of Umatilla County and with all directly applicable provisions  
7 of the LCDC administrative rules.

8 Umatilla County Development Code

9 UCDC Section 152.060 – Conditional Uses Permitted

10 In its Findings, the County identified the proposed Stateline 2 as a “commercial utility  
11 facility.” Under UCDC § 152.060(F), “commercial utility facilities for the purpose of  
12 generating power for public use by sale” are a conditional use in Umatilla County’s Exclusive  
13 Farm Use (EFU) zone. UCDC § 152.060 makes conditional uses subject to “applicable  
14 supplementary regulations in §§ 152.010 through 152.016 and §§ 152.545 through 152.562,  
15 and §§ 152.610 through 152.616.”<sup>17</sup> Further, the ordinance requires a zoning permit, pursuant  
16 to § 152.025, following the approval of a conditional use permit.<sup>18</sup>

17 UCDC § 152.611 gives the County the authority to impose conditions to “protect the  
18 best interests of the surrounding area or the county as a whole.” Umatilla County has  
19 recommended conditions for the proposed Stateline 2, and the substance of those  
20 recommendations is incorporated in the conditions that are a part of this order.

21 UCDC Section 152.061 – Limitations on Conditional Uses

22 UCDC § 152.061 imposes the following limiting criteria, “if determined appropriate,”  
23 on conditional uses in an EFU zone. It requires that the proposed use:

24 *(A) Is compatible with farm uses described in O.R.S. 215.203(2) and the intent and*  
25 *purpose set forth in O.R.S. 215.243, and will not significantly affect other existing*  
26 *resource uses that may be on the remainder of the parcel or on adjacent lands;*

27 This section addresses compatibility with “farm use,” which is defined in ORS  
28 215.203(2) as “the current employment of land for the primary purpose of obtaining a profit  
29 in money by raising, harvesting and selling crops or the feeding, breeding, management and  
30 sale of, or the produce of, livestock, poultry, fur-bearing animals or honeybees or for dairying  
31 and the sale of dairy products or any other agricultural or horticultural use or animal  
32 husbandry or any combination thereof.” This section also addresses compatibility of the  
33 proposed use with the “intent and purpose set forth in ORS 215.243.” The referenced statute  
34 sets forth Oregon’s agricultural land use policy, which states, in part: “The preservation of a  
35 maximum amount of the limited supply of agricultural land is necessary to the conservation of  
36 the state’s economic resources and the preservation of such land in large blocks is necessary  
37 in maintaining the agricultural economy of the state....”

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<sup>17</sup> See discussion on page 28 regarding UCDC §§ 152.010 through 152.016 and §§ 152.545 through 152.562. Section 152.610 is a definition of “conditional uses.” Sections 152.611 through 152.614 address procedural matters rather than substantive land use criteria. See page 24 for discussion of § 152.615. See page 26 for discussion of § 152.616.

<sup>18</sup> See page 29 for a discussion of § 152.025.

1 In its Findings, the Umatilla County Planning Department found that Stateline 2 is  
2 “consistent with the purposes of the County’s Exclusive Farm Use (EFU) zone which allows  
3 for development of a commercial utility facility as a conditional use in the EFU zone.”

4 The Stateline 2 turbine pads, met towers, access roads and underground collector  
5 cables would be located on a single privately-owned parcel of land. The facilities would  
6 occupy approximately 30 acres of the total parcel area of 2,564 acres. Of the 30 acres that  
7 Stateline 2 would occupy, all but about 2 acres is non-irrigated cropland recently used for  
8 growing wheat.

9 The turbines would be spaced approximately 250 feet apart. The tower pads would  
10 have a surface area of approximately 40 feet by 40 feet. Access roads would run along each  
11 turbine string and connect the strings. Existing roads would be used to the extent possible.  
12 New access road construction and improvements to existing farm roads would be coordinated  
13 with the landowner to minimize any crop impacts. The electrical and communications cables  
14 would be located along the strings, typically within 10 feet of the road centerline, and would  
15 be buried at a depth of at least 3 feet. See Conditions (37), (44) and (62).

16 The landowner would be able to conduct farm operations around the turbine strings.  
17 The spacing of the towers, height of the turbine blades and depth of the underground cables  
18 are such that Stateline 2 would not interfere with the current use of the land for the primary  
19 purpose of raising crops. The landowner concurs that the construction and operation of the  
20 expansion would not have any significant impact on farming activities.<sup>19</sup> Operation of the  
21 facility would have no effect on resource use of the remainder of the affected parcel or on  
22 adjacent lands. The certificate holder states that the lease with the landowner requires FPL to  
23 make reasonable efforts not to disturb farming and ranching activities on the facility site.<sup>20</sup>  
24 See Condition (40). The certificate holder further states that the lease protects the landowner  
25 from any increases in property taxes associated with the construction or operation of the  
26 facility.<sup>21</sup>

27 Construction activities would be compatible with farm use and would not affect  
28 resource use of the remainder of the parcel or adjacent lands (Condition (40)). In addition to  
29 the area permanently occupied by the expansion facilities, approximately 103 acres would be  
30 temporarily disturbed during construction. The temporarily disturbed areas would be restored  
31 after construction of the Stateline 2 facilities (Conditions (20), (68) and (82)). Trenches would  
32 be backfilled within two weeks after trenching and the trenched areas re-vegetated. Topsoil  
33 removed during trenching would be separated and returned as topsoil (Condition (62)). Water  
34 would be used for dust suppression and roads and turbine pads would be covered with gravel  
35 immediately upon exposure, thereby limiting wind or water erosion (Condition (61)). Any  
36 waste concrete left at the facility site would be buried at a minimum depth of three feet below  
37 the ground surface (Condition (72)).

38 When Stateline 2 is retired, structures would be removed to three feet below ground  
39 surface and the area would be reseeded. See discussion of the Council’s retirement and  
40 financial assurance standard at page 15.

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<sup>19</sup> Letter, dated February 27, 2002, from Julie Rugg, Barnett-Rugg Inc., owner of the property on which the expansion facilities would be built.

<sup>20</sup> Request to Amend Site Certificate, page 14.

<sup>21</sup> Request to Amend Site Certificate, page 13.

1           *(B) Does not interfere seriously with accepted farming practices as defined in*  
2           *O.R.S. 215.203(2)(c) on adjacent lands devoted to farm uses, nor interfere with*  
3           *other resource operations and practices on adjacent lands, and will not force a*  
4           *significant change in or significantly increase the cost of accepted farm or forest*  
5           *practices on surrounding lands devoted to farm or forest use.*

6           In its Findings, the Umatilla County Planning Department concluded that the proposed  
7           Stateline 2 “does not interfere significantly with accepted farming practices as defined in ORS  
8           215.203(2)(c) on adjacent lands devoted to farm uses, nor interfere with other resources  
9           operations and practices on adjacent lands, and will not force a significant change in or  
10          significantly increase the cost of accepted farming practices on surrounding lands devoted to  
11          farm use.”

12          Under ORS 215.203(2)(c), "accepted farming practice" means a mode of operation  
13          that is common to farms of a similar nature, necessary for the operation of such farms to  
14          obtain a profit in money, and customarily utilized in conjunction with farm use. The Stateline  
15          2 site and adjacent lands are used for rangeland (cattle grazing) or non-irrigated cultivation of  
16          small grain (generally winter wheat) with summer fallow, or they are planted with native  
17          grasses under the Conservation Reserve Program. There are no prime agricultural soils within  
18          the facility site.

19          Stateline 2 would have little or no impact on customary farm operations or the cost of  
20          accepted farm practices on adjacent lands.<sup>22</sup> During construction, the project might cause  
21          temporary off-site impacts to farming due to an increase in construction-related traffic. Once  
22          operational, however, Stateline 2 would generate little traffic. The location of facility  
23          structures might require changes to cropping patterns in the immediate vicinity of the turbine  
24          strings, met towers and access roads, but operation of Stateline 2 would cause no off-site  
25          impacts on adjacent lands that would significantly interfere with or increase the cost of farm  
26          practices on surrounding lands.

27           *(C) Does not materially alter the stability of the overall land use pattern of the*  
28           *area. The county shall consider the cumulative impact of non-farm dwellings on*  
29           *other lots or parcels in the area similarly situated, and whether the creation of the*  
30           *parcel will lead to creation of other parcels to the detriment of agriculture in the*  
31           *area.*

32          In its Findings, the Umatilla County Planning Department found that Stateline 2  
33          would not materially alter the overall land use pattern of the area and that the area would  
34          remain in farm use. We considered the cumulative effect of the proposed expansion facilities  
35          along with the existing Stateline and Vansycle Ridge facilities.<sup>23</sup> As discussed above, the  
36          construction and operation of Stateline 2 are compatible with farming activities, which are the  
37          primary use of the land in the area of the proposed facility site. Stateline 2 would create no  
38          new lots, parcels or non-farm dwellings to the detriment of agriculture in the area. It would

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<sup>22</sup> As stated above, the lease with the landowner requires FPL to make reasonable efforts not to disturb farming and ranching activities on the facility site and protects the landowner from any increases in property taxes associated with the construction or operation of the facility.

<sup>23</sup> A letter from the affected landowner states that the Vansycle facility does not significantly hinder farm operations, Site Certificate Application, Exhibit K-4

1 not alter the parcel size or primary use of the property on which the facilities would be located  
2 or on other properties in the area.

3 Stateline 2 would permanently occupy 30 acres (or less than 2 percent) of a 2,564-acre  
4 parcel. Traffic-related impacts during construction would be temporary. The cumulative  
5 impact of Stateline 2 together with the existing wind energy facilities nearby is not likely to  
6 make it more difficult for existing types of farms in the area to continue operations. The  
7 cumulative effect of these facilities is not likely to diminish opportunities for expansion of  
8 farming activities, leasing farm property or acquiring water rights. Farming activities can and  
9 are likely to continue on the properties on which Stateline 1 and 2 are located and on the  
10 surrounding properties. Therefore, Stateline 2 would not be developed to the detriment of  
11 farm operations. The proposed Stateline 2, together with the existing wind facilities, is not  
12 expected to diminish the number of properties or acres in farm use to the extent or in a  
13 manner that would destabilize the pattern of land use in the area. The Council finds, therefore,  
14 that the cumulative effect of Stateline 2 together with the existing wind energy facilities in the  
15 area would cause no impacts to farm activities on adjacent lands that might materially alter  
16 the stability of the land use pattern.

17 *(D) A Covenant Not to Sue with regard to normal farming practices shall be*  
18 *recorded as a requirement for approval.*

19 A covenant not to sue is unnecessary because the lease agreement between FPL and  
20 the landowner adequately addresses the issues otherwise addressed by a covenant not to sue.  
21 FPL states that the terms of the lease agreement with the landowner “are identical to” the  
22 terms of the leases on the Stateline 1 properties.<sup>24</sup> In the Final Order on the original site  
23 certificate, the Council found those leases provided adequate protection for normal farming  
24 practices.

25 UCDC Section 152.615 – Additional Restrictions

26 UCDC § 152.615 gives the County the authority to impose conditions on a proposed  
27 use:

28 *In addition to the requirements and criteria listed in this subchapter, the Hearings*  
29 *Officer may impose the following conditions upon a finding that circumstances*  
30 *warrant such additional restrictions:*

31 *(A) Limiting the manner in which the use is conducted, including restricting hours*  
32 *of operation and restraints to minimize such environmental effects as noise,*  
33 *vibration, air pollution, glare or odor;*

34 The certificate holder expects construction activities to be audible only at the closest  
35 residence. The Department of Environmental Quality’s industrial noise limits do not apply to  
36 sound from construction sites (OAR 340-035-0035(5)(g)), but the certificate holder would  
37 limit the noisiest of those activities to daytime hours (Condition (78)). Operational noise  
38 levels would be within the applicable noise limits. See discussion of the Oregon Department  
39 of Environmental Quality’s noise standard at page 60. During construction, the certificate  
40 holder would implement dust control and suppression measures (Condition (61)).

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<sup>24</sup> See the Application for Site Certificate, Stateline Wind Project, Attachment K-8.

1 Construction activities would not cause vibration, glare or odor. Facility operations would not  
2 cause vibration, air pollution, glare or odor.

3 *(B) Establishing a special yard, other open space or lot area or dimension;*

4 This provision does not apply to the proposed expansion.

5 *(C) Limiting the height, size or location of a building or other structure;*

6 There are no specific height limitations in the EFU zones. Umatilla County has not  
7 expressed any concerns with the height, size or location of the turbines or other facilities.

8 *(D) Designating the size, number, location and nature of vehicle access points;*

9 There would be two vehicle access points for Stateline 2. These access points would  
10 connect access roads on private property to county roads. The certificate holder will contact  
11 the Umatilla County Department of Public Works for any required access permits (see  
12 Conditions (2) and (45)).

13 *(E) Increasing the required street dedication, roadway width or improvements*  
14 *within the street right-of-way;*

15 There would be no new public roads or construction in public rights-of-way.

16 *(F) Designating the size, location, screening, drainage, surfacing or other*  
17 *improvement of a parking or loading area;*

18 Stateline 2 would require no new parking or loading areas.

19 *(G) Limiting or otherwise designating the number, size, location, height and*  
20 *lighting of signs;*

21 Signs would be limited to those required for operation or safety or required by federal,  
22 state or local law. See Condition (37).

23 *(H) Limiting the location and intensity of outdoor lighting and requiring its*  
24 *shielding;*

25 Lighting would be limited to warning lights required by the Federal Aviation  
26 Administration. See Condition (37).

27 *(I) Requiring diking, screening, landscaping or other methods to protect adjacent*  
28 *or nearby property and designating standards for installation and maintenance;*

29 Diking, screening and other methods of protecting adjacent properties are unnecessary  
30 and infeasible. The turbines would be painted a neutral light gray color to blend into the  
31 surrounding landscape.

32 *(J) Designating the size, height, location and materials for a fence;*

33 Stateline 2 would require no fencing. It is located in a remote area on private property.  
34 The turbine controls and access ladders would be located inside the towers, which will be  
35 locked. The towers would be tubular as opposed to lattice construction. See Conditions (37)  
36 and (38).

1                    *(K) Protecting and preserving existing trees, vegetation, water resources, wildlife*  
2                    *habitat, or other significant natural resources;*

3                    Stateline 2 would not affect existing trees, rivers or other standing bodies of water.  
4                    Areas temporarily disturbed by construction activities would be re-vegetated to minimize  
5                    erosion. Roads and turbine pads would be graveled immediately following exposures to  
6                    minimize erosion. See Conditions (30), (61), (64), (65) and (68). The certificate holder would  
7                    take measures to avoid, minimize and mitigate impacts to wildlife and wildlife habitat. See  
8                    discussion of the Council’s fish and wildlife habitat standard at page 40. See discussion of  
9                    findings regarding wetlands at page 62.

10                   *(L) Parking area requirements as listed in §§ 152.560 through 152.562 of this*  
11                   *chapter.*

12                   Stateline 2 requires no new parking areas.

13                   UCDC Section 152.616 – Standards for Review of Conditional Uses

14                   UCDC § 152.616(T) contains specific criteria for utility facilities as conditional uses:

15                   *(T) Commercial utility facilities. ... These uses are allowed provided that:*

16                   *(1) Facility is designed to minimize conflicts with scenic values and adjacent*  
17                   *forest, farming and recreational uses as outlined in policies of the Comprehensive*  
18                   *Plan;*

19                   Considering the intervening topography, the spacing of the turbines, the neutral color  
20                   of the turbines and the absence of emissions causing other visual impacts, Stateline 2 would  
21                   not conflict with scenic values. See discussion of the Council’s scenic and aesthetic standard  
22                   at page 48. In its Findings, the Umatilla County Planning Department found that Stateline 2  
23                   “is designed and located to minimize conflicts with scenic values and adjacent farming uses  
24                   as outlined in policies of the Comprehensive Plan.”

25                   For the reasons discussed under UCDC § 152.061, Stateline 2 would not conflict with  
26                   adjacent farm uses. There are no adjacent forest uses.

27                   All of the adjacent land is privately owned. With the exception of temporary impacts  
28                   of noise and traffic associated with construction, Stateline 2 would not conflict with adjacent  
29                   recreational uses. See discussion of the Council’s recreation standard at page 50.

30                   *(2) Facility be of a size and design to help reduce noise or other detrimental*  
31                   *effects when located adjacent to farm, forest and grazing dwelling(s) or a*  
32                   *recreational residential zone;*

33                   Stateline 2 would not be located adjacent to any farm, forest or grazing dwellings or  
34                   adjacent to a recreational residential zone. The closest occupied dwelling is located  
35                   approximately 4,000 feet from the nearest Stateline 2 turbine.<sup>25</sup> All other dwellings in the  
36                   vicinity are more than a mile away from the nearest turbine.

37                   The anticipated noise impacts of Stateline 2 are addressed in the discussion of the  
38                   Oregon Department of Environmental Quality’s noise standard at page 60. Other detrimental  
39                   impacts include visual and traffic impacts. Some Stateline 2 turbines may be visible from the

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<sup>25</sup> Letter, dated March 5, 2002, from Peter Mostow, counsel for FPL Energy.

1 closest farm dwellings. However, the height of the wind turbines and the need for  
2 unobstructed access to the wind resource make visual impact unavoidable. The certificate  
3 holder will apply feasible measures to reduce the visual impact of the proposed facility  
4 (Condition (37)). See discussion of the Council’s scenic and aesthetic values standard at page  
5 48. See discussion of the Council’s public services standard at page 57 for an assessment of  
6 the effects of increased traffic.

7 *(3) Facility be fenced when located adjacent to dwelling(s) or a Mountain*  
8 *Recreational or Forest Residential Zone and landscaping, buffering and/or*  
9 *screening be provided;*

10 Stateline 2 would not be located adjacent to any dwellings or to a Mountain  
11 Recreational or Forest Residential Zone.

12 *(4) Facility does not constitute an unnecessary fire hazard and consideration be*  
13 *made of minimum fire safety measures if located in a forested area, which can*  
14 *include but are not limited to:*

15 *(a) The site be maintained free of litter and debris;*

16 *(b) Use of non-combustible or fire retardant treated materials for structures and*  
17 *fencing;*

18 *(c) Removal of all combustible materials within 30 feet of structures;*

19 In its Findings, the Umatilla County Planning Department found that Stateline 2  
20 would not constitute an unnecessary fire hazard. The proposed expansion is not located in a  
21 forested area. The towers and pads would be constructed of fire retardant materials and cables  
22 would be buried. The Stateline 2 turbines would have built-in fire prevention measures.  
23 Combustible materials would not be stored at the facility and only a small amount of  
24 combustible material would be used during construction and operation. The certificate holder  
25 would implement fire response and prevention measures related to staff training, equipment  
26 and coordination with local fire departments. The entire Stateline 2 area lies within the Helix  
27 Fire Protection District.<sup>26</sup> The Helix Rural Fire Protection District does not foresee any  
28 problems in providing adequate fire protection to the additional wind turbines.<sup>27</sup> See  
29 Conditions (31), (33), (34), (58), (68) and (96).

30 *(5) Major transmission towers, poles and similar gear shall consider locations*  
31 *within or adjacent to existing rights-of-way in order to take the least amount of*  
32 *timber land out of production and maintain the overall stability and land use*  
33 *patterns of the area, and construction methods consider minimum soil disturbance*  
34 *to maintain water quality;*

35 Stateline 2 would take no timberland out of production. It would maintain the overall  
36 stability and land use patterns in the area as discussed under UCDC § 152.061 above. The  
37 certificate holder would implement mitigation measures to minimize soil disturbance during  
38 construction. Construction would be subject to an NPDES 1200-C construction permit and  
39 regulated by the erosion control plan and best management practices required by that permit.

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<sup>26</sup> E-mail from Andy Linehan, consultant to FPL Energy, dated March 27, 2002.

<sup>27</sup> Letter from Helix Fire Chief, Request to Amend Site Certificate, Exhibit 6.

1 Trenches would be backfilled and the trenched areas re-vegetated. Topsoil removed during  
2 trenching would be separated and returned as topsoil. Areas used for staging, laydown,  
3 turnaround and needed for road construction would be scarified and re-vegetated. Roads and  
4 turbine pads would be covered with gravel immediately upon exposure, thereby limiting wind  
5 or water erosion. See Conditions (20), (44), (60), (61), (62) and (68).

6 *(6) Facility shall not alter accepted timber management operations on adjacent*  
7 *forest land;*

8 This criterion is not applicable because Stateline 2 is not adjacent to forestland or  
9 timber management operations.

10 *(7) Facility shall adequately protect fish and wildlife resources by meeting*  
11 *minimum Oregon State Department of Forestry regulations;*

12 This criterion is not applicable because Stateline 2 would affect no acreage governed  
13 by Oregon Department of Forestry regulations. Protection of fish and wildlife resources is  
14 addressed below in the discussion of the Council’s fish and wildlife habitat standard at page  
15 40 and threatened and endangered species standard at page 45.

16 *(8) Access roads or easements be improved to a standard and follow grades*  
17 *recommended by the Public Works Director;*

18 FPL proposes improvements to existing roads and construction of new roads for  
19 access to the turbine strings and individual turbines. Construction of road improvements and  
20 access roads would comply with county-approved standards. See Conditions (44) and (81).

21 *(9) Road construction be consistent with the intent and purposes set forth in the*  
22 *Oregon Forest Practices Act or the 208 Water Quality Program to minimize soil*  
23 *disturbance and help maintain water quality;*

24 The Oregon Forest Practices Act does not apply to Stateline 2. Road construction  
25 work would, however, be performed under an NPDES 1200-C construction permit and  
26 regulated by an erosion control plan and best management practices required by that permit.  
27 Further, roads and turbine pads would be covered with gravel immediately upon exposure,  
28 thereby limiting wind or water erosion. See Conditions (60) and (61).

29 *(10) Complies with other conditions deemed necessary by the Hearings Officer.*

30 In its Findings, the Umatilla County Planning Department recommended conditions  
31 for Stateline 2, and the substance of those recommendations is incorporated in the conditions  
32 that are a part of this order.

33 *UCDC Section 152.063 – Development Standards*

34 UCDC § 152.063 contains dimensional and development standards applicable in an  
35 EFU zone.<sup>28</sup> Subsections (A) through (C) of the ordinance establish setback requirements  
36 from streets, property lines, county roads, public roads, state highways and public or private  
37 access easements. Stateline 2 complies with these setback requirements, to the extent that they

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<sup>28</sup> The County did not include Section 152.063 in its statement of the applicable substantive criteria (see Final Order on the site certificate application at page 20). However, we include the section because it includes standards applicable in an EFU zone.

1 apply. Subsection (D) addresses the distance of a dwelling from aggregate mining operations  
2 and does not apply. Stream setback requirements in subsection (E) do not apply because  
3 Stateline 2 would not require sewage disposal installations or construction of structures,  
4 buildings or similar permanent fixtures along streams.

5 Subsection (F) requires compliance with supplementary regulations found in §§  
6 152.010 through 152.016 and §§ 152.545 through 152.562 and with the exception standards  
7 of §§ 152.570 through 152.577. The supplementary regulations found in §§ 152.010 through  
8 152.016 do not apply to the proposed facility because they address uses that are not part of  
9 Stateline 2. UCDC §§ 152.545 through 152.548 address sign regulations. Any signs erected at  
10 site will be signs required by law or for operation and safety (Condition (37)). With respect to  
11 the parking and loading requirements of UCDC § 152.560 through 152.562, the graveled  
12 turbine pads will provide sufficient parking along the turbine strings. No other parking or  
13 loading areas are needed. The exception standards of UCDC §§ 152.570 through 152.577 do  
14 not apply to Stateline 2 because they address uses that are not part of the proposed facility.

15 UCDC Section 152.025 – Zoning Permit

16 UCDC § 152.025 addresses the need for a zoning permit<sup>29</sup>:

17 *(A) Prior to the construction, reconstruction, addition to or change in use of a*  
18 *structure, or the change in use of a lot or the installation or replacement of a*  
19 *mobile home on a lot, a zoning permit shall be obtained from the County Planning*  
20 *Department. Within the flood hazard area, a zoning permit shall be required for*  
21 *all other developments including placement of fill, mining, paving, excavation or*  
22 *drilling. Structures of 120 square feet or less in area and structures described in*  
23 *§ 152.026 [farm uses] do not require a zoning permit except when located in a*  
24 *designated flood hazard area. A zoning permit shall be voided after one year*  
25 *unless construction has commenced. The Planning Commission or its authorized*  
26 *agent may extend the permit for an additional period not to exceed one year upon*  
27 *written request.*

28 *(B) Zoning permits shall be issued by the Director according to the provisions of*  
29 *this chapter. The Planning Director shall not issue a zoning permit for the*  
30 *improvement or use of land that has been previously divided or otherwise*  
31 *developed in violation of this chapter, regardless of whether the applicant created*  
32 *the violation, unless the violation can be rectified as part of the development.*

33 The certificate holder will need a zoning permit before construction of Stateline 2  
34 because the proposed facilities exceed 120 square feet in size. The land on which Stateline 2  
35 would be located has not been developed or divided in violation of the Umatilla County  
36 Development Code.

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<sup>29</sup> The County did not include Section 152.025 in its statement of the applicable substantive criteria (see Final Order on the site certificate application at page 20). However, we include the section because of a cross-reference in § 152.060, one of the identified applicable substantive criteria.

1 Umatilla County Comprehensive Plan

2 The Umatilla County Comprehensive Plan contains findings and policy statements  
3 that address overall planning goals adopted by the county. Although the policy statements do  
4 not contain specific substantive criteria, we discuss the relevant policies below.

5 Energy Conservation Element – Policy 1

6 *Encourage rehabilitation/weatherization of older structures and the utilization of*  
7 *locally-feasible renewable energy resources through use of tax and permit*  
8 *incentives.*

9 Stateline 2 would be a “locally-feasible renewable energy resource” eligible under this  
10 policy for encouragement through tax and permit incentives. However, the County has not  
11 proposed any specific tax or permit incentives for Stateline 2.

12 Agricultural Plan Element – Policy 8

13 *The county shall require appropriate procedures/standards/policies be met in the*  
14 *Comprehensive Plan and Development Ordinance when reviewing nonfarm uses*  
15 *for compatibility with agriculture.*

16 The Umatilla County Development Code provisions discussed above establish  
17 standards to be met when reviewing nonfarm uses for compatibility with agriculture. For the  
18 reasons discussed under UCDC § 152.061 above, Stateline 2 would be compatible with  
19 agriculture.

20 Open Space, Scenic and Historic Areas, and Natural Resources – Policy 20

21 *(a) Developments of potentially high visual impacts shall address and mitigate*  
22 *adverse visual impacts in their permit application, as outlined in the Development*  
23 *Ordinance standards.*

24 The cumulative effect of Stateline 2 together with Stateline 1 and the Vansycle Ridge  
25 facility will have a visual impact. The height and number of wind turbines could be  
26 considered a “potentially high visual impact.” The certificate holder has addressed visual  
27 impact and mitigation in the amendment request. The certificate holder will apply feasible  
28 measures to reduce the visual impact of the proposed facility (Condition (37)).

29 *(b) It is the position of the County that the Comprehensive Plan designations and*  
30 *zoning already limit scenic and aesthetic conflicts by limiting land uses or by*  
31 *mitigating conflicts through ordinance criteria. However, to address any specific,*  
32 *potential conflicts, the County shall insure special consideration of the following*  
33 *when reviewing a proposed change of land use:*

34 *1. Maintaining natural vegetation whenever possible.*

35 The certificate holder would minimize the areas of disturbance during construction of  
36 Stateline 2 to the extent possible. Temporarily disturbed areas would be re-vegetated upon  
37 completion of construction. The certificate holder would comply with measures to prevent  
38 soil erosion and noxious weed species from taking hold in disturbed areas. See Conditions  
39 (20), (44), (60), (61), (62), (68) and (82).

1                   2. *Landscaping area where vegetation is removed and erosion might result.*

2                   Implementation of the erosion control plan and best management practices required by  
3 the NPDES 1200-C permit would minimize erosion associated with construction of turbines  
4 and roads. Temporarily disturbed areas would be re-vegetated and the turbine pads and roads  
5 would be graveled promptly. The certificate holder would comply with measures to reduce  
6 soil erosion and to prevent noxious weed species from taking hold in disturbed areas. See  
7 Conditions (60), (61) and (68).

8                   3. *Screening unsightly land uses, preferably with natural vegetation or*  
9 *landscaping.*

10                  Stateline 2 would not create “unsightly land uses.” The turbine towers would be  
11 painted gray to reduce visual contrast with the surrounding landscape. Other screening  
12 measures would not be feasible. See Condition (37).

13                  4. *Limiting right-of-way widths and numbers of roads intersecting scenic*  
14 *roadways.*

15                  There would be minor modification of existing farm roads and limited construction of  
16 new access roads. Facility rights-of-way and access roads would not intersect with any scenic  
17 roadways. See Condition (44).

18                  5. *Limiting signs in size and design so as not to distract from the*  
19 *attractiveness of the area.*

20                  The use of signs would be limited as described in Condition (37). Signs would not  
21 distract from the attractiveness of the area.

22                  6. *Siting developments to be compatible with surrounding area development*  
23 *and recognizing natural characteristics of the location.*

24                  As has been discussed above, Stateline 2 would be compatible with development in  
25 the surrounding area (farm use). It would retain the open landscape and, to the extent possible,  
26 recognize the natural characteristics of the location.

27                  7. *Limiting excavation and filling only to those areas where alteration of the*  
28 *natural terrain is necessary and revegetating such areas as soon as*  
29 *possible.*

30                  No major excavation or fill would be needed. Excavation would be necessary for  
31 construction of turbine pads and construction and improvement of roads. Turbine pads would  
32 be located on gentle, rather than steep slopes, thereby reducing the amount of excavation and  
33 consequent erosion. Existing roads would be used to the extent possible. New roads would be  
34 contoured to the existing terrain to the extent possible. The certificate holder would limit areas  
35 of soil disturbance within specified corridors along both new and improved roads, near the  
36 turbine pads and trenches and in designated staging and turnaround areas. Temporarily  
37 disturbed area would be re-vegetated as soon as possible. See Conditions (44), (68) and (82).

1                   8. *Protection of vistas and other views which are important to be recognized*  
2                   *because of their limited number and importance to the visual attractiveness*  
3                   *of the area.*

4                   Stateline 2 would not significantly affect any scenic vista or the visual attractiveness  
5 of the area. See discussion of the Council’s scenic and aesthetic values standard at page 48.

6                   9. *Concentrating commercial developments in areas where adequate parking*  
7                   *and public services are available and discouraging strip commercial*  
8                   *development.*

9                   Stateline 2 would not be open to the public and would not encourage strip commercial  
10 development. Existing parking is adequate and most public services unnecessary. Wind  
11 energy generation requires location in open spaces accessible to the wind resource and away  
12 from other commercial structures.

13                   *Open Space, Scenic and Historic Areas, and Natural Resources – Policy 26*

14                   *The County will cooperate with the [Umatilla] Tribe, Oregon State Historic*  
15                   *Preservation Office, and others involved in identifying and protecting Indian*  
16                   *cultural areas and archeological sites.*

17                   FPL assessed tribal cultural areas and archeological sites. See discussion of the  
18 Council’s historic, cultural and archaeological resources standard at page 56. A qualified  
19 cultural resource expert would be on the site during construction of Stateline 2. The certificate  
20 holder will notify the Office of Energy, the Oregon State Historic Preservation Officer and the  
21 Confederated Tribes of the Umatilla Indian Reservation (CTUIR) if previously unidentified  
22 cultural resources are discovered during construction. See Conditions (75) and (76).

23                   *Directly Applicable State Provisions*

24                   Under the land use standard, OAR 345-022-0030, the Council must determine not  
25 only whether a proposed facility complies with the applicable substantive criteria identified  
26 by the local government but also whether it complies with “any Land Conservation and  
27 Development Commission administrative rules and goals and any land use statutes directly  
28 applicable to the facility under ORS 197.646(3).” Under ORS 197.646(3), if a local  
29 government has not amended its comprehensive plan or land use regulations to implement a  
30 new or amended statewide planning goal, land use statute or LCDC rule, the new or amended  
31 state provision is directly applicable to local government land use decisions.

32                   Umatilla County has not amended its land use regulations to implement amended  
33 LCDC rules related to Goal 3 and ORS 215.283. Specifically, the directly applicable LCDC  
34 rules are OAR 660-033-0120, 660-033-0130 and 660-012-0065. The Council must determine  
35 whether Stateline 2 complies with these provisions.

36                   ORS 215.283 identifies the nonfarm uses permitted on EFU-zoned land. The proposed  
37 facility must fit within the scope of a use described in ORS 215.283(1), (2) or (3). OAR 660-  
38 033-0120 references Table 1, which describes the specific uses permitted on agricultural land.  
39 OAR 660-033-0130 identifies the minimum standards applicable to those uses. OAR 660-  
40 012-0065 describes transportation improvements on rural lands.

41                   The Stateline 2 facilities include the energy facility (wind turbines) and its related or  
42 supporting facilities (met towers, access roads and underground collector cables). The energy

1 facility fits within the scope of ORS 215.283(2)(g), which allows "commercial utility facilities  
2 for the purpose of generating power for public use by sale" to be located on EFU-zoned land  
3 subject to ORS 215.296 (discussed below at page 36) and any applicable local standards and  
4 conditions.

5 To determine whether a related or supporting facility is allowed on EFU-zoned land,  
6 the Council must decide if the specific related or supporting facility is more properly  
7 characterized as part of the same use as the energy facility or as a separate use. If the related  
8 or supporting facilities are characterized as a part of the energy facility, they also would fall  
9 within the scope of ORS 215.283(2)(g). However, if they are characterized as separate uses,  
10 they would be evaluated under a different subsection of ORS 215.283 applicable to that use.<sup>30</sup>  
11 Thus, various components of a proposed facility may be subject to different standards  
12 depending upon the subsection of ORS 215.283 under which the use is permitted.

13 In *Dierking v. Clackamas County*, 38 Or LUBA 106, *affirmed* 170 Or App 683, 688  
14 (2000), the Court of Appeals addressed the question whether a component facility should be  
15 characterized as a part of the principal use or characterized as a separate use. The Court held  
16 that a component should be considered part of the principal use if it (1) was essential to the  
17 functioning of the use and (2) had no independent utility. We have applied this test to the  
18 related or supporting facilities that are part of Stateline 2.

#### 19 Underground Collector Cables

20 The system of underground electrical collector cables is necessary for the operation of  
21 the facility and has no independent utility apart from the operation of the turbines for the  
22 purpose of generating power for public use by sale. Accordingly, it is reasonable to  
23 characterize the collector cables as part of the energy facility for the purpose of compliance  
24 with ORS 215.283.

#### 25 Met Towers

26 The two Stateline 2 met towers would occupy a total of approximately 20 square feet  
27 and would be located within the immediate vicinity of the turbine strings. Although met  
28 towers are not directly related to the generation of power, they are necessary to the operation  
29 of the energy facility and have no independent utility. The met towers would be used  
30 primarily to verify turbine performance warranties by providing a measure of wind speed  
31 unaffected by turbulence caused by the turbines themselves. They are a standard element of  
32 all wind projects.<sup>31</sup> The data from the met towers would be accessible only by the certificate  
33 holder. There is no evidence that information generated in the immediate vicinity of the

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<sup>30</sup> In the Final Order on the site certificate application, the Council found that the entire Stateline 1 facility (including the related or supporting facilities) was a "power generation facility" and allowable on agricultural lands under "ORS 215.283(2)(f)" subject to the standards in OAR 660-033-0130(5) and (22). *See* Final Order, page 33. Intervening legislation renumbered former ORS 215.283(2)(f) to what is now ORS 215.283(2)(g). The Council noted that the access roads could be evaluated separately under ORS 215.283(3), subject to the standards in OAR 660-033-0130(13). However, the Council assumed that a Goal 3 exception would be required under that rule. Reasoning that a Goal 3 exception would be required in either case, the Council did not decide whether the access roads should be evaluated as separate uses under under ORS 215.283(3). *See* Final Order, page 34, footnote 12. As discussed below, the roads are allowable under OAR 660-033-0130(13) without a Goal 3 exception.

<sup>31</sup> E-mail from Andy Linehan, date April 5, 2002.

1 Stateline 2 wind turbines would be of use to anyone other than the certificate holder. The met  
2 towers would be removed when the facility is retired. Thus, it is reasonable to characterize the  
3 met towers as being part of the principal use (the energy facility).<sup>32</sup>

#### 4 Access Roads

5 The proposed new access roads and improvements to existing farm roads are not an  
6 accessory use under the *Dierking* test. Although access roads may be necessary to the  
7 operation of the energy facility, they have independent utility. They can be used by the  
8 affected landowner for farm-related operations and uses. At the option of the landowner, the  
9 access roads may remain in use after the energy facility is retired. Because of their  
10 independent utility, the roads are reasonably characterized as a separate use. Based on this  
11 analysis, we evaluated the access roads as a separate use under ORS 215.283.

12 Specifically, under ORS 215.283(3), roads and “transportation facilities” are allowed  
13 subject to the following conditions:

14 (3) *Roads, highways and other transportation facilities and improvements not*  
15 *allowed under subsections (1) and (2) of this section may be established, subject to*  
16 *the approval of the governing body or its designee, in areas zoned for exclusive*  
17 *farm use subject to:*

18 (a) *Adoption of an exception to the goal related to agricultural lands and to any*  
19 *other applicable goal with which the facility or improvement does not comply; or*

20 (b) *ORS 215.296 for those uses identified by rule of the Land Conservation and*  
21 *Development Commission as provided in section 3, chapter 529, Oregon Laws*  
22 *1993.*

23 This provision allows public or private roads on EFU lands, subject to the provisions  
24 of (a) or (b), as applicable. The Stateline 2 access roads appear to be uses identified by LCDC  
25 rule and therefore specifically allowed under ORS 215.283(3)(b).

#### 26 LCDC Rules Applicable to the Principal Use

27 As described above, the principal use is the energy facility, including those  
28 components that may be considered part of the energy facility under the *Dierking* test. The  
29 applicable subsection of ORS 215.283 is (2)(g), which allows “commercial utility facilities  
30 for the purpose of generating power for public use by sale” on agricultural land. OAR 660-  
31 033-0120 (Table 1) lists that use as an “R” (“use may be approved, after required review”)  
32 and references the minimum standards found in OAR 660-033-0130(5) and (22).<sup>33</sup>

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<sup>32</sup> The met towers could be evaluated as a separate use under ORS 215.283(1)(d) (“utility facility necessary for public service”). In that case, the meteorological towers would be subject to the requirements of ORS 215.275, which identifies factors to establish that a utility facility, or component thereof, is necessary for public service. The met towers comply with ORS 215.275 based on their locational dependence. *See* ORS 215.275(2)(b). To serve their intended purpose, met towers must be located in the immediate vicinity of the turbine strings. There are no urban or nonresource lands on which the met towers could be located and still serve their purpose. *See* ORS 215.275(2)(c). Thus, the meteorological towers could be allowed as a separate use under ORS 215.275(1)(d).

<sup>33</sup> See the discussion of Table 1 in the Final Order on the site certificate application at page 33.

1 OAR 660-033-0130(5) provides as follows:

2 (5) Approval requires review by the governing body or its designate under ORS  
3 215.296. Uses may be approved only where such uses:

4 (a) Will not force a significant change in accepted farm or forest practices on  
5 surrounding lands devoted to farm or forest use; and

6 (b) Will not significantly increase the cost of accepted farm or forest practices on  
7 lands devoted to farm or forest use.

8 The criteria in this rule are similar to the criteria in UCDC § 152.061(B) that are  
9 discussed at page 23. For the reasons explained in that discussion, OAR 660-033-0130(5) is  
10 satisfied.

11 OAR 660-033-0130(22) provides as follows:

12 (22) A power generation facility shall not preclude more than 20 acres from use as  
13 a commercial agricultural enterprise unless an exception is taken pursuant to  
14 OAR Chapter 660, Division 4.<sup>34</sup>

15 An exception is not required under OAR 330-033-0130(22) unless the "power  
16 generation facility" precludes more than 20 acres from use as a commercial agricultural  
17 enterprise.<sup>35</sup> The Stateline 2 energy facility together with the met towers and underground  
18 collector cables would permanently occupy about two acres. Such facilities for Stateline 1 and  
19 Stateline 2 combined would permanently occupy about six acres.<sup>36</sup> Under this analysis, less  
20 than 20 acres would be precluded from use as a commercial agricultural enterprise. Therefore,  
21 no Goal 3 exception is required. Under this analysis, the access roads are not part of the  
22 principal use (the "power generation facility") but are evaluated as a separate use.  
23 Accordingly, the area occupied by access roads is not included as a part of the area that the  
24 "power generation facility" would preclude from agricultural use.

25 LCDC Rule Applicable to Roads and Transportation Facilities

26 As discussed above, ORS 215.283(3) applies to roads and transportation facilities.  
27 OAR 660-033-0120 (Table 1) lists "roads, highways and other transportation facilities and  
28 improvements" as an "R" and references the minimum standards found in OAR 660-033-  
29 0130(13).

30 OAR 660-033-0130(13) provides as follows:

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<sup>34</sup> The 20-acre threshold in subsection (22) applies to non-high-value farmland. As discussed under the Council's soil protection standard at page 36, the soils in the Stateline 2 area are not prime agricultural soils. A 12-acre threshold would apply under OAR 660-033-0130(17) if the affected area were high value farmland.

<sup>35</sup> It is unclear that the area in which farm use would be precluded qualifies as a "commercial agricultural enterprise" as that term is used in OAR 660-033-0130(5). For purposes of completeness, we assume without deciding that the area would qualify as a commercial agricultural enterprise.

<sup>36</sup> The entire Stateline 1 and 2 area is on agricultural land (EFU). According to Table B-1 of the site certificate application, the Stateline 1 turbines and met towers occupy four acres of land. According to Table 1 of the Request to Amend Site Certificate, the Stateline 2 turbines and met towers would occupy two acres. Thus, the total acreage occupied by the Stateline 1 and 2 energy facilities is six acres. The underground collector cables would not preclude use of the overlying land for agricultural purposes, and so the area of the collector cables is not included in this analysis.

1           (13) Such uses may be established, subject to the adoption of the governing body  
2           or its designate of an exception to Goal 3, Agricultural Lands, and to any other  
3           applicable goal with which the facility and improvement does not comply. In  
4           addition, transportation uses and improvements may be authorized under  
5           conditions and standards as set forth in OAR 660-012-0035 and 660-012-0065.

6           The Stateline 2 access roads are “transportation improvements” allowed under OAR  
7           660-012-0065.<sup>37</sup> Under OAR 660-012-0065(3)(a), “accessory transportation improvements  
8           for a use that is allowed or conditionally allowed by...ORS 215.283” are consistent with  
9           Goal 3. The proposed access roads are, in this context, “accessory transportation  
10          improvements” for the energy facility, which is a use conditionally allowed by ORS  
11          215.283(2)(g) as described above. Therefore, the construction and improvement of the  
12          Stateline 2 access roads do not require an exception to Goal 3.

13          Under ORS 215.283(3)(b), quoted above at page 34, roads and transportation facilities  
14          are subject to ORS 215.296. ORS 215.296(1) provides for approval of the use only if the use  
15          will not:

16                 (a) Force a significant change in accepted farm or forest practices on surrounding  
17                 lands devoted to farm or forest use; or

18                 (b) Significantly increase the cost of accepted farm or forest practices on  
19                 surrounding lands devoted to farm or forest use.

20          These requirements are the same as those included in OAR 660-033-0130(5). They are  
21          similar to the criteria in UCDC § 152.061(B) that are discussed at page 23. For the reasons  
22          explained in that discussion, the proposed access roads for Stateline 2 would satisfy ORS  
23          215.296.

#### 24          Conclusions of Law

25          The Council concludes that the proposed Stateline 2 facilities comply with applicable  
26          substantive criteria and with the Land Conservation and Development Commission  
27          administrative rules and goals and land use statutes directly applicable to the facility under  
28          ORS 197.646(3). This conclusion is subject to the conditions stated in this order. Conditions  
29          (2), (20), (31), (33), (34), (37), (38), (40), (44), (58), (60), (61), (62), (64), (65), (75), (76),  
30          (81), (82), (96) and (103) relate to the Council’s land use standard as it applies to Stateline 2.

31                 (b) Soil Protection

#### 32                 **OAR 345-022-0022**

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

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<sup>37</sup> OAR 660-012-0035 addresses “Transportation System Plans” and is not relevant to the proposed Stateline 2 access roads.

1           Findings of Fact

2           The Council considers adverse impacts to soils because of potential related impacts to  
3 agricultural and forest land uses, native vegetation, fish and wildlife habitat and water quality.  
4 The potential adverse impacts from construction and operation of Stateline 2 are erosion and  
5 compaction.

6           Of the 133 acres that would be temporarily or permanently disturbed by Stateline 2,  
7 approximately 120 acres are in agricultural use.<sup>38</sup> Soil uses that rely on productive soils in the  
8 area include growing small grain crops, such as winter wheat, and summer fallow or  
9 rangeland for cattle grazing. The soil types in the area of the proposed expansion are soils  
10 within the Ritzville General Soil Unit. This soil type has a moderate to high risk of erosion  
11 from wind and water. According to the Natural Resources Conservation Service, non-irrigated  
12 Ritzville soils are not prime agricultural soils.

13           A wind energy facility has no cooling tower or effluent, and therefore the deposition  
14 of salts or chemicals, land application of effluent and chemical spills are not potential impacts  
15 from construction or operation. During operation, small amounts of chemicals such as  
16 lubricating oils and cleaners for the turbines and pesticides for weed control would be used at  
17 the facility. All hazardous materials would be stored and used in compliance with applicable  
18 local, state and federal law. See Condition (32).

19           During construction, all areas where vegetation is removed would be exposed to wind  
20 and water erosion. Excavations for underground cables would temporarily expose the  
21 excavated spoils until the cables are laid, trenches are backfilled and the area has been re-  
22 vegetated. Roadway widening and turbine pad construction would require removal of surface  
23 vegetation before construction, exposing the soil to erosion. After construction, some areas of  
24 cut slope could remain exposed to increased erosion. The operation of heavy equipment and  
25 truck traffic for hauling concrete, aggregate, water and other materials and supplies could  
26 cause localized soil compaction. Compaction of soils could result in temporary loss of  
27 agricultural productivity where the vehicles operate off the access roads.

28           During operation, precipitation could result in surface water collecting on, and  
29 draining from, gravel surfaces or structures. Soils could be exposed to increased erosion  
30 during repair of underground cables.

31           The certificate holder would comply with measures to reduce or prevent erosion and  
32 other soil impacts during construction and operation. See Conditions (60), (61), (62) (68) and  
33 (92).

34           Conclusions of Law

35           The Council concludes that the design, construction and operation of the proposed  
36 Stateline 2 facilities, taking into account mitigation and subject to the conditions stated in this  
37 order, are not likely to result in a significant adverse impact to soils. Conditions (60), (61),  
38 (62), (68) and (92) relate to the Council's soil protection standard as it applies to Stateline 2.

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<sup>38</sup> Request to Amend Site Certificate, Tables 3 and 4, page 31.

1 (c) Protected Areas

2 **OAR 345-022-0040**

3 *(1) Except as provided in sections (2) and (3), the Council shall not issue a site*  
4 *certificate for a proposed facility located in the areas listed below. To issue a site*  
5 *certificate for a proposed facility located outside the areas listed below, the*  
6 *Council must find that, taking into account mitigation, the design, construction*  
7 *and operation of the facility are not likely to result in significant adverse impact to*  
8 *the areas listed below. Cross-references in this rule to federal or state statutes or*  
9 *regulations are to the version of the statutes or regulations in effect as of March*  
10 *29, 2002:*

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

13 *(b) National monuments, including but not limited to John Day Fossil Bed*  
14 *National Monument, Newberry National Volcanic Monument and Oregon Caves*  
15 *National Monument;*

16 *(c) Wilderness areas established pursuant to The Wilderness Act, 16 U.S.C.*  
17 *1131 et seq. and areas recommended for designation as wilderness areas pursuant*  
18 *to 43 U.S.C. 1782;*

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

24 *(e) National coordination areas, including but not limited to Government*  
25 *Island, Ochoco and Summer Lake;*

26 *(f) National and state fish hatcheries, including but not limited to Eagle Creek*  
27 *and Warm Springs;*

28 *(g) National recreation and scenic areas, including but not limited to Oregon*  
29 *Dunes National Recreation Area, Hell's Canyon National Recreation Area, and*  
30 *the Oregon Cascades Recreation Area, and Columbia River Gorge National*  
31 *Scenic Area;*

32 *(h) State parks and waysides as listed by the Oregon Department of Parks and*  
33 *Recreation and the Willamette River Greenway;*

34 *(i) State natural heritage areas listed in the Oregon Register of Natural*  
35 *Heritage Areas pursuant to ORS 273.581;*

36 *(j) State estuarine sanctuaries, including but not limited to South Slough*  
37 *Estuarine Sanctuary, OAR Chapter 142;*

38 *(k) Scenic waterways designated pursuant to ORS 390.826, wild or scenic*  
39 *rivers designated pursuant to 16 U.S.C. 1271 et seq., and those waterways and*  
40 *rivers listed as potentials for designation;*

1                   (L) *Experimental areas established by the Rangeland Resources Program,*  
2                   *College of Agriculture, Oregon State University: the Prineville site, the Burns*  
3                   *(Squaw Butte) site, the Starkey site and the Union site;*

4                   (m) *Agricultural experimental stations established by the College of*  
5                   *Agriculture, Oregon State University, including but not limited to:*  
6                   *Coastal Oregon Marine Experiment Station, Astoria*  
7                   *Mid-Columbia Agriculture Research and Extension Center, Hood River*  
8                   *Agriculture Research and Extension Center, Hermiston*  
9                   *Columbia Basin Agriculture Research Center, Pendleton*  
10                   *Columbia Basin Agriculture Research Center, Moro*  
11                   *North Willamette Research and Extension Center, Aurora*  
12                   *East Oregon Agriculture Research Center, Union*  
13                   *Malheur Experiment Station, Ontario*  
14                   *Eastern Oregon Agriculture Research Center, Burns*  
15                   *Eastern Oregon Agriculture Research Center, Squaw Butte*  
16                   *Central Oregon Experiment Station, Madras*  
17                   *Central Oregon Experiment Station, Powell Butte*  
18                   *Central Oregon Experiment Station, Redmond*  
19                   *Central Station, Corvallis*  
20                   *Coastal Oregon Marine Experiment Station, Newport*  
21                   *Southern Oregon Experiment Station, Medford*  
22                   *Klamath Experiment Station, Klamath Falls;*

23                   (n) *Research forests established by the College of Forestry, Oregon State*  
24                   *University, including but not limited to McDonald Forest, Paul M. Dunn Forest,*  
25                   *the Blodgett Tract in Columbia County, the Spaulding Tract in the Mary's Peak*  
26                   *area and the Marchel Tract;*

27                   (o) *Bureau of Land Management areas of critical environmental concern,*  
28                   *outstanding natural areas and research natural areas;*

29                   (p) *State wildlife areas and management areas identified in OAR chapter 635,*  
30                   *Division 8.*

31                   \*\*\*

32                   Findings of Fact

33                   The proposed Stateline 2 would not be located within any protected area designated  
34                   under OAR 345-022-0040(1). The Stateline 2 area lies to the south of Stateline 1 turbine  
35                   strings HG-K, HG-L and HG-M. The analysis area for Stateline 1 was the area within 20  
36                   miles from the site boundary. Stateline 2 would extend the analysis area by approximately 2  
37                   miles to the south. Within that expanded analysis area, there are no protected areas in addition  
38                   to those already addressed in the Final Order on the site certificate application. In that order,  
39                   the Council concluded that construction and operation of Stateline 1 were not likely to cause  
40                   significant adverse impact to any protected area.

1            Noise

2            The nearest protected area, McNary National Wildlife Refuge (MNWR), is in  
3 Washington. It is approximately 12 miles from the nearest Stateline 1 turbine. The nearest  
4 potential protected area, the Wallula Habitat Management Unit (WHMU), is 5 miles from the  
5 nearest Stateline 1 turbine. The proposed Stateline 2 turbines would be located farther from  
6 these areas, and there are Stateline 1 turbines located between the Stateline 2 expansion area  
7 and both the MNWR and the WHMU. The other identified protected areas and potential  
8 protected areas are at a greater distance from Stateline 2.<sup>39</sup> Because of distance and the  
9 intervening Stateline 1 turbines, the noise from construction or operation of Stateline 2 would  
10 be inaudible. There would be no significant noise impact on any protected area or potential  
11 future protected area.

12           Traffic

13           The construction traffic related to Stateline 2 is expected to be similar to the traffic  
14 related to construction of Stateline 1 in daily volume and types of vehicles. The traffic impact  
15 should be somewhat less due to the smaller number of turbines that would be built. The  
16 anticipated increase in traffic because of project construction would be small in comparison to  
17 the current volume. The increase would not require highway improvements near the protected  
18 areas or potential protected areas. Traffic impact during operation would be negligible.

19           Visual Impact

20           The visual impact of Stateline 2 on protected areas is likely to be insignificant. The  
21 nearest protected areas are 12 to 15 miles from the closest Stateline 1 turbines, and potential  
22 protected areas are all at least 5 miles away. In the Final Order on the site certificate  
23 application, the Council found that Stateline 1 would not cause a significant visual impact to  
24 protected areas at these distances. All proposed Stateline 2 turbines are at a greater distance  
25 from the protected areas.

26           Conclusions of Law

27           The Council concludes that the proposed Stateline 2 facilities are not located in a  
28 protected area as defined by OAR 345-022-0040(1) and that the design, construction and  
29 operation of Stateline 2, taking into account mitigation and subject to the conditions stated in  
30 this order, are not likely to result in significant adverse impact to any protected area.  
31 Condition (37) relates to the Council's protected areas standard as it applies to Stateline 2.

32           (d) Fish and Wildlife Habitat

33           **OAR 345-022-0060**

34           *To issue a site certificate, the Council must find that the design, construction,*  
35 *operation and retirement of the facility, taking into account mitigation, are*  
36 *consistent with the fish and wildlife habitat mitigation goals and standards of OAR*  
37 *635-415-0025 in effect as of September 1, 2000.*

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<sup>39</sup> Final Order on the site certificate application, page 47.

1        Findings of Fact

2                Mitigation Goals and Standards

3                OAR 635-415-0025 defines six categories of habitat in order of their value to wildlife.  
4        The rule establishes mitigation goals and corresponding implementation standards for each  
5        habitat category. The Council’s Final Order on the site certificate application describes the  
6        habitat categories, goals and standards at page 49, and that description is incorporated herein  
7        by reference.

8                Habitat in the Analysis Area

9                The certificate holder contracted with an expert, Karen Kronner, of Northwest  
10       Wildlife Consultants, Inc., to conduct a habitat assessment during the fall season of 2001  
11       within 1,000 feet of the Stateline 2 facilities. The results of that assessment are included in a  
12       report entitled “Wildlife Habitat Assessment, Stateline 2 Expansion Area.”<sup>40</sup>

13               All of the proposed turbines would be located on land currently being farmed for  
14       wheat. Most of the length of new access roads and underground collector cables also would  
15       be on currently cultivated farmland. Within the analysis area, there are several patches of non-  
16       cropland habitat. One collector cable route in the northwest portion of the Stateline 2 area  
17       would cross a narrow, dry grassland draw composed mostly of weedy non-native species,  
18       identified as Category 4. The underground cable would continue northward into non-native  
19       Conservation Reserve Program (CRP) grassland (Category 3), parallel to an existing collector  
20       route that is part of Stateline 1. In the same general area, two small areas of upland tree  
21       habitat, identified as Category 1 habitat, exist near a proposed new access road that is close to  
22       the southern end of Stateline 1 turbine strings HG-J and HG-K.<sup>41</sup>

23               In the southern part of the Stateline 2 area, slightly more than one acre of Category 3  
24       and Category 4 grassland would be disturbed along existing roads that would be upgraded for  
25       safety reasons. A small area of trees, identified as Category 1, exists approximately 130 feet  
26       from an existing road that would be improved during construction. The road runs through a  
27       developed area containing a house, outbuildings and shade trees (Category 6) and grassland  
28       areas (Category 3).

29                Potential Impacts from Construction and Operation of the Facility

30               Tables 3 and 4 of the amendment request, incorporated here by reference, list the  
31       estimated area of temporary and permanent disturbance by habitat category and vegetation  
32       type. Figure 4, included as Exhibit 9 of the amendment request, incorporated here by  
33       reference, shows the habitat categories in the Stateline 2 area, as identified by the certificate  
34       holder. The Oregon Department of Fish and Wildlife (ODFW) concurs with the certificate  
35       holder’s classification of the habitat in the Stateline 2 area.

36               No Category 1 or 2 habitat would be directly disturbed by the Stateline 2, either  
37       temporarily during construction or permanently by the location of turbine towers, roads or  
38       other structures of the facility. However, construction activity could cause an indirect impact  
39       on habitat quality if, for example, construction noise and vehicle traffic interfered with nesting

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<sup>40</sup> The report was included in the Request to Amend Site Certificate as Exhibit 10. Subsequently, FPL submitted a revised report, dated February 11, 2002.

<sup>41</sup> Both areas were discussed in the Final Order on the site certificate application at page 50.

1 of sensitive species. Construction related noise and traffic would be limited to an estimated  
2 6-month construction period. Indirect impact from operation of the facility could affect habitat  
3 quality.

4 Approximately 10 acres of Category 3 habitat, one acre of Category 4 habitat and 92  
5 acres of Category 6 habitat (developed cropland) would be temporarily affected during  
6 construction. Approximately two acres, combined, of Category 3 and 4 grassland habitat and  
7 28 acres of Category 6 cropland habitat would be permanently affected by the location of  
8 Stateline 2 facilities.

9 The certificate holder has identified seven potential raptor nesting areas within one  
10 mile of the nearest Stateline 2 facility.<sup>42</sup> The closest, approximately 130 feet from an access  
11 road, supports Swainson's hawks, as well as common tree-nesting passerines and possibly  
12 roosting bats. A great horned owl nesting site is located between proposed turbine strings SB  
13 and SC, less than 1,000 feet from an access road.<sup>43</sup> A ferruginous hawk nest was identified  
14 approximately 695 feet from an access road near the north end of the Stateline 2 area. Nearby  
15 is a great horned owl nest, about 465 feet from the access road. Another Swainson's hawk  
16 nest and a common raven nest are approximately 300 feet from the end of the proposed access  
17 road in the same general area. A red-tailed hawk nest was identified in Vansycle Canyon,  
18 approximately 4,224 feet from the nearest proposed turbine. No trees would be removed or  
19 directly affected by construction or operation of Stateline 2.

20 No special habitats that might attract wildlife, such as cliffs or ponds, have been  
21 identified in the Stateline 2 area. Bats utilizing habitat in Vansycle Canyon may forage and  
22 are likely to pass through the uplands of the project during summer and the fall migration  
23 period. Potential impacts from construction, operation and retirement of the facility are  
24 expected to be similar to the impacts expected for the Stateline 1 facilities, as described in the  
25 Final Order for the site certificate application, pages 51-54.

### 26 Mitigation

27 The certificate holder would avoid direct impact to all Category 1 and 2 habitat in the  
28 Stateline 2 area and would avoid indirect impacts during construction by scheduling  
29 construction to avoid activity near Category 1 habitat during the nesting season. All raptor  
30 nesting sites would be monitored for two years after construction (Condition (93)). Analysis  
31 of monitoring data might indicate impacts to wildlife or wildlife habitat that the certificate  
32 holder has not adequately addressed by mitigation. If these impacts result in a loss of habitat  
33 quantity or quality, further mitigation may be required.

34 Approximately 10 acres of mostly CRP grassland habitat identified as Category 3  
35 would be affected during construction; less than one acre of Category 3 grassland habitat  
36 would be permanently affected. Category 3 CRP land is essential or important habitat for  
37 wildlife species including but not limited to the Grasshopper sparrow and Swainson's hawk.

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<sup>42</sup> As shown on a map in Exhibit 10 of the amendment request. All but one of the indicated nest sites were identified as raptor nests. The site labeled "CORA" (common raven) is a nesting structure that could be used by a raptor species.

<sup>43</sup> This tree is in the bottom of a drainage, not in direct line of sight from the access road. The nest was checked on March 18, 2002 and it was found to be empty. It is unlikely that the tree will be used by a great horned owl in the 2002 breeding season. (Supplemental information, e-mail communication, March 19, 2002)

1 Fatalities of these species or a significant reduction in the use of habitat attributed to facility  
2 operation could indicate a loss of habitat quality due to indirect impacts of the facility. The  
3 applicant proposes to employ general mitigation measures during construction as described in  
4 Condition (63) and (65). Analysis of monitoring data might indicate impacts to wildlife or  
5 wildlife habitat that the certificate holder has not adequately addressed by mitigation. If these  
6 impacts result in a loss of habitat quantity or quality, further mitigation may be required.

7 Construction and operation of the facility would directly affect a small amount  
8 (approximately 2 acres) of Category 4 grassland habitat. In addition to the general mitigation  
9 measures described in Conditions (63) and (65), the certificate holder proposes to add one  
10 acre to the habitat enhancement area required under Condition (67) for Stateline 1. This  
11 additional one acre is proposed mitigation for permanent impacts to “slightly over one acre”  
12 of Category 3 and 4 grassland habitat.

13 The proposed Stateline 2 facility would permanently eliminate approximately 28 acres  
14 of Category 6 dryland agricultural habitat and would temporarily disturb another 92 acres  
15 during construction. The certificate holder would minimize impacts to the temporarily  
16 disturbed areas by mitigation measures described in Condition (68). Construction and  
17 operation of Stateline 2 is not expected to have significant indirect impacts on the quality of  
18 this habitat.

19 Under Council rules, a certificate holder shall retire a facility according to an approved  
20 final retirement plan (OAR 345-027-0020(9)). Under OAR 345-027-0110, a retirement plan  
21 must receive Council approval before retirement and termination of the site certificate. In the  
22 retirement plan, the certificate holder must include information on how to minimize impacts  
23 to fish, wildlife and the environment during the retirement process (OAR 345-027-0110(3)).  
24 The anticipated actions to retire the energy facility and restore the energy facility site to a  
25 useful condition would have effects on wildlife habitat similar to the effects of construction  
26 described above. It is likely that the activities to restore the site at retirement would  
27 temporarily disturb additional area similar in amount to the area temporarily disturbed during  
28 construction. However, completion of retirement would restore habitat in areas formerly  
29 occupied by facility structures or roads.

### 30 Oregon Wildlife Monitoring Plan

31 To assure that the operation of Stateline 2 complies with the Council’s fish and  
32 wildlife habitat standard, the Council concludes that a site certificate condition should require  
33 the certificate holder to conduct wildlife monitoring (Condition (93)). The overall objectives  
34 for monitoring the Stateline facility, including both Stateline 1 and Stateline 2, are:

- 35 1. To determine whether the facility causes significant fatalities of birds and bats,  
36 and
- 37 2. To determine whether the facility results in a loss of habitat quality.

38 The details of the monitoring components, statistical analysis and data reporting is  
39 described in the *Oregon Wildlife Monitoring Plan (Revised)*, Attachment A, which is

1 incorporated in this order.<sup>44</sup> The requirement of monitoring during the operation of the  
2 Stateline 1 and Stateline 2 facilities is a necessary part of finding compliance with the fish and  
3 wildlife standard. The impacts of operation cannot be evaluated without the data that adequate  
4 monitoring would provide. Based on that evaluation, additional mitigation of impacts may  
5 become necessary to assure that operation of the facility is consistent with the habitat  
6 mitigation goals and standards. If the data show significant impacts to wildlife or wildlife  
7 habitat, the certificate holder shall mitigate for the loss of habitat quality by measures  
8 approved by the Office of Energy (Condition (94)).

9 General Findings of Consistency

10 The Council's fish and wildlife habitat standard requires the Council to find that  
11 design, construction, operation and retirement "is consistent with" the fish and wildlife habitat  
12 mitigation goals and standards established by ODFW in OAR 635-415-0025. The Council  
13 makes the following general findings of consistency:

- 14     ▪ Design: By location of the proposed Stateline 2 wind turbines on previously  
15       cultivated land and by structural design, the proposed facility avoids impacts to  
16       wildlife and to essential and important habitat to the extent reasonably possible  
17       (Condition (52)).
- 18     ▪ Construction: Construction of the proposed Stateline 2 turbines and related or  
19       supporting facilities avoids direct impact to all Category 1 and 2 habitat in the  
20       analysis area.

21       Construction would have a direct impact on approximately 11 acres of Category 3  
22       habitat but would permanently remove less than one acre. Construction of the  
23       facility would have a direct impact on less than two acres of Category 4 habitat  
24       and would permanently remove less than one acre. To compensate for the loss of  
25       Category 3 and 4 habitat, the certificate holder would provide habitat enhancement  
26       on 1 acre of weed-infested land contiguous to the enhancement area for Stateline 1  
27       (Condition (104)). The proposed enhancement would meet the requirement of "in-  
28       kind, in-proximity" mitigation. This would achieve the goal of no net loss of  
29       habitat quantity or quality required for Categories 3 and 4 with respect to  
30       permanent elimination of habitat.

31       Construction would have a direct impact on approximately 120 acres of Category  
32       6 habitat, of which approximately 28 acres would be permanently removed. As  
33       proposed, the Stateline 2 facilities would minimize the impact to Category 6  
34       habitat.

35       The certificate holder would mitigate for indirect impacts to wildlife and wildlife  
36       habitat, as described in Conditions (63), (65) and (101).

- 37     ▪ Operation: The certificate holder would mitigate for indirect impacts to wildlife  
38       and wildlife habitat, as described in Conditions (89), (90) and (91). Operational

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<sup>44</sup> This order includes revision of the *Oregon Wildlife Monitoring Plan* that was included in the Final Order on the site certificate application and incorporated by reference in the site certificate issued September 14, 2001. The revised monitoring plan addresses both Stateline 1 and Stateline 2 facilities. The plan may be revised from time to time, as provided in Section 13 of the plan.

1 monitoring as described in the *Oregon Wildlife Monitoring Plan (Revised)* would  
2 provide data necessary to evaluate the operational impacts of the facility. Analysis  
3 of monitoring data might indicate impacts to wildlife or wildlife habitat that the  
4 certificate holder has not adequately addressed by mitigation. If these impacts  
5 result in a loss of habitat quantity or quality, further mitigation may be required.

- 6 ■ Retirement: The site would be restored according to a retirement plan as required  
7 by OAR 345-027-0110. Site restoration would restore habitat in areas formerly  
8 occupied by facility and in areas temporarily disturbed during retirement. The  
9 retirement plan would assure compliance with the standard of “no net loss of  
10 habitat quantity or quality” with respect to essential or important habitat.

### 11 Conclusions of Law

12 The Council concludes that the design, construction, operation and retirement of the  
13 proposed Stateline 2 facilities, taking into account mitigation and subject to the conditions  
14 stated in this order, are consistent with the fish and wildlife habitat mitigation goals and  
15 standards of OAR 635-415-0025. Conditions (7), (8), (14), (52), (63), (65), (68), (82), (89),  
16 (90), (91), (93), (94), (101) and (104) relate to the Council’s fish and wildlife habitat standard  
17 as it applies to Stateline 2.

#### 18 (e) Threatened and Endangered Species

##### 19 **OAR 345-022-0070**

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

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

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

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

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

1        Findings of Fact

2                Threatened and Endangered Species - Plants

3                The certificate holder concluded that it is very unlikely that there are any threatened or  
4 endangered plant populations in the Stateline 2 area.<sup>45</sup> This conclusion was based on a habitat  
5 assessment<sup>46</sup> performed by Karen Kronner, Northwest Wildlife Consultants, Inc., a winter  
6 field check by Randall Krichbaum, Eagle Cap Consulting Inc., and a technical report on rare  
7 plants in the Stateline area prepared by Eagle Cap in August 2001. The Office of Energy  
8 received no comments from the Oregon Department of Agriculture regarding the certificate  
9 holder's amendment request. There is no applicable protection and conservation program  
10 adopted under ORS 564.105(3).

11                In the Final Order on the site certificate application, the Council described the studies  
12 and analyses that have been done for plant species for the Stateline area.<sup>47</sup> The Stateline 2 area  
13 is in the same general area as Stateline 1, and topography, soil type and climate are similar.  
14 For Stateline 1, no state-listed plant species were found during field surveys, but one  
15 threatened plant species, Laurence's milk-vetch (*Astragalus collinus*), and two candidate  
16 species, hepatic monkeyflower (*Mimulus jungermanniodies*) and Columbia yellow-cress  
17 (*Rorippa columbiae*), were mentioned as potentially occurring in the Stateline 1 analysis area.

18                According to Kronner's habitat assessment report:

19                Since 1995, nearby areas have been studied by FPL for wildlife species of concern, wildlife habitat, and  
20 rare plants during the permitting process for the Stateline wind project. One underground electrical  
21 route is planned through an area surveyed during the spring season of in 2001 for the original Stateline  
22 project. Site-specific sensitive wildlife species and rare plant surveys have not been conducted within  
23 other portions of the Stateline 2 Expansion area during the appropriate seasonal period. Instead, a fall  
24 season habitat assessment was recently conducted to determine the habitat's suitability to support  
25 sensitive species and to rate the habitat types.

26                All of the proposed Stateline 2 turbines and most of the access roads and underground  
27 collector lines are located in cultivated agricultural land. The underground collector line at the  
28 north end of the proposed expansion runs through Conservation Reserve Program (CRP) land.  
29 However, this line is within the Stateline 1 analysis area and has been surveyed for rare plant  
30 species. Several of the access roads and underground collector lines cross non-cultivated  
31 areas. According to Krichbaum's memorandum, these non-cultivated areas "provide only  
32 marginal habitat for...the species of concern considered for the overall Stateline project."  
33 According to Krichbaum, Columbia yellow-cress and hepatic monkeyflower require moist  
34 conditions not present in the Stateline 2 area. Although occurrence of Lawrence's milk-vetch  
35 could not be "definitively determined" without a spring field survey, Krichbaum considered it  
36 "extremely unlikely to occur" in the Stateline 2 area because the potential habitat is degraded  
37 due to past disturbance and domination by non-native species and noxious weeds. Krichbaum  
38 notes that the Stateline 2 area lacks suitable habitat for rosy balsamroot (*Balsamorhiza rosea*),  
39 which is the only rare species documented to occur in the general Stateline area.

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<sup>45</sup> Supplemental information dated March 14, 2002, including a memorandum from Randall Krichbaum, Eagle Cap Consulting, dated December 21, 2001.

<sup>46</sup> The report was included in the Request to Amend Site Certificate as Exhibit 10. Subsequently, FPL submitted a revised report, dated February 11, 2002.

<sup>47</sup> Final Order on the site certificate application, page 57.

1 Based on the field study and analysis described above, the Council finds that Stateline  
2 2 is not likely to cause a significant reduction in the likelihood of survival or recovery of any  
3 threatened or endangered plant species.

4 Threatened and Endangered Species - Wildlife

5 The certificate holder surveyed all non-cultivated land in the Stateline 2 area in the fall  
6 of 2001. The amendment request includes a habitat assessment report performed by Karen  
7 Kronner, Northwest Wildlife Consultants, Inc.<sup>48</sup> In addition, other studies have been done on  
8 wildlife species in the general Stateline area.<sup>49</sup> The Oregon Department of Fish and Wildlife  
9 has reviewed the amendment request and concurs with the certificate holder regarding the  
10 potential for occurrence of threatened and endangered species in the Stateline 2 area.

11 Based on the analysis done for Stateline 1, there are only two threatened or  
12 endangered wildlife species that might potentially be affected by the Stateline facilities. The  
13 Washington ground squirrel is a state endangered and federal candidate species that occupies  
14 shrub-steppe habitat. The bald eagle is listed as threatened by both state and federal wildlife  
15 agencies. Bald eagles nest in trees or on cliffs and occasionally forage on small mammals and  
16 carrion in upland areas. For the reasons discussed below, the Council finds that Stateline 2 is  
17 not likely to cause a significant reduction in the likelihood of survival or recovery of  
18 threatened or endangered wildlife species.

19 Washington Ground Squirrel

20 No habitat suitable for Washington ground squirrels exists in cultivated land, which  
21 predominates in the Stateline 2 area. The certificate holder surveyed the Category 3 CRP  
22 habitat at the north end of Stateline 2 before construction of Stateline 1 in 2001. Possible  
23 ground squirrel holes were located in one area near the route of an underground collector line  
24 for Stateline 1, but the area was fenced and avoided during construction. This area lies more  
25 than 1,000 feet from the nearest proposed ground-disturbing activity for Stateline 2. The fall  
26 2001 survey of all non-cultivated land within 1,000 feet of the proposed Stateline 2 facilities  
27 detected no evidence of the presence of Washington ground squirrels. The mitigation actions  
28 described in Conditions (63), (65) and (69) would reduce the risk of potential impacts to the  
29 Washington ground squirrel.

30 Bald Eagle

31 During surveys in 1995, one bald eagle was observed in Washington approximately  
32 three miles north of the nearest part of the Stateline 1 facilities, and another was observed at  
33 least seven miles southwest of the nearest Stateline 1 facilities. Bald eagles may fly through  
34 the general Stateline area during migration. Potential impacts to bald eagles from the  
35 proposed Stateline 2 include injuries or fatality from collisions with turbines during  
36 construction or operation. The mitigation actions described in Conditions (52) and (70) would  
37 reduce the risk of potential impacts to bald eagles. Post-construction monitoring for avian  
38 impacts would detect unforeseen bald eagle fatalities and provide a basis for deciding whether  
39 additional mitigation actions should be taken (Conditions (93) and (94)).

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<sup>48</sup> The report was included in the Request to Amend Site Certificate as Exhibit 10. Subsequently, FPL submitted a revised report, dated February 11, 2002.

<sup>49</sup> Described in the Final Order on the site certificate application, page 58.

1           Conclusions of Law

2           The Council concludes that no conservation program applies and that the design,  
3 construction, operation and retirement of the proposed Stateline 2 facilities, taking into  
4 account mitigation and subject to the conditions stated in this order, are not likely to cause a  
5 significant reduction in the likelihood of survival or recovery of any threatened or endangered  
6 species listed under Oregon law. Conditions (52), (63), (65), (69), (70), (93) and (94) relate to  
7 the Council’s threatened and endangered species standard as it applies to Stateline 2.

8           (f) Scenic and Aesthetic Values

9           **OAR 345-022-0080**

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

16           \*\*\*

17           Findings of Fact

18           The presence of a large number of wind turbines within the agricultural landscape of  
19 northern Umatilla County has a visual impact. The wind turbines can be seen from many  
20 vantage points. At night, aircraft warning lights are visible, marking the location of the turbine  
21 strings. According to the Umatilla County Planning Department, public opinion is divided.  
22 Some are disturbed by the visual impact of the wind facility, while others find it  
23 unobjectionable.

24           Under the scenic and aesthetic values standard, the Council does not attempt to  
25 reconcile conflicting opinion about the general visual impact of the facility. Instead, the  
26 standard is narrowly focused on “scenic and aesthetic values identified as significant or  
27 important in applicable federal land management plans or in local land use plans in the  
28 analysis area.” In making its findings, the Council must answer two questions: 1) Are there  
29 any “significant or important” scenic values identified in applicable land use plans? 2) Would  
30 the visual features of the facility be likely to result in “significant adverse impact” to those  
31 values?

32           Visual Features of the Proposed Facility

33           The proposed Stateline 2 site occupies an area of approximately 3 square miles.  
34 Within that area, 60 wind turbine towers and tower pad areas and approximately 8 miles of  
35 new or improved access roads would cover a total of about 30 acres of land surface. Turbines  
36 would be arrayed along natural ridges within the expansion area. The turbine towers would be  
37 approximately 165 feet tall at the turbine hub and 242 feet tall overall including the length of  
38 the turbine blades. The towers would be smooth, tubular steel structures, approximately 14  
39 feet in diameter at the base. The towers would be uniformly painted a neutral light gray color.  
40 All turbine towers would be of the same type and appearance as the Stateline 1 turbines. In

1 addition, two 50-meter meteorological towers would be built. Lighting required by the  
2 Federal Aviation Administration (FAA) would make the facility visible at night.<sup>50</sup>

3 Land Planning Authorities

4 The analysis area for Stateline 2 is generally coextensive with the analysis area for  
5 Stateline 1 but extends approximately two miles to the south. There are no land planning  
6 authorities within the extended analysis area other than those identified in the Final Order on  
7 the site certificate application. Therefore, there are no additional “significant or important”  
8 scenic values applicable to Stateline 2 that have not already been identified and addressed in  
9 the Final Order on the site certificate application.

10 County Plans

11 The Council has previously reviewed the county land use plans for Umatilla County,  
12 Oregon, and Walla Walla, Benton and Franklin counties in Washington.<sup>51</sup> The comprehensive  
13 plans of Walla Walla and Benton counties do not identify any significant or important scenic  
14 values. The closest portion of Franklin County is about 17 miles from the nearest Stateline 1  
15 turbines, and even farther from Stateline 2, and no significant visual impact is likely at that  
16 distance.

17 The Umatilla County Comprehensive Plan identifies Wallula Gap, on the Columbia  
18 River, as a significant scenic area. From Wallula Gap, the closest visible Stateline 1 turbines  
19 are estimated to be seven miles away. In the Final Order on the site certificate application, the  
20 Council found that the “value” of Wallula Gap was as a scenic area “to look upon” rather than  
21 as a vantage point “to look from.” The presence of the wind facility seven miles away would  
22 not cause a significant adverse impact to that identified scenic value. The proposed Stateline 2  
23 turbines would be at an even greater distance from Wallula Gap.

24 The Council standard refers only to important scenic resources identified in “land use  
25 plans.” Nevertheless, in the Final Order on the site certificate application, the Council  
26 addressed two other scenic resources that were identified in a Umatilla County Technical  
27 Report as “outstanding sites and views”: Hat Rock State Park and Highway 204 (a scenic  
28 highway). The Council found that the Stateline 1 facility would be at least 16 miles distant  
29 from both Hat Rock State Park and Highway 204 and that at that distance the visual impact of  
30 the facility would be insignificant. The proposed Stateline 2 turbines would also lie at least 16  
31 miles distant from these two scenic areas. If visible at all, the visual impact of the Stateline 2  
32 turbines would be insignificant.

33 Municipalities

34 Helix is the closest municipality to the proposed facility at a distance of about 8 miles.  
35 However, intervening ridgelines would block the view of the proposed Stateline 2 area. None  
36 of the municipalities within the analysis area in Oregon has designated scenic or aesthetic  
37 values in their local land use plans. For the same reasons discussed in the Final Order on the  
38 site certificate application, construction and operation of the proposed Stateline 2 would not

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<sup>50</sup> At night, the required lights are red-colored, which reduces visual impact. The FAA requires white flashing lights in the daytime.

<sup>51</sup> The findings under the scenic and aesthetic values standard as discussed in the Final Order on the site certificate application, pages 60-61, are incorporated herein by this reference.

1 likely result in significant adverse impact to scenic and aesthetic values identified as  
2 significant or important in land use plans of any Washington municipality within the analysis  
3 area.

4 Confederated Tribes of the Umatilla Indian Reservation

5 The land use plan for the CTUIR does not identify significant or important scenic or  
6 aesthetic values.

7 State Land Management Plans

8 For the same reasons discussed in the Final Order on the site certificate application,  
9 construction and operation of Stateline 2 would not likely result in significant adverse impact  
10 to scenic and aesthetic values associated with the Lewis and Clark Highway Interpretive  
11 Project in Washington.

12 Federal Management Plans

13 A portion of the Umatilla National Forest falls within the analysis area. The Umatilla  
14 National Forest has designated viewsheds, scenic areas and wild and scenic rivers within the  
15 National Forest. However, viewsheds are in scenic corridors that are distant from Stateline 2  
16 and unlikely to have a line of sight to the proposed new turbines.

17 Conclusions of Law

18 The Council concludes that the design, construction, operation and retirement of the  
19 proposed Stateline 2 facilities, taking into account mitigation and subject to the conditions  
20 stated in this order, are not likely to result in significant adverse impact to scenic and aesthetic  
21 values identified as significant or important in applicable federal land management plans or in  
22 the local land use plans for the site or its vicinity. Condition (37) relates to the Council's  
23 scenic and aesthetic values standard as it applies to Stateline 2.

24 (g) Recreation

25 **OAR 345-022-0100**

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

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

33 *(b) The degree of demand;*

34 *(c) Outstanding or unusual qualities;*

35 *(d) Availability or rareness;*

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

37 \*\*\*

1           Findings of Fact

2           In the Final Order on the site certificate application, the Council concluded that  
3 Stateline 1 would not likely result in significant adverse impact to important recreational  
4 opportunities in the analysis area. The analysis area for Stateline 2 is coextensive with the  
5 analysis area for Stateline 1 but extends approximately two miles to the south. There are no  
6 additional important recreational opportunities within the extended analysis area that have not  
7 already been considered by the Council.<sup>52</sup> For the same reasons discussed in the Final Order  
8 on the site certificate application, the Stateline 2 is not likely to result in a significant adverse  
9 impact to important recreational opportunities in the analysis area, taking into consideration  
10 the factors listed in the Council’s standard.

11           Conclusions of Law

12           The Council concludes that the design, construction and operation of the proposed  
13 Stateline 2 facilities, taking into account mitigation and subject to the conditions stated in this  
14 order, are not likely to result in significant adverse impact to important recreational  
15 opportunities in the analysis area. There are no conditions specifically related to the Council’s  
16 recreation standard. However, other conditions may serve to mitigate the impact of the facility  
17 on recreational opportunities (for example, Condition (37) related to the scenic and aesthetic  
18 values standard).

19           (h) Public Health and Safety Standards for Wind Energy Facilities

20           **OAR 345-024-0010**

21           \*\*\*

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

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

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

30           Findings of Fact

31           The proposed Stateline 2 turbines would be located on private property with limited  
32 access to the public. The nearest occupied dwelling would be approximately 4,000 feet away  
33 from any turbine. The design of the Stateline 2 turbines would be the same as the design of  
34 the Stateline 1 turbines. The turbine towers would have locked access doors and the tubular  
35 design would deter climbing (Condition (38)). Pad-mounted transformers located at each  
36 turbine would be located inside locked metal cabinets (Condition (103)). The certificate

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<sup>52</sup> The findings under the recreation standard as discussed in the Final Order on the site certificate application, pages 65-66, are incorporated herein by this reference.

1 holder would inspect turbine blades on a regular basis for signs of wear or potential failure  
2 (Condition (95)).

3 Conclusions of Law

4 The Council concludes that the certificate holder can design, construct and operate the  
5 proposed Stateline 2 facilities to exclude members of the public from close proximity to the  
6 turbine blades and electrical equipment. The Council further concludes that the certificate  
7 holder can design, construct and operate the proposed Stateline 2 facilities to preclude  
8 structural failure of the tower or blades that could endanger the public safety and to have  
9 adequate safety devices and testing procedures designed to warn of impending failure and to  
10 minimize the consequences of such failure. These conclusions take into account mitigation  
11 and are subject to the conditions stated in this order. Conditions (36), (38), (95) and (103)  
12 relate to the Council's public health and safety standards for wind energy facilities as they  
13 apply to Stateline 2.

14 (i) Siting Standards for Wind Energy Facilities

15 **OAR 345-024-0015**

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

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

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

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

26 *(c) Using only those signs necessary for facility operation and safety and signs*  
27 *required by law;*

28 *(2) Can design and construct the facility to restrict public access by the following*  
29 *methods:*

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

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

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

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

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

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

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

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

9                   (b) Combining transmission lines and points of connection to local distribution  
10                  lines;

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

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

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

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

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

20                  Findings of Fact

21                  The Stateline 2 wind turbines would be similar in overall appearance to the existing  
22                  Stateline 1 turbines. The certificate holder would reduce the visual impact of the proposed  
23                  facility by the measures described in Condition (37). The turbine towers would have only the  
24                  minimum lighting required by the Federal Aviation Administration. Stateline 2 would have  
25                  only those signs required for facility operation and safety.

26                  The certificate holder proposes to use horizontal-axis wind turbines on tubular towers.  
27                  Access to each tower would be through a locked access door accessible only to authorized  
28                  project staff (Condition (38)).

29                  The certificate holder proposes to use existing roads where feasible and to construct  
30                  approximately 6.5 miles of new roads for access to Stateline 2. Road construction would be  
31                  designed to minimize erosion and prevent the introduction of invasive weeds where soil is  
32                  disturbed during construction. See Condition (44).

33                  Electric transmission lines for Stateline 2 would consist of underground 34.5-kV  
34                  collector cables that follow road rights-of-way where possible. Collector cable routes would  
35                  be combined where cables run close to one another. The collector system for Stateline 2  
36                  would connect to an existing underground circuit that is part of Stateline 1. Power from  
37                  Stateline 2 would be transmitted through the Stateline 1 circuit to an existing substation in  
38                  Washington. Stateline 2 would have no overhead transmission structures.

39                  To avoid creating artificial habitat for raptors or their prey, the certificate holder  
40                  would spread gravel on all above ground portions of the turbine pads to reduce the potential

1 for weed infestation and raptor use (Condition (64)). The certificate holder would consult with  
2 the Umatilla County weed control board and implement an ongoing weed control plan  
3 (Conditions (30) and (65)). Pad-mounted transformer structures at the turbine sites would be  
4 enclosed, providing no opportunities for sheltering raptor prey (Condition (103)). The  
5 certificate holder would avoid creating perching opportunities on towers or related structures.

#### 6 Conclusions of Law

7 The Council concludes that the certificate holder, taking into account mitigation and  
8 subject to the conditions stated in this order, can design and construct the Stateline 2 facilities  
9 to reduce visual impact, to restrict public access and to reduce cumulative adverse  
10 environmental impacts in the vicinity to the extent practicable. Conditions (30), (37), (38),  
11 (44), (64), (65) and (103) relate to the Council's siting standards for wind energy facilities as  
12 they apply to Stateline 2.

#### 13 (j) Siting Standards for Transmission Lines

#### 14 **OAR 345-024-0090**

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

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

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

#### 23 Findings of Fact

24 The 34.5-kV electrical cable collector system will be installed underground, at a depth  
25 of 3 to 5 feet. No occupied structures are located within 200 feet of any of the proposed  
26 collector cables. FPL would construct the underground system for Stateline 2 using the same  
27 construction and physical characteristics as the existing Stateline 1 system. In the Final Order  
28 on the site certificate application, the Council found the design and construction of the  
29 underground collector system proposed for Stateline 1 would reduce any measurable electric  
30 field below the 9 kV per meter threshold at one meter above ground and that induced currents  
31 would be insignificant.<sup>53</sup> The certificate holder proposes to follow the same design and  
32 construct methods for the collector system for Stateline 2.

#### 33 Conclusions of Law

34 The Council concludes that the certificate holder can design, construct and operate the  
35 proposed Stateline 2 collector system so that alternating current electric fields do not exceed 9  
36 kV per meter at one meter above the ground surface in areas accessible to the public. The  
37 Council further concludes that the certificate holder can design, construct and operate the

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<sup>53</sup> The findings under the siting standards for transmission lines in the Final Order on the site certificate application, pages 78-79, are incorporated herein by this reference.

1 Stateline 2 collector system so that induced currents will be as low as reasonably achievable.  
2 These conclusions take into account mitigation and are subject to the conditions stated in this  
3 order. Conditions (2) and (62) relate to the Council’s siting standards for transmission lines as  
4 they apply to Stateline 2.

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

6 Under ORS 469.501(4)<sup>54</sup>, the Council may issue a site certificate without making the  
7 findings required by the following standards. However, the Council may impose site  
8 certificate conditions based on the requirements of these standards.

9 (a) Structural Standard

10 **OAR 345-022-0020**

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

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

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

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

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

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

32 \*\*\*

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<sup>54</sup> 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           Background Information

2           CH2M HILL performed a site-specific characterization of seismic, geologic and soil  
3 hazards for Stateline 1. The Office of Energy consulted with a qualified earthquake engineer,  
4 Douglas R. Schwarm, P.E., GeoEngineers, Inc., to review that analysis. The Final Order on  
5 the site certificate application included site characterization and assessment of seismic,  
6 geologic and soil hazards in the Stateline 1 area.<sup>55</sup>

7           The entire Stateline 2 site is no more than approximately three miles from the Stateline  
8 1 site. The Stateline 2 site is similar in topography, soil type, surface soil conditions and  
9 regional geology. Subsurface conditions are likely to be comparable. In the amendment  
10 request, the certificate holder notes traces of what may be an inactive fault underlying  
11 proposed turbines S-22 through S-38.<sup>56</sup> However, rupture of the fault is expected to result in a  
12 maximum displacement of 1 foot, and the turbines are designed to withstand this magnitude  
13 of displacement without instability.

14           The certificate holder proposes to follow the same design and construction procedures  
15 for Stateline 2 as the Council approved for Stateline 1. In particular:

16           The design of the turbines will follow the Oregon Building Code and by amendment, the Uniform  
17 Building Code, 1997 edition. Appropriate design modifications will be made if either Soil Type SC or  
18 SD are encountered. Provisions similar to those cited in the original application will be used to protect  
19 the environment and to provide for human safety. These provisions include the evaluation of stability  
20 by the designer for turbine foundations located within 50 feet of slopes steeper than 30°. Construction  
21 procedures will be similar to those described in the original application. Foundations for the turbines  
22 will be inspected after excavation and before construction to confirm that geologic conditions are  
23 appropriate for supporting the turbine during gravity, seismic, and wind loading.<sup>57</sup>

24           The Oregon Department of Geology and Mineral Industries (DOGAMI) reviewed the  
25 amendment request. DOGAMI raised no issues regarding the structural standard and proposed  
26 no new site certificate conditions

27           Proposed Conditions

28           Conditions (49), (50), (51), (59) and (61) relate to the Council’s structural standard as  
29 it applies to Stateline 2. The Council concludes that the design and construction of Stateline 2  
30 should be subject to those conditions.

31           (b) Historic, Cultural and Archaeological Resources

32           **OAR 345-022-0090**

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

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<sup>55</sup> The findings under the structural standard in the Final Order on the site certificate application, pages 37-40, are incorporated herein by this reference.

<sup>56</sup> See Request for Amendment, Exhibit 4, Figure 2.

<sup>57</sup> Request for Amendment, page 26.

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

3           (b) *For a facility on private land, archaeological objects, as defined in ORS*  
4           *358.905(1)(a), or archaeological sites, as defined in ORS 358.905(1)(c); and*

5           (c) *For a facility on public land, archaeological sites, as defined in ORS*  
6           *358.905(1)(c).*

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

11           \*\*\*

## 12           Background Information

13           The Confederated Tribes of the Umatilla Indian Reservation (CTUIR) conducted  
14           cultural resources inventory survey of the Stateline 2 area.<sup>58</sup> The survey identified five  
15           historic sites and two historic isolated artifacts. The proposed Stateline 2 facilities would  
16           directly affect only one of these resources. Road construction would remove the site identified  
17           as 6-32-26/1-02, an historic dump site. After further investigation, the CTUIR has determined  
18           that none of the artifacts in the site could be proven to be older than 50 years. Therefore, the  
19           CTUIR concluded that this site is not eligible for inclusion in the National Register of Historic  
20           Places.<sup>59</sup> The certificate holder has agreed to coordinate with the CTUIR to flag all other sites.  
21           The State Historic Preservation Officer (SHPO) reviewed the amendment request and found  
22           no significant issues.

## 23           Proposed Conditions

24           Conditions (75) and (76) relate to the Council's historic, cultural and archaeological  
25           standard as it relates to Stateline 2. The Council concludes that the design, construction,  
26           operation and retirement of Stateline 2 should be subject to those conditions.

### 27           (c) Public Services

#### 28           **OAR 345-022-0110**

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

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<sup>58</sup> Request to Amend Site Certificate, Exhibit 7.

<sup>59</sup> Letter from Manfred Jaehnig, Ph.D., dated March 13, 2002, included in supplemental material submitted March 14, 2002.

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           Background Information

7           In the Final Order on the site certificate application, the Council found that the  
8           construction and operation of Stateline 1, taking into account mitigation, was not likely to  
9           cause significant adverse impact to the ability of communities within 30 miles of the facility  
10          to provide the services listed in the standard.<sup>60</sup> Construction of Stateline 1 did not, in fact,  
11          cause any adverse impact to local communities that has been reported to the Office of Energy.  
12          Construction and operation of Stateline 2, as discussed below, is expected to have no greater  
13          impact on the ability of local communities to provide these services.

14          During construction of Stateline 2, the impact on sewers and sewage treatment would  
15          be minimal (portable toilets would be used). The certificate holder estimates water use during  
16          construction of Stateline 2 would be less than half that needed during construction of Stateline  
17          1. Stormwater drainage during construction would be subject to a National Pollutant  
18          Discharge Elimination System (NPDES) Stormwater Discharge Permit (Condition (60)) and  
19          measures described in Condition (61). Construction of Stateline 2 would generate relatively  
20          little solid waste that would require off-site disposal. The certificate holder estimates that  
21          traffic safety impacts of Stateline 2 construction would be much less than estimated for  
22          Stateline 1, not only because fewer turbines would be built but also because much of the  
23          equipment and material required for construction of Stateline 2 has been stockpiled at the  
24          Stateline 1 site.

25          The certificate holder estimates that construction of Stateline 2 would bring  
26          approximately 200 temporary new residents into the local area, which is less than half the  
27          estimated temporary new residents for Stateline 1. Therefore, the impact to the ability of  
28          communities to provide housing, police and fire protection, health care and schools for  
29          temporary residents is expected to be less for Stateline 2.

30          The certificate holder estimates that the addition of 60 Stateline 2 turbines to the  
31          existing Stateline facility would not increase the estimated number of operations staff.  
32          Therefore, the impacts from operation of Stateline 2 are not expected to be significantly  
33          different than the impacts from operation of Stateline 1. The Helix Rural Fire protection  
34          district anticipates no problems in providing adequate fire protection to Stateline 2.<sup>61</sup>

## 35          Proposed Conditions

36          Conditions (31), (32), (33), (35), (45), (48), (58), (60), (61), (73), (77), (81), (85), (87),  
37          (88) and (96) relate to the Council's public services standard as it applies to Stateline 2. The

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<sup>60</sup> The findings under the socio-economic impacts standard in the Final Order on the site certificate application, pages 66-75, are incorporated herein by this reference.

<sup>61</sup> Request to Amend Site Certificate, Exhibit 6.

1 Council concludes that the construction and operation of Stateline 2 should be subject to those  
2 conditions.

3 (d) Waste Minimization

4 **OAR 345-022-0120**

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

7 (a) The applicant's solid waste and wastewater plans are likely to minimize  
8 generation of solid waste and wastewater in the construction, operation, and  
9 retirement of the facility, and when solid waste or wastewater is generated, to  
10 result in recycling and reuse of such wastes;

11 (b) The applicant's plans to manage the accumulation, storage, disposal  
12 and transportation of waste generated by the construction and operation of the  
13 facility are likely to result in minimal adverse impact on surrounding and adjacent  
14 areas.

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

19 \*\*\*

20 Background Information

21 In the Final Order for the site certificate application, the Council made findings  
22 regarding the solid waste and wastewater likely to be generated during the construction,  
23 operation and retirement of Stateline 1 and the impact on surrounding communities.<sup>62</sup> Solid  
24 waste and wastewater generated by construction, operation and retirement of Stateline 2 are  
25 likely to be similar in type and somewhat less in volume. The certificate holder has agreed to  
26 meet the same conditions regarding waste minimization for both Stateline 1 and 2.

27 Proposed Conditions

28 Conditions (32), (71), (72), (73), (74), (83), (86) and (98) relate to the Council's waste  
29 minimization standard as it applies to Stateline 2. The Council concludes that the design,  
30 construction, operation and retirement of Stateline 2 should be subject to those conditions.

31 **V. OTHER APPLICABLE REGULATORY REQUIREMENTS: FINDINGS AND**  
32 **CONCLUSIONS**

33 **1. Requirements under Council Jurisdiction**

34 Under ORS 469.503(3), the Council must determine that the proposed facility  
35 complies with "all other Oregon statutes and administrative rules identified in the project

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<sup>62</sup> The findings under the waste minimization standard in the Final Order on the site certificate application, pages 76-77, are incorporated herein by this reference.

1 order, as amended, as applicable to the issuance of a site certificate for the proposed facility.”  
2 Applicable Oregon statutes and administrative rules that are not addressed in section IV of  
3 this order include the Department of Environmental Quality’s (DEQ) noise control  
4 regulations, the Division of State Lands’ regulations for disturbance to wetlands, the Water  
5 Resources Department’s (WRD) regulations for appropriating groundwater and the Council’s  
6 statutory authority to consider protection of the public health and safety.

7 (a) Noise

8 Findings of Fact

9 The Final Order on the site certificate application quoted the applicable portion of the  
10 DEQ noise control regulation, OAR 340-035-0035, and described the “ambient degradation”  
11 and “Table 8 test” elements of that regulation.<sup>63</sup> The noise control regulation applies to noise  
12 generated during operation of the proposed facility. Noise that originates from construction  
13 activities is exempt from the DEQ noise standards. OAR 340-035-0035(5)(g). However, to  
14 reduce noise impacts on nearby residences during construction of the energy facility, FPL  
15 would confine the noisiest construction activities to the daylight hours (Condition (78)).

16 To comply with the DEQ noise regulation, new noise sources must meet both the  
17 “ambient degradation” and “Table 8” tests based on noise levels at the nearest “noise sensitive  
18 property.” For Stateline 2, the nearest noise sensitive property is a residence that is  
19 approximately 4,000 feet from the nearest proposed Stateline 2 turbine.<sup>64</sup> See Condition (105).  
20 This property is also the nearest noise sensitive property for Stateline 1. At this location, FPL  
21 measured background L<sub>50</sub> noise levels<sup>65</sup> ranging from 21.3 dBA (at a wind speed of 1.1 mph)  
22 to 49.6 dBA (at a wind speed of 12.2 mph) to 60 dBA (at an unknown wind speed).  
23 Background noise would include wind, operation of farm equipment and other local noise  
24 sources.

25 “Table 8” Test

26 Wind turbines produce noise from rotation of the turbine blades. Generally, turbine  
27 noise increases with wind speed. In the site certificate application for Stateline 1, FPL  
28 provided a statistical correlation of turbine noise to wind speed over the range wind speeds  
29 (7.9 to 56 mph) within which the turbines operate. At wind speeds above 56 mph, the turbine  
30 blades feather to avoid damage to the turbines. Following the same analysis the Council  
31 applied for Stateline 1, we assume that maximum turbine noise would occur at a wind speed  
32 of 56 mph. The “Table 8” test must be met based on the maximum turbine noise; that is,  
33 turbine noise at a wind speed of 56 mph must not exceed the levels specified in Table 8.

34 The applicable noise limit from Table 8 is the L<sub>50</sub> nighttime noise level of 50 dBA. For  
35 Stateline 1, the Council found that the predicted L<sub>50</sub> noise level at the nearest receptor would  
36 not exceed 47.5 dBA at a wind speed of 56 mph.

37 FPL calculated total noise emissions for the wind energy facility by reference to  
38 specifications provided by the equipment manufacturer. FPL then calculated turbine noise

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<sup>63</sup> The findings regarding the noise control regulation in the Final Order on the site certificate application, pages 80-82, are incorporated herein by this reference.

<sup>64</sup> This residence is also approximately 2,000 feet from the nearest Stateline 1 turbine.

<sup>65</sup> The L<sub>50</sub> noise level is the noise level exceeded 50 percent of the time.

1 levels at the nearest receptor at the maximum wind speed of 56 mph. Based on FPL's  
2 calculation, the L<sub>50</sub> noise level from Stateline 1 at the nearest receptor would not exceed 47.5  
3 dBA. This noise sensitive property is approximately 4,000 feet from the nearest Stateline 2  
4 turbine; that is, it is approximately twice as far from Stateline 2 as it is from Stateline 1. At  
5 this distance, FPL estimates the noise level from Stateline 2 would not exceed 44.5 dBA at a  
6 wind speed of 56 mph. FPL estimates the cumulative noise level from Stateline 1 and 2 would  
7 not exceed 49.3 dBA.<sup>66</sup> Thus, the maximum estimated turbine noise does not exceed the level  
8 specified by Table 8. Based on this analysis, the Council finds that Stateline 2 would meet the  
9 Table 8 test.

#### 10 Ambient Degradation Test

11 Our analysis of the ambient degradation test<sup>67</sup> assumes that if the facility meets the test  
12 under worst case conditions, it meets the test under all conditions. We assume that the worst  
13 case would be during low wind speed conditions when the ambient noise level is expected to  
14 be the lowest but when there is sufficient wind speed to produce noise from the operation of  
15 the wind turbines. The wind turbine start speed is 3.5 m/s (7.9 mph). Therefore, we assume  
16 that maximum ambient degradation would occur at a wind speed of 7.9 mph. The analysis is  
17 based on ambient L<sub>50</sub> noise data provided by FPL.

18 For Stateline 1, the Council found that the predicted turbine noise at the nearest  
19 receptor would be 37.8 dBA at a wind speed of 7.9 mph. To meet the ambient degradation test  
20 under worst case conditions, the turbine noise expected to occur at a wind speed of 7.9 mph  
21 must not increase the ambient noise level by more than 10 dBA in any one hour. The Council  
22 reasoned that the facility would meet the ambient degradation test if background noise at the  
23 nearest receptor were always greater than 28.3 dBA at a wind speed of 7.9 mph. That is, when  
24 the background noise level is 28.3 dBA, the addition of the predicted wind turbine noise of  
25 37.8 dBA at 7.9 mph would result in total ambient noise of 38.3 dBA<sup>68</sup>, a 10 dBA increase. If  
26 the background noise level exceeds 28.3 dBA, the addition of 37.8 dBA would result in less  
27 than a 10 dBA increase, and therefore the facility would meet the ambient degradation test.  
28 For the reasons discussed in the Final Order on the site certificate application, the Council  
29 found it reasonable to assume that wind-generated background noise at 7.9 mph would exceed  
30 28.3 dBA under most realistic circumstances.

31 For Stateline 2, FPL estimates that the predicted sound level at the nearest receptor  
32 would be approximately 30 dBA.<sup>69</sup> This sound level is significantly less than the predicted  
33 level of 37.8 dBA from Stateline 1. If the higher sound level of Stateline 1 would not exceed  
34 the limit under the ambient degradation test, it is reasonable to conclude that the lower sound

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<sup>66</sup> According to Mark Bastasch, FPL's noise engineer: "Geometric divergence from a point source results in a 6 dBA reduction per doubling of distance, resulting in a level of 41.5 from Stateline 2. The cumulative level (47.5 plus 41.5) would be 48.5 dBA. Geometric divergence from a line source conservatively yields a 3 dBA reduction per doubling of distance, resulting in a level of 44.5 from Stateline 2. The cumulative level (47.5 plus 44.5) would be 49.3 dBA. Under either scenario, the L50 noise limit of 50 dBA is not exceeded." (E-mail from Andy Linehan, dated April 4, 2002.)

<sup>67</sup> Noise generated or indirectly caused by the new noise source, measured at the nearest noise sensitive property, must not increase the ambient statistical noise levels, L<sub>10</sub> or L<sub>50</sub>, by more than 10 decibels in any one hour.

<sup>68</sup> Decibels are measured on a logarithmic scale.

<sup>69</sup> E-mail from Andy Linehan, dated April 4, 2002.

1 level from Stateline 2 also would not exceed that limit. Based on this analysis, the Council  
2 finds that Stateline 2 would meet the ambient degradation test.

### 3 Conclusions of Law

4 The Council concludes that noise from Stateline 2 would not exceed the applicable  
5 DEQ noise control standards. Conditions (78) and (105) relate to the noise standards as they  
6 apply to Stateline 2.

#### 7 (b) Wetlands

8 Under ORS 196.810 and the Division of State Lands Removal-Fill rules (OAR  
9 141-85-005 through 141-85-090) a permit is needed if 50 cubic yards or more of material is  
10 removed, filled or altered within any “waters of the state.” Under the law, “waters of the  
11 state” include wetlands.

### 12 Findings of Fact

13 The certificate holder surveyed all drainages in the Stateline 2 area in locations  
14 proposed for construction activity. Although Figure 2 (Request to Amend Site Certificate,  
15 Exhibit 4) shows a stream in map section 26 with a new access road and underground cable  
16 crossing, field investigation showed no evidence of stream characteristics or hydrology.<sup>70</sup> For  
17 purposes of the removal-fill determination, the certificate holder represented that it intended  
18 to avoid the one potential water of the state (ES-7). We base the conclusion that no removal or  
19 fill permit is required on avoidance of any potential water of the state.

### 20 Conclusions of Law

21 The Council concludes that a removal/fill permit is not required.

#### 22 (c) Water Rights

23 Through the provisions of the Ground Water Act of 1955, ORS 537.505 to 537.796,  
24 and OAR Chapter 690, the Oregon Water Resources Commission administers the rights of  
25 appropriation and use of the ground water resources of the state.

### 26 Findings of Fact

27 The construction and operation of the proposed Stateline 2 will not require a new  
28 water right. The City of Helix has agreed to meet the certificate holder’s water requirements  
29 under it’s municipal water right.<sup>71</sup> The certificate holder estimates that 7,000 to 30,000  
30 gallons of water per day will be needed during construction of Stateline 2. During operation  
31 of the facility, water use would be insignificant. A new water right is not required for  
32 industrial and commercial uses of up to 5,000 gallons per day. ORS 537.545(1)(f). During  
33 operation, a contractor would perform occasional blade washing (Condition (88)). The  
34 contractor would purchase water from a private or municipal source with an existing water

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<sup>70</sup> “Potential Stream Crossings for the Stateline 2 Expansion Project,” memorandum from Peter Pellegrin, CH2M HILL, enclosed in letter from Andy Linehan, dated April 4, 2002.

<sup>71</sup> Letter from Mayor Harry Schuening, dated January 8, 2002, included in the request for amendment, Exhibit 5.

1 right. The Water Resources Department has reviewed the amendment request and has  
2 concluded that no permit is required.

3 Conclusions of Law

4 The Council concludes that, subject to the conditions stated in this order, the proposed  
5 use of ground water for the construction and operation of Stateline 2 complies with the  
6 Ground Water Act of 1955 and the rules of the Water Resources Department. Conditions (73),  
7 (87) and (88) relate to the use of water.

8 (d) Public Health and Safety

9 Under ORS 469.310 the Council is charged with ensuring that the “siting, construction  
10 and operation of energy facilities shall be accomplished in a manner consistent with  
11 protection of the public health and safety...” State law further provides that “the site certificate  
12 shall contain conditions for the protection of the public health and safety...” ORS  
13 469.401(2).

14 Findings of Fact

15 We discuss specific public health and safety standards for wind energy facilities above  
16 at page 51.

17 *Electric and Magnetic Fields*

18 The proposed facility would include a network of 34.5-kV electric transmission lines  
19 (collector cables). Electric transmission lines create electric and magnetic fields. The  
20 Council’s electric field standard is addressed above at page 54, and for the reasons discussed  
21 there, the proposed transmission line would not exceed the standard. In the Final Order on the  
22 site certificate application, the Council addressed the issue of public exposure to magnetic  
23 fields and the Council's policy of “prudent avoidance.” The proposed design and construction  
24 of the underground collector system are the same for Stateline 2 as for Stateline 1. For the  
25 same reasons discussed in the Final Order on the site certificate application, the proposed  
26 underground transmission system does not present a significant risk to public health and  
27 safety.<sup>72</sup>

28 Conclusions of Law

29 The Council concludes that the siting, construction and operation of the proposed  
30 Stateline 2 facilities, subject to the conditions stated in this order, are consistent with  
31 protection of the public health and safety. Conditions (6), (21), (22), (36), (38), (62) and (95)  
32 relate to the protection of public health and safety.

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<sup>72</sup> The findings regarding electric and magnetic fields in the Final Order on the site certificate application, pages 85-86, are incorporated herein by this reference.

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

2           (a) Federally-Delegated Programs

3           The Council does not have jurisdiction for determining compliance with statutes and  
4 rules for which the decision on compliance has been delegated by the federal government to a  
5 state agency other than the Council. ORS 469.503(3). However, the Council may rely on the  
6 determinations of compliance and the conditions in the federally-delegated permits issued by  
7 these state agencies in deciding whether the proposed facility meets other standards and  
8 requirements under its jurisdiction.

9           Water Quality

10          The Oregon Department of Environmental Quality (DEQ), Water Quality Program,  
11 administers the National Pollutant Discharge Elimination System (NPDES) permit program  
12 and regulations regarding stormwater discharge. On April 19, 2002, the certificate holder  
13 submitted a 1200-C NPDES permit application and Erosion and Sediment Control Plan to  
14 address handling of stormwater during construction of Stateline 2. In earlier correspondence,  
15 DEQ stated that it anticipated no problem in issuing the permit after receipt of the application.  
16 In addition, DEQ has advised the Office that the certificate holder is exempt from the  
17 requirement of an industrial wash-water permit if blade washing is done with high-pressure  
18 cold water only, without chemicals, brighteners or cleansers (Condition (88)).

19          (b) Requirements That Do Not Relate to Siting

20          Under ORS 469.401(4), the Council does not have jurisdiction for determining  
21 compliance with state and local government programs that address design-specific  
22 construction or operating standards and practices that do not relate to siting. However, the  
23 Council may rely on the determinations of compliance and the conditions in the permits  
24 issued by these state agencies and local governments in deciding whether the facility meets  
25 other standards and requirements under its jurisdiction.

26          The Council concludes that, for construction and operation of the proposed Stateline 2,  
27 the following state and local government programs may apply to the proposed facility but are  
28 not within the Council's jurisdiction because the programs address design-specific  
29 construction or operating standards and practices not related to siting:

- 30           1) Regulations of building, structure design and construction practices by the Oregon  
31 Building Codes Division under ORS Chapters 447, 455, 460, 476, 479 and 480  
32 and OAR Chapter 918, Divisions 225, 290, 301, 302, 400, 440, 460, 750, 770 and  
33 780
- 34           2) Various programs addressing fire protection and fire safety and the storage, use,  
35 handling, and emergency response for hazardous materials and community right to  
36 know laws for hazardous materials, administered by the Oregon State Fire  
37 Marshal's Office, under ORS Chapters 453, 476 through 479; OAR Chapter 837,  
38 Divisions 40, 85 and 90
- 39           3) Programs addressing reporting, design and safety standards for electric  
40 transmission lines administered by the Oregon Public Utilities Commission, Safety  
41 Section under ORS 757.035 and OAR Chapter 860, Divisions 24 and 28

- 1           4) Registration requirements for underground facilities administered by the Oregon  
2           Public Utilities Commission under ORS 757.542 through 757.562 and OAR  
3           Chapter 952
- 4           5) Electric Service Supplier certification requirements administered by the Oregon  
5           Public Utilities Commission under ORS 756.040, ORS 757.600 through 757.667  
6           and OAR 860-038-0400
- 7           6) Regulations on the size and weight of truck loads on state and federal highways  
8           administered by the Oregon Department of Transportation under ORS Chapter  
9           818; OAR Chapter 734, Division 82
- 10          7) Regulations of domestic water supply systems regarding potability administered  
11          by the Health Division of the Oregon Department of Human Resources under ORS  
12          Chapter 448 and OAR Chapter 333, Division 61
- 13          8) Conditional use permits for concrete batch plants required and administered by  
14          Umatilla County

## 15   **VI. GENERAL APPLICATION OF CONDITIONS**

16           The Conditions referenced or included in this order are specifically required by OAR  
17   345-027-0020 (Mandatory Conditions in Site Certificates), OAR 345-027-0023 (Site Specific  
18   Conditions), OAR 345-027-0028 (Monitoring Conditions) or OAR Chapter 345, Division 26  
19   (Construction and Operation Rules for Facilities). The conditions include conditions based on  
20   representations in the request for amendment and the supporting record that the Council  
21   deems to be binding commitments made by the certificate holder. Also included are  
22   conditions the Council finds necessary to ensure compliance with the siting standards of OAR  
23   Chapter 345, Divisions 22 and 24, and to protect the public health and safety.

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

27           In addition to all other conditions referenced or included in this order, the site  
28   certificate holder is subject to all conditions and requirements contained in the rules of the  
29   Council and in local ordinances and state law in effect on the date the amended site certificate  
30   is executed.<sup>73</sup> However, upon a clear showing of a significant threat to the public health,  
31   safety or the environment that requires application of later-adopted laws or rules, the Council  
32   may require compliance with such later-adopted laws or rules. ORS 469.401(2).

33           The Council recognizes that many specific tasks related to the design, construction,  
34   operation and retirement of the facility will be undertaken by FPL's agents or contractors.  
35   Nevertheless, the certificate holder is responsible for ensuring compliance with all provisions  
36   of the site certificate.

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<sup>73</sup> However, in making land use findings, the Council applies the applicable local criteria in effect on the date the certificate holder submitted the request for amendment.

1 **VII. GENERAL CONCLUSION**

2 The proposed amendment would enlarge the site of the Stateline Wind Project. Under  
3 OAR 345-027-0070, to issue an order approving the amendment, the Council must consider,  
4 within the area added to the site by the amendment, whether the facility complies with all  
5 Council standards. In accordance with ORS 469.503, in order to issue an amended site  
6 certificate, the Council must determine that the preponderance of the evidence on the record  
7 supports the following conclusions:

- 8 1) The proposed facility complies with the standards adopted by the Council pursuant to  
9 ORS 469.501.
- 10 2) Except as provided in ORS 469.504 for land use compliance and except for those  
11 statutes and rules for which the decision on compliance has been delegated by the  
12 federal government to a state agency other than the council, the facility complies with  
13 all other Oregon statutes and administrative rules identified in the project order as  
14 applicable to the issuance of a site certificate for the proposed facility.
- 15 3) The facility complies with the statewide planning goals adopted by the Land  
16 Conservation and Development Commission.

17 Based on the findings of fact, reasoning and conclusions of law in this order, the  
18 Council concludes that these requirements are met.

19 **VIII. ORDER**

20 The Council approves Amendment #1 and issues an amended site certificate, subject  
21 to the terms and conditions set forth above, to FPL for the Stateline Wind Project.

Issued this 17<sup>th</sup> day of May, 2002.

THE OREGON ENERGY FACILITY SITING COUNCIL

By: \_\_\_\_\_  
Karen H. Green, Chair

Attachments

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

Attachment B: *Revegetation Plan (Revised)*