



Oregon

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MEMORANDUM

To: Chair Lively and Members of the House Committee on Climate, Energy, and Environment

From: Oregon Department of Energy

Date: March 26, 2025

Re: Comments on HB 3874

ODOE has no position on HB 3874 and our purpose in these comments is to provide information about the state siting process for wind energy.

OVERVIEW OF BILL

HB 3874 proposes to change the jurisdictional threshold for when a wind energy electrical generation project must be reviewed by the Energy Facility Siting Council (EFSC) from 50 MW¹ Average Electric Generating Capacity to 100 MW.

EFSC JURISDICTIONAL THRESHOLD DESCRIPTION

The proposed change from 50 MW to 100 MW is a simple numeric change, however, this change has several additional complications. Wind energy projects are estimated to generate electricity approximately 1/3rd of the time, and the wind energy project jurisdictional threshold is based on the “average electric generating capacity.”² However, to understand the true size of a wind energy project, it is necessary to determine the “nominal electric generating capacity,”³ which is three times the average. This is the combined maximum potential output of each of the proposed wind turbines. The table below includes this comparison in addition to the prior changes to the EFSC wind energy project thresholds.

¹ ORS 469.300(11)(a) “Energy facility” means any of the following:

(J) An electric power generating plant with an average electric generating capacity of 50 megawatts or more if the power is produced from geothermal or wind energy at a single energy facility or within a single energy generation area.

² ORS 469.300(4) “Average electric generating capacity” means the peak generating capacity of the facility divided by one of the following factors:

(a) For wind facilities, 3.00;

³ (17) “Nominal electric generating capacity” means the maximum net electric power output of an energy facility based on the average temperature, barometric pressure and relative humidity at the site during the times of the year when the facility is intended to operate.

Threshold	Average	Nominal	# of Wind Turbines*
Proposed HB 3874	100 MW	300 MW	100
Current	50 MW	150 MW	50
Pre 2019 HB 2329	35 MW	105 MW	35

*Assumes each turbine has 3 MW nominal or maximum generating capacity and a 500-foot-tall blade tip height, which is consistent with the most recently approved EFSC wind project.

EFSC JURISDICTIONAL WIND ENERGY PROJECTS

EFSC has been reviewing wind energy projects since 1983. The bulk of these reviews occurred between 2001 and 2017. However, EFSC continues to receive and review applications for wind energy projects. The table below provides a summary of active and inactive EFSC jurisdictional wind energy projects broken into more specific categories.

Status	MW
Active	
Operational	2,719
In Construction	300
Approved But Not Built - Approval Still Valid	361
Under Review	201
Subtotal	3,581
Inactive	
Approved But Not Built - Approval Expired & SC Terminated	1,214
Decommissioned	-
Denied	-
Request Withdrawn, Expired Prior to Final Decision	2,445
Subtotal	3,659
Total	7,240

WIND ENERGY PROJECT REVIEWS

EFSC's review process includes 16 standards that apply to all facilities and there are additional standards for some specific types of facilities. While there could be significant potential impacts from a wind energy project associated with any standard, depending on the location, below are the standards that typically require additional scrutiny and oftentimes review assistance by specific state agencies:

- Structural Standard/Public Health and Safety for Wind Facilities – related to the foundations, towers and blades of the wind turbines
- Land Use/Soil Protection – related to construction when large equipment can do a lot of damage to farm fields
- Fish and Wildlife Habitat – related to big game migration patterns and avian species
- Noise – related to public health and safety noise threshold exceedances to nearby residences
- Waste minimization – related to ensuring wind energy project components are not disposed of in landfills, to the extent possible

Counties are not obligated to consult with local, state and tribal governments in the same manner required for EFSC projects. This has been evidenced by the numerous appeals by the

Oregon Department of Fish and Wildlife of local projects, where their comments related to the adequacy of Habitat Mitigation Plans were not upheld by the governing body.

COMPLIANCE OVERSIGHT

EFSC statutes allow a funding structure whereby certificate holders are obligated to remit payment to the Oregon Department of Energy that annually supports its regulatory enforcement and compliance review for each individual certificated facility. Counties do not have the same regulatory structure for fee-based compliance costs. These costs are used by the Department, and its consultants, to work with certificate holders and the applicable county to support routine compliance oversight of requirements that apply to issues such as noxious weed control, revegetation, wildfire mitigation, emergency services coordination and annual training. The Department coordinates non-compliance issues with county personnel; invites county personnel to participate in site inspections; and shares copies of facility annual reports, inclusive of compliance documentation from the prior year.

WIND ENERGY PROJECT DECOMMISSIONING

EFSC has a mandatory Retirement and Financial Assurance standard that has two requirements. The first requirement is that the project owner must decommission the facility and return the site to a non-hazardous condition once the facility ceases operation. This requires the owner to submit a plan for decommissioning that is evaluated and approved by EFSC before the project approval is terminated and the owner is relieved of any site obligations.

The second requirement is that prior to beginning construction the owner must submit a financial instrument (bond or letter of credit) in the amount necessary for EFSC to decommission the facility if the owner is unable. That dollar amount is evaluated during the application process and is broken down into specific unit costs to ensure there would be enough funding for EFSC to decommission the facility. Once construction has started the financial instrument must be replaced annually as it is adjusted for inflation. Additionally, the financial instrument language is evaluated annually to ensure there are no loopholes that would allow a project owner to not decommission a project nor allow them to let their financial instrument lapse. The current average amount for an EFSC jurisdictional wind energy project financial instrument is \$12.2 million.

Before making changes to increase the jurisdictional threshold, it may be helpful to evaluate whether counties have the capacity and resources necessary to routinely enforce approval requirements during construction and operation of wind energy projects as well as to ensure they are safely and properly removed from the landscape at the end of their lifecycle.