TO; CHAIRMAN AND MEMBERS OF THE SENATE COMMITTEE ON RULES

Written comments on SB 908 and SB 952 as requested by Senator Ferrioli

Both these bills present a positive move in terms of providing oversight to the actions of the Oregon Department of Energy.

Both billss contain a major flaw in that they do not address the ongoing problems with the failure of the Department of Energy and Energy Facility Siting Council to provide a remedy when they make an error in the application of the rules or statutes. Senator Lee Beyer, Senator Alan Olsen and Representative Cliff Bentz have all indicated to me their belief that changes need to occur in the area of the Contested Case process. All three of these individuals served on the Joint Oversight Committee which heard and read multiple hrs. of public concerned with the Contested Case Process. Currently the Department of Energy and Energy Facility Siting council write the rules, interpret the rules and statutes, issue site certificates, hire hearings referees, determine who is granted a Contested Case, decide what issues they are allowed to argue, and issue the final orders on hearings. The only recourse the public has if they disagree with the decisions of the Council is to appeal to the Oregon Supreme Court. There have been over 80 different requests for contested cases on Amended Site Certificates with none allowed to my knowledge. The Department has stated that they allowed a hearing on one amendment issue, but have not provided an order indicating that the hearing actually occurred. Very few contested case requests have been granted on new applications and I am only aware of one instance when the requestor won the case. That was in the Saddle Butte Wind farm and the Department of Navy and Department of Defense were able to keep wind generators out of a portion of the air space used for military training.

When one department has control over whether or not their decisions are challenged, it often results in poor decisions being approved. This potential is exacerbated in that the Energy Facility Siting Council is composed of appointees with no requirements for knowledge or experience in siting energy developments. The latest appointment is an office employee with IBEW 125. Every time a development is approved, the members of the union which employs her are provided with jobs.

There are dozens of instances where decisions do not make sense, many of which are justified based upon a subjective determination that the development will have “no significant impact” on the resource protected by the standard. Often the issue is reflected in multiple site certificates For example:

1. Summit Ridge Wind develop site certificate allows 500 foot turbines within one mile of the Wild and Scenic Deschutes River, some of which will be visible from the water.
2. The Department obtains recommendations from the US Fish and Wildlife Service, however, they do not include site certificate conditions to protect Federally listed Threatened and Endangered Species. They have determined that they only follow State Threatened and Endangered species statutes.
3. They approved a site certificate with a condition that no roads could be constructed closer than 50 feet from wetlands.

4. They found in the Montegue Site Certificate that a 108 dB noise impact on a protected area is not significant.
5. They typically only require mitigation for permanent destruction of habitat by the bases of structures and that the developer replant areas torn up by construction activities They do not require compensation for things like displacement of wildlife.
6. The requirement that they address "cumulative impacts" has been interpreted as being limited to only the impacts of the development they are evaluating with no concern for adjoining developments.
7. They have determined in the just completed Contested Case regarding the Wheatridge Wind Development that it is the legislative intent that the developer determines which "related and supporting facilities" such as transmission lines, roads, buildings, etc. are considered part of an energy development. Developers can contract with other groups to build these facilities and by not including them in their application for a site certificate, these structures are excluded from the evaluation of the development. I am including a copy of my request for a rehearing on this decision as it provides a demonstration of the kinds of procedural as well as decisions that are occurring within the Department of Energy and supports my recommendation that another agency should be assigned responsibility for Contested Cases.

I encourage you to move Contested Cases out of the control of the Department of Energy and Energy Facility Siting Council. There are several ways this could be accomplished. For example:
-- It could be moved to another agency. Senator Lee Beyer has suggested moving it to the Public Utilities Commission.
-- The Department of Energy could be required to use the Department of Justice to hear their Contested Cases.
--Some other agency could be designated to handle the hearings.

No matter where the Contested Cases occur, there is no impact on an agency budget as the developers are responsible for reimbursing all agency costs associated with the hearings.

Thank you very much.

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