SENATOR BEYER AND COMMITTEE MEMBERS February 6, 2018

SB-4019 and SB-1537

COMMENTS OBJECTING TO THE FAILURE TO INCLUDE THE ENERGY FACILITY SITING DIVISION FROM THESE BILLS

I continue to support these bills. Unfortunately, I found out yesterday that they exclude the most egregious problem with the Oregon Department of Energy and that is the abuses of power occurring within the Energy Facility Siting Division of this Department.

Given the notoriety that has occurred regarding this department, it is difficult for me to understand why this group continues to be allowed to abuse the power they have been provided by statutes. They have shown over and over again that they will abuse their power when provided no oversight, no accountability, and control over every aspect of energy siting including writing rules, interpreting and applying rules, deciding if any contested cases will be allowed regarding their decisions, hiring hearings officers, issuing final hearings decisions, and monitoring compliance with site certificates. Add to that the fact that they bill the developers for all their actions which means that the more developments they approve, the more staff they can hire. No wonder they believe they can write their own rules. They can.

I have been attending the Energy Facility Siting Council meetings for over seven years, and the problems have continued to escalate over that time. In my role as Legal Research Analyst for the Friends of the Grande Ronde Valley, member of the Blue Mountain Alliance, Co-Chair of the STOP B2H Coalition, member of the Friends of the Gorge, and due to my relationships with other groups within the state concerned with the environment, my attendance at these meetings is primarily to keep abreast of the Energy Facility Siting Council activities and report concerns to these groups and others. Unfortunately, every meeting provides additional problems regarding the actions of this division. A couple of examples:

Example One:
In the new application for the Wheatridge Wind development, the Oregon Department of Energy and Energy Facility Siting Council stated they were allowing a contested case hearing to occur. The issue was whether or not the electric transmission line connecting the development to the grid was a part of the development as it was not included in the site certificate. Before the contested case arguments were heard, The Energy Facility Siting Council certified that their interpretation was correct. They stated that facilities such as transmission lines, roads or operations and maintenance buildings were only part of the development for siting if the developer included them in their application. No arguments were ever heard and a decision in support of the Energy Facility Siting Council was issued. The Energy Facility Siting Council, who issues the final orders on Contested Cases, decided at a council meeting that they won the contested case. They did not issue a final written order as is required by statute. They simply issued the site certificate as it was originally proposed and provided footnotes that they had prevailed in the contested case.

Example Two:
The best explanation of the extent of the actions that the Oregon Department of Energy and Energy Facility Siting Council considers an Amendment come from their own information provided to the Energy Facility Siting Council. The description of the Montegue Wind development amendment is included at the end of this public comment. Not only are they allowing a wind development to build an

entirely new solar development, but they are expecting the public to be able to evaluate this amendment when they are not being told if it is a bunch of wind turbines, solar panels or a battery installation that is going to fill the 1300+ acres being added as an amendment. In addition, the public at large will not be notified that anything is going on until after the application is accepted and the department and developer draft the order.

It is useful to follow the development of the Amendment Rules just promulgated by the Department to understand just how the Energy Siting Division and the current Energy Facility Siting Council operate. In 2011, the Helix Wind Development used an Amended Site Certificate to double the size of the development and all 10 requests for contested cases were denied based upon the statement of the Oregon Department of Energy that since it was an amendment, no one had the right to a contested case. Lori Brigotti, Brian Wolfe and others on the Energy Facility Siting Council at the time stated that they did not agree, but believed they were obligated to deny the requests. They asked the Oregon Department of Energy at the time to fix the Amendment rules so that people would have a right to a contested case in situations such as this, and developers would not be allowed to make changes like this as an amendment. (By the way, when the Department of Energy says they provide a contested case, what it means is they offer a chance for people to ask for one, not that they are allowed one). After 7 years of Rules Advisory Committee Meetings (I was a member of this advisory committee), extended changes, multiple different versions of "public input", over 160 public comments against the rule changes which were ignored, the rules were promulgated. These "new" rules reduced the role of the public even more, assured that the practice of denying all amendment requests on contested cases would continue, and denied any opportunity to even request a contested case in many amendments. Developers were provided even more opportunities to make major changes and call it an amendment. As a result of the abuses of power, irregularities in the process of promulgating the rules, and multiple other issues, 8 different environmental groups representing over 20,000 Oregon citizens have filed an appeal with the Oregon Court of Appeals regarding these rules. With these new Amendment Rules, the Oregon Department of Energy is allowing a developer to process a transmission line which meets the definition of a new transmission line as an amendment, allowing Montague Wind development to make changes without any amendment or opportunity for any participation by the public, and processing as an amendment what is actually an entirely new solar development which should be processed as a new application. I am including the information regarding these actions (which I only have access to after I was denied the information initially, and after making the denial public, the department has agreed to provide it to me) The public will not receive any actual notice, nor opportunity to object to these actions until after the Oregon Department of Energy has accepted the application as complete, and they and the developer have drafted the site certificate conditions. The "new" rules deny the public any opportunity to disagree with the decisions regarding whether or not an amendment is used, and what type of amendment is used to make changes. Of course, there will be contested case requests regarding the examples provided, however, they will be denied since contested cases are not allowed regarding whether or not a new development can be approved as an amendment to an existing site certificate. Just one more "DO NOT CHALLENGE US" rule.

Please explain to me how it is that this kind of abuse of power continues to be allowed. Why isn't this bill going to include removing the power of rulemaking from the Oregon Department of Energy Siting Division when this is the section that has abused the power more than those who are included in these bills?

Even if rulemaking related to energy facility siting is included in these bills, as it should be, the Oregon Department of Energy and Energy Siting Division will have over a year and a half to continue their attack upon the citizens and resources of this state. This bill should at least start the process of reigning in this division by removing the rulemaking from their control. These rules are not "technical". They cover

things like what are the impacts to views, wildlife, soil erosion, county services, etc. Currently the Oregon Department of Energy primarily repeats the site conditions written by the developers and state that there are "no significant impacts" to approve the items.

Desciption of Montegue "Amendment" provided to the Energy Facility Siting Council by the Oregon Department of Energy

"Montague Wind Power Facility Amendment #4 (Gilliam County)

Project Leads - Chase McVeigh-Walker

Description - Approved, but not yet constructed wind energy facility with up to 262 wind turbines and a maximum generating capacity of 404 megawatt on 33,402 acres. The site certificate holder is Montague Wind Power Facility, LLC, a wholly owned subsidiary or Avangrid Renewables, LLC, the U.S. division of parent company Iberdrola, S.A. The amendment request seeks authorization to expand the site boundary by approximately 13,365 acres to allow construction and operation of following three development options within portions of the new and existing site boundary: 1) 202 MW of wind energy generation (81 turbines); 2) 202 MW of wind energy generation (56 turbines); and 3) 100 MW solar, 102 MW solar, 100 MW battery storage.

Milestones - ODOE received Montague's pRFA in November (11/21/17), but didn't begin the amendment review process until January (1/9/18), after the certificate holder resumed payment of siting-related fees.

Updates and Looking Forward - The Department is currently performing a completeness review of the pRFA and will notify the certificate holder whether the request for amendment is complete by March 10, 2018."

IS THIS COMMITTEE GOING TO ALLOW THE OREGON DEPARTMENT OF ENERGY SITING DIVISION TO CONTINUE TO MAKE HEADLINES BECAUSE OF THEIR OUTRAGEOUS ACTIONS? AREN'T YOU TIRED OF HEARING ABOUT THE LATEST CRAZY DECISION OR RULE COMING FROM THIS SECTON? I KNOW I AM TIRED OF DRIVING 300 MILES ONE WAY IN ORDER TO GIVE A VOICE TO THOSE IN EASTERN OREGON WHO ARE LIVING WITH THE RESULTS OF THEIR DECISIONS. I WOULD GREATLY APPRECIATE IT IF YOU WOULD REMOVE RULEMAKING FROM THIS DEPARTMENT AND DEMONSTRATE TO THOSE ON THE WEST SIDE OF THE STATE THAT YOU ACTUALLY CARE ABOUT THE DAMAGE BEING DONE TO EASTERN OREGON ENVIRONMENT, HISTORICAL RESOURCES, WILDLIFE AND QUALITY OF LIFE BY THIS GROUP. THE GOVERNOR HAS COME TO THE DEFENSE OF THE OCEANS BECAUSE OF EFFORTS TO PUT OIL RIGS ON THE COAST. WE AWAIT HER OR YOU COMING TO OUR DEFENSE FROM THE ACTIONS OF THE SITING DIVISION.

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