

Chairman Lee Beyer, Vice Chair Findley and Committee Members

Re: Testimony in opposition to HB 2064 Scheduled for hearing May 6 at 1:00.

Please read my testimony and the Two Attachments as together they provide more than adequate reason to refuse to pass this bill out of committee.

You are being told that HB 2064 is necessary in order to continue the work of the Energy Facility Siting Council. It is simply not true.

1. I have been attending Energy Facility Siting Council (EFSC) meetings for over 10 years. There has never been an instance when a quorum could not be established.
2. There is no reason to have any vacancies on the council, let alone, ones that remain vacant for over 2 years as was the case until recently.

ORS 469.450 (2) states that no member of the council may serve more than two 4 year terms. The governor is to appoint a replacement prior to the end of the second term and immediately if a vacancy appears for any other reason. There could be a 7 member council in place tomorrow.

3. The Oregon Department of Energy (ODOE) has a financial interest in limiting the number of Council Members to limit questions and challenges regarding ODOE's failure to follow the rules in making recommendations to council.
4. The Siting Division budget is based upon billing developers for site certificate actions. ODOE has kept some site certificates active for years without the start of construction by allowing developers to file papers past deadlines, ignoring site certificate conditions and "reinterpreting" what the site certificates meant.
5. ODOE has been very successful in leading the Council to approve their recommendations. In most cases, this means that the public must pay to go to the Oregon Supreme Court to challenge ODOE decisions.

6. This bill makes it even easier for ODOE to use the council to approve their recommendations and deflect the increasing public anger regarding the damages to the public resources and people that ODOE is causing by refusing to follow the Oregon statutes and their own rules.

This occurred recently with a five member quorum and consider the consequences had there only been a four member requirement.

In a recent EFSC meeting, there were over 37 requests to overrule denials of the opportunity to have contested cases regarding a proposed site certificate. A tie vote meant that no contested case was allowed. There was a five member quorum;

- A. One member had to recuse herself since she works for IBEW 125 and is secretary for PacifiCorp retirement fund.
- B. ODOE has allowed Hanley Jenkins to continue to serve on the council in spite of the fact that the statute says he had to be replaced in December and ignoring the fact that there were over 33 pages of public objections to his being placed on the council in the first place due to questions regarding his ethics (See Attachment Two submission as additional testimony).
- C. That left only three legitimate council members deciding the fate of the 37 requests. In the event that there had been a four member quorum requirement, there would have only been two legitimate council members making the decisions.

If there is any doubt that control and abuse of power absent any challenges is the goal, one has only to look at the unbridled power the statutes allow the Oregon Department of Energy so long as they can control the Council.

- A. They can and do overrule administrative rules of all other agencies.
- B. There has only been one contested case ever allowed on amended site certificates in the history of the agency and very few with initial applications.
- C. Todd Cornett has pushed through changes in the Amendment Rules that allow him to chose to process amendments without giving the public any opportunity for a contested case. Todd has chosen this process for amendments adding land to energy developments, allowing a company to

replace all the non-recyclable blades on over 300 wind generators after only 9 years in a supposed 20-25 year life span, and allowing other major changes to site certificates.

The process has become so corrupt that even the Environmental Lobby is appealing actions of ODOE that are being rubber stamped by the Energy Facility Siting Council. The only protection that exists for the resources and people of this state from the corrupt use of power by the Oregon Department of Energy Siting Division is the Energy Facility Siting Council.. This bill represents just one of hundreds of steps that have been taken to insulate the Oregon Department of Energy from being held accountable for the damages that their decisions are causing to the people and resources of this state. Better to have 5 lay people with limited expertise making decisions than 4 or 3.

Attachment One is included with this submission.

Attachment Two is submitted as a separate submission.

ATTACHMENT:

When the Oregon Supreme Court determined the rule denying the public access to contested cases on amendments due to Todd Cornett choosing a procedure that does not include one was invalid, the agency simply reinstated the rule as a "temporary" rule requiring those who won the original appeal to start over with the Oregon supreme court. Then they reinstated the rule as a permanent rule.

Todd Cornett has been authorizing multiple amendments be processed under the procedure denying the public access to contested cases. With a seven member council requiring 5 voting members there is at least some possibility that the Energy Facility Siting Council could chose to refuse to approve decisions that are not supported by the statutes or their own rules. One example of the failure to allow contested cases is when a developer asks to extend the start of construction. The rules state:

- (A) OAR 345-027-0375 (2) (b) “ For a request for amendment to extend the deadline for beginning or completing construction, after considering any changes in facts or law since the date the current site certificate was executed, the facility complies with all laws and Council standards applicable to an original site certificate application.”
- (B) OAR 345-027-0375(3) In making the findings required to grant an amendment under section (2) the Council shall apply the applicable law and Council standards in effect on the following dates:
 - (a) For the applicable substantive criteria under the Council’s land use standard, as described in OAR 345=022-0030, the date the certificate holder submitted the request for amendment, and

(b) For all other applicable laws and Council standards, the date the Council issues the amended site certificate.

These extensions are often occurring years after the original site certificate was issued and the Department is not requiring the applicant to update the information on many of the issues, but simply accepting that there has been no change and the only way to argue is to pay to go to the Oregon Supreme Court with an Appeal.

For years the actions of the Energy Facility Siting Council when they accept the recommendations of the Oregon Department of Energy have been creating increased public outrage. That concern is being magnified as time has gone on and the problems have not been addressed.

Some quotes from the April 17 Oregonian newspaper article regarding the actions of the Oregon Department of Energy and Siting Council:

Quotes in articles:

--There are "unlawful efforts by staff at the Oregon Department of Energy to expedite big energy projects"

--staff at the energy department and Perennial "concocted an illegal scheme to green-light construction of the project in violation of state law"

--The department "allowed the developer to build a "road to nowhere" in order to meet a construction deadline". "The Energy Department said that Perennial met all the "pre-construction requirements' for the road, even if it fell short of meeting the "construction requirements" in its permit for the larger facility."

--The agencies actions were mind boggling" and are "part of a larger pattern of bending rules to accommodate energy developers"

--Court challenges continue regarding construction of the Summit Ridge Wind Farm located along the wild and scenic Deschutes River. This project also has been termed by the Oregon Department of Energy as having started construction due to improvements made to a private driveway the company says they will be using to access their development.

--"There is a lack of oversight, accountability and statutes allowing them unrestricted power which has resulted in an arrogance and disregard for anyone objecting to their actions."

Another article dated Oct. 27, 2020 “Despite troubled past, critics say Oregon Department of Energy is ignoring rules to benefit power plants.” contained the following statements:

“We thought Perennial would break the conditions of the site certificate, but they broke the law.” “Now, unbelievably, the Oregon Department of Energy is going to argue that they met the terms of the site certificate. Someone needs to investigate the behavior of this agency. If it isn’t prepared to help Oregon meet its climate goals or apply the site certificate that they themselves wrote, then someone else needs to step in and correct this.”

“This is hardly the first time the agency or the siting council has faced scrutiny for ignoring its own rules when it comes to energy development. The agency’s management dysfunction, lack of financial controls and non-existent due diligence when managing the \$1 billion dollar Business Energy Tax Credit program, had lawmakers considering whether to dissolve it altogether.” (Senator Beyer was on the legislative committee which proposed a bi-partisan bill which was never heard to address some of the problems)

The public has only the council to protect them from the self serving recommendations coming from the Oregon Department of Energy. This bill will further weaken an already largely ineffective body at performing that function. There is no way an even smaller number of decision makers, as proposed by this bill, will provide for legitimate decision making on the part of the council.

Many people in Oregon including myself would greatly appreciate your no vote on HB 2064.