



Oregon

Tina Kotek, Governor



550 Capitol St. NE
Salem, OR 97301
Phone: 503-378-4040
Toll Free: 1-800-221-8035
FAX: 503-373-7806
www.oregon.gov/energy

MEMORANDUM

To: House Committee on Climate, Energy, and Environment

From: Oregon Department of Energy

Date: March 10, 2025

Re: Comments on HB 3681

The Oregon Department of Energy is grateful to Representative Gamba for working with us and many others in crafting HB 3681, including on forthcoming amendments to the bill. The comments below pertain to a specific provision of the introduced bill.

Proposed language in Section 1 subsection (5) of the bill requires that “the [Energy Facility Siting] Council shall conclude the contested case and issue a final order within 12 months from the date of the proposed order.” ODOE is concerned that, due to the steps that must take place between the Oregon Department of Energy’s issuance of the proposed order and the Energy Facility Siting Council’s issuance of the final order, **meeting a 12-month mandate for contested cases may not be possible with some projects.**

ODOE Evaluation

The contested case process is a mandatory step in the state siting review per Oregon Revised Statutes (ORS) 469.370. The Energy Facility Siting Council appoints an independent hearing officer to run the contested case. Currently, the Oregon Department of Energy contracts with the Oregon Office of Administrative Hearings, which provides available Administrative Law Judges for EFSC to appoint as hearing officers for each project-related contested case on an application for a site certificate. The applicant and ODOE are automatically parties to the contested case. Any person can raise an issue during the draft proposed order comment period that relates to an EFSC standard. If that issue is specific enough for the applicant, ODOE, or EFSC to evaluate, then that person is eligible to request to be a party in the contested case related to that specific issue.

ORS 469.370(5) requires EFSC to conduct a contested case on an application for a site certificate in accordance with ORS Chapter 183 (Administrative Procedures Act) and any procedures adopted by EFSC. The process and timeline for the contested case, described in

Table 1 below, must be consistent with ORS Chapter 183, Oregon Administrative Rules (OAR) Chapter 137 (Department of Justice Model Rules of Procedure for Contested Cases), and EFSC contested case rules in OAR 345 Division 15. It must also ensure a full record on any issues that are appealed to the Oregon Supreme Court, which must conclude its own review within the six-month mandatory timeframe established in ORS 469.403. A comprehensive record, which is created in the contested case process, is necessary to ensure that the Supreme Court can make its decision in a timely manner. For example, the Supreme Court was able to uphold the Boardman to Hemingway Final Order after a four-month review, in part due to the comprehensive nature of the contested case record.

The majority of applications do not result in a full contested case (in which at least one party challenges that a specific standard or standards are not met). From 2020 to 2024 there were eight projects (six solar, one wind plus solar, and one transmission) approved by EFSC, with three having a full contested case (see Table 2 below). As you can see from these three contested cases, the timeline – as determined by the required process – has been greater than 12 months.

Table 1: Steps from Issuance of Proposed Order to Issuance of Final Order

ODOE issues proposed order and notice of opportunity to participate in contested case
Commentors on the draft proposed order have 30 days to request party status in the contested case and identify their issue(s)
Hearing Officer evaluates party status petitions
Hearing Officer notices and holds prehearing conference
Hearing Officer issues order on petitions for party status
Commentor/Parties are eligible to appeal determination of party status and issues to EFSC within 7 days
EFSC evaluates any party status and issues appeals at its next regularly scheduled monthly meeting
Hearing Officer holds prehearing case management conference with all parties and subsequently issues a case management order with the timing of the following steps: <ul style="list-style-type: none"> • Informal Discovery • Motions for Discovery Orders • Motions for Summary Determination (potentially) • Written Direct Testimony • Written Rebuttal Testimony • Requests for Cross-Examination • Oral Cross-Examination Hearing • Written Closing Argument • Written Response Briefs • Hearing Officer Proposed Contested Case Order • Written Exceptions • Written Responses to Exceptions
Hearing Officer issues proposed contested case order with findings of facts and conclusions of law
Parties have up to 30 days to file written exceptions. Other parties have no more than 15 days to file written responses to exceptions.

EFSC concludes the project review with the following steps. Depending on the volume and significance of information, these steps may occur at one or more regularly scheduled meeting(s):

- 1) hearing on any exceptions to the proposed contested case order
- 2) evaluation of proposed order
- 3) material change hearing if Council intends to make substantive changes from either the proposed contested case order or the proposed order to the final order
- 4) issuance of final order

Table 2: Overview of Three Most Recent Contested Cases

Project Name	Project Description	# of Parties	Issues Contested	Total Months
Boardman to Hemingway	300 Mile, 500 kV transmission line crossing 5 counties (17 zoning designations) on private (>300 properties), state and federal lands	36	78 issues related to: <ul style="list-style-type: none"> • Fish and Wildlife • Historic and Archeological Resources • Land Use • Need for the Project • Retirement and Financial Assurance • Scenic Resources • Protected Areas • Soils • Noise • Structural • Threatened and Endangered Species • Miscellaneous 	27.3 ⁱ
Obsidian Solar Center	400 MW Solar PV and battery energy storage project on 5.6 square miles	6	9 issues related to: <ul style="list-style-type: none"> • Setbacks • Adjacent farm uses • Exception to Goal 3 • Soils • Public services • Adjacent residences • Water 	16.8 ⁱⁱ

ⁱ The Boardman to Hemingway matter proceeded through a full contested case and several participants filed exceptions to the Hearing Officer's Proposed Contested Case Order, which Council then evaluated before issuing its Final Order.

ⁱⁱ The Obsidian Solar Center matter proceeded through a full contested case but none of the parties filed exceptions to the Hearing Officer's Proposed Contested Case Order.

Nolin Hills Wind Power Project	340 MW wind, 260 MW solar PV and battery storage project on over 3 square miles	1	2 Issues related to: <ul style="list-style-type: none"> • Local land use criteria 	13 ⁱⁱⁱ
--	---	---	--	-------------------

ⁱⁱⁱ The Nolin Hills matter did not proceed through a full contested case. The parties each brought Motions for Summary Determination, which the Hearing Officer granted in favor of ODOE and the applicant. The challenging party filed an exception to the Hearing Officer's decision, which EFSC then evaluated before issuing its Final Order.