

To: Chair Lively and members of the Climate, Energy and Environment Committee

From: Irene Gilbert/ 2310 Adams Ave/La Grande, Oregon 97850

Subject: HB 3681 Hearing Scheduled for 8:00 a.m. 3/11/25 Testimony

PUBLIC PARTICIPATION, ACCESS TO DUE PROCESS AND TIMEFRAMES

--The agency has tried unsuccessfully to win motions for Jurisdiction to be with the Oregon Superior Court for all ODOE and EFSC decisions regarding site certificates whether or not a contested case is allowed by the agency. They recently made two motions to the Union County Court and three motions to the Oregon Supreme Court regarding jurisdiction for non-contested cases. They lost all five motions. Non-contested cases are those denying the public access to an agency held contested case such as procedural errors, Summary Determinations, failure to appear for meetings of the hearings officer, specific site certificate conditions included or needed, etc.

Section 2, ORS 469.403 (2) and (3) should not be amended as proposed to require all disagreements with ODOE and EFSC to be appealed directly to the Oregon Supreme Court. The Supreme Court is limited in their review of appeals of Energy Facility Siting Council decisions to simply a review of the contested case file. They do not provide for discovery, interviewing of parties, the calling of witnesses, and limit the length of written testimony.

The Administrative Procedures Act provides that there is a second pathway for reconsideration of agency orders for cases not allowed a hearing by the agency. These non-contested cases go to the Circuit Court who provides the opportunity for development of a record that can be reviewed by the Oregon Supreme Court if a party disagrees with the circuit court decision. The proposed changes to ORS 469.403 will mean that when the agency denies access to a contested case, the citizen will be denied access to due process since there is no record that the Supreme Court can base their decision on other than the one developed to support the developer and the agency decision.

LIMITING TIMEFRAMES FOR CONTESTED CASES

The procedure for accessing due process for Initial Applications and Amendments to Applications should be the same. Currently, the statutes define due process for Initial Applications, but the Oregon Department of Energy rules describe 3 different processes for access to due process for Amendments to Site Certificates. The differences have meant that the public is confused regarding what is required and when it is required.

--If HB-3681 is supposed to shorten and streamline the siting process, it's focus on further limiting public participation and access to due process is not where changes are needed. The current process limits the public right to formally participate to a small portion of the processing of applications. They can comment on problems with the Draft Proposed Order, request a contested case when their comments are ignored in the final order, and sometimes participate in a contested case process. The timeline at the bottom of this comment shows the limited amount of time that the public was actually allowed to participate in the recently approved Boardman to Hemingway Transmission Line Application.

During the 14 years that the developer and ODOE worked to site the Boardman to Hemingway Transmission line, the public was allowed 90 days to review the draft proposed order and file and make comments that would support any future contested case requests; 2 months to review the Proposed Order and develop their contested case requests. Some were allowed to argue their issues in a contested case. Of the 117 requests for contested cases, all were denied by the Oregon Department of Energy and Energy Facility Siting Council. Most were denied access to a contested case process through either procedural issues, or as a result of Summary Determination Requests from Idaho Power and the Oregon Department of Energy, and the remainder following a contested case hearing.

Rather than placing additional restrictions on the public opportunities to participate in EFSC processes or access due process, this bill should address the timeframes that developers and the Oregon Department of Energy create. This would greatly benefit the developers since they are directly charged for the time, materials and other costs the agency has in processing applications. For the Boardman to Hemingway initial site certificate, Idaho Power had been billed over 4.1 Million dollars for the agency work prior to the start of the contested cases. Obviously, that amount has risen substantially since then.

I suggest the following amendments to this bill:

1. Require developers to meet with agency staff prior to filing a Notice of Intent to request a site certificate to find out the requirements they must meet to file a complete application.
2. Limit the amount of time the developer has to submit final application once the Notice of Intent is filed to one year, or deny request and have developer resubmit when able to provide a complete application.
3. Limit time for ODOE to evaluate the final application. They work with the developer during the time between when the draft application is submitted and acceptance of the final application. The Draft Proposed Order should be virtually complete during this time.
4. Eliminate having developers respond to public comments. ODOE and EFSC are supposed to be the decision makers, not the developer. .
5. ODOE should not require 10 months to make changes in the Draft Proposed Order addressing public comments until they issue the Proposed Order and allow the public to request contested cases. Typically there are very few changes made.
6. Limit time for hearings officer to determine what issues will be heard and the language of the issue statements. The developer and agency should not be determining the language of the contested case being heard.
7. The submission of Summary Determination Requests, responses and decisions take a significant amount of time and should not be a part of this quasi-judicial process. Those who submitted requests for

contested cases all argued that there were factual and law that were not correctly addressed. Arguments to the contrary in a quasi-judicial process should occur as part of the contested case where they can be properly vetted.

TIMEFRAMES FOR THE SITING PROCEDURES FOR THE BOARDMAN TO HEMINGWAY TRANSMISSION LINE

| DATE | ACTION | PARTIES |
|--------------------------------|--|---|
| Aug. 2008 | Idaho Power submitted Notice of Intent to file an application | Idaho Power and ODOE |
| July 6, 2010 | Idaho Power submits 2 nd Notice of Intent to file an application | Idaho Power and ODOE |
| March 2, 2012 | Project Order Issued | ODOE |
| | One year later | |
| February 27, 2013 | Draft Application Submitted | Idaho Power |
| Sept. 15, 2017 | Order issued application incomplete | ODOE |
| 2/28/18 | Final Application Received | ODOE |
| | | |
| July 26, 2018 | 2 nd amendment to Project Order changing requirements Idaho Power had to meet. | ODOE |
| May 22, 2019 | Draft Proposed Order Issued allowing 62 days to comment was extended to Aug. 22, 2019 (Approx 93 days) | PUBLIC |
| | Six years between draft application and ODOE issuing Draft Proposed Order and sharing application and draft plans with the public. | |
| July 23, 2019 – November, 2019 | Idaho Power and Oregon Department of Energy allowed to respond to public comments | ODOE and Idaho Power No requirement to allow developer or ODOE opportunity to respond to public comments |
| July 2, 2020 | Proposed Order and notice that contested case could be requested until August 27, 2020 | ODOE 10 months after public comments Proposed Order was issued. |

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| July 2, 2020 -Aug. 27, 2020 | 117 requests for contested case hearings submitted by public | PUBLIC |
| Sept, 2020 -November 25, 2020 | Hearings Officer determined cases denied due to procedures and language of the issues to be heard with input from the Oregon Department of Energy. | Hearings officer PUBLIC, IDAHO POWER AND EFSC --issue statements recommended by ODOE were accepted by hearings officer were often narrower in scope or different than the publics hearings requests and combined requests from different petitioners which were not the same.. (total 3 mos) |
| November 25, 2020 – May 31, 2022 hearings held | Hearings Officer decided actions allowed as part of the contested case hearings. For example, who would be required to answer questions from petitioners, whether discovery was allowed, who could be cross examined as a part of the hearing, decided to allow Summary Determinations and developed proposed contested case order | Of the 117 requests for contested cases from the public , many were denied immediately due to procedural errors; Over 30 requests for summary determination were made by Idaho Power and ODOE. Petitioners objected to requests. All were approved and issues thrown out without contested case hearings. --Remainder of cases were allowed contested case hearings during this 18 month timeframe and then denied following the contested cases. |
| May 31, 2022 | Proposed order issued | Public told all appeals must go to Oregon Supreme Court whether Contested cases or or than contested cases. |