

To: Chair Lively and Member of the House Committee on Climate, Energy and Environment

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

Testimony opposing HB 3681

There are so many things wrong with this bill it is hard to know where to begin. It is no doubt presented as a "Streamlining" and "Time Saving" bill. It removes any pretext of allowing the public, counties or other agencies the opportunity to influence or have a legitimate legal pathway to object to the poor siting of energy developments. Private citizens, counties and other agencies are being systematically excluded from the process.

For example:

--The Oregon Department of Energy removed the \$50,000 amount that was available to counties and agencies if they chose to litigate issues in a site certificate. They must now comply with the same requirements as the public at large.

--The statutes describe procedures for initial applications, but allow the Oregon Department of Energy to develop different rules for Amended Site Certificates. They created three different processes for Amending Site Certificates which cause ongoing confusion for the public. This bill should be amended to address this problem by making the process the same for initial and amended site certificates.

CHANGES TO OREGON PUC ROLE IN APPROVING CERTIFICATES OF PUBLIC NEED AND NECESSITY

I question why this body would want to remove the requirements that the PUC evaluate **whether or not a transmission line is necessary, safe, practical and justified**. A certificate of Public Convenience and Necessity gives a developer the power to condemn private land including high value farm and forest land that the landowner may have been caring for for generations. The impacts can be devastating including interfering with irrigation, fertilizer and pesticide applications, wetlands, historic properties, Threatened and Endangered Species and a host of other things including establishing an energy corridor which allows other utilities to be sited adjacent to it. There are currently several civil suits pending due to Idaho Power using their Certificate of Public Convenience and Necessity to require landowners to give them a permanent easement, allowing uses other than the development of a transmission line, and being unwilling to include requirements such as the management of noxious weeds in the easements. The developer is offering pennies on the dollar for these easements and failing to include consideration for things

like the lost productivity of the land and the fact that the landowners will be required to continue paying taxes on the land.

ALLOWING A SITE CERTIFICATE TO FUNCTION AS A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND ALLOWING TRANSMISSION LINES ON FARM LAND

The change allowing transmission lines to be sited on farm land provides an incentive for developers to use even more of these valuable resources. Making it easy to site transmission lines on farm land also creates an “energy corridor”. Once this occurs, other utilities are encouraged to parallel the existing line which consumes ever increasing amounts of farm land.

Accepting a site certificate from ODOE in lieu of a Certificate of Public Convenience and Necessity is even more flawed. ODOE and EFSC consistently allow exemptions and variances to Land Use Goals in their site certificates. This concern is so great that there is a bill proposed to require the EFSC to comply with the same land use laws as the counties. Currently, if a development does not comply with county rules, the council evaluates the development under state goals, and if there are problems with these, they provide developers with exemptions to the state laws.

Department of Energy issues their site certificates without requiring final mitigation and monitoring plans to be included. Virtually all site certificates are being issued with exemptions to Oregon Statutes and the department rules. The department has allowed exemptions to exceed the state noise limits for the entire length of a transmission line, provided exemptions to the use of Goal 3 agricultural and Goal 4 Forest Land, refused to require compliance with federal Threatened and Endangered Species protections, refused to include requirements of the Forest Practices Act, Refused to require Noxious Weed Control that is consistent with state statutes, only require developers to control Noxious Weeds for five years after construction, approved a requirement that a developer only be required to have a \$1.00 bond to restore the site of a transmission line if for any reason the developer walks away without restoring the site.

I understand the motivation for the siting division of the Oregon Department of Energy wanting to justify issuing site certificates given that the department is funded through billing developers for processing site certificates. It does not make sense for this agency to be able to authorize the forceful taking of private land by authorizing Certificates of Public Convenience through the issuance of Site Certificates. No one is being required to evaluate the cumulative impacts on state resources or doing a cost/benefit analysis of

what the actual costs to individuals and the state compared to the benefits to these for profit companies.

CONCERNS AND RECOMMENDATIONS REGARDING CONTESTED CASES AND APPEALS OF ODOE AND EFSC DECISIONS .

Jurisdiction for Appeal of agency actions has established in the Administrative Procedures Statutes in ORS 183.482 and ORS 183.484. These statutes provide two procedures to obtain access to judicial review. ORS 183.482 which is mirrored in ORS 469.403 provides the process and jurisdiction when an agency provides the opportunity for the individual to participate in a contested case procedure. These cases are appealed directly to the Oregon Supreme Court. The agency contested case process provides the opportunity for the citizen to develop their arguments and documentation supporting their appeal.

The second statute, ORS 183. 484 provides the procedure when the agency either denies or fails to provide the opportunity for a contested case . In these “non-contested cases”, the appeal is to the Circuit Court which is the entity which develops the contested case file which can then be appealed to the Oregon Supreme Court by a party wanting review by a higher court.

The Oregon Department of Energy has long tried to require all disagreements with their decisions to go directly to the Oregon Supreme Court, even when it is an issue where the agency did not allow a contested case. Absent allowing a contested case file to be developed, the public has virtually no chance of being able to present their case due to limitations on the length of arguments, number of exhibits, and no opportunity for discovery, cross examinations, or rebuttal. The department of energy has tried on multiple occasions in motions before the Oregon Supreme Court, the Oregon Court of Appeals, the Marion County and Union County courts to require all their cases to be heard by the Supreme Court. They have failed to win on this issue. They are now trying to change the statute to deny public access to being able to develop a complete file for appeal by requiring non-contested cases to go directly to the Supreme Court.

This change would also place unreasonable pressure on the Oregon Supreme Court if they are required to hear all non-contested cases as well as those when a contested case is held. Strict timelines for when cases result from EFSC actions mean they have to bump other appeals to address these within 6 months.

In the Boardman to Hemingway Cite Certificate, 117 contested case requests were made. Most were not allowed a contested case due to failing to meet procedural

requirements or due to Idaho Power and the Oregon Department of Energy asking that they be thrown out under Summary Determination. . For Amendment I and

Amendment II of that Site Certificate, none of the requests were allowed a contested case.

It is fair to state that very few, if any contested cases are allowed on Amended Site Certificates. People denied access to judicial review who are not allowed the opportunity to develop their arguments in an agency held contested case need to be allowed to do so under ORS 183.484 circuit court jurisdiction for non-contested cases.