

To: Date: 5/6/25

To: Senator Janeen Soilman, Chair; Sen, David Brock Smith, Vice-Chair; and Senate Committee on Energy and Environment Members.

From: Irene Gilbert, Citizen Co-Chair of Stop B2H and representative of the Public Interest

Subject: Comments regarding A-Engrpsed HB-3681 Public Hearing scheduled for 3:00 p.m. Senate Committee on Energy and the Environment.

Position on Bill: Opposed

Reason:

Recommendation that the current timeframe for the issuance of a site certificate be retained which requires a decision either approving or rejecting an application for a site certificate within 12 months of receipt of an application. (ORS 469.370(9)(d))

The language in ORS 469.370(6) conflicts with the above and allows additional time for the council to make decisions at a time when the legislature is being asked to approve a bill that will reduce the time necessary to obtain a site certificate.

Documentation:

The extensive amount of time that it took for Idaho Power to obtain a site certificate for the Boardman to Hemingway Transmission Line (B2H) has been used to justify the changes in rules proposed in HB-3681. There is no disagreement that a site certificate should not require 14 years from initial notice to issuance. The bill focus on ways to limit the opportunities for public participation in the process even though the extended timeframe for processing this application was not a result of the public involvement. It resulted from Idaho Power failure to submit timely or complete information and the Oregon Department of Energy failing to timely provide and evaluate information. The following timeframes are taken from the Site Certificate issued on September 27, 2022 for the B2H development. The first letter of Intent to build the project was submitted in 2008 but the site certificate was not issued until 2022. Only Idaho Power and the Oregon Department of Energy were involved in the process during the first 11 years. The public was provided their first opportunity to participate in 2019 and the timeframe from 2019 till the issuance of the site certificate, they were allowed to actively participate for approximately 24 months.

The following timeframes were taken from the process narration in the Site Certificate issued on Sept. 22, 2022.

DATE	PROCESS OCCURING	Timeframe
2008	Idaho Power submits original Notice of Intent	
7/6/2010	Idaho Power Submits new letter of intent	Two years for developer to finalize and submit Letter of Intent.
2/27/2013	Idaho Power submits preliminary application	
7/19/17	Idaho Power submitted amended application	Nine years between time Idaho submitted their initial application and receipt of an amended preliminary applicationl.
9/15/17	Oregon Department of Energy notifies Idaho Power application not complete.	
7/19/17 – 9/21/18	Oregon Department of Energy reviewed application.	
9/21/18	Oregon Department of Energy Determines application is complete.	14 months before the Oregon Department of Energy decided application was complete.
10/3/18	Public notice that application is complete (No opportunity for public input at this point).	
10/10/2018 – 11/26/2018	Reviewing agencies' comment.	
11/26/2018 - 5/29/2019	Oregon Department of Energy develops Draft Proposed Order	Seven months for the Oregon Department of Energy to obtain agency comments and develop Draft Proposed Order.
5/29/2019 – 7/23/19-	Public notified and given 62 days to provide comments.	This is the first time the public was allowed to participate in the Site Certificate by submitting public comments It was 11 years after the process startedl.
All7/23/2019 – 9/23/2019	Public granted additional 60 days to comment.	Public provided 4 months to review application, draft proposed order and case file and submit comments adequate to support any

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		future contested case requests.
9/23/2019 – 11/7/2019	Idaho Power allowed to respond to public comments.	Idaho Power provided over a month to respond to comments.
11/7/2019 – 7/2/2020	Oregon Department of Energy reviewed comments and made changes to Draft Order and Site Certificate.	Oregon Department of Energy took 9 months to review comments and decide if they wanted to make any changes in the Draft Site Certificate.
7/2/2020 through 8/27/20	Oregon Department of Energy issued proposed order and provided notice that those commenting could request a contested case.	Second opportunity for public involvement. Those who commented allowed approx. 7 weeks to develop and request contested cases when their comments were not addressed.
Aug. 27/ 2020- Oct. 29/2020	<p>Hearings officer reviewed requests for contested cases and issued her order on the 117 requests for contested cases and 54 requests for full party status.</p> <p>47 issues denied outright; 70 issues allowed to proceed to the contested case process where the hearings officer threw out an additional 30 issues through Summary Determination requests from Idaho Power and the Oregon Department of Energy prior to the start of the contested cases.</p> <p>At the end of the contested case process the 40 cases allowed to be heard were all denied.</p> <p>All 54 requests for full party status were denied including those from non-profits representing hundreds of individuals. No public person or group was allowed more than limited party status.</p>	

11/9/2020	26 of those denied full party status appealed to council to change decision. Council did not allow anyone from the public to be full parties.	Several days.
11/25/2020-5/31/2022	Hearings officer ran contested case hearing including decided who petitioners could interview or cross examine, accepting and reviewing petitioners arguments and responses, deciding to approve all Summary determination requests, reviewing objections from Idaho Power and the Oregon Department of Energy to support contested case arguments, etc. The Summary Determination Process consumed approximately 3 months and resulted in the approval of all 30 requests that issues be thrown out without allowing a contested case and resulted in hearings officer throwing out all issues which the department and Idaho Power asked for Summary Determination on. She then issued a Draft Contested Case Decision which denied all contested case requests from the public.	Public involved in contested case process for 18 months. Nearly 3 months were consumed by having to respond to requests from Idaho Power and the Oregon Department of Energy to throw out issues through Summary Determination. This timeframe included submitting arguments, responding to Idaho Power and Oregon Department of Energy disagreements with public contested case issues, submitting requests for responses to written questions of witnesses, requesting cross examination of witnesses, completing cross examinations and submitting closing arguments.
5/31/22 – 6/30/22	Petitioners allowed to file exceptions to the order	One month
6/30/22 – 7/15/22	Idaho Power and Oregon Department of Energy allowed to file objections to requested exceptions.	
8/29-31/2022	Council reviewed requests and responses and did not make changes.	

.A siting process that drags on for years creates unnecessary stress for all parties. The following changes in the Oregon Statute would limit the timeframes for issuance of site certificates using the B2H process as an example:.

1. The Initial application was submitted five years after Idaho Power submitted their Letter of Intent to request approval of the B2H Site Certificate.

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Recommended Correction: Allow a maximum of 6 months between time a developer submits their Letter of Intent and they provide their Initial Application. A failure to do so should result in having to start over with a new Letter of Intent when they are able to submit a relatively complete application.

2. The Draft Proposed Order was not issued until 24 months after the amended application was submitted.

Recommended Correction: Require the Draft Proposed Order be issued within 6 months of receipt of the initial application. It is reasonable to expect ODOE staff to develop the Draft Proposed Order concurrently with their review of the application and a 6 month timeframe should be more than adequate to do so.

3. Nine months were devoted to allowing Idaho Power to respond in writing to the public comments and for ODOE to make any changes resulting from public comments and issue a Proposed Site Certificate Order.

Recommended Correction: There is no requirement that developer be allowed to respond to public comments and there are rarely any significant changes made to the Draft Proposed Order as a result of public comments. The developer has had years to fill the case file with evidence and arguments supporting the Draft Proposed Order. The Oregon Department of Energy will have been participating in the development of the file and should not need additional comments from the developer to finalize their proposed Site Certificate. By the close of the public comment period, the Oregon Department of Energy should be able to make any changes to the order within a month.

4. Including Summary Determination into a Quasi-Judicial process is not necessary, nor is the process understood by most of the public. It is a procedure that is seldom used in formal court hearings and should not be allowed in these Quasi-Judicial proceedings that are supposed to allow the public to participate without requiring legal council.,
5. Rather than continue with the suggestion that the legislature provide limitations on the timeframes that developers and the Oregon Department of Energy should be meeting, I suggest that the statement in ORS 469.370(5) which gives the Oregon Department of Energy at least 12 months from the date of the proposed order to the conclusion of the contested case hearing to issue a proposed order and instead rely upon the current language in ORS 469.370(9)(d) requiring the council to approve or reject an application for site certificate “Within 12 months after filing an application for a site certificate for any other energy facility.”