

Date: 5/8/25

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

From: Irene Gilbert, Citizen, representative of the Public Interest and co-chair stop B2H

Subject: Opposition to 1A-Engrossed HB 3681

Comments opposing the requirement that all decisions related to Site Certificates go directly to the Oregon Supreme Court regardless of whether a contested case is held by either the Oregon Department of Energy or a county court. This is not the only flaw in the bill, but it is the one I will address.

Testimony;

Given Oregon's involvement in litigation challenging a failure to provide due process for undocumented persons, I am surprised that this bill proposes denying Oregon citizens and landowners due process guaranteed by the 14th Amendment..

I previously provided testimony and a timeline showing that the reason that processing the Boardman to Hemingway Transmission Line site certificate took so long to complete was due to the failure of Idaho Power and the Oregon Department of Energy to provide complete or timely documents, not the time the public was allowed to participate in the process.

The sponsor of this bill testified that the Oregon Department of Energy requested they not be held to a 12 month period to issue a site certificate due in part to the need that they include information that supported their decisions in any future appeals. This request ignores the fact that the agency has months or years to develop arguments supporting their decisions. The public is provided no opportunity to include in the file information supporting their arguments when they are denied access to a contested case and then are required to appeal directly to the Oregon Supreme Court

This committee is being asked to approve a bill that denies access to due process for those objecting to site certificate procedures, decisions or conditions. It then allows the site certificates to be treated as a Certificate of Public Convenience and Necessity to allow private, for-profit utilities to take properties through Eminent Domain from private landowners.

Due process as required by the 14th amendment to the constitution guarantees the right to life, liberty and property against actions of a state government, county or city. Due Process requirements include:

- The process must have clear rules that protect the person's rights.
- Hearing must be held by an impartial entity
- Notice provided that indicates what the intended action is, how it will impact a person's life, liberty or property.
- The right to be heard including fair notice of the hearing, the right to council, the right to cross-examine witnesses and the right to receive a written decision with reasons based on evidence as well as the right to appeal.

Decisions must be timely. For example, not providing an order when access to a contested case is denied until the final Site Certificate is issued, but taking the action immediately as this bill would allow.

The Administrative Procedures Act is the vehicle that Oregon uses to assure that Oregon agencies are complying with the requirements to provide due process. The Administrative Procedures Act provides two pathways which comply with the 14th amendment.

The first is for issues which have been allowed to be heard as "Contested Cases" prior to appealing a decision to the Oregon Supreme Court. For the Oregon Department of Energy, that means that the issue being appealed is challenging a decision that is in a final order resulting from a Contested Case or the final decision in a site certificate which either approved or denied a site certificate.

The second process is the “non-contested case” process which is for issues where a contested case process through the agency was not allowed or provided.

In order to require an individual to appeal to the Oregon Supreme Court to review such cases, the individual must have had the opportunity to access due process through the circuit court which provides for due process in terms of discovery, an unbiased decision maker, and the right to cross-examine witnesses.

Supporters of this bill may argue that for cases not provided a hearing either before the agency or the county courts, it is the supreme Court who provides for “due process”.

I have made pro-se arguments before the Oregon Supreme Court on three appeals. The process allowed me to submit opening arguments which were limited in length. The developer and the Oregon Department of Energy were allowed to submit rebuttal arguments. The decision was made based upon these documents and the material already in the file. There was no discovery, no cross examination of witnesses, no oral arguments. The statutes do not require, nor support the Oregon Supreme Court meeting due process requirements. The court is required to provide a decision within 6 months, They are also required to base their decisions on the content of the agency file regarding the project.

Unless a contested case is allowed by the agency, or a decision is reviewed by the circuit court, the file contains only the following two documents:

1. Written comments the public provided in response to the draft proposed order. The public is instructed that they need to provide a statement of the issue they are concerned with and some kind of documentation regarding why the person is objecting to that issue.
2. The written request for a contested case which the agency indicates must state what the issue is, the rule being violated, why a contested case should

be allowed, references your prior comments, and whether you are asking to appear as a full party or limited party to the proceedings.

The record at this point typically includes thousands of pages of material provided by developers to support their claims that they comply with the siting standards and the Oregon Department of Energy justification for their approvals of a site certificate and other decisions such as denying requests for site certificate conditions to meet requirements of the rules,

Requiring all decisions related to the issuance of a final Site Certificate to be heard as “contested cases” before the Oregon Supreme Court fails to comply with due process. It allows actions to be taken against an individual or the public without providing any opportunity to have the case heard prior to taking the action.

The lack of providing for a fair and impartial process with established rules has been further eroded due to the failure of SB1034 which would have required the Oregon Department of Energy to comply with the same Land Use Rules that counties and other agencies must comply with. This rule now allows for a taking of property absent requiring that Land Use Decisions be completed prior to the issuance of a Certificate of Public Convenience and Necessity.

The Boardman to Hemingway Transmission Line site certificate has been referenced as supporting the need for this bill. I submitted a timeline regarding the processing of that Site Certificate showing that it was Idaho Power and the Oregon Department of Energy which slowed the process, and yet this bill focuses on removing rights of the public as a means to reduce processing timeframes.

Allowing the use of a Site Certificate to meet the need for a Certificate of Public Convenience and Necessity in order to condemn private property for a transmission line right of way is a conflict of interest for the following reasons:

--The Oregon Department of Energy siting division is financially dependent upon developers who pay for staff and expenses during the review of

applications for site certificates. In the case of the Boardman to Hemingway Transmission Line, Idaho Power paid over four million dollars for work on the application before the Contested Case Process had even started. Given the devastating impacts to property owners that condemnation of their land for a right of way causes make the use of a site certificate to support condemnation questionable.

--The Oregon Department of Energy consistently denies contested case requests for most people, either by refusing to allow the hearing or denial following a hearing. For the Boardman to Hemingway Transmission line there were 117 requests from the public for contested cases. Over 70 were denied access to a contested case due to procedural issues or through requests from Idaho Power and the Oregon Department of Energy for Denial by Summary Determination. The remainder were denied following Contested Cases.

There have been two amendments to the initial site certificate which added a total of 5,000 acres to the site and removed or changed multiple site certificate conditions included in the initial site certificate. None of the requests for contested cases were granted.

--The agency and it's legal counsel appear in all contested cases and appeals in support of the developer.

These kinds of actions demonstrate why site certificates should not be used to take land from unwilling owners through condemnation.

I encourage this committee to refuse to allow HB -3681 to move forward.