Chair Jama and members of the Senate Committee on Rules 6/5/25

Re: Testimony supporting SB-1034

The Oregon Department of Energy through the Energy Facility Siting Council have failed on an ongoing basis to follow Oregon Land Use laws. The division charged with requiring developers to comply with land use laws is funded entirely by those they are evaluating. They have allowed exceptions to land use goals in all of the last 33 site certificates they have issued. With the change in the statute which denies the public access to a Circuit Court review when the department denies a contested case it will be nearly impossible for the public to effectively argue their cases before the Oregon Supreme Court when these exceptions are granted.

Contrary to one individual's testimony, the review by the Oregon Department of Energy is not objective. The state goals are by their nature broad. The specific details regarding how to apply the goals are defined by the county rules based upon the important resources and landscapes present. By failing to require developers to comply with local rules, the agency is able to rely upon their own "interpretations" and "discretion" in making decisions. This has resulted in a lack of consistency in the decisions.

Example of "discretion" which have appeared in final Site Certificates:

--Allowing a developer to post only a $1.00 bond to meet the mandatory requirement that the developer retain a "bond that the Energy Facility Siting Council determines is adequate to restore the site to a useful, non hazardous condition".

--Allowing developers to decide what facility components, such as roads and transmission lines connecting the development to the electric grid will be considered as part of the development in applications.

--A third example of "discretion" was allowing a developer to use their own methods for determining noise levels rather than the ones specifically outlines in Oregon's Noise statutes and allowing an "exception" allowing a

developer to expose residents to twice the level of increased noise than that established in statute.

--Allowing exceptions to Goal 4 forest land and Goal 5 farm land goals.

Exceptions by their nature are not consistent with the plain language of the statutes and rules creating confusion and inconsistency in the requirements for energy developments. For the Boardman to Hemingway Transmission Line the department exception to Goal 4 has been followed up with a decision by the Oregon Department of Forestry that Idaho Power is not required to comply with the Forest Practices Act. According to an email I received on February 6, 2025 from Kirk Ausland of the Oregon Department of Forestry, the developer will not be requiring approval of an "Alternate Practice" including providing mitigation for changing the land use designation of forest land to one that does not require reforestation of the area being clear cut.

The Oregon Department of Energy refused to include information on PacifiCorp in their review of the B2H project even though they were aware that PacifiCorp would be a 55% owner of the line. The Public Utility Commission considered the significant need PacifiCorp stated would be provided by the transmission line to serve their customers in issuing a certificate of public convenience and necessity. This allows Idaho Power to condemn private property for their right of way. Now PacifiCorp has admitted that the line cannot be used to serve their customers, with one exception and have removed it from their public planning documents. Idaho Power would not have been able to claim they could not meet their need with less costly and less damaging resources without including PacifiCorp's stated need. The law does not allow condemnation of private property to allow a utility to meet the need of a single large for profit private party. Using "discretion", the Oregon Department of Energy did not require an application which included information and documentation regarding the major owner of the transmission line. If they had, it no doubt would have been discovered that PacifiCorp customers would not be served by the development. As it now stands, Idaho Power is condemning farm and forest lands across five Eastern

Oregon counties to construct a transmission line that will only serve 20,000 customers in Malheur and Baker Counties and one in Morrow County along with their 600,000 Idaho Customers. The remainder of the transmission line will be used for wholesale purchase and sale of energy on the open market.

Many of the siting standards relate directly to Oregon Land Use statutes and rules. The ongoing allowance of exceptions to state laws and rules by the Oregon Department of Energy through the Energy Facility Siting Council for large wind, solar and transmission lines, has established that for energy developments complying with Land Use Laws is not a requirement, but an option.

These developments are consuming a greater and greater amount of land in Eastern Oregon with no consideration for the cumulative impact of the developments on the people or resources. In Morrow County there are 1,018,740 acres of combined crop and rangeland. The constructed and approved wind and solar developments compose a site of 121,388 acres. That means that 12% of Morrow County agricultural land is now within constructed or approved wind and solar developments.

I am reminded of a Committee Meeting I attended several years ago. One of the representatives asked how much land would be required to meet the need for electricity in Oregon through wind developments. One of the other committee members stated, “There is lots of land in Eastern Oregon.” Unfortunately, her suggestion has been implemented.

Please approve HB-1034 to require “right siting” of wind and solar developments.

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