

SB 951: CHANGES TO ENERGY FACILITY SITING LAW

Testimony of
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on behalf of
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INTRODUCTION

This bill addresses Oregon's process for deciding whether applicants can build new power generating facilities in Oregon. Utilities and others have already submitted to the Energy Facility Siting Council (EFSC) their plans to erect over 3500 megawatts of fossil-fueled combustion turbine power plants in Oregon. Many of these plants are huge, about 500 megawatts each. This quantity of combustion turbines, operating consistently, would produce more power than 6 Trojans at its historical operating factor. In fact, 3500 megawatts of combustion turbines operating full-time would produce power equal to over 80% of Oregon's total power consumption today! These plants would burn huge quantities of Canadian natural gas and emit hundreds of millions of tons of carbon dioxide and other air pollution.

If built and operated, they would also foreclose the development of conservation and renewable resources in Oregon by consuming all conceivable "need" for power--and then some. Conservation is labor intensive; renovating Oregon's homes, offices, schools, hospitals, industrial plants, and irrigation systems could save energy at less cost to the economy and environment than burning gas to produce electricity (and wasting two-third of the gas in the process of conversion and transmission). Such conservation would also create tens of thousands of jobs that would continue for the foreseeable future. Operating a huge combustion turbines does not provide substantial employment. A 500 megawatt turbine requires a workforce of only about 20 persons, while a 5 megawatt residential conservation project would employ about 100 persons for 3 years.

The utilities and developers drafted SB 951 to gut the State's authority over power plant siting. It would accomplish this purpose in many ways.

REVIEW OF SB 951 PROVISIONS

1. ELIMINATING THE ASSURED CONTESTED CASE HEARING

Present law guarantees the opportunity for concerned citizens to require EFSC to conduct a full contested case hearing on any site certificate application. SB 951 eliminates that assurance by providing that only the site certificate applicant is guaranteed a place in any contested case hearing.

In the past, such contested case hearings have saved Oregonians hundreds of millions of dollars that the utilities would otherwise have wasted on doomed nuclear projects. In 1975, EFSC had granted a site certificate for the Pebble Springs nuclear projects to be built by PGE, PP&L, and Puget Sound Power & Light Company. Lloyd K. Marbet appealed that decision to the Oregon Supreme Court,

which struck down the EFSC action and required that the agency conduct a new proceeding. The ruling in the new case in late 1978 was that, indeed, there had been no sufficient proof that the nuclear projects were needed (that is, cost-effective compared with the available alternatives, including conservation). That finished off the Pebble Springs projects and saved Oregon ratepayers hundreds of millions of dollars. PGE, PP&L, and the other utilities were insisting upon spending on those plants. More tens or hundreds of millions were saved, because the law provided then (as it does now) that the site certificate is automatically "stayed" during the appeal to the Oregon Supreme Court.

Thus, State government actually worked and produced a result far superior to that desired by the utilities. As the Pebble Springs plants were of the same vintage as WPPSS 1 & 3, it is almost certain that the utilities would later have abandoned the projects as too costly and not needed, even after spending billions of dollars to build them. Recall that WPPSS spent over \$6 billion on nuclear projects that it abandoned in 1982, mothballed in 1982 and 1983, and finally terminated in 1993.

Why do utilities want to build power plants that are not needed or cost-effective? Because that is how utilities earn their profits, under the type of conventional ratemaking that prevails in Oregon. Only if the utility owns the plant can it place the cost of the plant in "ratebase" and therefore earn a profit or "rate of return" on that cost. If a utility simply buys power from another source, for example, conventional ratemaking allows it to recover its costs but no profit. If this bill is to proceed, it should be amended to remove the root cause for utilities to desire to build uneconomic power plants--by allowing utilities to earn a profit (or suffer a loss) on power purchases. There are a variety of valid methods to achieve this.

2. ELIMINATING THE "NEED FOR POWER" STANDARD.

Existing law requires EFSC to adopt site certificate standards requiring an applicant to show a "need for the proposed facility, consistent with the state energy policy set forth in ORS 469.010, 469.060, 469.190 and 469.310," which include a broad array of economic and environmental concerns. ORS 469.060 specifically pertains to the "statewide energy need" and "satisfying Oregon's future energy needs".

Existing law accords a "rebuttal presumption of need" for facilities "identified for acquisition in the short-term plan of action" of a least-cost plan approved by the Oregon Public Utility Commission or by any "other governmental body that makes or implements energy policy." This refers to the energy policy set forth in the specified Oregon statutes (ORS 469.010, 469.060, 469.190 and 469.310); SB 951 specifically requires that any least-cost plan used to obtain a "rebuttable presumption of need" be "consistent with the energy policy of the state."

SB 951 simply removes the entire need for power standard, thereby allowing utilities and developers to build power plants (and, in the case of utilities, results in imposition of the costs of such power plants upon their captive customers), whether or not such plants are needed or are economic or have severe adverse environmental effects.

3. GUTTING ALL OREGON ENERGY POLICY IN POWER PLANT SITING PROCEEDINGS.

SB 951 deletes all meaningful references to Oregon's energy policies, apparently directing EFSC to site power plants without regard for those policies. In particular, SB 951 deletes the requirement that "cost-effectiveness be considered in state agency decision making relating to energy sources, facilities or conservation" and even deletes all references to "cost-effective," including the definition of "cost-effective."

Proponents of the bill should be asked why EFSC should approve facilities that are not cost-effective and why cost-effectiveness should no longer be considered. The reason appears to be that the utilities wish to be free to build non-cost-effective power plants, then impose all of the costs upon ratepayers.

SB 951 also deletes even the requirement that ODOE review the literature and prepare a report on global warming gases.

4. IMPAIRING ENFORCEMENT OF SITE CERTIFICATE CONDITIONS.

SB 951 eliminates EFSC and ODOE monitoring of certificated sites for compliance with Oregon statutes, EFSC or ODOE rules, or site certificate conditions, leaving such monitoring up to the applicant. A more clear case of the fox guarding the henhouse would be difficult to imagine.

SB 951 strikes EFSC's and ODOE's authority to "inspect the site . . . to assure that the facility is being operated consistently with . . . any applicable health or safety standards."

SB 951 also strikes EFSC's authority to establish programs for monitoring "to assure continued compliance with . . . health and safety standards adopted under ORS 469.501 and 469.503."

SB 951 also eliminates the requirement that the applicant be held to its "warranties" in the site certificate. Thus, commitments made by applicants will no longer be enforceable.

SB 951 also eliminates the authority of any court to issue restraining orders or

injunctions to secure compliance with the Oregon statutes pertaining to energy facility siting and operation. Instead, the court can issue such orders only for violations of site certificates. Thus, if there is a requirement of Oregon law that is not repeated verbatim in the site certificate, Oregon courts are rendered powerless to enforce Oregon law.

5. CURTAILMENT OF EFSC'S AUTHORITY TO SET STANDARDS FOR ENERGY FACILITY SITING.

SB 951 restricts EFSC's standard-setting authority to certain subjects. It expressly strikes EFSC's authority to consider "wastewater" generation in the siting process.

SB 951 also seeks to establish a skewed "override" provision, allowing EFSC to grant a site certificate, regardless of the applicant's failure to meet any or all of the standards, if "the overall public benefits of the facility outweigh the damage to the resources protected by the standards the facility does not meet." Combined with the severe restriction on the subject matter of the standards, this would establish a skewed benefit/cost analysis, in which all "benefits" of the project are counted but only a few of its "costs" are counted. As SB 951 deletes all references to global warming and virtually all other environmental considerations beyond the boundary of the power plant site itself, this provision would allow EFSC to count benefits throughout Oregon (or the world), while counting only those environmental detriments which happen to occur only on the site boundary (such as dust), and then not even consider wastewater production.

6. ELIMINATING THE STAY OF THE SITE CERTIFICATE PENDING A DECISION ON SUCH STAY BY THE OREGON SUPREME COURT.

Existing law provides that any party to a contested case proceeding or any person affected by an EFSC order can appeal the order directly to the Oregon Supreme Court. The applicant can petition the Court to lift the stay upon showing that the "delay in construction will result in substantial economic injury to the applicant." Self-imposed economic injury, resulting from the applicant's own decisions, does not qualify for lifting the stay. Thus, an applicant cannot get the stay lifted by committing itself to spend money on the project, then claiming that the delay will cause it economic injury. The applicant also must prove that lifting the stay "will not result in irreparable harm to resources protected by applicable council standards or applicable agency or local government standards."

Under these standards, the Court in 1995 lifted the automatic stay on the Coyote Springs project almost immediately after PGE requested it. None of the intervenors opposed lifting of the stay, which would never have been in effect at all, had PGE sought to avoid it prior to the time that the appeal was filed in the Oregon Supreme Court.

The Court can then reverse and remand the case back to EFSC, if its finds error in EFSC's decision. To date, in the 3 times an EFSC site certificate order has been appealed, the Oregon Supreme Court has reversed and remanded it in 2 cases. If the Court remands an EFSC order, the applicant must then return to EFSC for a new or continued site certificate proceeding.

SB 951 eliminates the automatic stay and allow EFSC to require that intervenors post huge monetary bonds even to argue that a stay should be imposed. Further, allowing only EFSC to grant a stay poses a clear conflict; the agency granting the site certificate should not be the entity to decide whether its own order should be stayed or not.

7. ELIMINATING EFSC AND ODOE MONITORING OF THE TROJAN NUCLEAR SITE.

SB 951 eliminates authority for EFSC or ODOE to perform testing, sampling, or monitoring of any "nuclear fueled thermal power plant." Trojan is certificated as such a plant. Consequently, SB 951 cuts Trojan loose from any EFSC or ODOE inspections or monitoring.

8. ELIMINATING ALL SITING AUTHORITY OVER NUCLEAR WASTE DISPOSAL FACILITIES.

SB 951 removes the authority of EFSC to control the siting of nuclear waste disposal facilities in Oregon, including high-level radioactive waste disposal facilities, as it eliminates the definition of "waste disposal facility," thus removing such facilities from EFSC scrutiny or licensing.

9. OTHER PROBLEMS (PARTIAL LIST).

SECTION OF SB 951	CHANGE TO EXISTING LAW	COMMENTS
3	deletes definition of "electric utility"	makes the siting system unworkable
3(16)	defines nominal electric generating capacity as "net electric power output"	makes the siting system unworkable; capacity is a measure of size, while output is a measure of throughput

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