



Oregon

Tina Kotek, Governor



550 Capitol St. NE
Salem, OR 97301
Phone: 503-378-4040
Toll Free: 1-800-221-8035
FAX: 503-373-7806
www.oregon.gov/energy

To: Energy Facility Siting Council

From: Oregon Department of Energy

Date: September 8, 2023

Subject: Agenda Item E (Information Item): Ms. Gilbert's Presentation of Siting Process Concerns for the September 2023 EFSC Meeting

Attachments: Attachment 1: Ms. Gilbert's comments

AGENDA ITEM BACKGROUND

On July 21, 2023 Ms. Gilbert submitted a memo to the Energy Facility Siting Council (Council) describing concerns related to the Siting Process. Ms. Gilbert requested that the memo be provided to Council and reviewed as an agenda item at a future Council meeting. Ms. Gilbert's memo was provided to Council and is included as Attachment 1 of this staff report.

Council Secretary, Mr. Cornett, conferred with Council Chair, Ms. Grail, on the request for inclusion of the memo as a Council meeting agenda item. On August 24, 2023, Ms. Gilbert was notified that her request had been granted by Chair Grail and that she would be provided 15 minutes at the September 22, 2023 Council meeting, to be held at the Oregon Department of Energy's Salem office location, with remote and call-in participation options, to present concerns raised in the memo.

To: Energy Facility Siting Counsel Members Friday, July 21, 2023

From: Irene Gilbert, as an Individual citizen

Subject: Council Process Concerns. These issues are being presented by me as an individual and have not been approved by any groups which I am affiliated with.

I am requesting that the Energy Facility Siting Counsel make the following requests of the Oregon Department of Energy

1. That scheduling provides adequate time for counsel members to receive, read, and research public comments they receive.
2. That the Oregon Department of Energy provide statements in public notices that communicate that changes to existing site certificate conditions will be reviewed in regards to their impacts on the entire development.
3. That notice include a description of Amendments that communicates that the changes are significant when they are.
4. Rather than Counsel making comments that are based upon assumptions regarding a commenter or their comment which may impact counsel decisions, I am requesting that they be posed as a question to the individual.

NARRATIVE REGARDING THE ABOVE REQUESTS

TIMELINES FOR COUNCIL REVIEW OF PUBLIC COMMENTS

As frustrating as it is, I continue to bring issues before the Council in the hopes that at some point Counsel will give weight to the public comments rather than relying upon interpretations and recommendations of the Oregon Department of Energy and the developer. Counsel members should at least give the public the courtesy of reading their comments and require scheduling that allows them to read the objections and compare them with the rules and statutes that the counsel is to apply. When public comment hearings are held the day prior to the Counsel being presented with the Oregon Department of Energy Recommendations, the potential that public comments will be given due consideration is slim at best. I applaud Counselor Devlin and Counselor Beier for stating the obvious fact that they would not have enough time to read and consider the written comments submitted by the public regarding Amendment 1 of the B2H Site Certificate prior to the counsel meeting the following day which started at 8:30 a. m. The counsel has the authority to require that ODOE schedule

meetings to review Draft Site Certificates and public comments in a timeframe that allows members to make up their own minds as to their legitimacy.

A process where council members must rely upon the Oregon Department of Energy staff to interpret, restate and recommend that public comments should not be adopted is both discouraging and disrespectful to members of the public who often struggle for many hours in an effort to communicate to counsel areas where a draft site certificate fails to comply with Counsel rules. Many of these citizens are not familiar with the EFSC contested case process, may or may not have had any experience with government bureaucracy and often are stressed and frightened by the impacts that the proposed development will have on them and things they value. Some appear trying to protect resources that families have spent generations protecting that will be damaged or destroyed. The majority of the parties simply want developers to compensate citizens and the public at large for the damages to such things as wildlife, historic properties, protected areas, local economies, or because they are being placed at risk of wildfire, noxious weed infestations, noise exceedances, etc. Citizens and local agencies will bear the burden for the impacts of energy developments. That burden should not be increased because the developer is allowed to avoid providing compensation or resources to compensate for damages.

I understand why developers want site certificates that require minimal mitigation for impacts to private property owners, ratepayers and public institutions. They typically work for their stockholders or large multinational companies and must make money to satisfy them.

I understand ODOE's motivation for supporting the developers as they did by making recommendations that counsel deny every contested case on the Original Site Certificate for one recent decision. ORS 469.421 requires the Oregon Department of Energy Siting Division to charge developers and facility owners the entire cost of their budget. They are reliant on the developers of Site Certificates they approve to pay their salaries and maintain the Siting Division. If they were not approving site certificates and having energy developments built, they would lose their jobs.

What I do not understand is why the Council members would accept the recommendations and restatement of arguments provided by ODOE and the developers without actually doing their own evaluation of public comments and

references provided or providing opportunity for the public to correct errors, misstatements of issues or when the department fails to present arguments made by the public. I encourage you to have a discussion regarding above request Number 1.

PROCEDURAL QUESTION AND RECOMMENDATION REGARDING WHETHER THE PUBLIC NOTICES ACCURATELY DESCRIBES THE ISSUES AND PROCESSES THAT WILL OCCUR

I submit the following:

On Page 1 the notice states reviewed at the July 18, 2023 counsel meeting states that the amendment includes re-location of transmission line route segments, changes in some new and substantially modified roads and “amendments of site certificate language to support implementation and interpretation”.

I question that a statement such as this communicates to the public the fact that changes in site certificate conditions include changing the requirements or allows exceptions to previously approved requirements.

On page 2, description of amendment request it says that the request adds area to move facility components and “also seeks approval to modify condition language for several conditions (See RFA1 Attachment 6-1) I question that a statement such as this communicates that there are site certificate changes that are entirely different as a result of the modification of the language.

On page 4 of the Public Notice the first paragraph states, **“Review for RFA1, Council must determine whether the preponderance of evidence on the record supports that the PORTIONS OF THE FACILITY WITHIN THE AREA ADDED TO THE SITE BOUNDARY BY THE AMENDMENT COMPLIES WITH ALL LAWS AND COUNCIL STANDARDS APPLICABLE TO AN ORIGINAL SITE CERTIFICATE application, and the amount of the bond or letter of credit required under OAR 345-022-0050 is adequate.”**

The Oregon Department of Energy told the council that their rules do not require specificity in their notices and that their public notice does not state that the public cannot respond to anything they like. When a notice states that what the counsel will be evaluating is whether the portions of the facility added to the site boundary comply with counsel rules, it is reasonable to believe that based upon

the decision process for allowing a contested case this is the only area where any changes could form the basis of a contested case. Commenting on other impacts would be a waste of time.

To Address this issue, please discuss and consider implementing recommendations 2 and 3 above.

REGARDING A COMMENT REGARDING WHETHER OR NOT I WAS AWARE OF A COUNCIL RULE WHICH OCCURRED AT THE JULY 18, 2023 PUBLIC HEARING

At that meeting a Counselor stated that she did not believe me when I stated the reason for requesting time to submit written comment on a topic in writing was because I was unaware of the opportunity to comment regarding impacts to the entire site when previously approved site certificate conditions were changed during an amendment. When counsel makes assumptions absent documentation that are likely to impact the results of a decision and an individual is present, I recommend that Counsel provide opportunity for the individual to respond. My father is responsible for my ethics and honesty is a core value I have. I do not knowingly lie. If I misstate it is because I lack understanding or knowledge. When I said that I was unaware until 2 days prior to the council meeting that comments regarding changes in previously approved site certificate conditions allowed comment on how that change impacts the entire development, that was exactly what I meant. I do not recall having an Amendment request that included both the addition of area as well as substantial changes in previous site certificate conditions. Typically they address increased area, new processes, changes in ownership, dividing the site into two or more developments, or changes to timeframes as the only issue.

In spite of following counsel for a dozen years, my experience with contested cases regarding amended site certificates is very limited. ODOE has a long history of denying contested cases on Amendment Requests and I would be surprised if they have allowed more than a half a dozen such requests in the past dozen years. I encourage council to request from ODOE a list of any Site Certificate Amendments where I was allowed to comment or understood that I have a right to comment to support a future contested case request based upon changes to previously approved site certificate conditions that would impact the entire site.

The reason I went back to the actual language of the rule 2 days prior to the public hearings was because of the significance of the changes in previous Site Certificate Conditions. Upon reading the rule, I realized that the changed site certificate conditions should be evaluated based upon impacts to the entire facility in spite of the statement to the contrary in the Public Notice.

The notice failed to communicate either the significance of the changed site certificate conditions or the fact that the council is required to evaluate the changed conditions in relation to their impacts on the entire facility. I do not believe at this point it would be productive for me to contest this issue. I am, however, requesting that counsel include in their next meeting a discussion of this memo and that individual council members consider implementing Suggestion 4 when they question statements of a party or a developer.

I also encourage counsel to fact check my comments as well as those of developers which are made during EFSC meetings.

For example, please research whether or not I would be correct were I to state that a bond is not required because developers maintain insurance or other methods that would address the need to compensate the public for costs of sight restoration in the event that the developer fails to do so that would not rely upon ratepayers and the public to pay for site restoration.

Respectfully submitted,
Irene Gilbert
2310 Adams Ave.
La Grande, Oregon 97850