

Luke May, Siting Analyst
Oregon Department of Energy
550 Capitol St. NE, 1st Floor
Salem, OR 97301
Email: SummitRidge.AMD4@Oregon.gov

Dear Luke:

This is my contested case request. There is an additional issue I want to submit, however, I wanted to be sure this one gets in. I received an e-mail indicating that due to mailing deadlines, I was allowed an additional day, until May 3 at 5:00p.m. to submit my contested case requests. I would appreciate confirmation that I can submit additional information tomorrow.

I apologize for the length of this request. I have been denied multiple Contested Case Requests due to a perceived failure to include enough documentation with the request. I do not believe the level of detail that has been requested is supported by the State Statutes regarding requests for contested cases, however, I am attempting to meet the very detailed requirements that the Oregon Department of Energy has been requiring.

I submitted this comment in writing on February 22, 2019. This Contested Case Request relates to Issues One, Two, Three and Four Starting on Page 2 and ending on Page 9.

CONTESTED CASE REQUEST SUMMIT RIDGE AMENDMENT 4

In reviewing my public comments, the Oregon Department of Energy (ODOE) has paraphrased information, taken information out of context, and omitted important details and issues. For this reason, I am requesting that the evaluation of the following Contested Case issues include my exact verbiage. In the event that this request is denied, I am also requesting that the denial be sent to me as a separate document. Previously, the denial was incorporated into a final Site Certificate, and I had a great deal of difficulty determining why I was being denied as well as being confused regarding when the timeframe for taking action on the denial actually started.

COMMENT ONE: I believe that the documentation I provided from the Oregon Water Authority confirmed that the ODOE interpretation that the developer was allowed to use up to 15,000 gallons per day was incorrect. The change should occur in the final Order for this development. In the event that the Siting Council fails to include the limitation to 5,000 gallons per day use, I am requesting a contested case on this issue. I have provided overwhelming data related to the correct interpretation of water use and received confirmation from the Director of ODOE that the change would be made.

CONTESTED CASE ISSUE TWO:

The Cumulative Effects Standard for Wind Energy Facilities has not been met and ODOE has failed to do an analysis of this issue in spite of my comments pointing out the issue.

This contested case also is in relation to the incorrect evaluation of the individual impacts which impact the Wild and Scenic Deschutes River. The documentation in the record shows the impacts are significant, however, the decision of the Council is not consistent with that documentation.

The evaluation of my comment two did not address the issue of a failure of the development to comply with the Cumulative Effects Standard, OAR 345-024-0015 as outlined starting on Page 3 through the first paragraph of Page 8 of my comments letter dated Feb. 22, 2019, and including impacts from weeds and wildlife discussed on pages 8 and 9.

OAR 345-024-0015 states:

“To issue a site certificate for a proposed wind energy facility, the Council must find that the applicant can design and construct the facility to reduce cumulative adverse environmental effects in the vicinity by practical measures **including but not limited** to the following:

- (1) Using existing roads to provide access to the facility site, or if new roads are needed, minimizing the amount of land used for new roads and locating them to reduce adverse environmental impacts.
- (2) Using underground transmission lines and combining transmission routes.
- (3) Connecting the facility to existing substations, or if new substations are needed, minimizing the number of new substations.
- (4) Designing the facility to reduce the risk of injury to raptors or other vulnerable wildlife in areas near turbines or electrical equipment.
- (5) Designing the components of the facility to minimize adverse visual features.

(6) Using the minimum lighting necessary for safety and security purposes and using techniques to prevent casting glare from the site, except as otherwise required by the Federal Aviation Administration or the Oregon Department of Aviation.”

A contested case is necessary since ODOE took multiple individual issues which require a contested case due to the determinations by ODOE that they are not “significant” issues. While it is not a problem that they were dealt with individually, the division failed to complete the “cumulative” evaluation of the issues as is required by the rules and statutes provided. Cumulatively, they clearly describe a composite of impacts which together result in significant and irreparable damages to the Lower Deschutes Wild and Scenic River. This river is listed as both a state and federally protected area as well as requiring protection under EFSC rules and Wasco County rules. A review of the management plan requires that there be “Effective mechanisms and regulations in place—to provide for the long-term protection of those resources for which the river was deemed eligible.” The identified “outstandingly remarkable” resources which must be viewed cumulatively per OAR 345-024-0015 include Views, Cultural Pre-History, Fisheries, Historic including the 38 sites documented relating to the Oregon Trail. and multiple recreational activities including fishing, hiking, camping, rafting, bird watching, biking and relaxing.

Please do not lose sight of the fact that this contested case is not only about the fact that the individual issues exceed what would be considered “significant impacts”, but also that the combined impacts viewed cumulatively create an even greater and unacceptable impact.

Paragraph One, Comment designated 2a.

I identified the Protected Areas standard in the introduction to this series of comments as well as the cumulative impacts standard. ODOE’s confusion relates to the fact that the issues, while important in and of themselves, require that review also address the cumulative impacts of all of them occurring simultaneously.

The Staff report incorrectly states that the standard requires only an evaluation of facility-related water use, and does not specifically require an evaluation of potential impacts to groundwater resources. OAR 345-022-0040 states: "To issue a site certificate for a proposed facility located outside the areas listed below, the

Council **must** find that, taking into account mitigation, the design, construction and operation of the facility are not likely to result in significant adverse impacts to the areas listed below."

There is no specific reference to either facility related water use, or impacts to groundwater resources. Both can impact the water table, and groundwater is critical to maintaining the flow of water in the Wild and Scenic Deschutes River. ODOE discounts documents provided from Northern Ireland Department of Environment, the USGS Washington Water Science Center, GSI Water Solutions and 9 additional documents referenced in my comment. The developer has provided no study or research proving that there will not be impacts to the water table from the impacts of weight and vibration as the turbines produce electricity. The record shows a preponderance of evidence that there is the risk of impacts to the water table and the flow of water which is recharging the Deschutes River and providing habitat for federally threatened and endangered fish in that river. This water issue also should be addressed under both OAR 345-022-0060 and OAR 345-022-0070. The results of ignoring this issue are multiple, substantial and should not be dismissed casually as is the case in ODOE's Staff Report for the March 22, 2019 meeting.

2b addresses views as both an individual consideration as well as providing additional impacts to be included in the cumulative impacts evaluation which has not been completed. ODOE refused to even review this issue or the impacts it adds to the cumulative impacts evaluation. They state: "Because there has been no changes in fact or law, the Department does not intend to address this comment further in the proposed order. Contrary to this statement, the Land Use rules for Wasco County have been updated. The rules require "Taking into account mitigation, siting, design, construction and operation of the energy facility will not cause significant adverse impact to important or significant natural resources identified in the Wasco County Comprehensive Plan, Wasco County Land Use and Development Ordinance or by an jurisdictional wildlife agency resource management plan..."

ODOE is only applying the first section of OAR 345-027-0075(l) Scope of Council Review. That part says "For a request for amendment to extend the deadlines for beginning or completing construction, after considering any changes in facts or law since the date the current site certificate was executed,"(in other words, first identify changes before completing the remainder of the review) and ignores the second requirement which states, "the facility complies with all laws and Council

standards applicable to an original site certificate application." I have provided additional documentation showing that there are significant impacts to the "Outstandingly Remarkable" visual values which supported the listing of the river as protected. The application itself documents significant visual impacts in their statement which is also on Page 61 of the Proposed Order that "portions of multiple turbines would be visible and some highly visible along the Deschutes River generally between Macks Canyon and Game Commission Camp," and other turbines would be "intermittently" visible from various locations along the Deschutes River. According to the Bend office of ODFW, the river miles between Game Commission Camp and Macks Canyon is approximately 13 miles. That is 13 miles when you are floating the river. To put this in perspective, two day float trips cover 40 miles of the Lower Deschutes. Three day trips cover the same 40 miles but at a more relaxed pace. 25% of the time people spend on the river during these trips would be spent looking at portions of turbines and some highly visible. If you camp in this area, you could be spending 50% of your "Wild and Scenic" experience viewing wind turbines rather than "wild and scenic" areas. Thousands of boaters access the river and will be exposed to these turbines each year. The impacts will be felt 24 hrs a day due to lighting requirements and 385 days a year. This certainly documents that the impacts to the Wild and Scenic Deschutes are "significant." ODOE rule 345-001-0010(53) defines "significant" as "means having an important consequence, either alone or in combination with other factors, based upon the magnitude and likelihood of the impact on the affected human population or natural resources, or on the importance of the natural resource affected, considering the context of the action or impact, its intensity, and the degree to which possible impacts are caused by the proposed action." In this case, Summit Ridge would be 100% responsible for all impacts being addressed in the site certificate and which are the subject of this contested case request.

Contrary to the Staff Report provided March 22, WCCP Goal 5, Policy 5 does provide a requirement and a standard of protection for the Wild and Scenic Deschutes River. It states "The Deschutes and John Day Scenic Waterways **shall be maintained and protected** as natural and open space areas with consideration for agriculture and recreation. The term "maintained and protected" establishes a standard that they be retained in their current status. Wasco County Land use laws apply county wide. OAR 345-022-0040 also requires the council to determine that developments constructed outside the protected areas do not result in significant adverse impacts. The statute ORS 197.015(5) establishes the

requirements and scope of county land use planning documents. It states that they include a summary of policies and proposals in broad categories and does not necessarily indicate specific locations of any area, activity or use. The Department agreed with my analysis indicating that WCCP's Goal 5 and 6 apply to the facility as noted on page 14 of the EFSC Staff Report for March 22, 2019 meeting. The statement that the development could be consistent with these policies in spite of the fact that the wind turbines would be visible along the Deschutes River could be considered consistent with these policies is a determination that has been objected to at every opportunity starting with the initial site certificate. In going through the initial application and one of the amendments, I identified the following people, organizations and departments who commented regarding their concerns regarding the impacts this development would have: Mr. Neal, Friends of the Columbia Gorge, BLM, Oregon Parks and Recreation, Wasco County Planning Department, Friends of the Grande Ronde Valley, Mr Heiken representing Oregon Wild and myself. I can find no other site certificate application which has received this level of public concern regarding the visual and cumulative impacts it would have on a public resource. A determination that the visual impacts would not be significant by the council is contrary to the opinion of the hundreds of people who have taken the time to comment regarding concerns with this development and shows a serious disconnect with the citizens and the state policy contained in ORS 469.010 stating that "It is essential that future generations not be left a legacy of vanished or depleted resources, resulting in massive environmental, social and financial impact." And "The basic human needs of every citizen, present and future, shall be given priority in the allocation of energy resources, commensurate with perpetuation of a free and productive economy with special attention to the preservation and enhancement of environmental quality." Obviously, the public that is referenced in this policy statement overwhelmingly are communicating the fact that a decision to allow this development to move forward is not consistent with their, as well as the Members of the Friends of the Grande Ronde Valley's views regarding what it means to preserve environmental quality or what it means to preserve the environmental quality for future generations. On Mar. 4, 2011 Sue Oliver reported to the EFSC on Summit Ridge. She stated, "Impacts of greatest concern were potential visual impacts to the Columbia Gorge National Scenic Area and the Deschutes river. This issue has continued to exist for the decade this project has been before the Council. It is also not consistent with the management plans for the Wild and Scenic Deschutes, ODOE rules, or the County

Land Use Plans. It is time to listen to the increasingly robust voice of the people and deny this amendment due to the visual impacts alone. When viewed cumulatively, there is no possibility that impacts could meet a test of “not significant”, and the fact that this developer cannot identify anyone willing to purchase their energy certainly removes any need for the development.

2c—Review of the impact the facility will have on wildlife and the need to include wildlife impacts in the required cumulative impacts evaluation. As stated in my comments on Page 7, “This is but one example of the inadequacy of the wildlife surveys being required.” My comment related to the overall inadequacy and/or lack of wildlife surveys. As was stated in my comments, the references to raptor and Golden Eagle impacts was provided as an example of the inadequacy of current surveys. Not only is there a lack of current surveys to base a decision on, but the site certificate fails to require surveys which are consistent with OAR 345-001-0010(2) which describes the analysis area as “containing resources that the proposed facility may significantly affect.” It also is not consistent with the definition of “Study Area” in OAR 345-001-0010(59) which identifies impacts to threatened and endangered animal species of 5 miles and use impacts to fish and wildlife habitat as one-half mile. In the response to my comments regarding the inadequacy of even the old surveys, ODOE responded that “The scope of Condition 10.7 is not intended to address potential impacts to raptors from wind turbine collision and fatality risk, as Condition 10.7 applies to a final habitat assessment.” They then state in paragraph 5 on Page 15 that “Condition 10.13 is not intended to address potential impacts to raptors from wind turbine collision and fatality risk, as it is used to inform Condition 10.15 which protects State-sensitive avian species during nesting and breeding seasons”. In other words, the department is documenting that they actually have not required any surveys intended to establish the risk to raptors from the Summit Ridge wind development. This section is further inadequate as it fails to comply with the Wasco County Section 19.030(C)(5) which requires the use of “appropriate no construction buffers around known nest sites.” The site certificate requires no buffers when the nest is not occupied or it is not the nesting and breeding season. Absent any documentation, they have established in their Proposed Order that the developer may kill up to the non scientifically established “Threshold of Concern” for raptors including Threatened and Endangered State and Federal species prior to any evaluation of the need for mitigation for these deaths. Given the clear documentation that there have been no surveys related to the potential

for avian deaths of Threatened and Endangered birds, it appears the choice of this example was a good one. ODOE continues to defer any concerns regarding Federally Protected species as not their responsibility. That is not legitimate. Not only has Oregon's Legislative Council confirmed that at a minimum these species must be addressed under the Habitat Mitigation Policy, but the Endangered Species Act clearly holds them accountable for any death or damage to these species by including State Agencies in the definition of "person".

A "person" cannot cause any damage to these animals, and yet the State of Oregon, Energy Facility Siting Council is being asked to approve a site certificate that authorizes the kill of a specific number of endangered birds which opens the council to federal lawsuit. Do not approve a site certificate that requires you to authorize illegal actions.

I urge you to allow this contested case to go forward or that you refuse to approve a site certificate that provides no surveys or outdated surveys regarding impacts to wildlife in habitat located in a protected area of the state. There is overwhelming documentation that the wildlife issues that impact the Wild and Scenic Deschutes have not been addressed. It is also overwhelmingly evident that the cumulative impacts assessment will not result in the determination that the site certificate can be issued when reviewing this with previously identified impacts.

2d. There has been no serious effort to document the negative impacts to the outstanding significant recreational opportunities provided on the Lower Deschutes River or to include these impacts in a cumulative impacts evaluation. What can be done is a review of material provided for other means as well as the identified impacts and try to determine how the public will view the changes based upon those using the resource. What we know is that multiple turbines will be seen from the bottom of the Deschutes Canyon while people are traveling by boat. We also know that this impact is understated due to the fact that only three visual representations were done for the entire river where turbines would impact the river, and those were not done in the areas that boaters would be floating. We know that the lights on the turbines will be visible in the night sky for the many recreationalists who camp along the wild and scenic river. We know that raptors nesting along the river will be killed while searching for food in the area of the development which will reduce the wildlife viewing. We know that the noise standard being used by ODOE is 10 dB more than that currently

recommended by the World Health Authority. We know that these impacts alone will negatively impact the recreational opportunities in this area and the public enjoyment of those opportunities. These issues need to be included in the cumulative impacts analysis of the development. Review of the combined cumulative impacts of this development on water resources, wildlife resources, visual resources, historic resources, recreational resources, noise impacts, weed impacts, on the Wild and Scenic Deschutes River are significant.

In response to the additional issues being required for a contested case request, the following applies:

I am very much interested in this proceeding. I have been following this development for multiple years and am concerned regarding the impact this development will have, not only on my experience of using the Wild and Scenic Deschutes River, but also concerns regarding the fact that it will mean that future generations will be denied the pristine, outstandingly significant things that resulted in the river being designated as a “Wild and Scenic River” both by the State of Oregon, but also by the Federal Government.

I am requesting participation as a full party to this proceeding. I have not had the time to bring forward all my concerns and issues both during the comment period as well as with this contested case. I am hoping that others will request contested cases giving me an opportunity to comment on those additional issues.

I am representing myself as an individual, and also the non-profit, Friends of the Grande Ronde Valley (FGRV) as their Legal Issues Coordinator. The members of the FGRV as a group are concerned regarding the negative impacts that industrial wind developments including Summit Ridge are having on the protected resources of the state. Given the significance and number of impacts that will result if this development is built, the FGRV members have a significant interest in assuring that the long-term damages do not degrade the area for future generations of Oregonians.

I do not believe others who commented on the record can represent the interests of myself or the FGRV. I do not know if anyone else has requested a contested case on the above issues, however, the perspective I present based upon my

involvement with the FGRV and as an individual will be unique and an individual with my experiences will not be as able to support them.

Irene Gilbert

2310 Adams Ave.

La Grande, Oregon 97850

Email: ott.irene@frontier.com

Phone: 541-963-8160