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May 2, 2019

Email: SummitRidge.AMD4@Oregon.gov

Re: Summit Ridge Wind Farm – Request for Amendment 4 – Contested Case

We are writing (again) to you to request a contested case on this amendment request in accordance with OAR 345-027-0071(6). The developer failed to show that they are currently eligible to receive an amended site certificate for the Summit Ridge Wind Development due to a lack of information regarding wildlife impacts by the development. We will address those issues below. However, we are also compelled to further contest that the Council MUST stay the amendment request, and immediately promulgate rules for compliance with requirements for an extension based on need. This is also addressed below.

Wildlife Impacts:

Fuji Kreider commented (on line) and again, on February 22nd, via an email letter signed also with Jim Kreider, on the lack of current wildlife survey data required to make a decision on this amendment. In our emailed public comment, of February 21, 2019, paragraph three, we specifically addressed this issue. We have since realized that our effort to identify a statute were not successful, however, as EFSC rules and the statutes do not require this level of information, that does not disqualify us from this contested case request. We have now identified several rules and statutes which apply to our issue. They include OAR 345-022-0060 Wildlife Habitat rules, OAR 345-022-0070, Threatened and Endangered Species, OAR 345-022-0040, Protected areas, and ORS 469.503 requiring the record to document eligibility.

Our interests in this issue stem from the fact that both: the wildlife as well as the Wild and Scenic Deschutes River, are public resources that are to be protected for future generations. We are very active Oregonians and participate in multiple activities dependent upon areas such as the Deschutes being available to us. We hike, bike, walk, camp, view wildlife; and very important to this location, river rafters! We are also members of clubs and environmental groups that actively work to support and protect resources including the Wild and Scenic Rivers.

This development will permanently impact wildlife and the Deschutes; as well as, other resources which we have not included in this contested case (because they weren't mentioned earlier.) **We wish to participate as a full party to this contested case.** We have other concerns with this development which we have not included in our comments, but which are important to us and we hope that others are moving forward with contested cases on at least some of those issues.

A determination cannot be made regarding whether Pattern can comply with these rules absent survey information regarding what animals and birds are present, how many are present, what activities are occurring on or adjacent to the site such as nesting, etc. The lack of information regarding wildlife also precludes determining that the development can comply with the Protected Area Standard, OAR 345-022-0040 due to the impacts the development may have on raptors. Since raptors utilize the Wild and Scenic area of the proposed development location as common forage, the likelihood of them being killed (death/take rates) must be studied again to determine if changes in the populations—and their food source— have occurred (due to fire, climate, etc.) since the original site certificate was issued. What are the current (and cumulative) risks, cannot be evaluated until adequate and updated surveys are conducted.

The overarching concern which necessitates this request for a contested case is contained in ORS 469.503 which requires evidence in the record which provides a preponderance of evidence that the facility complies with the council standards or the overall public benefits of the facility outweigh those adverse effects on a resource or interest protected by the standards.

In most instances, there is no current information or dated information on the record to support a decision that the development meets the wildlife standards. In addition, the Oregon Department of Fish and Wildlife has indicated in their comments that there is a need to provide current surveys. Dr. Smallwood, who's comments we are referencing in total, also correctly indicate that the Threatened and Endangered Species Act as implemented through the WCLUDO's Section 19.030(5) would include federally listed species. This is clear in the act definition of "person" that specifically includes state and county governmental agencies. There is also a document submitted by Ms. Gilbert with an opinion from Oregon Legislative Council indicating that EFSC does have to address federally listed species and since they are not doing so under OAR 345-022-0070, they must do so under OAR 345-022-0060.

EFSC rules require the developer to show through a "preponderance of evidence" that the development meets the standards effective the date of issuance of the Site Certificate. The developer per their letter to Luke May, dated 2/20/2019, concurred that the current surveys are not adequate. They stated "Pattern agrees that the original surveys need to be refreshed and will comply with the relevant site certificate conditions to ensure that current conditions are taken into account." Rather than provide the current surveys they agree are necessary, they indicate that they will complete those surveys, update their avoidance, minimization and mitigation measures after the site certificate is issued. There is no way to determine that this development can meet the wildlife requirements without the information that is being withheld by the developer. The record fails to meet the requirement that it contain a preponderance of evidence supporting the developer's claim they can meet the standards, and does contain a preponderance of evidence indicating that the information currently available is not relevant, especially in terms of climate changes and habitat changes which may have occurred as a result of the fires occurring in the area after the last amendment review.

Need—No Power Purchase Agreement:

In the Proposed Order, comments that we submitted in our letter (referenced above) were “punted” away based on the rationale that:

(in red lined) “Council rules include no substantive review criteria for which to evaluate the explanation of the need for an extension. Council is not required to find, and rules do not guide a finding, as to what constitutes an “acceptable” need for a timeline extension.” (p.16)

This is unbelievable to us! Once again we will reiterate a concern that not many others have commented on. Our interests as electric utility ratepayers are one reason that we are justified in raising the issue. One might also consider that we have an interest, as stewards and citizens of our great state, and we want to see rationale decisions being made in the public domain. The overarching concern is contained in ORS 469.503 which requires evidence in the record which provides a preponderance of evidence that the facility complies with the council standards or the overall public benefits of the facility outweigh those adverse effects on a resource or interest protected by the standards.

How can the Council rule on whether there are “public benefits” when there is no rule referencing a determination of need?! The Council therefore, cannot make the determination in the context of ORS 469.503. Therefore, we contend, again, the Council must either deny the amendment request—or stay the request until there are rules in place to address this vital concern.

We are requesting a contested case regarding the failure of the applicant to document that they are in compliance with the above statutes and rules. We furthermore request that an amended site certificate be denied for this development.

Cordially,



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