

Agenda Item M - Attachment 2:

Request for Contested Case

Irene Gilbert and Friends of the Grande Ronde Valley

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Contested case request regarding Amendment 4 of Summit Ridge Site Certificate

I believe it is illegal to continue processing this application due to the fact that the Oregon Supreme Court determined that the request is being processed under invalid rules. Even under the previous rules, this application was not timely. In spite of this, the Oregon Department of Energy has been unwilling to confirm that they will cease processing this application under the invalid rules. It is for that reason that I am filing this request for a contested case.

I previously commented on the wildlife surveys in my document of Feb. 22, 2019 which is available on the ODOE Summit Ridge comments document.

Problematic issues still remain as follows:

1. ORS 469.503 requires a “preponderance of evidence” on the record. Issuing this site certificate and having the developer provide evidence after a site certificate is issued does not meet this standard. The record is supposed to show that the developer is eligible on the date the site certificate is issued.
2. ODOE continues to exclude federally listed Threatened and Endangered species from the survey results unless they are accidentally encountered. As you know, representative Gregg Barreto requested an opinion from the Oregon Legislative Council to determine if failing to include these species in the Threatened and Endangered evaluation resulted in the state being out of compliance with the federal laws. The response was that it would not be so long as the species were addressed in the Habitat Mitigation decisions. This amended site certificate continues to exclude federally protected wildlife from habitat mitigation review and decisions as is documented in Table 2, Page 31 of the amended site certificate. This omission is further problematic due to ORS 183.332 requiring that the state rules conform to the federal rules.
3. As you indicated, the wildlife surveys being performed are intended to help establish habitat categories for purposes of habitat mitigation. With that in mind, the limitation of surveys to the siting corridor fails to provide the information necessary to do so. The surveys need to extend beyond the site boundary so that the extent that the indirect impacts of the species use of the habitat are included in the survey area. Just one of several examples I could provide is the Sage Grouse which has protected habitat around the lek as well as additional protected habitat beyond this area. Washington Ground Squirrels are another example. Because the above are significant concerns that should result in additional changes to the Site Certificate, the issue is within the Council jurisdiction and ability to resolve, and the issue is based upon a conflict between the state statutes, ODOE rules and their interpretation, it should be addressed through this contested case hearing.

While I appreciate the Council's efforts to bring the issue into compliance with the statutes and rules, it still fails to provide the necessary information in a timeframe that allows decisions to be made which are required by OAR 345-022-060 prior to the issuance of a site certificate. For this reason, I am requesting a Contested Case Hearing be held.

I am requesting to be a full party to these proceedings.

I am personally impacted by this decision due to the fact that I vacation and recreate in the areas where the turbines would be visible. The Friends of the Grande Ronde valley have similar interests, However, they also have a much larger breadth of interests and concerns . Due to that fact and my ongoing association with this non-profit, I am the only one who can present the issues that they want addressed.

Sincerely,

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