

From: [Irene Gilbert](#)
Sent: Sunday, September 1, 2019 4:35 AM
To: [Oregon Department of Energy](#)
Cc: [Nathan Baker](#); [Fuji Kreider](#); [Jim Kreider](#); [Lois Barry](#); [Charlie Gillis](#); [Gary Marlette](#); [Albert J. Farmer](#); [BENNER Janine](#) * ODOE; [CORNETT Todd](#) * ODOE; [Ted Sickinger](#); [EFSC Rulemaking](#) * ODOE
Subject: Energy Facility Siting Council Seeks Advice on Rules Governing Site Certificate Amendment Process

My comments are that this request is too little too late. It was quite clear to me at the Energy Facility Siting Council meeting when you took actions on the temporary and planned permanent restoration of these rules that you do not plan to make any substantial changes based on comments. It was stated that you already had received plenty of comment when these rules were originally implemented, so just having an opportunity to submit written comments would suffice. The only concern that the council and EFSC had was making sure you could get the rules restored permanently before the temporary rules expire and that it would not interfere with Christmas holidays..

I will provide additional comments by the deadline, but I want to share this part of my comments at this time:

I am outraged by the fact that you adopted these temporary rules for the express purpose of being able to approve amendments to sight certificates for the next 180 days that should be deemed illegal due to the court decision finding the rules you continue to apply void. These people should have to reapply under the previous rules. I and the people I represent will be permanently damaged due to the approval of these developments under illegal rules. We have already been prejudiced multiple times due to your previous approval of amendments under the Type B process for developments such as the State Line Wind Development absent any right being provided to the public to have any real impact or input into the decisions and your denial of our right to due process as well as the expanded use of ODOE determinations that no site certificate is required at all since these rules were initiated. These rules were never intended to increase public participation or influence on the siting process. They were intended to eliminate public input in the Type B amendments due to the elimination of any legitimate due process, and to make the process so complicated and full of specific, but completely objective requirements for the type A process that virtually every decision to deny a contested case was based upon the whim of ODOE and EFSC. You succeeded in placing in rule your historic pattern of removing the public from having any influence or contested cases no matter how poorly sited the developments are. Every word of the "new" amendment process should be thrown out as was ordered by the court. The pre October 2017 rules should be in effect, and if this process and outcome is how ODOE plans rule revisions, no rules should ever be promulgated by this agency absent a thorough vetting by the Oregon Supreme Court prior to implementing them. You are already planning "recordkeeping" changes to the illegal rules to change "shall" to "will" in dozens of places which will eliminate any potential for legal argument against your actions to succeed due to the permissive nature of the word "will", and to change the appeal to the Oregon Supreme Court rather than the Oregon Court of Appeals even though this was discussed in the order and you were told that you should not make this change. I am sure you are aware of the instructions to the legislature regarding writing bill language which say that the word "shall" is to be used for mandatory requirements and that is what should be used in bill writing if it is a requirement. Apparently, ODOE is not required to do anything, and the rule changes will codify this.

If the Oregon Department of Energy had the slightest interest in the public input you would have never promulgated these changes to the amendment rules in the first place. You had overwhelming public objection to virtually every change you made, but you did not listen. If the agency had any interest in performing your job in an ethical manner, you would have respected the decision by the Oregon Supreme Court and gone back to the rules in place prior to the mess you created promulgating the changes or at a minimum, asked for input from more than just the developers prior to issuing the temporary rules restoring the power grab the rule changes represent. You would not be rushing the permanent rules through with no public hearings, no Rules Advisory committee, etc., in order to get them in place prior to the 180 day deadline for temporary rules, and you would not be making a personal invitation to me to comment on the day a petition was filed for judicial review of your actions in overruling the courts through the use of a temporary rule. I made pages of comments when you implemented these rules in the first place, but you ignored them all. The only input I gave which you implemented was my comment, "If you are going to eliminate the public from the process, the least you can do is publish your actions on your web site."

These are the first of my comments regarding the rules you plan to restore permanently. Since you ignored all the comments from the agencies who took forward the appeal as well as mine, I am resubmitting as comments all the comments I made prior to you implementing these rules and the comments made by the public groups who appealed your decision. Perhaps in a second review of these concerns you will be able to find something worthy of your consideration.

Do not paraphrase or change any of these comments. When your agency has paraphrased and taken comments out of context in the past, you have changed the meaning in the process. My words are an accurate reflection of the comments I want to make.

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From: [Irene Gilbert](#)
Sent: Sunday, September 1, 2019 6:12 PM
To: [Oregon Department of Energy](#); [Jim Kreider](#); [Fuji Kreider](#); [Lois Barry](#); [Charlie Gillis](#); [Gary Marlette](#); [Albert J. Farmer](#); [BENNER Janine](#) * ODOE; [Ted Sickinger](#); [CORNETT Todd](#) * ODOE; [EFSC Rulemaking](#) * ODOE; [Brian Kelly](#); [Gail Carbiener](#); [Dave Price](#); [Suni & Charlie Danforth](#); [Brock Evans](#); [Lynn Randall](#); [Granella Thompson](#); [Cindy Severe](#)
Subject: Re: Energy Facility Siting Council Seeks Advice on Rules Governing Site Certificate Amendment Process

Todd Cornett, Janine Benner and members of the Energy Facility Siting Council

You are seeking "advice", however, it appears that you are very limited regarding what you want advice on. For one thing, you did not even provide a copy of the rules you want "advice" on. Unless someone was sitting in the room, they would have no idea what you are talking about approving as a final rule. I assume it is the illegal "temporary rules" which restore the rules determined invalid by the Oregon Supreme Court. You want "advice", not comments and primarily it is to advise you on how to accomplish the rules objectives "while not increasing the negative consequences on business." I assume that means how do you continue to allow amendments without the interference of the public in the process. At the Aug. 22 meeting, at least it was stated that there would be a written "comment period" even though you felt you had already received enough public input. Since you did not act on any of the citizen input you received, it is not surprising that you are not even pretending there is a "comment" period.

As the business owner of a sporting goods store, and an individual who communicates on a daily basis with other business owners, let me be perfectly clear. Your use of the current temporary rules which are the illegal rules you have been using for the past two years has a negative financial impact on all businesses in the State of Oregon dependent upon the natural resources of this state. Forests, agriculture and tourism which support most businesses in this state rely upon intact resources which are being consumed by the energy developments you have been illegally allowing to extend construction start dates using dated information, or no information, allowing them to increase the size of the developments, increase the height and diameter of the wind turbines increasing the deaths of birds, bats and pushing wildlife out of the best habitats. Destroying the viewscapes and the visual character of the Oregon Trail ruts to the extent that they in no way represent the views that the pioneers saw and which have in the past thrilled tourists. Any business dependent upon the use of natural resources of this state is experiencing ongoing and increasing financial damages the longer your agency continues to use the amendment rules to discourage and avoid public involvement in the processes. You have caused irreparable damages during the past two years while you have used the illegal amendment rules to allow developers to add land to their sites, increase the height and width of the rotors and in so doing, increased the fatalities to birds and bats, add entirely new developments using different energy sources to existing sites and calling it an amendment, at times allowing developers to add land to their sites without requiring any amendment process at all, keep energy developments that were sited years ago and were poorly sited at that time able to build by extending start of construction dates using that old information, and on and on. In other words, businesses such as sporting goods, businesses relying on tourists, nature lovers and hunters, fishermen or agricultural and forest products have been financially damaged by these rules. This damage continues and will continue so long as you continue to use the illegal rules to allow developers to continue to make significant changes while avoiding or ignoring the public in the process.

This is not "advice". It is a "comment" regarding your request. Please see that it is retained in exactly the form I am submitting it for your records. Also, please see that all the comments I provided starting with those I submitted during the time I served on the Rules Advisory Committee for these rules and continuing through this correspondence are included in the comments regarding your proposed permanent rules. I encourage you and the Energy Facility Siting Council to actually read them this time.

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On Friday, August 30, 2019, 01:56:20 PM PDT, Oregon Department of Energy <odoe@service.govdelivery.com> wrote:



ENERGY FACILITY SITING COUNCIL

Energy Facility Siting Council Seeks Advice on Rules Governing Site Certificate Amendment Process

On August 22, 2019, the Energy Facility Siting Council [adopted temporary rules](#) that govern the process for amending an energy facility site certificate. The temporary rules replace rules in OAR [345-015](#), [345-025](#), and [345-027](#) that were approved by the Council in October 2017.

The Council also initiated a permanent rulemaking process to adopt new, permanent rules for the site certificate amendment process that will replace the temporary rules. The Council invites written advice on what options it should consider for permanent amendment rules including, but not limited to, options that may achieve the rules' substantive goals while reducing the rules' negative economic impact on business.

The Oregon Department of Energy, serving as staff to the Council, intends to release draft proposed rules for consideration by the Energy Facility Siting Council in October 2019. Stakeholders are encouraged to provide written advice for Council's consideration to EFSC.Rulemaking@oregon.gov by September 27, 2019.

Advice may also be mailed to:

Christopher Clark, EFSC Rules Coordinator
Oregon Department of Energy
550 Capitol St.
Salem, OR 97301

To view more information about this rulemaking project and other rulemaking materials, please visit:
<https://www.oregon.gov/energy/Get-Involved/Pages/Energy-Facility-Siting-Council-Rulemaking.aspx>

For additional information about this rulemaking, contact EFSC.Rulemaking@oregon.gov or call Christopher Clark, the Council's Rules Coordinator, at 503-373-1033.



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Advice regarding any proposed Amendment Rules to replace those deemed invalid by the Oregon Supreme Court:

1. There should be no limit on contested case requests that exclude rules used in issuing site certificates, or amendments to site certificates. For example, Division 21 which defines what must be included in an application or amendment request should be contestable if the Oregon Department of Energy determines a site certificate application is complete which does not document the statements being made by a developer.
2. The public should be provided an opportunity to review and comment on the application for amendment prior to the development of the Draft Proposed Order. Contrary to the statements from ODOE, allowing the public to review what is being proposed and comment prior to issuance of a draft proposed order would likely reduce the need for some contested cases due to alerting the developers and EFSC of areas of conflict. Addressing issues early in the process is far less time consuming than dealing with them through ODOE's formal processes. I personally have had success in talking through concerns with developers and identifying solutions without involving ODOE or EFSC, but that is no longer occurring due to the short timeframes between when the information is made available through a draft proposed order and the deadline for submitting comments.
3. ODOE needs to quit trying to implement an interpretation that requires the public to include all rule references and documents they will use in a contested case request during the public comments. The statute and rules do not support their interpretation. The rules relate only to the opportunity to submit additional documents or identify related statutes for inclusion in the public comments. The comments are intended to identify the issue of concern in a concise manner with some sort of documentation. A contested case request must address the issue identified in the public comments, but there is no restriction in statute or rule which would preclude the identification of additional rules that cover the identified issue or documents supporting the need to resolve the conflict or supporting the fact that a conflict exists.
4. The contested case rules should use the Model Rules, unless there is a demonstrated critical need to add something. The contested case rules should use the same procedure for a new application as are used for an amendment to an existing site certificate. No time is saved by having two different sets of requirements for applications and amendments, and since the court decision requiring the opportunity to allow contested case requests, there is no time saving by using different procedures.
5. Hearings referees should come from the Oregon Department of Justice and they should be the ones making an unbiased decision regarding whether the issues being brought forward in a contested case request should be heard.
6. not be adjusted through the rule to make it more difficult for the public to have access to a contested case.
7. The determination regarding whether or not a contested case is allowed should rest with determining that there is a conflict between the interpretation or application of the rules as defined by ODOE and EFSC and the interpretation or application of the rules as is perceived by the public. No decision should be based upon a determination by the council that they do not agree with the petitioner, or making a determination based upon the contested case request that the petitioner would lose the contested case.