

November 27, 2019

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Energy Facility Siting Division  
Oregon Department of Energy  
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REQUEST FOR RECONSIDERATION OF THE DENIAL OF OUR REQUEST FOR A  
CONTESTED CASE ON AMENDMENT 4 OF THE SUMMIT RIDGE DEVELOPMENT.

Dear Max:

Pursuant to OAR 345-001-0080, we hereby petition the Energy Facility Siting Council (“EFSC” or “Council”) for reconsideration or rehearing (“petition”) of the denial of our request for a contested case on Amendment 4 of the Summit Ridge Development.

We request that the Council reconsider and reverse the following orders in this matter: (1) Order on Requests for Contested Case, (2) Order on Requests for Contested Case on Amended Proposed Order, and (3) Final Order on Request for Amendment 4 to the Site Certificate. We also request that the Council rehear the matter by holding a new public hearing, and allow a contested case to address and resolve the disputed issues. Finally, we request that the Council deny the requested Amendment to the Site Certificate.

The Council denied our request for a contested case on the above amendment request. However, we believe that the site certificate does not address our concern in a manner that provides a “preponderance of evidence in the record” as required by ORS 469.503 that the facility complies with the requirements of OAR 345-022-0060 Wildlife Habitat, OAR 345-022-0070 Threatened and Endangered Species, OAR 345-022-0040, Protected Areas and ORS 469.503.

The record only contains results of desktop surveys which fail to establish the actual conditions at the location. Given the extensive use of this area by raptors and the known significant numbers of wildlife located along the adjacent Wild and Scenic Deschutes, a mere determination by a desktop review that animals are present in the area does not address the actual significance of the projected impacts of the development. In addition, the increased concerns with the impact of climate change on the animals and their use of areas such as this, means there has been a significant change since the original site certificate was issued.

A requirement for future actions which could determine that the development does not meet the requirements to issue a site certificate does not meet the requirements of the rule. Absent documentation that the facility does not meet the standard, it must be assumed that it does not, and the site certificate would have to show that the facility provides a public benefit that would exceed the damages caused by a failure to meet these rules.

We incorporate by reference into this petition for rehearing or reconsideration our previously submitted concerns in this matter.

We respectfully request that the Energy Facility Siting Council reconsider and reverse its orders in this matter and/or rehear the matter.

Respectfully submitted,



Jim Kreider  
60366 Marvin Road  
La Grande, Oregon 97850  
[jkreider@campblackdog.org](mailto:jkreider@campblackdog.org)



C. Fuji Kreider  
60366 Marvin Road  
La Grande, Oregon 97850  
[fkreider@campblackdog.org](mailto:fkreider@campblackdog.org)

CC:

Todd Cornett, Division Administrator  
Energy Facility Siting Division  
Oregon Department of Energy  
[todd.cornett@oregon.gov](mailto:todd.cornett@oregon.gov)

Patrick Rowe  
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Dyann Susan Blaine  
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Luke May, Siting Analyst  
Oregon Department of Energy  
550 Capitol Street NE, 1<sup>st</sup> Floor  
Salem, OR 97301

May 2, 2019

Email: [SummitRidge.AMD4@Oregon.gov](mailto: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 22<sup>nd</sup>, 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,



Fuji Kreider and Jim Kreider  
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La Grande, OR 97850  
[jkreider@campblackdg.org](mailto:jkreider@campblackdg.org)  
[fkreider@campblackdog.org](mailto:fkreider@campblackdog.org)

**From:** [Fuji Kreider](#)  
**Sent:** Thursday, February 21, 2019 4:00 PM  
**To:** [MAY Luke \\* ODOE](#)  
**Subject:** Re: Summit Ridge Wind Farm - Request for Amendment 4

Fuji Kreider  
60366 Marvin Rd  
La Grande, OR 97850

February 21, 2019

Dear Chair Beyeler and Members of the Council,

I am writing to comment on the request for Amendment #4 to the site certificate for the Summit Ridge Wind Farm. Even though the construction deadlines for this project have already been extended twice, the site certificate holder (Pattern Energy) now seeks yet another extension. Please deny Pattern's request to extend the deadlines a third time.

It has been more than nine years since the preliminary application was filed, and more than seven years since the project was approved. If Summit Ridge were a viable, worthwhile project, construction would have been underway years ago. Yet Pattern admits that it has not been able to find a buyer for the power, obtain financing, or enter into any construction contracts for the project, despite the previous two extensions.

Moreover, the raptor survey data for this project is stale and outdated. It has been eight to nine years since the project site and vicinity were last surveyed for bald and golden eagles, and three to four years for other raptors. Previously, the U.S. Fish and Wildlife Service expressed serious concerns about this project's impacts and recommended a six-mile buffer between turbine sites and bald and golden eagle nests. Pattern now asks EFSC to extend the construction deadlines yet again, but has failed to perform and disclose updated surveys. It is impossible for EFSC and the reviewing public to determine the true, current impacts of the project on eagles and other raptors. In addition, technology for mitigating harm to birds-such as radar technology for curtailing operations during migratory periods-has changed substantially in the nine years since this project was first proposed. Because Pattern has neither disclosed the project's true impacts, nor explored suitable mitigation of these impacts, a third extension is inappropriate and should be denied.

In addition, Pattern Energy submitted this request for a third extension under invalid rules. These rules are currently being challenged by nine conservation organizations in the Oregon Supreme Court. The rules are invalid for a number of reasons, including because the rules were not adopted in compliance with the procedural requirements of the Oregon Administrative Procedures Act. Pattern should not be allowed to submit an application under these invalid rules.

Moreover, even if Pattern's application could somehow be retroactively processed under the old rules for proposed amendments to site certificates, those rules required Pattern to submit its application at least six months before the construction start deadline. Here, Pattern waited until three days before the deadline to submit its application and has failed to demonstrate good cause for its delay.

For these and other reasons, the requested third extension of the construction deadlines should be denied. If Pattern Energy desires to move forward with this controversial project, it must file a new application, complete with current data and information on the project's impacts. Please don't reward Pattern for its failures to disclose the project's impacts and its delays in proceeding with this project. Please deny the requested third extension.

Sincerely,  
Fuji Kreider

## MAY Luke \* ODOE

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**From:** Jim Kreider <jkreider@campblackdog.org>  
**Sent:** Friday, February 22, 2019 8:10 AM  
**To:** MAY Luke \* ODOE  
**Cc:** 'Fuji Kreider'; 'Jim Kreider'  
**Subject:** Summit Ridge Wind Farm - Request for Amendment 4  
**Attachments:** Summit Ridge - Kreider Comments - Fe 2019.docx

Dear Chair Beyeler and Members of the Council,

Attached are our comments on Summit Ridge Wind Farm – Request for Amendment 4. We need to start over.



Oregon Energy Facility Siting Council  
c/o Luke May, Siting Analyst  
Oregon Department of Energy  
550 Capitol St. NE  
Salem, OR 97301  
[luke.may@oregon.gov](mailto:luke.may@oregon.gov)

**Re: Summit Ridge Wind Farm – Request for Amendment 4**

Dear Chair Beyeler and Members of the Council:

We are writing to comment on the request for Amendment #4 to the site certificate for the Summit Ridge Wind Farm. Even though the construction deadlines for this project have already been extended twice and the developer ownership has changed (in the 3<sup>rd</sup> Amended site certificate 12/15/17); the site certificate holder (Pattern Energy) now seeks yet another extension. Please deny Pattern's request to extend the deadlines a third time.

This ill-conceived project has never begun construction because it has struggled to find financing and has no market (no power-purchase agreement.) It has been more than nine years since the preliminary application was filed, and more than seven years since the project was originally approved. If Summit Ridge were a viable, worthwhile project, construction would have been underway years ago. Yet Pattern admits that it has not been able to find a buyer for the power, obtain financing, or enter into any construction contracts for the project, despite the previous two extensions (p. 2 of Preliminary Request for Amendment #4 application.)

In addition, and more applicable to the Council's standards, OAR 345-024-0010 and 345-024-0015, the **raptor survey** data for this project is stale and outdated; and, mitigation technology has changed. It has been eight to nine years since the project site and vicinity were last surveyed for bald and golden eagles, and three to four years for other raptors. Previously, the U.S. Fish and Wildlife Service expressed serious concerns about this project's impacts and recommended a six-mile buffer between turbine sites and bald and golden eagle nests. Pattern now asks EFSC to extend the construction deadlines yet again, but has failed to perform and disclose updated surveys. It is impossible for EFSC and the reviewing public to determine the true, current impacts of the project on eagles and other raptors. In addition, technology for mitigating harm to birds—such as radar technology for curtailing operations during migratory periods—has changed substantially in the nine years since this project was first proposed. Because Pattern has neither disclosed the project's true impacts, nor explored suitable mitigation of these impacts, a third extension is inappropriate and should be denied.

Procedurally, there are additional problems with Pattern's request. First, Pattern submitted this request for a third extension under invalid rules or rules that have not been confirmed by the Oregon courts. These rules that were used are currently being challenged by nine conservation organizations in the Oregon Supreme Court. The rules are invalid for a number of reasons, including because the rules were not adopted in compliance with the procedural requirements of the Oregon Administrative Procedures Act. Pattern should not be allowed to submit an application under these invalid rules and should have been directed to re-apply. However, even

if Pattern's application could somehow be retroactively be processed under the old rules for amendments to site certificates, those rules required Pattern to submit its application at least six months before the construction start deadline. Here, Pattern waited to submit its application until three days before the deadline, and has failed to demonstrate good cause for its delay. If lack of financing and market are their reasons for delay (for past 9 years), then the project is obviously ill-conceived from the beginning!

**For these reasons: lack of financing; lack of adequate raptor surveys; and procedural errors, the requested third extension of the construction deadlines should be denied.**

If Pattern Energy desires to move forward with this controversial project, it must file a new application, complete with current data and information on the project's impacts and secure and adequate financing. Please do not reward Pattern for its failures to disclose the project's impacts and its delays in proceeding with this project. Please deny the requested third extension.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jim Kreider".A handwritten signature in blue ink, appearing to read "C. Fuji Kreider".

Jim and C. Fuji Kreider  
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