

Comments on SB 908 and SB 952

Both these bills present a positive move in terms of providing oversight to the actions of the Oregon Department of Energy.

Both proposals contain a major flaw in that they do not address the ongoing problems with the Energy Facility Siting Division and Energy Facility Siting Council. There are problems with the development and implementation of the rules as well as a failure to provide the public with a remedy when the Energy Facility Siting Council and the Department of Energy makes an error. Given the testimony before the Joint Legislative Oversight Committee from multiple sources who have been subject to the workings of the Energy Facility Siting Council decisions, I respectfully submit the following recommendations.

1. Establish areas of expertise for the members of the Energy Facility Siting Council.
--The only experience of the last person appointed to the Council is her current employment as Assistant Business Manager and Secretary to an electricians Union. Given the significance of the decisions being made by this council, and the apparent conflict of interest this appointment represents, it is clear that there is a need to establish areas of expertise for appointees.

2. Place the rulemaking for the Energy Facility Siting Council under the Energy Commission.

Two recent examples of the types of issues this would address are:

--ORS469.501 requires the Energy Facility Siting Council to adopt rules to address "Effect of the facility, taking into account mitigation, on fish and wildlife, including threatened and endangered fish, wildlife or plant species". The Department of Energy and Energy Facility Siting Council have decided to interpret the statute to mean they only have to consider Threatened and Endangered Species listed by Oregon, and in fact, authorize a number of deaths of federally protected species before they consider mitigation actions against developers. This rule change has placed the state of Oregon at risk for a lawsuit due to the failure to honor the federal Endangered Species Act in the issuance of site certificates.

--The Department of Energy and Energy Facility Siting Council are in the process of changing the rules related to Amended Site Certificates. They received comments from representatives of the Amendment Rules Advisory Committee, Utilities, Developers and the public that the proposed rules were unacceptable and should be withdrawn. The Department of Energy and Energy Facility Siting Council have chosen to ignore that input, and instead are moving ahead with promulgating the rules with only an extended comment period. This failure to consider public input is typical of the actions that indicate a need to have rules promulgated by an oversight committee.

3. This bill does not address the ongoing problems with the failure of the Department of Energy and Energy Facility Siting Council to provide a remedy when there is an error in the application of their rules. For example:

--They deny all requests for contested cases on Amended site certificates and have done so since the department was formed. This is in spite of the fact that amended site

certificates have been used to double the size of an energy development, change the type of energy development from one fuel source to another, etc.

--Most recently, in the Wheatridge site certificate, the Energy Facility Siting Council approved a site certificate that did not include the transmission line connecting the development to the grid which is contrary to ORS 469.300(24) and (25) which defines an energy site as including the facility and related or supporting facilities and defines related or supporting facilities as any structure proposed by the applicant, to be constructed or substantially modified in connection with the construction of an energy facility, including associated transmission lines. A proposed contested case decision has been issued indicating that the transmission line is not part of the energy development since the applicant did not include information on the transmission line in their application for a site certificate. The decision was based upon a document from the Energy Facility Siting Council that stated that the supplemental structures such as transmission lines, roads, etc. are only considered part of the energy development if the developer includes them in their site certificate application. They decided that "proposed by the applicant" means included in their application, not that the applicant proposed the transmission line because it is necessary to get their energy to the electric grid, or because they are controlling the development of the transmission line through their agreement with Umatilla Electric which is being paid by Wheatridge to build the line.

These sorts of decisions demonstrate a gross abuse of power on the part of the Department of Energy and Energy facility Siting Council which cannot be allowed to continue.

The decisions and actions of the Department of Energy and Energy Facility Siting Council make the problems with the issuance of tax credits pale by comparison. It is time for the legislature to address the abuses within the Energy Facility Siting Section of the Department of Energy. I encourage you to include language in these bills which will make an effort to address the many issues similar to those outlined above. A positive start would be to transfer the contested case process to the Department of Justice attorneys.

I urge you to amend the content of SB 908 and SB 952 to include methods to resolve the concerns listed above.

Thank you very much.

Irene Gilbert
2310 Adams Ave.
La Grande, Ore. 97850
e-mail: ott.irene@frontier.com