

Date: June 23, 2017

To: Mike Kaplan, Director, Oregon Department of Energy  
Todd Cornett, Council Secretary  
Members of the Energy Facility Siting Council

All members involved in the Wheatridge Wind Development Contested Case as indicated on attached Certificate of Service and Certificate of Filing (While I am not certain of a legal requirement to provide notice to these individuals, I am doing so)

Request for reconsideration and rehearing of the Wheatridge contested case and site certificate decision per OAR 137-003-0080. The Department of Energy made multiple procedural errors in addition to failing to correct their prior decision based upon a preponderance of evidence in the case file as follows:

1. The Department of Energy and Energy Facility Siting Council failed to follow the procedures required in a contested case hearing contained in OAR345-015-0085 in the following areas: (a) There was no final contested case hearing order issued by the Department of Energy or Energy Facility Siting Council as required by OAR 345-015-0085(7). OAR 345-015-0085(9) clearly indicates the need for a final hearings order prior to the issuance of the final site certificate. (b) The Department issued a final site certificate incorporating information from the draft contested case order without issuing a final contested case order. OAR 345-015-0085(3) states that the hearing officer proposed order is not part of the councils order. The Council failed to issue an order on the contested case, so that case is still active in spite of the fact that the council incorporated the draft information into a site certificate and apparently is applying the timeframe for requesting a rehearing on the contested case issue as if a final order had been issued.
2. The Department of Energy and Energy Facility Siting Council changed critical components of the site certificate decision process without changing the Administrative Rules to support the new decision process. The site certificate that was issued states that no site certificates have previously been issued which exclude the gen-tie line as a supporting facility.
3. The hearings officer erred in the following ways: (a) Failed to provide a fair and impartial hearings decision as required by OAR 345-015-0023 (2)(a) by giving unjustified weight to opinions of the Council when the hearing was to evaluate the accuracy of the council decision. He also failed to consider the information provided to him in the case record which indicated a preponderance of evidence existed in support of a finding in favor of my hearing request including past practices and interpretations which conflicted with the applicant's arguments (b) Did not notify parties to the contested case of his intent to take special notice of the opinion of the Council regarding their interpretation of the intent of the legislature and allow an opportunity for parties to contest the facts so noticed as is required under OAR 345-015-0046(2) (c) The council members do not meet the requirements of OAR 345-015 -0046(e) which allows the hearings officer to take official notice of "General, technical or scientific facts within the specialized knowledge of the Council or the Department of Energy" The Council or the Department have no knowledge, authority or statutory basis for determining what the legislative "intent" was regarding the words "proposed by the applicant", nor is there any statute delegating such

authority to them. Their authority is limited to implementing the statutes. The council has no more basis for determining intent than any of the other parties who disagree with their new interpretation of what the legislature intended. On June 19, 2017, representative Jodi Hack in an e-mail to me recommended legislative intent issues be submitted to the Legislative Policy and Research Department. Current legislators believe that the best resource for determining legislative intent is the Legislative Policy and Research Department and yet the hearings referee made his decision based upon an opinion document provided by lay citizens on the Council.

4. The hearings issue being heard was based upon the fact that the EFSC had erred in their interpretation of the statutes relating to whether or not the gen-tie line was required to be included in the application for a site certificate. Basing the hearings decision on a certified question responded to by the party who originally made the decision being contested and placing more weight on that response than multiple other persons who commented at public hearings and submitted comments reflected in the record does not justify the issuance of a summary judgment without hearing the full case. This action denies me and the Friends of the Grande Ronde Valley the right to have a full hearing on the issue. The Department and Council have demonstrated ongoing actions denying the public a remedy when the EFSC makes an error in their decision making which is reflected in the actions on this contested case.
5. The hearings officer and the Council cannot issue a final order on the summary judgement as the issue did not meet the standard requiring that there are no issues as to any material fact that is relevant to the legal issue when a decision is sought. OAR 137-003-0080 require the decision maker to consider the entire record to assess whether or not there is a genuine issue of material fact that is relevant to the legal issue to which a decision is sought. The record shows that there is significant disagreement regarding the failure to include the gen-tie line in the assessment regarding the issuance of a site certificate and the preponderance of evidence on the record supports my argument that it must be included as a supporting facility and be included in the evaluation of the site certificate application.

A review of the full record, which was made available to the contested case hearings referee shows that those disagreeing with the hearings referees decision include two Department of Justice Attorneys, the Friends of the Grande Ronde Valley, Umatilla County planning department and County Commissioners, myself in addition to others.

The above issues support the need for reconsideration and/or rehearing on the Contested Case request from the Friends of the Grande Ronde Valley and myself as provided by OAR 137-003-0080. Please note that while I have attempted to reference the correct rule related to this request, an error in terms of either incorrectly identifying the agency rule or statute, or typographical errors does not invalidate my request as I am not required to site a specific rule reference.

I encourage the Energy Facility Siting Council to make a formal decision regarding this request rather than simply decide not to address the request as has been the practice in the past. Under OAR 137-003-0675 and ORS 183.482 a failure to act is a denial of the request. Use of this procedure has allowed the EFSC to deny requests without having to go on record with any documentation as to the basis of their denial. Given the number of discrepancies and failures to

follow the rules and statutes which exist in the Wheatridge case, the Department and Council are obligated to explain why they would be unwilling to allow a rehearing or reconsideration absent providing justification for their actions.

This contested case order reflects an abuse of power when an agency and those with power delegated to them by virtue of their positions within the state system exceed the reasonable limits of that power and take actions not supported by Oregon Statutes or rules. For that reason alone, the contested case should be reheard, a final order should be issued following that hearing, and then a site certificate should be issued or amended to reflect the rehearing results.

Irene Gilbert, Legal Research Analyst  
Friends of the Grande Ronde Valley  
On behalf of myself and the FGRV  
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CERTIFICATE OF FILING

I certify that on June 23, 2017 I filed the original copy of the REQUEST FOR RECONSIDERATION AND REHEARING OF THE WHEATRIDGE CONTESTED CASE DECISION AND SITE CERTIFICATE, by e-mail to:

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and

Todd Cornett, Council Secretary  
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DATED THIS 23rd day of June, 2017.

Irene Gilbert, Legal Research Analyst  
Friends of the Grande Ronde Valley  
On behalf of the FGRV and myself as an individual

## CERTIFICATE OF SERVICE

I hereby certify that on June 23, 2017, I served the foregoing REQUEST FOR RECONSIDERATION AND REHEARING OF THE WHEATRIDGE CONTESTED CASE DECISION AND SITE CERTIFICATE , by sending a full copy of the above document electronically to the persons at their last known e-mail addresses as set forth below:

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DATED this 23rd day of June, 2017

Irene Gilbert, Legal Research Analyst  
Friends of the Grande Ronde Valley  
On behalf of the FGRV and myself