

Representative Helm and Committee Members

House Bill 4148

February 13, 2018

Additional testimony in support of making this bill provide meaningful oversight due to the ongoing actions that represent a gross abuse of power on the part of the Department of Energy, Energy Facility Siting Division. This division already receives recommendations from multiple sources including the counties, cities, other agencies, and the public to name just a few. They ignore most of the recommendations as their rules provide them with the authority to override any recommendations they receive.

Hanley Jenkins, who is a member of the Energy Facility Siting Council has stated on the record that the Siting Division rules have more authority than the statutes. As a result of this arrogance which has developed over time, they have developed rules which allow things such as the following:

The Siting Division is planning to allow the Montegue Wind Development to add 100 acres to an existing wind development without requiring an amendment to their site certificate. Any time you add land to a site certificate, you will be adding impacts. This is not even allowed by their own rules, but the department seems able to “reinterpret” rules at a whim.

345-027-0053 Changes Exempt from Requiring an Amendment

“An amendment to a site certificate is not required if the proposed change in the design, construction or operation of a facility is in substantial compliance with the terms and conditions of the site certificate, and is a change:

(I) To an electrical generation facility that would increase the electrical generating capacity and would not increase the number of electric generators at the site, change fuel type, increase fuel consumption by more than 10 percent or **enlarge the facility site;**

This same Wind Development is being allowed to add over 13,300 acres to the 33,000 acre existing wind development and do it as an amendment instead of a new application. This is over 20 square miles of Oregon resources which will be impacted including views from the Wild and Scenic John Day River, Historic trails, water resources, wildlife and their habitat, and multiple other resources. Because the Siting Division is allowing it as an amendment, the public will not be notified of the changes or have an opportunity to comment until after the department has decided the application is complete, and the developer and the department have drafted the planned site certificate. Not only that, but historically the public is not allowed a contested case hearing on any decisions regarding amended site certificates, and the just promulgated amendment rules have added multiple additional requirements and limitations on requests including only allowing contested cases on part of their rules and actions.

As if the previous information is not egregious enough to make this committee understand that this division needs more than “recommendations”, the amendment to add this land is also going to allow the development of an entirely new solar development and an entirely new battery development. I do not object to either type of development on its face. What is not acceptable is using a process which excludes the public and if these new developments can be approved by an amended site certificate, it is clear that the Oregon Department of Energy will also be willing to add a coal generation development or a natural gas development in the same way. Setting a precedent such as this which is not consistent with the statutes defining an energy facility as being a single energy source is indicative of other actions

on the part of this department that ignore the long term impacts of their decisions and fail to follow the requirements of the statutes. This department needs to be held accountable for their actions and the legislature needs to break up the power that is being abused due to having control over the writing of the rules, the interpretation of the rules, the application of the rules, the decisions regarding who gets a contested case when there is disagreement with their decisions, control over what rules people can ask for contested cases on or if a contested case hearing is even an option, the hiring of hearings officers, the issuance of final contested case orders, the monitoring of developments for compliance with the rules, and all this in a process where the developers pay the department for everything they do in terms of siting of energy developments. In other words, the more developments they approve, the more staff the developers pay for the siting division to hire. No wonder there is so much abuse! The longer this legislature allows the Energy Siting Division to run amuck, the more headlines they will create, the more they will make a laughing stock of the state, and the more people will wonder whether the next headline they create will be criminal, unethical, or just unbelievable.

DID YOU KNOW:

1. The Siting Division does not require plans such as the Fire Protection Plan, the Mitigation Plan, the Fire Prevention Plan, the Traffic Control Plan, etc. to be completed until after the site certificate is issued and the public is not given access to these plans or the chance to object or comment on them?
2. Did you know that the Siting Division has allowed wind turbines to be constructed within 50 feet of public roadways?
3. Did you know that the Siting Division has allowed roads to be within 25 feet of wetlands?
4. Did you know that the Siting Division allows a "Threshold of Concern" to be reached before they will consider mitigation for deaths of Threatened and Endangered Birds or Bats?
5. Did you know that turbines can be placed right next to raptor nests as long as they are not built when young birds are present?
6. Did you know that the Siting Department will not require turbines to be placed out of site of the river level on Oregon's wild and scenic rivers?
7. Did you know that the Siting Division will not honor federally protected Threatened and Endangered Species?
8. Did you know that the Siting Division does not honor wildlife protections requested by the US Fish and Wildlife Department?
9. Did you know that the Siting Division ignores nearly all public comments regarding concerns with site certificates?
10. Did you know that the Department of Energy does not follow the required wildlife survey areas required by the statutes?
11. Did you know that the Siting Division will not allow the public to appeal their decisions to the Oregon Court of Appeals unless they specifically comment on the issues they want to appeal during the Siting Division process even when they do not allow the public to request a contested case?
12. Did you know that the Siting Division lets developers decide whether or not the transmission line connecting an energy development to the electric grid is part of the energy development?
13. Did you now that the Siting Division has allowed turbines to be sited in locations that according to the Department of Defense create a national security risk due to interfering with the radar that tells them that we are being attacked?

14. Did you know that the Siting Division has refused to require setbacks or require wildlife surveys of wetlands?
15. Did you know that rather than make a rational decision and require protection for the resources, wildlife and people of Oregon, the Siting Division simply says that there will be “no significant impacts” and allow developments to infringe upon people and resources of this state in ways that no rational person would consider “insignificant”?

I could go on and on with examples of damages this agency has inflicted on Oregon’s irreplaceable resources. I would also be happy to provide specific examples of the issues listed above if you request that. You only have to read the public comments each time another problem is uncovered by the news media to know that the public is fed up.

When it comes to the Oregon Department of Energy Siting Division, please quit kicking the can down the road. This Division is corrupt and it is just getting worse the longer it is ignored. They make the entire department and the Energy Facility Siting Council look like idiots for signing off on their recommendations. There is a need for an oversight committee that has some power over this division and part of the duties need to be moved out of the Department of Energy altogether as they have shown time and time again that they will abuse power when it is given to them absent any checks and balances. The longer you wait, the more headlines they will make and the more outrageous actions I will be reporting on.

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