Chairman Helm and Committee Members:

TESTIMONY IN SUPPORT OF HB 2329 with the Amendment 1 and in opposition to the planned Amendment 2 which apparently the Oregon Department of Energy will be submitted during the worksession.

I previously gave verbal testimony in support of HB 2329. My written comments did not get into the record, however, I recently was made aware that the Oregon Department of Energy is intending to submit an amendment to the bill which would remove most of the decisions that the bill moves to the counties back to the Oregon Department of Energy and Energy Facility Siting Council. Because there is going to be an amendment proposed during the work session that was not referenced during Mr. Cornett's testimony indicating the department of neutral on this bill, I hope you will consider the following comments:

I have a significant amount of experience in reviewing legislation. For example, in 1995 the Medical Issues Coordinator for Workers' s Division went to work for the legislature just prior to the start of the legislative session when SB 369 was before the legislature. This was a major Workers Compensation Reform Bill. I was loaned to the division to function as a part of their Executive team. My job was to analyze the language of the bill, determine the impacts on the division, medical providers, insurers and the public and prepare testimony for the administrator. I also have had firsthand experience in dealing with land use issues at both the county and before the Oregon Department of Energy (ODOE)and the Energy Facility Siting Council (EFSC). I believe the following identifies some of the reasons why HB 2329 with the Amendment 1 can provide a positive path forward in the siting of energy facilities in Oregon.

- It moves more decision making to the local level where decision makers are in a better position to identify important resources and impacts specific to the local county.
- It is easy for the local citizens and agencies to access the decision makers.
- Counties provide due process for those impacted by decisions. Decisions can be made more rapidly which should save money for developers.
- The county processes I have experienced have been respectful of the citizens and include them in the decision process from start to finish.
- The counties are able to access the same funding stream being used by ODOE in reviewing applications, obtaining input from other agencies and contracting with subject matter experts in the instances where they do not have the expertise available to deal with specific issues in an application.

2. The initial concerns I had with the bill was the fact that it did not spell out a requirement that the counties evaluate the criteria outlined in the EFSC rules and assure there is monitoring to assure compliance with the requirements for the life of the development.
The issues that are supposed to be included in the evaluation of site certicates by EFSC need to be addressed when counties make siting decisions. The original administrative rules identify areas critical to proper siting of solar and wind developments. The problem with continuing to process applications through the Oregon Department of Energy and Energy Facility Siting

Council is they no longer heed the advice of experts from agencies responsible for the rules they are to apply. The rules allow their decisions to overrule all other state agencies and virtually all decisions result in a determination of "no signifficant impacts". As a result, developers are being issued site certificates that will do irreparable damage to Oregon resources. While a county may make a poor siting decision, it is likely that the people will be replaced with those with better judgement. Currently, there are no consequences for poor decisions. The state employees do not lose their jobs and members of the Energy Facility Siting Council continue to be reappointed. Requiring counties to assess the same issues as are identified in the ODOE rules would avoid errors which some counties have fallen into in the past such as not requiring bonding to assure funding is available for restoration of the site so that it does not fall upon landowners or taxpayers to restore sites.

My experience with ODOE and the EFSC over the past 8 years leave me with few positive comments other than the fact that they have some staff that are capable and trying to do a good job

ODOE and the EFSC currently control every aspect of energy siting in Oregon including writing of rules, interpretation of rules, processing applications, developing site certificates, deciding whether a contested case is available and if one is, who is allowed to access it, hiring hearings officers and issuing a final hearing decision. This has led to an arrogance within the division and the council where the public is treated as an inconvenience. For several years there have been efforts to deal with the problems with the Oregon Department of Energy through a Joint Legislative Committee which resulted in no action occurring because the issues were determined to be too significant to deal with without a committee focused entirely on the Siting Division. Then a group of stakeholders under Senator Olsen met multiple times, but was suddenly disbanned resulted in no significant actions.

In the meantime, the Oregon Department of Energy promulgated rules eliminating any review of Federally Threatened and Endangered Species. In spite of the legislative council review of the decision indicating that these species had to be considered under the Habitat Mitigation Rules, that has not occurred. They require mitigation for the actual footprint of developments and do not require mitigation beyond restoring habitat damaged during construction even though it may take years to restore the habitat that is damaged. For example: Summit Ridge habitat mitigation area is 43 acres for a 30,000 acre site; They currently are issuing site certificates with a "Threshold of Concern" which allows developers to kill federally protected birds and bats in spite of the fact that they admit there is no scientific basis for the numbers of fatalities they allow prior to considering requiring mitigation for the deaths.

ODOE and the EFSC give lip service to taking seriously what the public has to say, however, their actions do not reflect that. They have never allowed a contested case hearing on their decisions on amended site certificates for solar or wind developments. They continue to develope rules that allow fewer opportunities for public participation and are making those opportunities increasingly restricted. For example,
--They removed the $50,000 that counties could be reimbursed by the developer to pay for

legal costs if they asked for a contested case due to disagreement with the decision that the agency made. This change was made as an Amendment to a bill after the public hearing was held and during a work session just as there is apparently going to be an amendment proposed during this week's work session. Few counties have the luxury of pulling funds out of their already tight budgets to contest a decision. ODOE then changed the amendment rules to make involving the counties and other state agencies in processing amendments up to their discretion.
--ODOE has changed the rules so that they do not notify the public of amendments or allow them to participate in amended site certificate decisions until the application is complete and the proposed order has already been drafted.
--Site certificates are issued without anything but a rough draft of plans such as weed management, mitigation for habitat damages, fire protection, traffic management, wildlife surveys, habitat restoration, etc. The public never sees the final plans because they are not completed until after the site certificate has been issued and the public is no longer a participant in the process.
--The department decides whether or not an amendment to a site certificate will be required at all. If it is required, they decide whether to process the amendment under a procedure that will allow the public to request a contested case, or whether to use a process which denies them this opportunity. This month the department decided not to allow any contested cases for an amendment to the Summit Ridge Wind development. It was only after a court challenge to that decision by The Friends of the Columbia Gorge and several other non profits that the public was allowed access to a contested case. At the last EFSC meeting one individual testified that he had taken off work to show the council that he was not just a number, he was a person and they should take his input seriously. There were over 1,000 comments sent in objecting to the Amendment to the development.
--The EFSC is disrespectful of the public when they do participate in the process. I have been called “honey” at a public meeting, had a council member make fun of my comments, and had subtle comments made referring to such things as people who search for trivial things to object to. As a member of the public it is no fun dealing with the ODOE and EFSC.

It is no secret that the more developments the Oregon Department of Energy sites, and the more amendments they approve, the larger their budget and staff numbers become. This may explain why in spite of the fact that the State of Oregon is a net exporter of electricity, and our electricity use is not increasing, the Energy Facility Siting Council has already issued site certificates or is in the process of issuing site certificates for 3,091 Mw of wind and solar facilities that have not been built. This is within 200 Mw of all the wind and solar developments currently operating in the state. It is a good time to turn over the siting of developments to the capable hands of the Counties.

The County procedures all include a local appeal process, and having the counties do the siting would mean that market forces would actually work the way they were intended to when the "need" requirement was removed from the siting process. Developers would not be obtaining site certificates to simply lay claim to an area thinking that sometime in the future they would have a purchaser for their electricity.

The additional workload would be spread out over multiple counties and either completed by existing staff or contracted out eliminating the need for the two additional siting analysts the Department of Energy is requesting be approved.

I strongly support the inclusion of Amendment 1 to require review of the issues the EFSC is supposed to be reviewing. While you will hear that ODOE and the EFSC have a standards based review procedure, they consistently identify impacts that should preclude the issuance of a site certificate and simply state that they have determined that those impacts are "not significant". This statement has been used to approve Summit Ridge Wind development which will result in turbines visible from the water of the Wild and Scenic Deschutes River in spite of federal law saying that there can be no visual impacts at the river.

While it is not possible to share even a small percentage of the as yet unaddressed problems with continuing to use the Oregon Department of Energy and Energy Facility Siting Council to issue most site certificates, I would like to give you just a flavor of the challenges that the public is up against in dealing with this agency:

1. Site certificates are being issued for wind and solar developments that are not intended to serve Oregon customers and for which there is no need currently, as well as none predicted to occur for multiple years. Currently site certigficates have been issued or are in the process of receiving a site certificate for over 3213 Mw of wind and solar that has not yet been built and electric usage is basically flat, so even with the planned removal of coal from Oregon's electric mix, there are adequate site certificates to replace the coal generated electricity with wind and solar without approving any additional industrial wind or solar developments. Developers have been keeping some site certificates active for years using dated material and obtaining multiple amendments to extend construction deadlines due to a lack of need. This results in a waste of time and money and serves no real purpose other than keeping ODOE staff employed. For example: Saddle Butte Wind Development 399 Mw, Application complete 2013; Montegue Wind 404 Mw. original site certificate issued 2010; Wheatridge Wind Energy 500 Mw, Originally sited in 2014; Summit Ridge 200 Mw, original site certificate 2011; Golden Hills 400 Mw originally sited in 2009; Obsidian Solar Center 400 Mw; Boardman Solar Center 75 Mw; Bakeoven Solar 303 Mw; Blue Marmot Solar, 60 Mw; and Nolan Hills Wind 350 Mw.
2. While the statute requires a "cumulative effects" determination, ODOE has reinterpreted the statute to only apply to the effects of the single development they are siting.
3. While the statute requires a preponderance of evidence on the record showing the development complies with the standards at the point when a site certificate is issued, ODOE puts off much of the information regarding whether or not they are going to be in compliance until after the site certificate is issued.
4. The statutes require monitoring for the life of developments to determine if the development continues to comply with rules such as Threatened and Endangered Species and Habitat Mitigation, ODOE is only requiring things like bird and bat fatality surveys for two years, and most of their monitoring of things like weeds, erosion, wetland impacts, etc. is only being required for the siting corridors or distances like 200 feet or 500 feet from where they are constructing turbines,
5. Since ODOE rules state that their rules take precidence over all other state agency rules, they

routinely ignore comments from other agencies, and they clearly state that they are not required to comply with comments received from groups such as the tribes since their rules do not require them to do so.
6. ODOE will only address rules sited in the public comments pertaining to an issue even though the statutes and rules do not require any siting of a standard during public comments. When multiple rules apply and additional rules are sited in a contested case request on an issue, they refuse to acknowledge them. In the justification for denial of a cotested case regarding my comment that fatality surveys needed to continue through the life of the Golden Hills project, especially in light of the fact that there had never been 650 foot turbines with the rotor span of these approved in Oregon, and none had been constructed in the United States, it was stated, "Ms. Gilbert modifies the issue as raised on the record of the draft proposed order by referencing the Council's Fish and Wildlife Habitat standard (OAR 345-022-0060), Threatened and Endangered Species standard (OAR 345-002-0070) and Cumulative Effects for Wind Energy Facilities Standard (OAR 345-0024-0015). As previously noted, the Department recommends Council not allow the request to modify the issue as raised on the record of the draft proposed order."

It should be clear from the above examples, and there are litterally hundreds of others that could be listed, that the Oregon Department of Energy focuses on justifying a determination that all developments comply with all their standards. When they cannot possibly find a development eligible, they rely on a determination that there is "no significant impact". Local decision makers simply could not get away with bending and reinterpreting rules to create eligibility without being voted out of office.

I realize this is a long comment, but I hope you take the time to read it.

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