



"Protect Our Land, Preserve Our Heritage"

STOP B2H Coalition

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Oregon Public Utility Commission
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RE: Docket AR 626 – Certificate of Convenience and Public Necessity (CPCN) Continuing Comments of Jim Kreider and the STOP B2H Coalition

On behalf of the STOP B2H Coalition, and the people of Oregon who will be harmed by the commission's proposed actions, please accept these additional written comments in the rulemaking proceedings under AR 626, Certificate of Convenience and Public Necessity (CPCN).

Environmental Justice

We continue to be dismayed at the commission's obvious lack of interest in public participation over the past 3 years in this docket and consider it an abdication of responsibilities. Most egregious has been the commissions refusing to address Environmental Justice (EJ) issues and include Environmental Justice filters in this condemnation rulemaking for the convenience of the electric utilities—and at the unnecessary burden to the public. We believe that you have demonstrated a failure to make balanced and rational decisions in the public's interest; this is also the behavior of regulatory capture.

Environmental justice is "equal protection from environmental and health hazards, and meaningful public participation in decisions that affect the environment in which people live, work, learn, practice spirituality, and play."

Environmental justice works towards ensuring all people enjoy the same degree of protection from environmental and health hazards and equal access to the decision-making process to maintain a healthy environment in which to live, learn, and work.

Federal guidelines

Environmental justice (EJ) is the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation and enforcement of environmental laws, regulations and policies.

- Fair treatment means no group of people should bear a disproportionate share of the negative environmental consequences resulting from industrial, governmental and commercial operations or policies.
- Meaningful involvement means:
 - People have an opportunity to participate in decisions about activities that may affect their environment and/or health.
 - The public's contribution can influence the regulatory agency's decision.

- Community concerns will be considered in the decision-making process.
- Decision makers will seek out and facilitate the involvement of those potentially affected.

The Federal Energy Regulatory Commission (FERC) has come to understand this bias and has established a two-year [Equity Action Plan](#) (EAP) to promote equity and remove barriers that underserved communities, including environmental justice communities, face in the context of FERC's processes and policies.

Can OPUC do the same? Or, is the desire to build new transmission to meet a yet to be defined future load for decarbonization and reliability--at any cost -- driving the Commission's decisions?

Oregon environmental justice

In 2007, SB 420 established Oregon's Environmental Justice Task Force (EJTF) to advise the Governor and state natural resource agencies on environmental justice concerns. The 12-member Task Force meets with environmental justice (EJ) communities across the state, reports directly to the Governor about environmental justice concerns that those communities are facing, and works with agencies to address those concerns while meeting EJ goals. (See ORS [182.538](#); [182.542](#); [182.545](#); [182.550](#))

[ORS 182.542](#) establishes that the Environmental Justice Task Force shall:

- Advise the Governor on environmental justice issues.
- Advise natural resource agencies on environmental justice issues, including community concerns and public participation processes.
- Identify, in cooperation with natural resource agencies, minority and low-income communities that may be affected by environmental decisions made by the agencies.
- Meet with environmental justice communities and make recommendations to the Governor regarding concerns raised by these communities.
- Define environmental justice issues in the state.

Additionally, the law requires state natural resources agencies (see [ORS 182.545](#)) address environmental justice issues as part of standard operations and report directly to the Governor on its progress. In order to provide greater public participation and to ensure that all persons affected by decisions of the natural resource agencies have a voice in those decisions, each natural resource agency shall:

- In making a determination whether and how to act, consider the effects of the action on environmental justice issues.
- Hold hearings at times and in locations that are convenient for people in the communities that will be affected by the decisions stemming from the hearings.
- Engage in public outreach activities in the communities that will be affected by decisions of the agency.
- Create a citizen advocate position that is responsible for:
 - Encouraging public participation.
 - Ensuring that the agency considers environmental justice issues.
 - Informing the agency of the effect of its decisions on communities traditionally underrepresented in public processes.

In the Regular 2022 Legislative Session HB [4077 Renaming and Reorganizing the Environmental Justice Task Force \(Organization and Duties of Environmental Justice Council\)](#) was passed strengthening this Council and giving further instruction to agencies for compliance.

It is very clear that the OPUC has failed to include the spirit and intent of SB 420 and HB 4077. OPUC has EJ advocates and a Diversity and Inclusion staff and they have not been consulted or included at any of the meetings in this

rulemaking. There has been no public other than myself in these meetings. No effort that we are aware of has been made by the OPUC to proactively seek out comments from the public, even after urging the commission to do so.

There has been a gaggle of representatives from the utilities, paid for by ratepayer money, participating in this rulemaking docket. How much more unjust can it get than to have the ratepayer pay the utilities and the OPUC to operate in collusion to screw the ratepayer and taxpayer out of their land. And, the communities get the short end of the stick with a liner facility going through them without any economic impact studies for something that will irreparably harm the community into perpetuity – WITHOUT A VOICE.

The commission is going to allow waivers to its rule for the utilities and allow the taking of land, usurping other state agencies and the counties authorities' to take a person's land before all the required permits and paperwork are secured.

The utilities claim they need to have ownership of the land in some counties before they can apply for and get a permit. This is a matter for the county or legislature. They wrote the laws and this must have been their intent. It is the utilities' duty to bring it to the lawmakers' attention for clarification. OPUC has no business fixing a utility problem by sacrificing a landowner. This was to be the capstone (final) event when rulemaking started. Now, as proposed, it grants permission to condemn property before all permits are secured. That isn't how the world I live in works. The building inspector will not let me build a house without the proper permits – why should the OPUC?

Utility Abuse of Power? Case in Point.

Idaho Power, the smallest utility in the state that is always asking to be exempted from rules because of their smallness, is playing an outsized role in seeking condemnation rule changes. In prior written and verbal testimony I shared with the commission their bullying tactics around the Boardman to Hemingway transmission line (B2H). Landowners were being served a petition for precondemnation entry on real property using [ORS 772.210 -- Right of entry and condemnation of lands for construction of service facilities](#) and [ORS 35.220 Condemnation entry on real property](#). Michael Grant, OPUC Executive Director, and I had an email exchange on this and there is nothing he can do. Todd Cornett, ODOE Assistant Director for Siting said the same. Which I do not understand? ODOE has "over the fence" guidelines for landowners that do not want the utility on their land but that does not go into effect until an EFSC site certificate is issued. Before that, utilities can harass and beat up the landowners with these rules, forcing them to court and paying high attorney fees. This is a screwed up process and both agencies say it is not my problem! Do you call that good government?

When the condemnation petitions made it into the regional newspapers the spin was that landowners were being taken to court to have their land condemned and that was not the case. What happens to their emotional well being when harassed this way? And what happens to their land values when the threat of eminent domain looms? Having to console landowners who are having their dreams taken away is unpleasant and I never want to get good at it. As stated in a commission hearing the STOP B2H Coalition is still dealing, after clarifying letters to the editor, with the fallout from this misinformation. We are sure that Idaho Power likes it when local governmental officials tell the landowner: "there is nothing we can do, this is a done deal."

A case in point I just had to take a break as a landowner came by totally frustrated with Idaho Powers contractors. By court order they are to let the landowner know 48 hours before they enter their land. Many times he is not given that much notice and at times just finds contractors on his land. While this is Idaho Power and not the other utilities they use the same contractors and methods and I believe these are accepted industry standards. This waiver will create a bigger problem!

STOP's Response to Idaho Power's Initial Comments 7/28/22:

We cannot support either of Idaho Powers suggestions. In the first suggestion, below, they ask for a waiver if the petitioner CANNOT obtain all necessary documentation to support a finding under OAR 5 860-025-0040(2) or (7).

OAR 860-025-0030(4) If the petitioner cannot obtain, or has not yet obtained, will be unable to include all necessary documentation to support a finding under OAR 860-025-0040(2) or (7), the petitioner must submit a request for a waiver of section (3) of this rule in advance of or concurrent with the petition. If filed concurrently, the petitioner will provide notice that the petition includes a request for waiver at the time of filing. The OAR 860-025-0030(3) waiver request must include:

- (a) The identification of whether the waiver request pertains to OAR 860-025-0040(2) or (7), and a list of all necessary documentation that cannot be obtained or has not yet been obtained will not be able to be submitted at the time of filing;

If the petitioner cannot get the necessary documentation it is because the project does not meet the law or the rules. Who is the OPUC to say that if a law or rule does not allow a permit or paperwork to be issued due to non-compliance that OPUC can wave it? Isn't that breaking the law?

In the second instance, it references the Oregon Energy Facility Siting Council (EFSC) and their review of the statutes involved in issuing a site certificate. I shared the EFSC standards and exhibit reference files, as well as a NEPA (federal) list of reviewing topics as examples; and discussed how an EFSC review does not cover all the same bases that NEPA does. I also pointed out that neither cover: economic impacts to communities, lost revenue to the landowner and community, the social economic ramifications, and how EJ communities are impacted. If condemnation is to be the last step a thorough review of what the other agencies do and do not do, is required to find and understand the gaps in this rulemaking process.

To allow an EFSC site condition to act as the sole determinant for condemnation is wrong for some of the reasons pointed out above. There are gaps. To issue a CPCN before a site certificate is issued is wrong too. Furthermore, to issue a site certificate if a project is under appeal is wrong. Even if a person is convicted in a court they get to stay out of jail, if bond is posted until their appeals are heard. Here a person's land is taken by condemnation. Gone! If the appeal is won and the commission withdraws the CPCN final order the land is still taken – it is gone! Not to mention the emotional distress families will be put under and the actual legal costs involved. This is wrong, wrong, wrong!

OAR 860-025-0040(7) If a proposed transmission line is subject to the jurisdiction of the Energy Facility Siting Council (EFSC), ~~the Commission will not take final action until EFSC has issued a site certificate for the transmission line, and the site certificate has been issued prior to the Commission's final action, the Commission will adopt the findings made as a part of the EFSC-issued site certificate, and the requirements of OAR 860-025-0040, (2) - (6) shall not apply. If the site certificate has not yet been issued at the time of final Commission action or is subject to an appeal and the site certificate is subsequently successfully appealed, revoked or modified to include a finding that the transmission line is incompatible with an acknowledged comprehensive plan or implementing regulations after the Commission has issued a CPCN, the Commission may amend or withdraw the CPCN final order.~~

This is simple. If one cannot get the permit or required paperwork there is no application. Some other regulator found the project to be inconsistent with their rules and laws that govern them and said no. If they have not obtained the permit or required paperwork required yet, wait like the rest of us. Wait for EFSC or a NEPA EIS process to fully conclude. Then consider a CPCN using the EJ filters adapted by the OPUC for this situation and any processes identified as deficient in the other proceedings and now included in the CPCN process and proceed.

Why does the OPUC want to use their superpowers to overrule other agencies?

The Stop B2H Coalition has been before the OPUC in various other dockets since 2016. We have been steady and professional with well-researched comments and information. From the tone of these comments, it should be apparent that the commission has hit a raw nerve. The taking of people's land and livelihood is NOT something to be dealt with lightly. No short cuts should ever be allowed; and our representative government, regulatory agencies, and decision makers should be in a role of helping and easing the pain experienced by its citizens and constituents, not siding with for-profit, or consumer owned monopoly utilities.

Thank you

A handwritten signature in blue ink, appearing to read "Jim Kreider", with a stylized, flowing script.

Jim Kreider
STOP B2H Coalition