

1 BEFORE THE ENERGY FACILITY SITING COUNCIL
2 FOR THE STATE OF OREGON

3
4 In the Matter of the Application for Site
5 Certificate for the Saddle Butte Wind Park
6

**APPLICANT SADDLE BUTTE WIND,
LLC'S MOTION FOR STAY OF
CONTESTED CASE PROCEEDINGS**

7 To: Hearing Officer Keil,

8 **MOTION**

9 Pursuant to OAR 345-015-0054 and OAR 345-015-0023, Applicant Saddle Butte Wind,
10 LLC ("Applicant") moves for an 18-month stay of further proceedings in this contested case. As
11 explained in more detail below, this stay is warranted for two related reasons: (1) it is necessary
12 for Applicant to reevaluate this project in light of the significant delays and expenses incurred
13 through these proceedings to date, and (2) the stay will provide an opportunity for further
14 development of the federal efforts underway to explore improvements to the Fossil, Oregon radar
15 capabilities. For the avoidance of doubt, this request for a stay is in no way intended by
16 Applicant to be a withdrawal of its pending application.

17 **MEMORANDUM IN SUPPORT**

18 Applicant submits the following two related reasons as support for this stay:

19 **1. Delays & Related Expenses**

20 The site certificate application process has proven costly, in both time and expense.
21 Applicant submitted its preliminary application for a site certificate in July 2012, and provided
22 supplemental information in March 2013. In October 2013, the Oregon Department of Energy
23 ("ODOE") filed its Proposed Order, recommending the Energy Facility Siting Council
24 ("Council") grant Applicant a site certificate subject to certain conditions. On the same date,
25 ODOE concurrently established a contested case.
26

1 Without question, the contested case has involved a series of issues requiring substantial
2 time and expense to address. Yet the resulting proceedings have also been subject to a series of
3 extensive and irregular delays, including an interlocutory appeal to the Council by the
4 Department of Defense (later rejected by the Council); the filing of supplemental testimony and
5 briefing; a four-month period between the close of the record and the filing of the first Proposed
6 Contested Case Order; the Council's rejection of that Proposed Contested Case Order over two
7 months later; and the decision by the Council to replace the original Hearing Officer with a new
8 Hearing Officer – who, understandably, has required additional time to review the substantial
9 record and legal issues in order to prepare a new Proposed Contested Case Order.

10 The result has been not only a loss of time, but also a drastic increase in costs incurred by
11 Applicant. Indeed, to date, the expenses charged by ODOE to Applicant are *over 3 times* the
12 estimate ODOE provided to Applicant in 2012 for the entire site certificate application process –
13 and the case proceedings are not over: the issuance of a new Proposed Contested Case Order, a
14 new round of exception briefing, and review by the Council of the new proposed case order all
15 have yet to occur.

16 Applicant recognizes that there are multiple reasons for delay in these proceedings, not
17 all of which can be attributed to any one cause. But those delays, and the accompanying costs,
18 require Applicant to further evaluate the status of its application before incurring any additional
19 expenses.

20 **2. New Efforts to Address Federal Radar Issues**

21 As the parties are aware, Applicant must address – at the federal level, separate from
22 these EFSC proceedings – the potential effect of the proposed wind turbines on radar
23 capabilities. Oregon Senator Ron Wyden has recently initiated a dialog with the Federal Aviation
24 Administration (“FAA”), Department of Defense and Department of Homeland Security to urge
25 further improvements to the radar capabilities in Fossil, Oregon to resolve the recurring tensions
26 between renewable energy projects in the region and the radar operations. Attached hereto as

1 Exhibit 1 are recent news reports concerning Senator Wyden's efforts as well as the agencies'
2 planned upgrades to these facilities.

3 These efforts not only reflect a potential "win-win" resolution of a significant issue for
4 local economic development and the federal agencies, but could also factor into Applicant's
5 further evaluation of its application. Applicant requests a stay to complete this process in a
6 timeframe that will first allow an opportunity for these efforts to meaningfully develop.

7

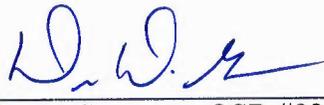
8 DATED this 6th day of July, 2015.

9

DAVIS WRIGHT TREMAINE LLP

10

11

By 

12

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THE SPOKESMAN-REVIEW

May 31, 2015

Oregon senator seeks radar upgrade to nurture wind farm growth

Associated Press

Tags: Federal Aviation Administration rural development Sen. Ron Wyden wind energy



Oregon Sen. Ron Wyden said wind-energy developers consistently run into problems with an outdated radar system in Oregon, preventing the local wind-energy development that has become a leading source of revenue for many communities in eastern Oregon and Washington.

Radar system

The surveillance radar is jointly managed by the Department of Defense and Homeland Security and also is used for air traffic control.

In 2010, the system was upgraded to allow construction of the 845-megawatt Shepherds Flat Wind Farm in Gilliam and Morrow counties. But Wyden said the administration should replace the entire Fossil radar to allow further projects.

“I appreciate the significance of your agencies’ responsibilities in Eastern Oregon, and I

PENDLETON, Ore. – U.S. Sen. Ron Wyden is asking officials to update Air Force radar in Fossil, Oregon, because the current system is outdated and preventing the generation of nearly 4,000 megawatts of wind energy across eastern Oregon and Washington.

Wyden, an Oregon Democrat, sent a May 21 letter to Pentagon and federal aviation officials asking them to replace the system with technology that can overcome interference created by turbines, reported the East Oregonian.

He said developers consistently run into problems with the radar in Fossil, preventing the local wind-energy development that has become a leading source of revenue for many communities.

The Federal Aviation Administration has flagged several wind turbines as a potential hazard because they obstruct the radar’s ability to monitor airspace.

strongly support your efforts to ensure national defense and safe skies," he wrote.

"I do not, however, believe that these missions should preclude further development of wind-energy resources."

FAA spokesman Allen Kenitzer said they have received Wyden's letter and will respond in a timely manner. The Defense Department did not respond to a request for comment Thursday.

A farmer in the process of permitting a 500-megawatt wind farm in Morrow and Umatilla counties said more than 70 percent of his 292 turbine sites have been identified by the FAA as potential hazards.

Farmer Jerry Rietmann, who is also the CEO of Wheatridge Wind Energy LLC, said he met with leaders in Washington, D.C., but they were unable to come up with a solution to the wind turbine problem.

Rietmann said he's still positive about his farm's future.

"It's hard for me to believe, at the end of the day, there isn't a reasonable solution to continue wind development in the region," he said. "If not, then I guess we made a good bet and lost."

Although the cost of replacing the Fossil radar is unknown, Sherman County Judge Gary Thompson believes it is nothing in comparison to the billions of dollars in potential investment from wind companies searching for rural locations.

In Oregon's second-smallest county of just 1,765 people, Thompson said there are more than 1,000 megawatts of wind generation that bring in more than \$8 million in revenue.

"It's our biggest industry, currently," he said. "In county revenue, it surpasses farming substantially."

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U.S. radar to be upgraded to reduce impact of turbines

The Associated Press Published Jun 14, 2015 at 12:34AM

PENDLETON — An Air Force radar on a remote Oregon mountain will get a software upgrade to allow more wind-power turbines to be installed in the region, two federal agencies announced.

Eastern Oregon and Washington state are already a boom area for electricity generation powered by wind. Officials had said the wind farms were a potential hazard because the turbines generate false alarms, or clutter, on radar screens.

U.S. Sen. Ron Wyden, D-Oregon, objected, saying the radar was preventing new wind-energy development in eastern Oregon and Washington state, the East Oregonian reported.

The long-range surveillance radar is near the town of Fossil in Wheeler County northwest of the Blue Mountains. It is jointly managed by the Defense and Homeland Security departments.

It is also used for air traffic control, and the Federal Aviation Administration flagged several turbines as potential hazards because they obstruct the radar's ability to monitor airspace.

The FAA says the upgrade, developed over three years, should improve the detection of aircraft while reducing clutter from the turbines.

The radar received a software upgrade in 2010 to allow for construction of a large wind farm called Shepherds Flat that's in Gilliam and Morrow counties.

Wyden called for the system to be replaced entirely, but he said the upgrade was a step in the right direction.

He said he'd press for a solution that "maintains defense capabilities and air safety while preserving every opportunity to develop wind energy to its complete potential."

The FAA, the Defense Department and Homeland Security say they will continue to look at ways of mitigating the effects on radar by wind turbines and evaluate proposed wind farm projects on a case-by-case basis.

There are 12 wind-energy projects either proposed or in the permitting process in Oregon, most in eastern Oregon, according to the Renewable Northwest Project based in Portland.

CERTIFICATE OF FILING

1
2 I certify that on July 6, 2015, I filed the original and one copy of this APPLICANT
3 SADDLE BUTTE WIND, LLC'S MOTION FOR STAY OF CONTESTED CASE
4 PROCEEDINGS by first class United States Service mail and by emailing a copy of the same to:

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20 Of Attorneys for Saddle Butte Wind, LLC
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26

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing APPLICANT SADDLE BUTTE WIND, LLC'S MOTION FOR STAY OF CONTESTED CASE PROCEEDINGS on the following on the date indicated below,

- Via First Class Mail with postage pre-paid; and
- Via Email Transmission

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Dated this 6th day of July, 2015.

By


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Of Attorneys for Saddle Butte Wind, LLC