



March 6, 2013

Ken Salazar, Secretary of the Interior
Department of the Interior
1849 C Street, N.W.
Washington, DC 20240

Re: Petition to Revoke December 2011 Record of Decision For
North Steens 230-kv Transmission Line Project

Dear Secretary Salazar:

On behalf of the Oregon Natural Desert Association (ONDA) and Audubon Society of Portland (Portland Audubon) we ask for your immediate action to revoke the December 2011 Record of Decision for the *North Steens 230-kv Transmission Line Project*, and the associated Right-of-Way (ROW) grants issued by the Bureau of Land Management (BLM) for that project. This petition is based on significant changes in the technical and financial ability of the project to proceed including: 1) the lack of an interconnection agreement for the project; 2) the questionable status of the Power Purchase Agreement; 3) the revocation of a Notice to Proceed (NTP) and refunding of the project bond by the BLM; and 4) the withdrawal of legal counsel by the developer.

This letter is a petition for agency action pursuant to the Administrative Procedure Act, 5 U.S.C. § 502 et seq. and we request a decision on this petition within 60 days.

Steens Mountain

ONDA and Portland Audubon are non-profit conservation organizations representing thousands of members who care deeply about protecting Steens Mountain and its outstanding ecological and recreational values.

Steens Mountain, situated deep in southeast Oregon's high desert, is a spectacularly scenic area with a rich diversity of geological wonders, wildlife habitat, recreation opportunities, and wilderness values. It is home to nationally-significant populations of greater sage-grouse, a candidate species for listing under the Endangered Species Act, as well as golden eagles, prairie falcons, bighorn sheep, and many other sensitive species.

BLM has recognized the unique importance of Steens Mountain by including it within BLM's National Landscape Conservation System, which was established to "conserve, protect and restore these nationally significant landscapes that have outstanding cultural, ecological, and scientific values."

Likewise, Congress has recognized and protected the unique values of Steens Mountain through enactment of the Steens Mountain Cooperative Management and Protection Act of 2000 (“Steens Act”), 16 U.S.C. §§ 460nnn *et seq.* Our organizations were active in securing passage of the Steens Act.

The Steens Act was adopted by Congress to “conserve, protect, and manage the long-term ecological integrity of Steens Mountain for future and present generations.” 16 U.S.C. § 460nnn-12(a). The Act mandates that the Secretary of Interior manage public lands of the Steens Mountain Cooperative Management and Protection Area (CMPA) “in a manner that – (1) ensures the conservation, protection, and improved management of the ecological, social, and economic environment of the [CMPA], including geological, biological, wildlife, riparian, and scenic resources, North American Indian tribal and cultural and archeological resource sites, and additional cultural and historic sites. . . .” *Id.* § 460nnn-21(a)(1) (emphasis added).

Industrial Wind Development on Steens Mountain

The unique values of Steens Mountain are now threatened by industrial wind development. Specifically, in October 2011, BLM issued the “North Steens 230-kV Transmission Line Project: Final Environmental Impact Statement” (DOI-BLM-OR-B060-2010-0035-EIS), which addressed the proposal by applicant Echanis LLC, a wholly owned subsidiary of Columbia Energy Partners, LLC (jointly, “CEP”), to construct a 230-kV transmission line extending 46 miles from a new wind development on Steens Mountain to a new substation on an existing 115-kV line, crossing 12.1 miles of public lands managed by the BLM, including a portion of the federally-protected CMPA.

The express purpose of the transmission line is to carry electrical power from the proposed Echanis Wind Energy Project, a proposed 104 megawatt wind energy facility located on private land adjacent to the CMPA and the Steens Mountain Wilderness Area.

Based on the October 2011 FEIS, you and then-BLM Director Robert Abbey signed a Record of Decision dated December 28, 2011, approving the grant by BLM of rights-of-way (ROWs) over the public lands for the proposed North Steens Transmission Line. BLM subsequently issued ROWs to CEP for the North Steens line, pursuant to the ROD. In May 2012, BLM further issued an initial Notice to Proceed, authorizing pre-construction surveys (but no ground disturbing activities) and BLM required the developer to post a bond in the amount of \$651,897.

Our organizations have filed federal court litigation challenging the North Steens FEIS and ROD, which remains pending. *See ONDA et al. v. Salazar et al.*, No. 3:12-cv-596-MO (D. Oregon). CEP intervened in that action.

Recent Developments Demonstrate That the ROD and ROW Should Be Revoked

1. **Lack of Interconnection Agreement** - The North Steens Transmission Line FEIS and ROD approved the grants of ROWs over the public lands specifically to

allow Echanis LLC to transmit power from the Echanis Wind Project to connect to the existing power grid, with the power to be sold to Southern California Edison pursuant to a 2008 Power Purchase Agreement (PPA) between the utility and the applicant. As the FEIS and ROD also acknowledge, the Bonneville Power Administration (BPA) was a cooperating agency on the FEIS, because it would be required to approve a Large Generator Interconnection Agreement for connecting the North Steens Transmission Line and power generated by the Echanis Wind Project to the regional power grid administered by BPA. *See* FEIS, pp. ES-1 to ES-3, 1-1 to 1-3, 1-22, 2-1, 2-17 to 2-19; ROD, pp. 9–14, 46–47.

In February 2013, the BPA disclosed to counsel for ONDA and Portland Audubon that CEP has withdrawn its application for a Large Generator Interconnection Agreement, which (as noted above) is required for the North Steens Transmission Line and Echanis Wind Project to connect with the BPA power grid. A copy of the email from BPA disclosing this fact is attached hereto as Attachment A.

We understand that there are many other applicants for interconnection agreements to the BPA grid, including many other wind projects. By withdrawing its application, CEP has lost its priority position for a BPA interconnection agreement; and other projects can now move ahead of it for approval on the limited capacity of the BPA grid. CEP's withdrawal of its Large Generator Interconnection Agreement with BPA underscores that CEP lacks technical, and potentially financial, capability to undertake the construction and operation of the North Steens Transmission Line and associated Echanis Wind Project.

2. **Questionable status of the PPA** - We have been advised that Southern California Edison has reportedly cancelled the PPA with CEP to purchase power generated by the Echanis Wind Project. We have requested that BLM verify whether the PPA has in fact been cancelled, but to date BLM has failed to confirm or deny this fact to us.

Because of changes in the California energy regulatory scheme for renewable energy, we understand that neither Southern California Edison nor any other California utility could now make use of wind power generated out-of-state to satisfy California's renewable energy portfolio requirements. Further, of the presence of existing and proposed wind power projects in the Pacific Northwest make it highly unlikely that CEP will be able to enter into a comparable PPA for purchase of power generated by the Echanis Wind Project.

3. **Revocation of BLM's Notice to Proceed (NTP)** – Despite the issuance of the initial NTP for the project in May 2012, CEP failed to initiate any of the pre-construction surveys or other activities authorized by the NTP. BLM revoked the NTP on February 21, 2013 and refunded the posted bond for the project in the amount of \$651,897.00. In its revocation decision, BLM acknowledged that the

bond would need to be recalculated “at a future date when construction is reasonably foreseeable.” Attachment B (emphasis added).

4. **Withdrawal of Legal Counsel** - In late 2012, CEP’s legal counsel with the Seattle law firm Stoel Rives abruptly withdrew from the federal court litigation, and no substitution of counsel has been made. No reason was provided to the Court for the withdrawal, but it can be readily inferred that CEP failed to pay its lawyers’ bills. This raises serious questions about the developer’s financial status and commitment to the project. Furthermore, if the developer is not willing to defend the BLM’s decision, DOI should not waste taxpayer dollars defending a project that is unlikely to ever be built.

Conclusion

The BLM’s ROW regulations require that, to seek and hold a right-of-way grant over public lands, an applicant must be “technically and financially able to construct, operate, maintain, and terminate the use of the public lands you are applying for.” 43 C.F.R. § 2803.10(b) & § 2804.12(a)(5) (emphasis added). And an applicant is required to provide updated information to BLM when there is a change in its application, including its financial condition. *See id.* § 2807.11(c)(3). BLM may deny a right-of-way application where the applicant fails to demonstrate adequate financial and technical capability, *id.* § 2804.26(a)(5); and BLM may revoke or suspend a ROW grant where the applicant fails to comply with the regulations or the terms, conditions and stipulations of the grant. *See id.* § 2807.17(a). Likewise, the ROW grants themselves provide that “failure of the holder to comply with applicable law or regulations or any terms, conditions, or stipulations . . . shall constitute grounds for suspension or termination” in accordance with the ROW regulations.

The fact that CEP has no application for a Large Generator Interconnection Agreement pending before BPA to connect the approved North Steens Transmission Line to the regional grid, plus the suggestion that CEP’s PPA with Southern California Edison has been cancelled, along with BLM’s recent revocation of the May 2012 NTP, all underscore that the applicant **no longer has the financial or technical ability** to construct, operate, maintain, or terminate the use of the public lands as required by the BLM ROW regulations. Moreover, by apparently failing to inform BLM of the changes in its financial condition, CEP has violated the ROW regulations as well.

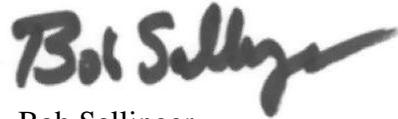
We thus formally request that you revoke the ROD and ROW grants for the North Steens Transmission Line because of these reasons. Doing so is appropriate not only because of the changed conditions and ROW regulation requirements, but as discussed above, because the Steens Mountain is a precious natural resource that deserves to be protected from the kind of speculative development proposed here.

We look forward to your prompt response to this petition. Thank you in advance for your consideration.

Very truly yours,



Brent Fenty
Executive Director
Oregon Natural Desert Association



Bob Sallinger
Conservation Director
Audubon Society of Portland

Enc.

Cc w/ enc.:

Neil Kornze, Acting Director
Bureau of Land Management
1849 C Street, N.W., Room 5665
Washington, DC 20240

Dan Ashe, Director
U.S. Fish and Wildlife Service
1849 C Street NW, Room 3352
Washington, DC 20240

Jerome E. Perez, Oregon State Director
Bureau of Land Management
333 SW 1st Ave.
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Robyn Thorson, Pacific Northwest Regional Director
US Fish and Wildlife Service
911 NE 11th Ave.
Portland OR 97232

Paul Henson, State Supervisor
US Fish and Wildlife Service
2600 SE 98th Ave., Ste. 100
Portland OR 97266

Brandon Cain, District Manager
BLM Burns District
28910 Hwy 20 West
Hines, OR 97738

Subject: RE: Update on BPA FOIA
From: "Winn, Kim S (BPA) - DK-7" <kswinn@bpa.gov>
Date: 2/4/2013 12:32 PM
To: Kristin Ruether <kruether@advocateswest.org>

[CEP has withdrawn their interconnect request.](#)

From: Kristin Ruether [mailto:kruether@advocateswest.org]
Sent: Friday, February 01, 2013 10:07 AM
To: Winn, Kim S (BPA) - DK-7
Subject: Re: Update on BPA FOIA

Thanks for the update, could you please clarify what you mean by "BPA is no longer doing this project"?

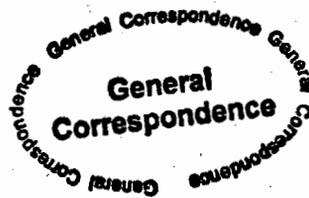
Kristin

On Feb 1, 2013 12:14 AM, "Winn, Kim S (BPA) - DK-7" <kswinn@bpa.gov> wrote:

I sent the Exemption 4 reviews out yesterday. They are due back to me by 2/15. Then I turn those documents and reviews over to the FOIA attorney for a determination.

We have scheduled an Exemption 5 review of the remaining box of documents with a subject matter expert on 2/6.

According to the subject matter expert BPA is no longer doing this project. If this aspect changes your need for the information please let me know.



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AND.		
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OTHER		

Handwritten: [Signature] 2/2/13
[Signature] 2/21/13

2800 (ORB000)
OR-65891

CERTIFIED MAIL – 7010 1870 0002 7993 0279
RETURN RECEIPT REQUESTED

Decision

Guy Piazza
Echanis, LLC
1111 Main Street, Suite 110
Vancouver, Washington 98660

Case File No. OR-65891
BLM Bond No.: ORB000264
Cash Amount: \$651,897.00

Bond Refunded

Dear Mr. Piazza:

This letter is to inform you that Bureau of Land Management (BLM) is revoking the limited May 21, 2012 Notice to Proceed (NTP) for Echanis, LLC, to commence with preconstruction activities. Due to the current litigation and interrupted status of the project, the BLM finds that the bond and Cost Recovery Agreement dated May 18, 2012 will need to be recalculated at a future date when construction is reasonably foreseeable.

At this time, Echanis, LLC still holds a valid Right-of-Way (ROW), however, Echanis, LLC shall not perform any activities outside of casual use within the ROW until the following has occurred:

1. A current construction bond has been calculated and deposited with the BLM per the stipulations of the ROW grant, OR-65891.
2. The Cost Recovery Agreement has been reviewed and updated as necessary depending on time and cost factors.
3. BLM has received and accepted: engineered transmission line plans with pole locations and a map detailing work schedules by section.
4. BLM has issued a NTP.

BLM has initiated the refund process for the bond (which Echanis LLC deposited with the Federal Government on March 19, 2012) in the amount of \$651,897.00. Refunds typically take 1-2 weeks.

This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR, Part 4 and the enclosed Form 1842-1. If an appeal is taken, your notice of appeal must be filed in this office (at the above address) within 30 days from receipt of this decision. The appellant has the burden of showing that the decision appealed from is in error.

If you wish to file a petition (request) pursuant to regulation 43 CFR 2801.10 or 43 CFR 2881.10 for a stay (suspension) of the effectiveness of this decision during the time that your appeal is being reviewed by the Board, the petition for a stay must accompany your notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the notice of appeal and petition for a stay must also be submitted to each party named in this decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (see 43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

- (1) The relative harm to the parties if the stay is granted or denied,
- (2) The likelihood of the appellant's success on the merits,
- (3) The likelihood of immediate and irreparable harm if the stay is not granted, and
- (4) Whether the public interest favors granting the stay.

Please call me at (541) 573-4400 if you have any questions.

Sincerely,



Brendan Cain
District Manager

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