

## SENATE COMMITTEE ON RULES AND REDISTRICTING

March 06, 2001 Hearing Room C  
03:00 PM Tapes 26 - 27

**MEMBERS PRESENT:**        **Sen. Steve Harper, Chair**  
                                  **Sen. Peter Courtney, Vice-Chair**  
                                  **Sen. Jason Atkinson**  
                                  **Sen. Lee Beyer**  
                                  **Sen. Kate Brown**  
                                  **Sen. Randy Miller**  
                                  **Sen. John Minnis**

**VISITING MEMBER:**        **Senate President Gene Derfler**

**STAFF PRESENT:**         **Craig Allen, Committee Administrator**  
                                  **Annetta Mullins, Committee Assistant**

**MEASURE/ISSUES HEARD:**        **Public Hearing**  
  **SB 843**

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These minutes are in compliance with Senate and House Rules. Only text enclosed in quotation marks reports a speaker's exact words. For complete contents, please refer to the tapes.

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<b>TAPE/#</b>	<b>Speaker</b>	<b>Comments</b>
<b>TAPE 26, A</b> 004	Chair Harper	Calls meeting to order at 3:04 p.m. and opens a public hearing on SB 843.
<b><u>SB 843 - PUBLIC HEARING</u></b> 009	Sen. L. Beyer	Lane County. Advises the committee that they bring to the committee the first part of a three-part energy package to try to make sure Oregon does not have the problems that California has experienced this past year, in both the short term and long term. SB 843 is the "emergency energy piece" and is intended to help assure there is a supply in place next fall in case the water in the dams does not increase. A long-term siting piece will come from the House to allow utilities and generators to put capacity supply in place quickly to meet the more midterm issues. The same bill also includes some inducement pieces which relate to SB 520 and 521 that have come out of the Revenue Committee and which removes the sunset on energy conservation and other issues such as promotion of fuel cells.
029	Sen. L. Beyer	Today they introduce SB 843. Introduces Roy Hemingway from the Governor's office and Sen. Atkinson, and explains they have been working together on the bill. Explains that their process has been to ask interest groups, from consumers to utilities, generators, pipeline companies, etc. what needs to be done to change Oregon law to make it easier for producers to bring more energy on line, keeping in mind that we need to live within the

042	Sen. Jason Atkinson	<p>clean water and clean air standards, and what can be done to encourage the other side, the demand side, to do conservation. Believes people will come to table saying this is good.</p> <p>District 25. States that this has been a bipartisan project that has had input from the House. Explains they are very interested in moving a bundle of bills in the next few weeks; this is the most important of the first three.</p>
066	Roy Hemingway	<p>The –3 amendments (<b>EXHIBIT A</b>). have some well-drafted and negotiated pieces of language to get power on the Northwest power grid as fast as possible.</p> <p>Office of Governor Kitzhaber. States the irony of living in the Northwest is when we are experiencing wonderful days, one must also have regret that we are experiencing about one-half of the normal precipitation in an average year.</p>
094	Hemingway	<p>The result is the perfect storm of bad energy events. The energy situation in California has driven up prices in the wholesale market for electricity to at least 10 times their normal level, sometimes as much as 100 times their normal level at a time when the Pacific Northwest is relatively short of power because we have not built power plants to keep up with our rising demand. This winter, about 4,000 less average megawatts of hydropower will be produced, and similar amounts less in the other basins in which hydroelectric energy is generated. Given this situation of low stream flows and high energy prices and shortage of generation, it is appropriate to focus on what state government can do to set this right.</p> <p>SB 843 is one piece of a number of things that are being done. The next two pieces will deal with long-term energy siting issues and then with energy conservation. The objective was to look at what can be done quickly to get generation on the ground quickly to deal with the immediate situation this year and next. Advises that other people can provide a section-by-section analysis.</p>
109	Chair Harper	<p>Asks if the SB 843-3 amendments (<b>EXHIBIT A</b>) replace the bill.</p>
122	Sen. L. Beyer	<p>Responds affirmatively.</p>
123	Mark Hellman	<p>Public Utility Commission (PUC). Explains some of the amendments to SB 843 (<b>EXHIBIT A</b>):</p> <ul style="list-style-type: none"> <li>• Changes on pages 2, 3, and 4 amend the PUC general powers statutes such that the commission could delegate its authority to an arbitrator in deciding how much a generating resource is worth when parties disagree about a commission order on valuation. Explains that it will help ensure that resources are reasonably valued through an administrative process and thereby avoiding having to sell a resource to settle a dispute on how much a resource is worth.</li> </ul> <p>Identifying how much a resource is worth is a critical part for providing value to consumers that are eligible for direct access because commercial and industrial consumers who are eligible for direct taxes are credited with their share of the value of the plan regardless of who they buy power their power supply from. That is critical in order to have the market competitive.</p>

150		<ul style="list-style-type: none"> <li>• Legislation also allows for agreement among a very broad set of parties on the valuation rules and allows them to move forward regarding the commission process as to how the utility's generating resources ought to be valued.</li> </ul>
159	Sen. Minnis	Asks what is meant by the language on page 3, lines 4 and 5, "Any person selected to arbitrate the valuation dispute shall be experienced in valuing generating resources..."
165	Hellman	Explains that it means the person who is going to arbitrate what the value of the resource is must be someone who has been in the practice of going across the country appraising resources to say how much they are worth.
172	Sen. Minnis	Asks if the bill defines what "experience" means. States that the language in lines 9 and 10 says the challenges are limited to the allegations of bias or lack of qualification.
181	Hellman	Responds there will be an appraiser representing commercial and industrial consumers, one representing small consumers, and appraisers representing the utility. Explains that even though the commission is in the position of selecting the arbitrator, one of the other parties may not like the selection. This legislation is saying if someone doesn't like the selection of the arbitrator, the person only has two reasons for challenging the selection. One is bias, and the other is lack of qualifications.
196	Sen. Minnis	Asks how they will determine what the qualifications are, and if there is a challenge, who has standing.
204	Hellman	States that he thinks the commission ruling would be challenged and believes the court would look at what the commission said.
211	Sen. Minnis	Asks if it is solely in the hands of the commission to determine the experience level.
211	Hellman	Responds affirmatively.
217	Sen. Minnis	Asks if they will adopt this by rule.
217	Hellman	Responds that the commission has rules before it that will be able to go forward with this legislation being passed. The rules anticipate that the appraisers representing each of the parties would get together and choose an arbitrator, and believes the choice would be approved by the commission.
230	Sen. Minnis	Asks if the challenge could end up in the Court of Appeals. Explains that he is trying to set a record so that if the Court of Appeals were to get a challenge it would have something to look back at--what experience level are we talking about, what direction is being given to the commission for the purpose of drafting rules.
238	Hellman	States he believes the commission deals with these kinds of issues all the time when it has witnesses before it and whether those witnesses qualify as experts in the field.
147	Sen. Minnis	States then we are looking for someone with very specialized knowledge and experience in the area of appraisal of these types of resources. Therefore, our expectation is that the commission will adopt rules consistent with that.
252	Hellman	Agrees. Adds that the commission could expand on rules it has to make sure that the definition of experience in valuing resources is sufficient to provide a basis for defending the decision.
258	Sen. Minnis	States he is basically trusting that the commission is going to

		adopt rules to require that the person is, in fact, an expert in the area of appraising these kinds of resources and that is going to be the basis on which the commission will ultimately judge any challenge to the appointment of an arbitrator in these kinds of cases.
264	Hellman	Responds that he thinks the parties themselves and their appraisers have a very, very strong incentive to make sure that the arbitrator they pick is well qualified because the decision the arbitrator is going to make will affect many millions of dollars of each of the parties. They have a vested interest to make sure that the arbitrator they pick is well qualified.
275	Chair Harper	Asks if all decisions go to arbitration, is it an infrequent occurrence, is it a big deal or not.
275	Hellman	Responds it is a big deal. States that to his knowledge the PUC has not used arbitration for resolving its own orders. The commission does do arbitration with respect to telecommunication interconnection agreements. This is specific enabling legislation to allow a commission order on a value to go to arbitration and have the arbitration settle what the value of the generating resource is. This would be unique and is for this stated purpose.
294	Chair Harper	States that Sen. Minnis' focus is trying to ensure a clear line of what an arbitrator is and how they are selected so they cannot be challenged.
294	Hellman	Reiterates it is important and states it is for this specific instance of generating resources. Parties will have the incentive to make sure the process proceeds appropriately and that an arbitrator is an expert in order to participate.
301	Sen. Minnis	Questions what "bias" on page 3 in line 9 means.
307	Hellman	Explains that "allegation of bias" in this case might mean that they have some kind of vested interest in the plant, they might have some kind of financial interest with one of the utilities or clients.
311	Sen. Minnis	Asks if it also means what is called "a material conflict of interest."
312	Hellman	Responds affirmatively.
320	Sen. Minnis	Asks for an explanation of language on page 3, lines 24 and 25. Asks if this language is tied back to any statutes or intent--what kind of corruption would be included.
326	Hellman	Responds it could be bribery. Explains the point is that there are only specific limited kinds of cases in which the arbitrator would not adopt the decision.
333	Sen. Minnis	Asks if this is talking about corruption that rises to the level of criminal conduct or a civil complaint.
336	Hellman	States he is not an attorney but corruption means there was definitely an undisclosed bias.
345	Chair Harper	Asks if everyone is happy with Section 1 ( <b>EXHIBIT A</b> ).
347	Sen. Minnis	States he thinks the language could be tightened up more but he is satisfied with the answers.
349	Sen. Minnis	Asks if this language is used in other statutes.
354	Hellman	Comments his attorney is not present, but would guess the attorney did look at other kinds of statutes because the Attorney General's office has been looking at the delegation issue in general and wanted to make sure this language is sufficient and

		satisfactory to the Attorney General's office so that it could go forward.
363	Sen. Minnis	States he is looking for case law that might give guidance to interpretation and application of the terms.
338	Dave Heynderickx	Senior Deputy, Legislative Counsel. Explains that the language on page 3 in subsection (8), at least the first four items, is taken from chapter 36 which deals with commercial arbitration and is the standards when one wants to challenge the decision of an arbitrator. Explains there are fairly limited grounds for challenging arbitration decisions in commercial arbitration. This is intended to limit those categories.
382	Sen. Minnis Heynderickx	Asks if there are many challenges. Responds he does not believe there are. Thinks this is pretty tight language for preventing any appeals of decisions of an arbitrator in these circumstances.
367	David Stewart-Smith	Administrator, Energy Resource Division, Oregon Office of Energy. States that the bill makes several changes to existing energy facility siting statutes. Explains amendments contained in Section 2 ( <b>EXHIBIT A</b> ).
		<ul style="list-style-type: none"> <li>• Section 2 changes jurisdiction of the states Energy Facility Siting Council for renewable energy resources from 35 peak megawatts to 35 average megawatts. Determining average megawatts will be done by the calculation inferred on page 5, subsection (5).</li> </ul>
424		<ul style="list-style-type: none"> <li>• Section 2 also removes renewables from the existing place for the definition of energy facilities and creates a new subsection (J) on page 7 to implement the definition for council jurisdiction for renewable energy facilities.</li> </ul>
445		<ul style="list-style-type: none"> <li>• The remainder of changes in Section 2 are renumbering.</li> </ul>
460	Stewart-Smith	Reviews changes in Section 3 of the SB 843-3 amendments ( <b>EXHIBIT A</b> ).
		<ul style="list-style-type: none"> <li>• Changes in Section 3 start on page 13 in line 6 and continue on pages 14, 15, and 16. The changes are the creation of an outright exemption from Siting Council jurisdiction for temporary energy facilities. This is an attempt to craft an answer to the short-term energy capacity problem. Explains that there may already be sites around the state that have access to electric transmission capacity and natural gas and will not need a great deal of expensive infrastructure in order to get on line quickly. This creates the exemption for the temporary power plant from Siting Council jurisdiction as long as it meets a set of criteria such as local land use approval; the plant must operate for only 24 months. There are several different provisions for implementing that, but the sense is to allow the development of some temporary power plants over the next couple of years to answer what we feel is a short-term capacity problem while the larger, longer-term plants are being developed. There are a number of those in review right now and a number of developers interested in building larger long-term power plants; this is the stop-gap measure.</li> </ul>
<b>TAPE 27, A</b>		
017	Stewart-Smith	Continues review of amendments ( <b>EXHIBIT A</b> ).

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| 026 | Stewart-Smith | <ul style="list-style-type: none"> <li>Section 4 contains conforming amendments in order to be able to implement the temporary nature of this. These power plants can only be built within a certain period of time. The language will not be permanent in the Oregon Revised Statutes. Section 4 implements the eventual removal of the language.</li> <li>Section 5, page 22, says the amendments implemented by Section 4 become operative January 2, 2006. That is the time the language will be removed from the statutes.</li> </ul>   |
| 029 | Stewart-Smith | <ul style="list-style-type: none"> <li>Section 6, page 25, line 12, changes the level at which a power plant can qualify for expedited review from the Energy Facility Siting Council to average capacity measurement. This would allow larger power plants to go through the expedited review process.</li> </ul>   |
| 039 | Stewart-Smith | <ul style="list-style-type: none"> <li>Section 7, page 28 starting at line 4 provides for an additional provision that will give an easier time in the siting process for renewable energy resources. A number of standards have been carved out, including soil stability and the recreation standard. The power plant will not have to prove compliance with those standards. It will result in a shorter application process and less time to find the application complete, but the council retains the ability should there be an issue that needs to be addressed in the site certificate. The council retains the ability to condition the site certificate to comply with the form--the sense of the standard itself. The provision provides a presumption that the standard has been met and gives the council the authority to condition the site certificate to ensure that.</li> </ul> |
| 057 | Hellman       | <p>Reviews amendments in Section 8 (<b>EXHIBIT A</b>).</p> <ul style="list-style-type: none"> <li>Section 8 has two changes to definitions. One is on page 29 in subsection (10). The other is on page 32 in subsection (36). These changes will allow the utility to provide a safe harbor rate to commercial and industrial consumers. Without these changes the electric companies would have a risk because they go out and buy power to serve customers on the standard offer then the customers may change their mind and go somewhere else. The utility would then be left with the expensive contracts and no one to recover costs from. With these changes the utilities would be assured of their cost recovery.</li> </ul>  |
| 073 | Lee Sparling  | <p>Administrator of the Electric and Natural Gas Division, PUC.<br/>Explains the amendments in Section 9 (<b>EXHIBIT A</b>).</p> <ul style="list-style-type: none"> <li>The purpose of Section 9 is to make some minor changes in the provisions relating to the three-percent public purposes charge that will go into effect for electric companies on October 1, 2001. It applies to Portland General Electric and PacifiCorp.</li> <li>Explains that on page 36, the provision beginning on line 9 says that when the utilities begin collecting the three-percent public purposes charge they are no longer responsible for running their own programs with respect to the residential weatherization programs. This amendment also adds the commercial energy services programs also specified by</li> </ul>   |

		statute. It is pretty much a housekeeping type of amendment and corrects an oversight when the statute was originally drafted last session.
		<ul style="list-style-type: none"> <li>Explains that the public purposes charge will be collected by the utilities and disbursed to other agencies. Part will be dispersed to the Housing and Community Services Department and a large chunk will be directed by the PUC for use in conservation and renewable resource programs.</li> </ul>
105	Chair Harper	Asks what the effect is of the change on page 34.
108	Sparling	Responds that he cannot speak directly to the change. States that Legislative Counsel made the change in response to the education issues expert in Legislative Counsel who was concerned about how certain funds were to be divided up among the school districts.
117	President Derfler	Asks if the temporary units will be amortized over a 24-month or a longer period of time.
124	Stewart-Smith	Explains that the way it is set up the power plants can only operate for 24 months. They may pay that back over a longer period of time, but if it is going to make economic sense for the utilities or the independent power producers, they will have to see that it makes economic sense within that 24-month period.
	President Derfler	Questions whether the utility will amortize the costs over the 24 months. Asks whether the consumer would be liable for the unamortized costs if a utility puts in a temporary unit and finds after a year that they can buy power less costly on the open market.
129	Hellman	Explains how costs would get recovered. States that it is up to the utility as to whether they want to take advantage of the opportunity or have it as a market resource.
155	President Derfler	Comments that if the utility amortizes the costs over a five-year period, there would still be a fairly large transition costs if someone wanted to go out in the market system.
161	Hellman	States it is his impression that these are pretty low-cost kinds of units. If the alternative is to buy power at \$1 a kilowatt hour, it would be much more economical to take advantage of these resources to avoid having to go out into market to make those kinds of purchases.
170	President Derfler	Comments this proposal is supposed to be a balanced system so everybody comes out, but he can also see how they can play games and eliminate the transition when they want to go out in the market.
173	Stewart-Smith	Comments that these are temporarily sited units with two years of permitting. Something has to happen after two years. This is just a temporary fix so that we can avoid getting hurt as the markets settle down and the new permanent supply is being built to serve the western United States.
181	Hellman	Comments they have also noticed that with the units that are likely to be put in under this temporary exemption, they are also the kinds of units that are used in industrial plants for co-generation capacity. States that his sense is that the units will have an after-market value after the two years they would operate.
198	Stewart-Smith	Comments further on amendments to SB 843 ( <b>EXHIBIT A</b> ).

- Changes to Section 10. are conforming amendments because of renumbering the definition section.
  - Section 11, page 51, in line 11 is the same conforming amendment.
  - Section 12, page 52, is a Legislative Counsel change to make changes easier in future legislative sessions.
  - Section 13, page 53, is a provision for renewable energy resources to suspend the council's use of an energy generation area for the balance of the year 2001. Adds that they will work closely with the counties who will be responsible for siting some of the smaller plants within the wind energy generation area. States they have assured Umatilla County that their agency stands ready to help them in the short term in order to get the facilities reviewed under the county land use process.
  - Section 14 repeals the language in Section 13 because that language implements the energy generation area waiver only for the balance of 2001.
  - Section 15 is the emergency clause.
- 204
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- 229
- 264 Tom Gallagher PG&E National Energy Group. Introduces Dave Robertson, Public Affairs Director. States they are here to support the bill. Believes the short-term bill deals with a lot of the power crisis issues in front of us now. They support all the pieces, specifically the renewable energy piece, the 35 megawatts, etc. States they are really focused on the long-term bill that will start on the House side. States that as market generation developers they were asked two questions in the work group: 1) how can we get new generation on the ground quickly and get kilowatt hours up and running for the shortage we have now, and 2) who is going to build that new generation. States those are questions they are concerned about. Believes the answers to the first question are in the long-term bill. State they would like to build the generation. There are at least four developers involved in this process and a great number of plants are in the process to get sited. Believes they can move that forward under the long-term bill. They look forward to working with the committee on both of the bills.
- 302 Rachel Shimshack Renewable Northwest Project. Submits and summarizes prepared statement in support of SB 843 (**EXHIBIT B**).
- 358 Cindy Finlayson Portland General Electric. Submits and summarizes prepared statement in support of SB 843 (**EXHIBIT C**).
- 396 Kevin Lynch Managing Director, Government Affairs, PacifiCorp. Submits a prepared statement in support of SB 843 (**EXHIBIT D**). States that he believes the legislation before the committee today (**EXHIBIT A**) addresses objectives 1, 3, and 4 (**EXHIBIT D**) quite well and they wholeheartedly support the language that gives the commission the authority to delegate the resource valuation decisions to an arbitrator. They also support the provisions that expedite the siting of temporary facilities and relax a bit, at least for a while, the requirements for siting new renewable facilities. Adds they have a vested interest in seeing all those things go forward in an expeditious manner.
- 434 Lynch Their one equivocation is on the issue of changing the definitions



of economic and uneconomic utility assets in SB 1149. States that the offer of safe harbor provision that is being contemplated now was not envisioned two years ago when SB 1149 was enacted. And it was not envisioned a year ago when the rules were being worked on. States they are being asked to do a little bit of catch up to try to bring the statute and more importantly the rules up to date to address a difficult market situation. That takes new thinking and a little bit of effort. PacifiCorp has proposed a set of rule changes that would, in their opinion, get to the point that standard offer product works both for their customers and for their company. States they had an initial meeting with a number of other stakeholders and commission staff this afternoon and he believes the discussion was very positive. States he is hopeful they can get the rules worked out on a timely basis so that his company and customers know what they are facing in the next couple of months so they can provide the product rather than having them go to market. Urges the committee to move favorably on SB 843.

**TAPE 26, B**  
033

Sen. Minnis

Asks where the definition changes are in the draft (**EXHIBIT A**).

Lynch

Responds they are in Section 8. Explains that the bracketed material is on page 29 in lines 10 and 11, and on page 32 in lines 19 and 20. Explains that the intention of the definitions is to create a threshold date by which assets of the utility are considered in a pool for valuation and determination of either transition credits or costs. The point of setting up the standard offer whereby the companies' purchasing power was to provide power for customers that choose not to buy directly in the market. The point was made that if you set a threshold date for the offering of direct access, then there is a vulnerability to the utilities that purchases made after that date, in order to meet the standard offer obligation, could not be considered in that calculation of transition credits or transition costs. The concern PacifiCorp has is the language is sufficiently broad that when you take the date away, it may also bring in a new set of generation resources that we may engage in building after that date, or they had intended to bring in after that date.

Explains that it is the policy of the state at this point that the utilities are basically getting out of the business of building new regulated generation. If you slip this date out in this definition, it sort of muddies that policy. They are trying to do their business according to the laws in each state. They thought they knew what the rules were in Oregon. They think they know what the rules still are but have a little bit of concern that this definition may open up those rules to change. Believes it is something they can work out, but they really need to know. Also others who are developers need to know what the market in Oregon is going to look like in the future--is it going to be a regulated market or a deregulated market. If there is uncertainty, there will be a problem with anybody building resources.

073

Sen. Minnis

Asks if Lynch is saying that by deleting this language it is taking us back toward a regulated market.

077	Lynch Sen. Minnis Lynch	Responds there is a possibility of that. Asks how that would happen. Responds the commission would make the decision. States they are working with the commission heavily and constructively and are trying to get to the point where they have a common understanding of how to move forward. Adds that they want to be in the business of building new power plants and want to know the rules under which they are building them.
083	Greg Miller	Business Customer Coalition. Reads prepared statement in support of SB 843 <b>(EXHIBIT E)</b> .
107 104	Sen. Minnis Gary Conkling	Asks what this bill does to accelerate siting. Representing the industrial customer of northwest utilities, a member of the Business Customer Coalition. States that the provisions that Mr. Miller spoke in support of include provisions relating to exemption from certificate requirements for both temporary facilities and renewable facilities, the expedited review as an option for siting of larger facilities, as well as the customer protections that relate to allowing utilities to buy power forward to stand behind standard offers, which is an important customer protection.
127	Chair Harper	Closes the public hearing on SB 843 and recesses meeting at 4:09 p.m.
127	Chair Harper	Quickly reopens the meeting and adjourns the meeting at 4:19 p.m.

Submitted By,

Reviewed By,

Annetta Mullins,  
Committee Assistant

Craig Allen,  
Committee Administrator

**EXHIBIT SUMMARY**

- A - SB 843, SB 843-3 amendments, Sen. Derfler, 53 pp**
- B - SB 843, prepared statement, Rachel Shimshak, 6 pp**
- C - SB 843, prepared statement, Cindy Finlayson, 1 p**
- D - SB 843, prepared statement, Kevin Lynch, 3 pp**
- E - SB 843, prepared statement, Greg Miller, 1 p**