

Talking Points for June 4 Chelan PUD Board of Commissioners Meeting

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The Moratorium on Pending HDL Applications is Improper

An *ex post facto* law is a law that a governing body creates and then applies retroactively to instances of the prohibited action. For example, if you've been chewing gum for years, and Wenatchee suddenly bans chewing gum, even if you stop chewing gum from that point forward, under an *ex post facto* chewing gum ban Wenatchee could punish you for all the times you chewed gum before the ban was in place.

Obviously this is unfair, and that is precisely why our courts are so quick to strike down *ex post facto* laws as unconstitutional. If this wasn't the case, if an authority could punish you for actions that weren't illegal at the time they were committed simply because they later became illegal, then there would be no way for ordinary citizens to know how to behave on a day-to-day basis. In that world, no one could plan their actions to avoid punishment from the state.

But if an *ex post facto* law is unfair and improper in a criminal context—and it is—then how can an *ex post facto* moratorium be fair and proper? The simple answer is it cannot. The Board's action to create a moratorium, and then apply it to pending HDL applications for cryptocurrency mining creates the same sort of injustice as Wenatchee punishing someone for chewing gum when it wasn't illegal to do so. The Board's moratorium should not apply to applications that were pending as of March 19.

The Impact the Board's Ex Post Facto Moratorium Has Had on My Life

Before I submitted my HDL application to Chelan PUD, I did a lot of research to ensure the feasibility of this project. I researched properties that might work for a cryptocurrency mine. I spent extensive time with the City of Wenatchee to make sure that existing code would allow me to build my mine. I met with Chelan PUD to make sure that it could provide the load I requested. What I learned after dozens of phone calls, emails, and meetings was that the location I targeted would work if I reduced my original load request from 300 kW to 117 kW. As a result, I filed an HDL application for 117 kW.

In order to file an HDL application with Chelan PUD, an applicant must identify the owner of the property and provide their contact information. When I filed my HDL application, I didn't own property in Wenatchee. I asked Staff if I could proceed with an application without identifying an owner, and they informed me they would not process my application without this information. Because of this, I put in a bid on a property, thinking that in the 1.5 months between the bid and closing, Staff would finish its review, and I would understand how much it would cost to build this mine before I purchased the property.

After I filed my HDL application, I maintained steady contact with Staff. I explained my situation and requested Staff complete its review before my closing date. Then I followed up

with Staff every few days to check on the status of its review. This amounted to several communications, including a conversation with Staff the working day before the moratorium was announced. Never once in all these communications did Staff mention the possibility of a moratorium, much less that it could be applied retroactively to my application.

Because I had no clue a moratorium was in the works, and because it is unconscionable to apply a moratorium retroactively, I made changes in my life to prepare to build my cryptocurrency mine. I put in notice at work and moved out of my apartment. I put my belongings in storage, so they would be ready to move to Wenatchee after repairs were completed. I hired several professionals, and paid a lot of money, to inspect the property.

Two years ago, I applied for a job with the State Department as a Foreign Service Officer (FSO), which is a diplomat who represents the United States in its embassies and consulates around the world. As an FSO you interact with local governments, advance U.S. foreign policy, and keep Washington D.C. apprised of developments in the country where you are stationed. This is a great job and, not surprisingly, there is a lot of competition for it. Less than one-half of one percent of all applicants to become an FSO receive an offer. Because demand is so high, the application process is grueling. Applicants must take a day-long written test, get top secret security clearance, pass a thorough health evaluation, and pass a day-long oral assessment by a team of five experienced FSOs. If you make it through all of this, then you wait for years before receiving an offer. As luck would have it, I got an offer from the State Department two days after I submitted my HDL application, and the offer gave me four days to decide.

Because I already committed a lot of time and money to this project, and because I had no idea that a moratorium would be imposed on my application, I declined the offer. My State Department contact reached out to make sure I understood my offer would go to someone else, and if I changed my mind I would have to go through the whole application process from the beginning. My response was that although it was a dream job, and I would be happy doing it, I had already committed to this project and was determined to see it through. Two weeks later the Board announced the moratorium and imposed it on my application.

Put yourself in my shoes for a moment and imagine what it would feel like to find out Chelan PUD had instituted a moratorium and pulled the rug out from underneath you. What do you do? Do you give up, lose the thousands already invested, and try to piece your life back together, knowing that some things, like the State Department offer, are gone? Do you proceed, and take on \$200,000 in liabilities, in the hope that the Board and Staff will resolve the moratorium in your favor? What do you do while waiting for approval to proceed? Do you get another job, knowing that if the moratorium is lifted it is going to take all your effort to get the mine running? Do you wait on getting another job until after the mine is built, and hope that the Board makes a quick decision? There really is no good option here, and my life is in a state of limbo until the moratorium is resolved.

That is why I spoke with you during your April 2 meeting, and asked that you take a flexible approach to the moratorium. What I found out at that meeting was that nothing could be done before the May 14 hearing. As a result, I asked to meet with the Board and Staff in the weeks leading up to the May 14 hearing to explain my situation and do whatever I could to make sure that the motion presented to the Board would allow my application to proceed. Despite these efforts, the only people who would speak or meet with me had no input on the motion presented to the Board, and the people who did have input on the motion would not engage in substantive discussions despite numerous emails, voicemails, and requests to meet.

The application of the moratorium to pending HDL applications is wrong, and, in my case, it has created outsized negative impacts. In our legal system, when the facts of a particular case are such that normal treatment under the law would produce unfair results, our courts can modify the treatment of the parties to make the result more equitable. I request that the Board and Staff work to ensure that one of the motions voted on at the August 6 hearing gives the Board the ability to review the circumstances surrounding a pending application, and, where application of the moratorium would produce inequitable results (like in my case), allow the application to be released from the moratorium.

I also request the Board and Staff work to ensure one of the motions voted on at the August 6 hearing allows pending applications requesting less than 150 kW to proceed. Since the purpose of the moratorium is to minimize the burden cryptocurrency has on the grid and community, it makes sense that the larger energy requests face more scrutiny. When it announced the cryptocurrency moratorium, Chelan PUD noted there were 19 pending cryptocurrency applications with a potential total load of 16.3 MW. Only nine of those pending applications request less than 150 kW, for a total of 612 kW. Among those nine applications, several will not proceed because of zoning, feasibility, and solvency limitations. Allowing these smaller applications to proceed will not burden the grid and will begin to address the inequity of the *ex post facto* moratorium.

The Specific Jobs Created by My Cryptocurrency Mine

I must make several changes to the property I purchased in order to build a cryptocurrency mine. I've spoken with Jason Verbeck of Alpine Aire Heating and Cooling for an HVAC system, Mike Fries of Apple City Electric to handle the electrical wiring, and Alek Rini of Element Homes to make repairs to the original building and construct a shed to house the mine. I've already paid local realtors and attorneys about \$7,000 to close the purchase of the property and resolve easement issues. All told, by the time the mine is running I will have contributed more than \$100,000 to Wenatchee's economy, in addition to the fees and expenses I will have to pay Chelan PUD. This money will keep people in Wenatchee employed and help provide for their families. Given how small my load request is, this is a very good deal for Wenatchee.