

Energy Facility Siting Council Meeting

August 29-30-31, 2022

**Agenda Item B: Council Review of the Proposed Order, Proposed Contested Case
Order/Exceptions Hearing**

Council Materials

Index of Filings on Procedural Issues

Filing Party	Filing Title
Stop B2H	Exceptions to Proposed Contested Case Order – Sections I – II.A (pg. 1-6)
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Gilbert	Gilbert Exception to Proposed Contested Case Order in it entirety
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**Stop B2H Coalition Exceptions to Proposed Contested Case Order –
Sections I – II.A (pg. 1-6)**

**BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF OREGON
for the
OREGON DEPARTMENT OF ENERGY**

IN THE MATTER OF:

**BOARDMAN TO HEMINGWAY
TRANSMISSION LINE**

STOP B2H COALITION

**EXCEPTIONS TO PROPOSED
CONTESTED CASE ORDER**

OAH Case No. 2019-ABC-02833

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I. INTRODUCTION

STOP B2H Coalition (hereafter “STOP”) disagrees with many of the factual and legal conclusions, and characterizations of the evidence, that are contained in the Proposed Contested Case Order (hereafter “PCCO”). STOP presented briefing upon, and/or presented or adduced evidence showing, that many of the findings and conclusions in this PCCO are not accurate or legally appropriate.

STOP has outlined the Exceptions it takes, on the issues upon which it has standing. In the interest of administrative economy, rather than repeating the same points, STOP incorporates by reference and relies on the exceptions outlined by Dr. Suzanne Fouty, with regard to determinations on Issue SP-1, and several exceptions outlined by Lois Barry which relate to scenic resource impacts (Ms. Barry’s issues R-2, R-3, R-4; and, STOP’s issue SR-7).

II. SPECIFIC EXCEPTIONS

A. Procedural Issues

i. Party Status

STOP B2H Coalition requested “full” party status in this contested case hearing. On September 29, 2020, STOP filed briefing on the matter, pointing out that it had a broad demonstrated interests across many intertwined issues, including generally a public interest, and that as a result it was entitled to full party status, rather than just “limited party” status in this matter. STOP outlined how it had participated throughout the application process on a wide range of issues. STOP also noted that nothing in OAR 137-003-0005(3)(c) provides for the input of another party on a petition for party status, and that Idaho Power Company’s (IPC’s) comments on STOP’s petition were therefore inappropriate.

On October 29, 2020, the Administrative Law Judge (ALJ) issued an *Order on Petitions*

for Party Status, Authorized Representatives, and Issues for Contested Case (Order on Party Status). For the reasons set forth in STOP’s September 24, 2020 briefing, STOP takes exception to this portion of the Proposed Contested Case Order (“PCCO”) at p.2.

The PCCO fails to incorporate and address any valid reasoning or legal basis for restricting STOP’s participation to that of merely “limited” party in this matter.¹ As STOP noted, its interests in the B2H matter are broad and inextricably intertwined. STOP Party Status Brief p.2. STOP has participated as a public interest organization throughout the application and pre-contested case process, and as a result, it has a broad public interest in the outcome of the proceeding. *Id.* Additionally, STOP made note that nothing in OAR 137-003-0005(8) provides for *other parties’ input* on this matter, and despite that, the ALJ took briefing and arguments from IPC on other parties’ status. *Id* at p.3.

Finally, the PCCO does not appear to incorporate the Order limiting STOP’s party status. STOP takes exception to the failure of the PCCO to fully address and explain why, as a matter of fact and law, STOP should be limited in its participation in this contested case proceeding.

ii. Site Conditions and Responses

The ALJ wrongly interpreted OAR 345-015-0085(1)-(2) when holding in the PCCO that “allowing a limited party to propose *any* site certificate conditions that the limited party believes are necessary or appropriate notwithstanding the limitations on that limited party’s standing and participation in the contested case tends to frustrate the intent of ORS 469.370 and OAR 345-015-0016.” PCCO p.277. To the contrary, this illuminates the due process issues raised by artificially limiting STOP (and others) party status. These issues are inextricably intertwined, and

¹ STOP, as a grass-roots, 501(c)(3) non-profit with over 900 members, was injured by the ALJ’s ruling, limiting its public interest participation.

site conditions touch many of the artificially narrow issue statements.

The ALJ posits in the PCCO that it was not necessary to address some of STOP's Site Condition proposals because they were allegedly "untimely." The ALJ's theory on this was that because some of the STOP Condition proposals were included in STOP's Response Argument (submitted after seeing the Condition language proposals made by ODOE & IPC in their Closing Arguments) the STOP Condition proposals were supposedly improper/untimely. PCCO pp.204-205 (claiming this was improper because "the Department and Idaho Power did not have any opportunity to respond.")

This approach is unfair, and unlawful, as the ALJ was holding STOP to a different standard than other parties – specifically ODOE and IPC. The PCCO acknowledges that both ODOE & IPC **also** submitted proposed Condition **language in their Response briefs**. *See*, PCCO p.204 ("In their respective Closing and Response briefs, both the Department and Idaho Power proposed revisions to the Recommended Noise Control Conditions..."). The ODOE & IPC Response Condition proposals were accepted as timely, and considered by the ALJ – **even though** STOP (and other parties) did not have "an opportunity to respond" to those proposals, as required by OAR 345-015-0085(2). This inconsistent application of the law is not acceptable.

The ALJ's refusal to consider each of STOP's Response brief Site Condition proposals was error. The Council should remand this matter to the ALJ for proper consideration of the STOP proposed Condition language, or the Council should adopt STOP's proposed Site Condition language.

iii. Format Of PCCO Conclusions

STOP takes exception to the form of the Conclusions of Law in the PCCO. In the section marked as Conclusions of Law, the PCCO merely restates each issue statement in the

affirmative. PCCO pp.138-143. The Conclusions of Law must apply the facts to the law, and tie the facts to the conclusions, otherwise a reviewing Council (or Court) will not be able to discern *how* the conclusion was reached. While the “Opinion” section of the PCCO does attempt to address some of the reasoning behind some of the Conclusions, not every Conclusion of law is clearly tied to specific facts and reasoning. That will make review much more difficult, and STOP takes exception to the format used for Conclusions of Law. Each Conclusion should have the supporting facts identified and the reasoning behind the conclusion clearly articulated.

B. Issues Disposed of on Summary Determination

i. Standard of Review

In order to prevail on a Motion for Summary Determination (MSD), the moving party must demonstrate that “[t]he pleadings, affidavits, supporting documents... and the record in the contested case show that there is no genuine issue as to any material fact that is relevant to the resolution of the legal issue as to which a decision is sought; **and** . . . [t]he agency or party filing the motion is entitled to a favorable ruling as a matter of law.” OAR 137-003-0580(6)(a)-(b) (emphasis added). When reviewing the facts, the ALJ “shall consider all evidence in a manner most favorable to the non-moving party or non-moving agency.” OAR 137-003-0580(7).

This means, according to the Courts, that: “If there is evidence creating a relevant fact issue, then no matter how “overwhelming” the moving party’s evidence may be, or how implausible the nonmoving party’s version of the historical facts, the nonmoving party, upon proper request, is entitled to a hearing.” *Watts v. Board of Nursing*, 282 Or App 705, 714 (2016). *See also, King v. Department of Public Safety Standards and Training*, 289 Or App 314, 321 (2017) (“Issues may be resolved on a motion for summary determination **only** where the application of law to the facts requires a single, particular result.”) (emphasis added).

**Gilbert Exceptions to Procedures Used During B2H Contested Case Process and
Request for Exception to Summary Determination FW-4, LU-5, NC-5, M-2, FW-9,
FW-10, FW-11**

**BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF OREGON**

**for the
OREGON DEPARTMENT OF ENERGY**

IN THE MATTER OF:	)	EXCEPTION TO PROCEDURES USED
	)	DURING B2H CONTESTED CASE
	)	PROCESS AND REQUEST FOR
BOARDMAN TO HEMINGWAY	)	EXCEPTION TO SUMMARY
TRANSMISSION LINE	)	DETERMINATION FW-4, LU-5, NC-5,
	)	M-2, FW-9, FW-10, FW-11
)	
	)	OAH Case No. 2019-ABC-02833

Energy Facility Siting Council:

EXCEPTION REQUESTED DUE TO PROCEDURAL ISSUES PREJUDICING PUBLIC PARTICIPATION IN
THE B2H CONTESTED CASE PROCESS

This exception is presented to request that the Council determine that it is appropriate to support an exception to the procedures and processes used in the contested cases for the Boardman to Hemingway Transmission Line Contested Case Hearing which individually and cumulatively document a failure to provide a “fair and impartial evaluation of the issues in this contested case procedure and to establish the issue as legitimate for appeal. It also supports the issuance of an exception to the Proposed Contested Case Order on issues FW-4, LU-5, NC-5, M-2, FW-9, FW-10, FW-11.

1 Procedural Exception

This document provides multiple overarching and specific examples of “facts” which document with a preponderance of evidence that the process failed to support the requirements of the statutes and rules guaranteeing the public access to a fair process. Together these issues resulted in extreme prejudice to the public participants in the process. The Council Rule OAR 345-015-0023 states:

“(2) A hearing officer shall take all necessary action to:

(a) Ensure a full, fair and impartial hearing;

(b) Facilitate presentation of evidence;”

Some of the activities the hearings officer is authorized to do which must reflect her role of ensuring a full, fair and impartial hearing include:

“(5) The hearing officer is authorized to carry out the responsibilities assigned in this rule, including but not limited to the authority to:

(b) Rule on offers of proof and receive evidence;

(c) Order depositions and other discovery to be taken and to issue subpoenas;

(d) Order and control discovery, as provided in OAR 137-003-0025, and all other aspects of the contested case hearing, the order of proof, and the conduct of the participants;

(e) Dispose of procedural matters and rule on motions;

(f) Call and examine witnesses;

2 Procedural Exception

(g) Hold conferences, including one or more prehearing conferences as provided in OAR 137-003-0035, before or during the hearing for settlement, simplification of issues, or any other purpose the hearing officer finds necessary. The hearing officer may limit the issues of the contested case including, for a contested case proceeding on an application for a site certificate, determining those issues that have been raised with sufficient specificity in the public hearing;”

The procedures used and interpretations provided reflect a failure to demonstrate a process that reflected a full, fair and impartial contested case hearing required by. ORS 183.615 AND ORS 183.417(8).

The courts have established limits on the procedures which can be used in contested cases including:

COURT DECISIONS CONFLICTING WITH THE PROCEDURES USED

1. DLCD v. Tillamook County, 34 Or LUBA 586(1998) (ORS 197.763)ORS 197.835(3) and 197.763 require that petitioners have raised the issue they wish to raise during the local proceedings. However, **this statutory restriction does not apply to individual arguments regarding those issues.**
2. League of Women Voters v City of Corvallis, 63 Or LUBA 432 (2011) Where issues regarding compliance with approval criteria were raised, **petitioners may challenge the adequacy of findings that are ultimately adopted regarding those approval; criteria.**

3 Procedural Exception

3. DLCD v Curry County, 33 Or LUBA 728 (1997) Where an issue is adequately raised, **ORS 197.763 does not limit particular arguments related to that issue on appeal.**
4. *Gonzales v. Oregon* *only supports an agency interpretation of it's own rules when they are ambiguous*
5. . Auer v. Robbins, 519 US 452, 461, 117 S Ct 905, 137 L Ed 2d 79 (1997) **provides deference to the agency's interpretation of its own ambiguous regulations** The rule must be ambiguous and the interpretation must be consistent with the rule.

Facts supporting this exception:

1. The Proposed Contested Case "Findings of Fact" reads like closing arguments for Idaho Power and the Oregon Department of Energy. It fails to reflect a neutral evaluation of the issues in the following was:
 - a. It accepts the statements in the "Proposed Order" as facts without addressing whether the file documents their validity.
 - b. It includes statements such as: The developer "proposes", "states", "indicates" as findings of fact absent references to documentation to support them.
 - c. It provides "documentation that items are "facts" by stating that the two respondents, Idaho Power and the Oregon Department of Energy agree with one another.
 - d. It fails to include most arguments from the petitioners as "Findings of Fact" when the petitioners provided documentation supporting them.

CHANGE IN PROCEDURAL RULES

4 Procedural Exception

AT THE START OF THE B2H CONTESTED CASE PROCEDURE THE ALJ WAS REQUIRED TO FOLLOW THE MODEL RULES CONTAINED IN OAR 137-003-001 through OAR 137-003-0092 and OAR 137-003-0501 THROUGH OAR 137-003-0700. THE RULES WERE CHANGED PART WAY THROUGH THE PROCESS TO REMOVE THE USE OF OAR 137-003-0501 THROUGH OAR 137-003-0700 AND INSTEAD USE DIVISION 15 RULES . THIS CHANGE PREJUDICED PARTICIPANTS IN THE FOLLOWING MANNER:

--Participants made comments regarding the Draft Proposed Order to support future contested cases, under the "old" rules simply requiring them to identify the "issue". After comments were made, the Proposed Order was issued adding criteria based upon the new language and ODOE interpretations of the requirements regarding the content of the comments in order to obtain a contested case. These stricter requirements were applied to the already submitted comments resulting in the denial of contested cases that met the requirements that the participants only identify the "issue" under the rules at the time the comments were made. These stricter requirements were included as a change between the Draft Proposed Order and the Proposed Order on Page 10 and included new "interpretations" due to the use of ODOE rules.

FACTS:

1. The EFSC did not authorize or request changes to the procedures to be followed in the Contested case for the Boardman to Hemingway Contested Cases.

5 Procedural Exception

- a. Documentation: EFSC audio and transcript of 8/21/20 meeting including Maxwell Woods statements at that meeting that any change would not affect the B2H Contested Case Procedure.
2. Patrick Rowe acted as legal representative to the Council submitted a request to change the procedures specifically for the Boardman to Hemingway Contested Cases on September 2, 2020 absent authorization from the Council to do so.
 - a. Documentation: See above documents in Item 1 from the EFSC record..
3. On September 2, 2020, Patrick Rowe also approved his request for the procedural change on behalf of the Attorney General.
 - a. The request failed to comply with OAR 137-003-0501(l)(b) requiring The Attorney General, **after consultation with the Chief Administrative Law Judge, to exempt the agency or a category of the agency's cases, by order, from the application of the rules in whole or in part.** Due to the failure to comply with the above rule, including the consultation and the fact that the exemption did not apply to the agency as a whole or a category of agency cases the 9/2/2020 document must be considered null and void other than documenting an action that demonstrates prejudicial intent toward public participants in the contested cases.
 - b. This initial request and approval (which I assert was not legally obtained) was obtained and dated on 9/2/2020 after all requests for party status and contested case issues had been submitted to the ALJ. by the 8/27/20 deadline imposed by the ALJ.

6 Procedural Exception

- c. Patrick Rowe's actions constitutes a conflict of interest which is prohibit by law. He functioned as legal representative for the Oregon Department of Energy, the Oregon Energy Facility Siting Council and the Oregon Department of Justice in actions regarding the Boardman to Hemingway Contested Case Process resulting in prejudicial actions impacting the public in these hearings. .
4. On 10/22/20, Patrick Rowe, on behalf of the Oregon Department of Energy sent an "Informational Filing" saying the 9/2/20 AG exemption for B2H cases was no longer in effect, but a 10/21/20 exception for all contested cases occurring prior to July 1, 2021 was now in effect.
 - a. There was no discussion with the Energy Facility Siting Council regarding this new AG request or the fact that the request included the B2H Contested Case which the counsel was assured would not be impacted by a change. (See Council transcript from 8/21/20 for documentation as referenced above.)
 - b. Contested case participants were provided no opportunity to supplement or amend their requests for Contested Cases based upon the ODOE use of and interpretations of Division 15 rules they claimed they now had the authority to interpret.
 - c. The change in rules retroactively for a contested case procedure which began May, 2019 severely prejudiced the public participation in contested cases regarding the B2H proposed site certificate due to stricter rules regarding how specific comments on the Draft Proposed Order had to be, confusion regarding

7 Procedural Exception

newly stated interpretations of the requirements, and the need to now learn a new set of rules in order to participate in the contested case.

The action in this case constituted the implementation of new rules being applied to the B2H Contested Case Process. The retroactive nature of the change in rules fails to comply with ORS 183.355 which states:

“(3) Each rule is effective upon filing as required by subsection (2) of this section, except that

(a) If a later effective date is required by statute or specified in the rule, the later date is the effective date.”

The Oregon Revised Statutes do not allow for implementing new rules retroactively as was done in this contested case process.

BASIS FOR ALLEGING THE CHANGE IN RULES GOVERNING THE B2H CONTESTED CASE PROCEDURE RESULTED IN CAUSING EXTREME PREJUDICE TO ME AND THE PUBLIC PARTICIPATION IN THE PROCESS.

1. By 10/22/20, the following procedures included in the contested cases had been completed.
 - a. All public comments were submitted based upon the language in the ALJ Model Rules contained in OAR 137-003-001 through 0092 and OAR 137-003-0501 through OAR 137-003-700 and the Oregon Statutes ORS 183.615 AND ORS 183.417(8)

8 Procedural Exception

- b. All arguments regarding what requests for contested cases would be allowed to move forward had been made.
 - c. The Oregon Department of Energy lacked the authority to “interpret” the meaning of the DOJ Model Rules, but following the change in rules they took extreme license with interpreting the ODOE rules in Division 15.
- 2. ODOE and the Counsel lacked the authority to interpret Model Rules in OAR 137-003-0501 through OAR 137-003-0700 which were being followed during the first 17 months of this contested case.
 - A. On Page 10 of the Proposed Order, the Oregon Department of Energy explains the interpretation of ORS 469.370(5) relating to when individuals can request a contested case related to changes between the Draft Proposed Order and the Proposed Order on a new application for site certificate. The Proposed Order states on Page 10, “The Department interprets these provisions to only apply to any differences between the DPO and the Proposed Order that could result in a SUBSTANTIVE CHANGE to a recommended Council action, including recommended findings of compliance with a standard or applicable law, a site certificate condition, or the Council’s decision to approve or deny the site certificate. The Department does not consider a change to its analysis of underlying facts to be a material difference subject to the provisions of ORS 469.370(5)(b) unless there is a corresponding substantive change to a recommended Council action. (A change that incorrectly interprets a law may result in substantive changes that would not be apparent until after a contested case is heard)

9 Procedural Exception

B. Also from Page10 of the Proposed Order: “The council interprets the statement regarding the requirement to raise an issue in the public hearing with sufficient specificity to afford the decision maker an adequate opportunity to respond to the issue”. The Oregon Department of Energy states: “The purpose of OAR 345-015-0016(3) is to ensure that commenters provide the applicant, Department and Council all comments, including any documents or statutory or regulatory citations, that the commenter believes are relevant to the analysis conducted by the Department and Council at a point in the process where the Department, Council have “an adequate opportunity to respond to the issue”, “and applicant can address them in the proposed order.”

These interpretations not only conflict with appeals court decisions stating the “raise it or waive it” comment period is to raise issues, not argue the entire case, court decisions stating that commenters do not have to identify statutes and rules relating to their issue, and created an ethics challenge for DOJ Administrative Law Judges due to the fact that these definitions make it impossible to meet the requirement in statute that there be a “fair and impartial hearing”. The change resulted in Oregon Department of Justice hearings referee who was hearing the case requesting the ODOE legal representatives’ assistance during the Pre-Hearing conferences in interpreting the rules she was to apply to this contested case.

SUMMARY DETERMINATION

The following information is provided as documentation of a failure to provide a fair and impartial contested case process, and also to support this request for exceptions to Summary Determinations on my issues FW-4, LU-5, NC-5, M-2 AND decisions on issues FW-9, FW-10

10 Procedural Exception

and FW-11 requested by Idaho Power. I am incorporating my submissions regarding FW-4, LU-5, NC-5 and M-2 in support of this request as well as the arguments against FW-9 and the procedural arguments in this document relating to limiting petitioners to “limited party” status and denying them the opportunity to respond to FW-9, FW-10 or FW-11.

The contested case procedures effectively implemented a new rule for council contested cases. The contested case is not an opportunity for implementing new rules or rule changes that are required to follow DOJ procedures to be implemented. Allowing summary determinations for contested case issues in the Boardman to Hemingway contested cases failed to comply with the limitations on the use of summary determinations in contested cases as outlined by the attorney general in her exception memo. This resulted in a process that was prejudicial to the public and failed to provide for a “fair and impartial” contested case process. The process included implementing ORS 137-003-0580 rules which were not supported by the attorney general.

Facts:

1. Neither the Siting Counsel or the Attorney General authorized the use of Summary Determinations in the B2H Contested Case Process.
2. The Attorney General’s October 21 exemption stated the rules EFSC has traditionally applied “do not contain a specific rule regarding options or summary determination on issues which I leave to the Council, presiding ALJ, and the parties to resolve”
 - a. The SD issue was not brought before the Council or the public, and no rules were promulgated to include this procedure in Council Contested Cases.
3. Petitioners were provided no opportunity to formally brief the ALJ regarding including SD in the Contested Case Process.

11 Procedural Exception

- a. On December 9, 2020 Patrick Rowe sent a memo to ALJ Webster signed as “Senior Assistant Attorney General, Oregon Department of Justice stating, “The Department (of energy) interprets this statement to mean that the Hearing Officer can decide whether to allow Motions for Summary Determination in this case after receiving input from the parties. The Department recommends that if any party would like the ability to bring Motions for Summary Determination, it promptly inform the Hearing Officer during a period of time set by the Hearings Officer.” “if any party does wish to have the ability to bring Motions for Summary Determination all parties should first be allowed to brief whether Summary Determinations should be allowed under the rules governing the contested case (OAR 137-003-001 through 137-003-0092 and OAR Chapter 3456-015-0012 through 345-015-0085). The hearings officer could then establish a schedule for briefing on that issue. The Department notes that this issuer of Motions for Summary Determination has been handled in this manner in the past, i.e., the parties first briefed whether the Council rules allowed for Motions for Summary Determination.”
4. Procedures in OAR 137-003-0580(6) were used in the SD procedures which the Attorney General had specially excluded ODOE and Council from using in their contested cases. Even if this process and the use of this rule had been legitimately included, the language of OAR 137-003-0580(6) is clearly stated and was not followed. No interpretation of the Oregon Statute or Rules of the Oregon Department of Justice could be made by ODOE or the ALJ based upon the courts failing to allow an agency to interpret rules of another agency.

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ORS 137-003-0580 states: “(a) The pleadings, affidavits, supporting documents (including any interrogatories and admissions) and the record in the contested case show that there is no genuine issue as to any material fact that is relevant to resolution of the legal issue as to which a decision is sought; and
(b) The agency or party filing the motion is entitled to a favorable ruling as a matter of law.”

5. The only rules that could have been applied to support the procedures used in a Summary Determination process, and even that is questionable, would be the Oregon Statute ORCP Rule 47.
6. RULE 47 Section C states; “The court shall grant the motion if the pleadings, depositions, affidavits, declarations, and admissions on file show that there is no genuine issue as to any material fact and that the moving party is entitled to prevail as a matter of law. No genuine issue as to a material fact exists if, based on the record before the court viewed in a manner most favorable to the adverse party, no objectively reasonable juror could return a verdict for the adverse party on the matter that is the subject of the motion for summary judgment. The adverse party has the burden of producing evidence on any issue raised in the motion as to which the adverse party would have the burden of persuasion at trial. The adverse party may satisfy the burden of producing evidence with an affidavit or a declaration under section E of this rule. “

The language of the two rules quotes above addressing Summary Determination is provided to show the very narrow standard that must have been met to allow Summary Determinations in the B2H Contested Cases. Summary Determination is appropriate only if the evidence, when

13 Procedural Exception

viewed in the light most favorable to the nonmoving party, establishes that “there is ‘no genuine issue as to any material fact that is relevant to resolution of the legal issue as to which a decision is sought, and the nonparty filing the motion is entitled to a favorable ruling as a matter of law.’”

The scope of the interpretation of the rules cannot be interpreted so broadly that it includes factual disputes when they exist.

In addition, it must be determined that no objectively reasonable juror could have found the petitioner’s position regarding the contested case to be legitimate.

Decisions in the B2H contested case process document that there is a failure in making decisions regarding summary determinations that meet the narrow standards in the above rule and statute.

The Proposed Contested Case Order, Page 5, states that Idaho Power filed 13 requests for Summary Determinations and the Oregon Department of Energy filed 8 requests. Several of these requests included multiple issues, and one was requesting that a favorable decision be issued for several of Idaho Power’s own contested cases. In total 33 different Contested Case issues accepted from 14 different public members or groups covering conflicts in 9 different siting standards were requested by ODOE and Idaho Power. All requests were granted Summary Determination and removed from the contested case process for the Boardman to Hemingway Transmission line.

To accept these SD decisions as legitimate, it is necessary that in every instance documented by multiple individuals and groups there was not a single factual or legal issue that remained to be established.

ALL PUBLIC PARTIES LIMITED PARTICIPANTS

Decision to designate all petitioners with the exception of the Oregon Department of Energy and Idaho Power as Limited Parties and establishment of limits on those parties resulted in a prejudicial procedure. It violates the APA's mandates that all parties to a contested case may, if they chose, address "all issues properly before the presiding officer" and "respond to" each other's issues with evidence, argument, and cross-examination. See ORS 183.417(l), 1823.4113(2)(e) , 183.450(3). See Pages 21 and 22 of Proposed Contested Case Order.

Rules and Statutes regarding this issue:

ORS 183.413 participants have the right to be notified of the procedures to be used in the contested case

ORS 183.417 states parties have a right to respond to all issuers before the presiding officer and present evidence and witnesses on those issues.

OAR 135-003-0005(7) requiring an evaluation of 4 different issues in determining party status.

Facts:

-- The Oregon Department of Energy and ALJ relied on an Administrative Rule OAR 137-003-0005(8) to overrule Oregon Statutes in ORS 183. This action was not legal or legitimate and resulted in a procedural decision that severely prejudiced the public access to a fair and impartial hearing required by Oregon statute and ODOE rules.

15 Procedural Exception

--The Oregon Department of Energy and ALJ lack the authority to interpret the intent of Department of Justice statutes or rules and no interpretation was requested or provided from the Attorney General regarding the interpretation of OAR 137-003-0005(8)

--Petitioners had no notice under OAR 183.413 or way of knowing on the August 27 deadline for submitting requests for party status and contested case issues that they needed to submit requests for all issues they wanted to respond or that there was the potential that even though they met the requirements for full party status, they might only be allowed to appear as limited parties.

-- Petitioners were denied participation in accepted contested case issues they were relying upon others to develop and submit hearing requests on after their opportunity to request contested cases on those issues had expired.

--Limiting petitioners to limited party status resulted in no petitioners being allowed to argue against contested cases submitted by Idaho Power or their requests for Summary Determinations on their own actions when petitioners had not been given status on those issues. Issues included FW-9, FW-10 and FW-II.

--Petitioners representing the public interest were denied opportunity to respond to issues raised by the public in this contested case.

--The Proposed Contested Case Order and previous orders failed to provide the mandatory evaluation of the ORS 137-003-0005(7) for those requesting standing as full parties.

Narrative:

16 Procedural Exception

On September 25, 2020 petitioners were allowed to address whether they met the requirements for party or limited party status. Those rules are provided in OAR 135-003-0005(7).

The ALJ received 54 requests from organizations and individuals requesting party status and identifying contested case issues.

Contrary to the requirements of OAR 135-003-0005(7) requiring a review of four specifically listed items for petitioners requesting party status, 35 petitioners were assigned limited party status regardless of requests for full party status. This action was justified by interpreting the intent of OAR 135-003-0005(8) as an isolated statement outside the context of the remainder of OAR 137-003-0005 language and involved interpretation of Department of Justice rules absent involving that agency. The courts have not supported an agency interpreting the rules or statutes of another agency. The remaining petitioners were denied party status altogether. The justification provided in the Amended Order on Party Status, Authorized Representatives and issues for Contested Case give the following reasons for denying participants the rights guaranteed them in statute state the following reasons: (a) "the number and nature of properly raised contested case issues in this matter" (b) "ALJ duties under OAR 345-015-0023(2) to, among other things, ensure a full, fair and impartial hearing, facilitate the presentation of evidence, maintain order, comply with time limits, and assist the Council in making its decision"

Fact: No petitioner should have been denied their individual rights provided in statute due to there being many members of the public objecting to the actions of the agency or multiple areas where the public felt the agency decisions failed to be in compliance with the law. Rather than supporting a "full, fair and impartial hearing and presentation of evidence", this action

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denied multiple citizens the rights guaranteed them by statute and by so doing failed to provide the mandatory full, fair and impartial hearing or an opportunity to present their evidence on issues. Giving more weight to maintaining order where there was no lack of order, enforcing timelimits and assisting the Council in making decisions than the weight given to the rights of the public under ORS 183.417 cannot be justified.

Action Requested: The contested cases should be reheard to allow those denied their rights under ORS 183.417 an opportunity to present their arguments and evidence.

OAR 135-003-0005(7) "In ruling on petitions to participate as a party or a limited party, **the agency shall consider:**

- (a) Whether the petitioner has demonstrated a personal or public interest that could reasonably be affected by the outcome of the proceeding;**
- (b) Whether any such affected interest is within the scope of the agency's jurisdiction and within the scope of the notice of contested case hearing;**
- (c) When a public interest is alleged, the qualifications of the petitioner to represent that interest;**
- (d) The extent to which the petitioner's interest will be represented by existing parties.**

(8)A petition to participate as a party may be treated as a petition to participate as a limited party.

OAR 345-015-0016(3) " Except as described in section (4) of this rule, only those persons who have commented in person or in writing on the record of the public hearing described in OAR 345-015-0220 may request to participate as a party or limited party in a contested case proceeding on an application for a site certificate. To raise an issue in a contested case

proceeding, the issue must be within the jurisdiction of the Council, and the person must have raised the issue in person or in writing on the record of the public hearing, unless the Department did not follow the requirements of ORS 469.370(2) or (3) or unless the action recommended in the proposed order described in OAR 345-015-230, including any recommended conditions of approval, differs materially from the action recommended in the draft proposed order, in which case the person may raise only new issues within the jurisdiction of the Council that are related to such differences. If a person has not raised an issue at the public hearing with sufficient specificity to afford the decision maker an opportunity to respond to the issue, the hearing officer may not consider the issue in the contested case proceeding. To have raised an issue with sufficient specificity, the person must have presented facts at the public hearing that support the person's position on the issue".

The ALJ referenced the following rules as supporting her decision to require all public parties be limited rather than full parties: OAR 345-015-0083 , OAR 137-003-0040 and OAR 137-003-0005(8) and (9) In reading the language of these rules, they do not appear to support such a decision and the ALJ failed to identify the specific verbiage she believes apply or how the language would relate and support a decision limiting all parties to limited party status. OAR 345-015-0083 says a failure to raise an issue in the prehearing conferences for the contested case hearing on an application for a site certificate constitutes a waiver of that issue. It does not appear to relate to this issue. The ALJ accepted the written requests for hearings issues and did not require further comment at the prehearing conference to support the issues being raised.

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The Draft Contested Case Hearings decision referenced OAR 137-003-0040 but gave no indication of what part or how it related to the Limited Party determination and it appears to not be relevant. The only sections that she may believe support her might be section (l) and (4), however, she did not state this, and I disagree with that possibility.

137-003-0040

Conducting Contested Case Hearing

(4) Presiding officers or decision makers, agency representatives, interested agencies, and parties shall have the right to question witnesses. However, limited parties may question only those witnesses whose testimony may relate to the area or areas of participation granted by the agency.

Fact: The procedural action was suggested for the first time during the evaluation of issues for contested case and party status. It represents a change from prior practices and involves new interpretations of Oregon Statutes, Administrative Rules of both the Oregon Department of Justice and the agency.

ODOE has assumed the authority to interpret their own rules as if AUER provides them the opportunity to redefine the meaning of the rules even when the language of the rules is not ambiguous. *Auer v. Robbins*, 519 US 452, 461, 117 S Ct 905, 137 L Ed 2d 79 (1997) **provides deference to the agency's interpretation of its own ambiguous regulations** The rule must be ambiguous and the interpretation must be consistent with the rule. *Gonzales v. Oregon* also only supports an agency interpretation of its own rules when they are ambiguous

.Keiser v Wilke.

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The courts provide for no deference to an agency which allows them to interpret the rules of another agency as was done here and even the deference to an agency to allow for interpretation of their own rules has been limited by the US Supreme Court in interpretation.

DENIALS OF OPPORTUNITY FOR CROSS EXAMINATION OF WITNESSES and REQUESTS FOR ORDERS REQUIRING FULL RESPONSES TO DISCOVERY.

ALJ denied opportunity for petitioners to cross examine witnesses and to issue orders requiring compliance with requests for discovery.

ORS 183.450(3) guarantees the right to cross-examine adverse witnesses and to present rebuttal evidence. The Oregon Court of Appeals confirmed this right in *Gregg v Or Racing Comm'n* 38 Or App 19, 26, 588 P2d 1290(1979)

ALJ denied requests for witnesses to appear due to inadequate responses to discovery requests.

ALJ ALLOWED THE OREGON DEPARTMENT OF ENERGY TO RESTATE PETITIONERS CONTESTED CASE ISSUES TO ELIMINATE MULTIPLE ARGUMENTS RELATED TO THE CONTESTED CASE ISSUES:

This concern was formalized in my "RESPONSE TO SECOND AMENDED RESPONSE TO PETITIONS FOR PARTY/LIMITED PARTY STATUS AND REQUEST FOR ACTION TO MITIGATE FOR ODOE UNSOLICITED CHANGES IN THE DOCUMENT." Included by reference supporting this issue.

See ODOE Amended Response to Petitions for Party/Limited Party Status which provided an abbreviated statement of petitioner's issues and ODOE Second Amended Response to Petitions

for Party/Limited Party Status which incorporated additional changes that ODOE agreed to, or additions they chose to include and provided additional arguments supporting their recommendations on whether issues should be accepted for contested case hearing.

The ALJ failed to include the arguments presented by petitioners in her Proposed Contested Case Order. To a large extent, the Findings in the Proposed Contested Case Order are simply statements lifted from the Proposed Order and testimony from Idaho Power and the Oregon Department of Energy absent any reference to documentation which supports the statements.

REQUIREMENT THAT PETITIONERS ONLY BE ALLOWED TO REFERENCE ITEMS SUBMITTED DURING THE DEVELOPMENT OF THE PROPOSED ORDER BY USING THE FILE AND REFERENCES SUPPLIED BY THE OREGON DEPARTMENT OF ENERGY

Petitioners were not allowed to use commonly accepted references to identify exhibits or reference documents. The files they were required to use contained multiple errors, glitches, and did not include a full table of contents so petitioners could find the documents they wanted to reference. This posed an overwhelming barrier to participants being able to support their issues. I am including as supporting documentation the multiple objections regarding this process submitted during the contested case process and the ALJ order denying the request that participants be able to reference by any other means.

THE PROPOSED CONTESTED CASE ORDER FAILS TO COMPLY WITH ORS 183.470

This statute requires:

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(1) Every order adverse to a party to the proceeding shall be in writing or stated in the record and may be accompanied by an opinion.

(2) A final order shall be accompanied by findings of fact and conclusions of law. The findings of fact shall consist of a concise statement of the underlying facts supporting the findings as to each contested issue of fact and as to each ultimate fact required to support the agency's order.

(3) The agency shall notify the parties to a proceeding of a final order by delivering or mailing a copy of the order and any accompanying findings and conclusions to each party or, if applicable, the party's attorney of record.

THE ALJ FAILED TO LIMIT HER ORDER TO THE ARGUMENTS PRESENTED BY THE PARTIES

The ALJ failed to limit her actions to addressing the material submitted by the parties. Instead, it appears she did independent research of the record to find material she believed supported the agency and developer's arguments but failed to do similar research to identify supporting documentation for petitioners' arguments.

CONCLUSION:

There are additional decisions throughout the process that show deference toward Idaho Power and the Oregon Department of Energy. I reserve the right to list additional items should this issue go to appeal. I believe the above examples show the procedure to be flawed and justify the issuance of an exception discounting the Proposed Contested Case Order due to failing to represent a fair and impartial process supporting it.

The above documentation regarding the flawed process used to support Summary Determinations in issues FW-4, LU-5, NC-5, M-2, FW-9, FW-10, FW-11 along with my previously submitted objections which are included by reference provide supporting evidence necessary to support an exemption to the decisions in the Proposed Contested Case Order to allow Summary Determination on these issues.

Irene Gilbert, Pro-Se Petitioner representing myself and the Public Interest

CERTIFICATE OF MAILING

On June 30, 2022, I certify that I filed the foregoing EXCEPTION TO PROCEDURES USED DURING B2H CONTESTED CASE PROCESS AND REQUEST FOR EXCEPTION TO SUMMARY DETERMINATION FW-4, LU-5, NC-5, M-2, FW-9, FW-10, FW-11

with the Hearings Coordinator via electronic mail, and with each party entitled to service, as noted below.

By: Arrangement for hand delivery or US Mail:

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Gilbert Exception to Proposed Contested Case Order in its entirety

IN THE MATTER OF:

**THE PROPOSED BOARDMAN TO
HEMINGWAY TRANSSMISSION LINE**

OAH Case No. 2019-ABC-02833

) PETIONER IRENE GILBERT'S
) EXCEPTIONS TO ADMINISTRATIVE
) LAW JUDGE WEBSTER'S RULINGS
) IN THE: **PROPOSED CONTESTED**
) **CASE ORDER**
) DATED JUNE 30, 2022 including
) decisions denying all my contested cases
) and site certificate conditions proposed,
)
)

To: Energy Facility Siting Council Members

I submit that the Proposed Contested Case Order fails to reflect a fair and unbiased evaluation of the issues contained therein.

The Contested Case File, Proposed Order, and Exceptions requested by participants documents an ongoing deference toward Idaho Power and the Oregon Department of Energy. The issues reflected in my submissions as well as other petitioners document the cumulative effect of the decisions which denied the public access to a fair and impartial hearings process. Required by statute and rules of the council.

I am submitting as evidence the contents of the Contested Case Files which includes the court decisions that are not being complied with, the requirements of the statutes and rules being waived, the procedural decisions which the parties to the contested case submitted were prejudicial against them, and the lack of supporting documentation provided to support the Proposed Contested Case Order.

Due to the egregious nature of the impact on petitioners as a result of the procedural decisions, the following I requested:

1. Provide for a new contested case proceeding or in the alternative, .
2. Provide for an independent legal review of the complete contested case file and proposed order to identify errors in the proposed rulings, finding of fact, and decisions regarding contested case issues and procedures to be used and provide mitigation to address harm caused by those errors on petitioners.

CERTIFICATE OF MAILING

On June 30, 2022, I certify that I filed the foregoing PETITIONER **IRENE GILBERT**'S EXCEPTIONS TO ADMINISTRATIVE LAW JUDGE WEBSTER'S RULINGS **IN THE: PROPOSED CONTESTED CASE ORDER** including decisions denying all my contested cases and site certificate conditions proposed with the Hearings Coordinator via electronic mail, and with each party entitled to service, as noted below.

Irene Gilbert

Pro-Se Petitioner

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McAllister Exception to Proposed Contested Case Order

ESTERSON Sarah * ODOE

Subject: McAllister Exception to Proposed Contested Case Order, Case No. 2019-ABC-02833
Attachments: Ex. 1_McAllister Petition for Party Status.pdf; Ex. 2_McAllister Reply to ODOE Response to Petition (2020.09.27).pdf; Ex. 3_McAllister Supplemental Reply to Parties' Statement of Issues (10.2.22).pdf; Ex. 4 McAllister Appeal to EFSC with Exs. 11.6.2020.pdf; Ex. 5 _McAllister Request for Clarification re Appeal (2020.12.06).pdf; Ex. 6_ODOE position on time for Appeal of Issue Exclusion (11.30.20).pdf; Ex. 7_ McAllister Response to IPC improper ex parte communication (2021.05.28).pdf; 2022.06.30_McAllister Exception to Proposed Contested Case Order .pdf

From: wildlandmm@netscape.net <wildlandmm@netscape.net>

Sent: Thursday, June 30, 2022 10:15 AM

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Cc: dstanish@idahopower.com; lisa@mrg-law.com; jocelyn@mrg-law.com; alisha@mrg-law.com; jstippel@idahopower.com; TARDAEWETHER Kellen * ODOE <Kellen.TARDAEWETHER@energy.oregon.gov>; ESTERSON Sarah * ODOE <Sarah.ESTERSON@energy.oregon.gov>; Patrick.g.rowe@doj.state.or.us; jesse.d.ratcliffe@doj.state.or.us; jeff.seeley@doj.state.or.us; mike@sargetakis.com; kga@integra.net; fuji@stopb2h.org; jkreider@campblackdog.org; candrew@eou.edu; lkathrynandrew@gmail.com; loisbarry31@gmail.com; petebarry99@yahoo.com; mcgccarb@bendbroadband.com; mcooperpiano@gmail.com; deschnerwhit@yahoo.com; onthehoof1@gmail.com; suzannefouty2004@gmail.com; susanmgeer@gmail.com; ott.irene@frontier.com; charlie@gillis-law.com; diannebgray@gmail.com; joehorst@eoni.com; dmammen@eoni.com; amarch@eoni.com; amarch@eoni.com; garymarlette@yahoo.com; wildlandmm@netscape.net; sam.myers84@gmail.com; wintersnd@gmail.com; marvinroadman@gmail.com; Svetlana.m.gulevkin@doj.state.or.us

Subject: McAllister Exception to Proposed Contested Case Order, Case No. 2019-ABC-02833

Attached please find my exception to the proposed contested case order for the B2H contested case.

Sincerely,
Michael McAllister

**BEFORE THE ENERGY FACILITIES SITING COUNCIL
for the
STATE OF OREGON**

IN THE MATTER OF:	)	PETITIONER McALLISTER’S
	)	EXCEPTION TO
THE APPLICATION FOR SITE	)	ADMINISTRATIVE LAW
CERTIFICATE FOR THE BOARDMAN	)	JUDGE WEBSTER’S PROPOSED
TO HEMINGWAY TRANSSMISSION	)	CONTESTED CASE ORDER
LINE	)	AND EXCLUSION OF
	)	PROPERLY RAISED ISSUE
OAH Case No. 2019-ABC-02833	)	FROM PROCEEDING
)	

I. INTRODUCTION

Petitioner Michael McAllister now seeks exception to the exclusion of his primary issue from the contested case proceeding: that the Energy Facility Siting Council (EFSC) must review the application for site certificate in a manner that is consistent with the federal Bureau of Land Management’s (BLM) review under the Nation Environmental Policy Act (NEPA), specifically with respect to the Union County segment of the route. In advancing Idaho Power Company’s (IPC) application in which IPC knowingly excluded the BLM’s agency preferred route per its Environmental Impact Statement (EIS) analysis, EFSC is considering an incomplete application and, as Mr. McAllister raised in his Petition for Party Status, has not complied with ORS 469.370(13).

Mr. McAllister was denied the opportunity to be heard on this issue of primary concern, the “consistency of review” issue, which he raised in public comment. Based on a misconstruction of Mr. McAllister’s concerns raised in DPO comment and the requirement of ORS 469.370(13), the Hearing Officer found, and EFSC affirmed prior to issuance of the

Proposed Contested Case Order, that this issue was not properly raised for consideration in the contested case. The Hearing Officer and EFSC erred in excluding Mr. McAllister's properly raised issue from the contested case and therefor from consideration in the findings of the Proposed Contested Case Order.

Mr. McAllister properly raised the issue of consistency with federal agency review, as explained in multiple filings prior to the exclusion of the issue.¹ Mr. McAllister was improperly denied the opportunity to be heard on the matter of whether the Council has conducted its review in a manner consistent with that of the BLM under NEPA in accordance with ORS 469.370(13) and the Second Amended Project Order and, for the reasons detailed below, excepts both the findings of fact and conclusions of law underlying the exclusion of the issue from the contested case and the Proposed Contested Case Order.

II. RELEVANT BACKGROUND

Throughout the life of the Boardman to Hemingway transmission line project, Mr. McAllister's primary concern has been siting the transmission line such that it is consistent with federal agency² review under the National Environmental Policy Act, 42 U.S.C. Section 421, et seq., which, importantly seeks to "encourage productive and enjoyable harmony" between humans and the environment; to promote efforts that will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of people; and to enrich the understanding of the ecological systems and natural resources important to the Nation. 42 U.S.C. 4321. Mr. McAllister has repeatedly and consistently expressed this concern and objective to the Oregon Department of Energy (ODOE), Energy Facility Siting Council (EFSC), and Idaho

¹ See attached Exs. 1-5.

² Here, the U.S. Bureau of Land Management (BLM).

Power Company (IPC). This objective is validated and supported by ORS 469.370(13), which provides:

For a facility that is subject to and has been or will be reviewed by a federal agency under the National Environmental Policy Act, 42 U.S.C. Section 4321, et seq., the council shall conduct *its site certificate review, to the maximum extent feasible, in a manner that is consistent with and does not duplicate the federal agency review.* (Emphasis added).

Specifically, as relevant to the contested case proceeding, Mr. McAllister raised the issue of consistency with the BLM's NEPA analysis and review during the DPO comment period and again in his Petition for Party Status, and repeatedly argued the propriety of inclusion of the consistency issue in the contested case.³

Mr. McAllister's DPO Comment.

During the public DPO comment period, Mr. McAllister raised his concern that IPC's Application for Site Certificate (ASC) excluded what the BLM had identified as its Agency Preferred Route through Union County pursuant to EIS and NEPA analysis.⁴ See attached Ex. 1 (McAllister Petition for Party Status with DPO comment included). Mr. McAllister raised at that

³ In multiple subsequent filings, Mr. McAllister explained: (1) the intent of his comment and (2) why the issue was properly raised in DPO comment such that it should be heard in the contested case.

⁴ Significantly and of great concern, IPC falsely claimed in its ASC that it had, in fact, applied for the Agency Preferred NEPA Route. Specifically, IPC falsely claimed in the ASC that: (1) the Mill Creek Route, for which it has applied, is the BLM's preferred route in the Final Environmental Impact Statement ("FEIS"), *i.e.*, the NEPA route (it was not); (2) that this purported NEPA route is IPC's Proposed Route; and (3) that the actual Agency Preferred Route in the FEIS, the Glass Hill Alternative, was not carried forward by the BLM (it was). ASC Exhibit B, Attachment B-6 (2017 Supplemental Siting Study) at 3 (ODOE - B2HAPPDoc3-3.4 ASC 02e_Exhibit B_Attachment B-6 and B-7a_ASC 2018-09-28. Page 7 of 162); ASC Exhibit B, at B-39 (ODOE - B2HAPPDoc3-3 ASC 02a_Exhibit B_Project Description_ASC 2018-09-28. Page 45 of 96); *See* Final Environmental Impact Statement, Chapter 2 at 23, 136 (available at https://www.bpa.gov/efw/Analysis/NEPADocuments/nepa/Boardman%20Hemingway/Boardman_Chapter_2_Proposed_Action_and_Alternatives.pdf). *See* also, attached Ex. 7 (McAllister Response to IPC Ex Parte Communication with EFSC (May 28, 2021)).

time that EFSC’s site certificate review should be consistent with that of the BLM and that, absent inclusion of this route, “Idaho Power Corporation [sic] and others are currently processing an incomplete application.”⁵ (Michael McAllister DPO comment, Ex. A to Petition for Party Status (filed Aug. 27, 2020), p. 9 of 49, attached hereto as Ex. 1). Mr. McAllister raised that BLM’s Agency Identified Route should be included in the application, such that EFSC’s review could and *would be consistent* with that of the BLM under NEPA. Specifically, Mr. McAllister included the following in DPO comment:

Dear Mr. Cornett,

On January 14, 2019, I delivered to you a letter (attached - page 2) to express my concerns about Idaho Power Corporations (IPC) "incomplete application" for *Site Certificate* of their **Boardman to Hemingway Transmission Line** through Union County. The application is incomplete because IPC did not include the Agency Selected Route, adopted by the National Environmental Planning Act (NEPA) process - conducted by the U.S. Department of Interior's Bureau of Land Management.

This past Thursday - June 20, 2019 - the **Energy Facility Siting** Council held Public Hearing on the *Draft Proposed Order and Request/or Comments-here* in Union County. I attended that meeting and I did make comments regarding my position with regards to Idaho Power Corporations Incomplete Application for Site Certificate.

In brief, the most significant point that I made was - the **Agency Identified Route A** would affectively mitigate nearly all the concerns expressed by the many attendee's comments at that meeting.

⁵According to EFSC, “an application is complete ...when the applicant has responded to all the requirements in the project order.” Energy Facility Site Certificate Project Guide (July 2015) (citing OAR 345-015-0190(5) (<https://www.oregon.gov/energy/facilities-safety/facilities/Documents/Fact-Sheets/Site-Certificate-Project-Guide.pdf>). Here, the Second Amended Project Order for the B2H transmission line provided that, “Pursuant to ORS 469.370(13), EFSC will review the application for site certificate, to the [maximum] extent feasible, in a manner that is consistent with and does not duplicate BLM review under NEPA. This includes elimination of duplicative study and reporting requirements and EFSC use of information prepared for the federal review.” (Second Amended Project Order, issued July 26, 2018 at p. 25 of 29).

Following the public comments, two representatives from Idaho Power were seated before the Siting Committee, this so that committee members could ask questions in response to the public comments previously made.

Committee Member Hanley Jenkins asked the only question and he phrased it this way- "**I am going to ask you one very hard question -why did Idaho Power Corporation not include the BLM Agency Identified Route into their Application**"?

Idaho Power's Mark Stokes provided the following as an answer- **the BLM Agency Alternative was not included because their process was being drawn out - we were under time constraints to submit our application and went ahead without it.**

There were no further questions, and no further opportunity for the public to respond to this **Revelation.**

I have been involved over ten years in advocating for what is now the BLM Agency Identified Route A.

Idaho Power Corporation and others are currently processing an incomplete application. IPC has been asked to amend their application repeatedly, to include the **Agency Identified Route A.** This issue should not become a Contested Case.

Attached Ex. 1 at 9 of 49 (Michael McAllister DPO comment, Ex. A to Petition for Party Status (filed Aug. 27, 2020)).

Mr. McAllister further stated in DPO comment:

I am requesting that Idaho Power Corporation amend their Oregon EFSC Application for Site Certificate to include the U.S. Bureau of Land Management's **Agency Identified Route A** for consideration by the State of Oregon EFSC board members. It is the only route that was fully subjected to environmental analysis and public comment during the Federal EIS. It was established through community consultation and environmental review in a multi-year process. It must be on the table for full consideration by Oregon EFSC for a "Complete Application" review.

Id. at 10. Based on the above, it is evident that Mr. McAllister raised the issue that EFSC should conduct its site certificate review consistent with BLM review, that this was possible under the current circumstances as the BLM had, at that time, already conducted a relevant review and study, and that, as such, exclusion of the BLM's Agency Identified Route constituted an "incomplete application" that should be amended such that EFSC's review could be consistent

with that of the federal agency. Such request directly reflects the mandate of ORS 469.370(13), which EFSC expressly incorporated into the Second Amended Project Order.⁶

Mr. McAllister's Petition for Party Status.

Mr. McAllister timely filed his Petition for Party Status on August 27, 2020 (attached hereto as Ex. 1). Mr. McAllister's Petition includes, among other things, that:

- “IPC’s proposed B2H facility has been reviewed by the United States Department of Interior’s Bureau of Land Management (BLM) under the National Environmental Policy Act (NEPA), 42 U.S.C. Section 4321, et seq. The BLM has, in fact, identified the least impactful route through Union County, which is depicted on the interactive map on IPC’s website as the ‘Agency Selected Route (NEPA).’” (Petition for Party Status at pp. 2-3)
- IPC has actively and admittedly disregarded this route identified by the BLM. (Id. at p. 3)
- IPC’s application and deliberate exclusion of the NEPA route is inconsistent with ORS 469.370(13). (Id. at p.4)
- EFSC member Hanley Jenkins inquired why IPC had excluded NEPA Route during the June 20, 2019 Public Hearing in La Grande, OR. IPC’s only apparent response was that delays in the BLM’s process were inconvenient for IPC, and the Union County segment did not cross federal lands and therefore it could disregard BLM review as to that segment. Ex. 1 (Id. at p. 4) (citing Public Hearing Tr. June 20, 2019, La Grande, OR at p. 151:1-18).
- IPC’s admitted disregard without adequate justification for the BLM identified, NEPA-consistent route runs counter to ORS § 469.370(13). (Id. at p. 5).

On September 27, 2020, in Reply to ODOE Response to Petition, Mr. McAllister further explained:

In its response to my petition, ODOE improperly dismisses nearly all the issues I raised during the public comment period as not properly raised or, with respect to what I see as the most significant issue I raised in my comments—that the site

⁶ Boardman to Hemingway Transmission Line, Second Amended Project Order (July 26, 2018) at p. 25 (accessible at <https://www.oregon.gov/energy/facilities-safety/facilities/pages/b2h.aspx>). Notably, at the time the Second Amended Project Order issued, the BLM had already identified, and IPC was aware of, its Agency Preferred Route through Union County based on EIS and NEPA analyses.

certificate review was not consistent with the federal agency (the Bureau of Land Management (“BLM”)) review, that it was not raised at all. In attempting to limit this Court’s consideration of the majority of issues I raised, ODOE does not fully or accurately represent my public comments...

First, and most significantly, ODOE claims with respect to “Issue 8” (EFSC did not conduct review, to the maximum extent feasible, in a manner consistent with the federal agency review), that I did not raise this issue on the record of the DPO. This is incorrect. The primary purpose, intent, and focus of my comments was the fact that the site certificate review (with respect to the segment of the transmission line with which my comments are concerned) was not consistent with federal agency review. Indeed, my public comments, as well as numerous letters I wrote to ODOE and Idaho Power Company (“IPC”), call out the failure to pursue consistency with the BLM (the relevant federal agency conducting review) and request that IPC and EFSC take action to ensure such consistency...

EFSC’s failure to comply with its statutory obligation to conduct review to the *maximum extent feasible* with the federal agency review, including but not limited to its failure to meet its obligation to use information generated for federal agency review and to rely on a joint record to address council standards, is an important issue of great public concern, which ODOE seeks to exclude on a technicality. I now make the same request of this Court that I previously asked of EFSC: that it protect the public interest and the members of Union County by requiring consistency with the federal agency review when siting the transmission line through Union County.

(Attached Ex. 2, McAllister Reply to ODOE Response to Petition, filed Sept. 27, 2020 at p. 1-2).

On October 2, 2020, with permission from the Hearing Officer, Mr. McAllister filed his Supplemental Reply to Parties’ Response to Petition, again explaining the issue he raised, and why he properly raised the issue of inconsistency of state and federal agency review in public comment and sought to challenge this in the contested case. Specially Mr. McAllister explained:

First, I wish to underscore that I properly raised the issue that EFSC did not conduct its review, to the maximum extent feasible, in a manner consistent with the federal agency review (ORS 469.370(13)). In my public comment, I raised that, at that time, review could not be consistent with the federal agency review with respect to Union County because Idaho Power Company (IPC) was disregarding the Bureau of Land Management (BLM) review of the Union County segment, knowingly and intentionally excluding the BLM’s environmentally preferred route in its application. In my comment I point out the inconsistency, ask that it be remedied, and point to how the Morgan Lake Alternative is not consistent with EFSC standards. Indeed, the entire thrust of my comment was to request EFSC to ensure consistency with the BLM review...

I reiterate that throughout the life of this project, my primary concern has been siting the line such that impacts are properly mitigated, consistent with the BLM's review and NEPA analysis. EFSC did not conduct review, to the maximum extent feasible, consistent with the federal agency review. This is evidenced by its failure to require any reasonable justification from IPC as to why it chose to disregard the environmentally preferred route. My public comments, including my reference to the "incomplete application" speak directly to this issue. The Court should not exclude from its consideration the critical issue of EFSC's compliance with ORS 469.370(13) with respect the Union County segment.

(Attached Ex. 3, McAllister Supplemental Reply at pp. 1-3 of 17)

On October 29, 2020, the Hearing Officer issued her Order on Petitions for Party Status, Authorized Representatives and Issues for Contested Case. Without addressing the arguments raised in Mr. McAllister's filings, the Hearing Officer found that Mr. McAllister had not properly raised the issue relating to consistency of EFSC and federal agency review, required by ORS 469.320(13), and that the issue was outside of the Council's jurisdiction:

An applicant's choice of routes, and whether Applicant selects the route with the least environmental impact, are matters that fall outside Council's jurisdiction. As discussed previously in Section I, an issue is within Council's jurisdiction if it relates to a standard for the siting, construction, operation and retirement of the facility. ORS 469.501. There is no siting standard that requires Applicant to propose the least impactful route or the route recommended by a federal agency. There is no siting standard requiring Council to consider routes not proposed by Applicant and no siting standard allowing Council to recommend routes that are not proposed in the ASC. Because Applicant's selection of the Morgan Lake Alternative route (instead of the Agency Selected NEPA Route, or other possible routes) falls outside Council's jurisdiction, the above issues are not properly raised for consideration in the contested case. OAR 345-015-0016(3).

(Oct. 29, 2020 Order on Petitions for Party Status, Authorized Representatives and Issues for Contested Case, at p. 63 of 85).

On November 6, 2020, Mr. McAllister appealed this determination to EFSC. In his Appeal, Mr. McAllister explained for the Council:

In my Petition and public comment, I specifically raised the issue that review of IPC's application was not consistent with federal agency review, calling the application "incomplete" for this reason. ORS 469.370(13) specifically requires that the council *shall* conduct its site certificate review...in a manner that is

consistent with and does not duplicate federal agency review, including development with the federal agency and reliance on a joint records to address applicable council standards. As I have previously raised, the Council did not, and to this day has not, complied with this law as it relates to the Union County segment of the transmission line. Tellingly, in excluding the issue of whether the Council has complied with ORS 469.370—a matter that falls squarely within the Council’s jurisdiction—the Order does not address the language of the statute at all or the fact that I raised the issue of consistency of review during the process. Rather, it misstates the issue and ignores its primary intent, framing it in order to construe it as outside of the Council’s jurisdiction...

Further, not only did I raise this issue of compliance with ORS 469.370(13) in my public comment, but I raised it with sufficient specificity such that Chairmen Jenkins expressly asked IPC why it had excluded the BLM’s identified environmentally preferred route at the public meeting to which IPC provided an entirely inadequate—if not false—justification (*see* transcript excerpt included in Ex. 1, p. 2). The Council asked no follow up questions and the public—outraged by IPC’s response—was denied the opportunity to do so.

(Attached Ex. 4, McAllister Appeal to EFSC, Nov. 6, 2020 at pp. 3-5 of 68).

Following the November 19-20, 2020 EFSC Council Meeting during which the Council discussed numerous petitioner appeals on party status and issues to be included in the contested case, the Council affirmed the Hearing Officer’s exclusion of Mr. McAllister’s issue relating to ORS 469.370(13).⁷ (EFSC’s Order on Appeals of Hrg. Officer’s Order on Party Status, Authorized Reps. and Issues. Nov. 25, 2020 at p. 15 of 22). While excluding his issue of primary concern, Mr. McAllister was granted standing to challenge three other issues, identified as FW-

⁷ At the time Mr. McAllister’s “consistency of review” issue was dismissed, he expressed his intent to appeal the exclusion of this issue from hearing and sought clarification on the timing and process to appeal such exclusion. (See attached Ex. 5, McAllister Request for Clarification re Appeal, filed Dec. 6, 2020). At that time ODOE took the position, both in writing and orally at hearing, that the Council’s Order on Appeals of the Hearings Officer’s Order on Petitions for Party Status is not appealable or subject to judicial review at that time because the denial of issues to be heard in the Contested Case does not constitute an appealable Final Order (Patrick Rowe email submitted Nov. 30, 2020, attached hereto as Ex. 6). Mr. McAllister relied on ODOE’s representation as the State Agency most familiar with these processes and waited until the Hearing Officer issued her final Proposed Contested Case Order on May 31, 2022 to appeal.

13, R-2, and SP-2 in the contested case. (See Amended Order on Party Status, Authorized Representatives and Properly Raised Issues for Contested Case, Dec. 4, 2020 at pp. 62-65, 78, 81, 82 of 87).⁸

The Proposed Contested Case Order, issued May 31, 2022, does not reference the above-detailed dispute regarding the exclusion of Mr. McAllister’s “consistency of review” issue and related filings in documenting the history of the case.

III. EXCEPTIONS TO FINDING OF FACT AND CONCLUSIONS OF LAW

Pursuant to OAR 345-015-0085(5), Mr. McAllister excepts the Proposed Contested Case Order on the basis that Mr. McAllister’s issue relating to compliance with § 469.370(13) was improperly excluded from the contested case proceedings. In denying Mr. McAllister the opportunity to be heard on this issue, the Hearing Officer, affirmed earlier by EFSC, erred in both findings of fact and conclusions of law.

Flawed Findings of Fact.

First, the relevant orders misconstrue the issue Mr. McAllister raised. In framing the relevant issue, the Hearing Officer (and subsequently EFSC) failed to recognize the nuances of the issue, as he attempted to present them in DPO comment. Mr. McAllister repeatedly raised, including in DPO comment, that absent inclusion of the BLM’s Agency Preferred Route, IPC’s Application was incomplete and must be amended. Inherent in this request is the assertion that EFSC’s review should be consistent with that of the BLM, which had identified an Agency

⁸ The Hearing Officer dismissed FW-13 and SP-2 on summary determination and EFSC affirmed on appeal. The Hearing Officer ruled against Mr. McAllister on Issue R-2 in the May 31, 2022 Proposed Contested Case Order. (Proposed Contested Case Order at pp. 233-238).

Preferred Route pursuant to EIS and NEPA.⁹ Specifically, Mr. McAllister stated, that:

the application is incomplete because IPC did not include the Agency Selected Route, adopted by the National Environmental Planning Act (NEPA) process - conducted by the U.S. Department of Interior's Bureau of Land Management...It must be on the table for full consideration by Oregon EFSC for a 'Complete Application' review.

(Attached Ex. 1 at p. 9-10 of 49 (Michael McAllister DPO comment)). This is necessary for the Council to “conduct its site certificate review, to the maximum extent feasible, in a manner that is consistent with and does not duplicate the federal agency review” as mandated by ORS 469.370(13).

Mr. McAllister repeatedly raised the “consistency of review” issue—including in DPO comment—which is codified by ORS 469.370(13). The Hearing Officer erred in her factual findings with respect to the issue Mr. McAllister raised in DPO comment, framing his issue such that his concern with, and request for “consistency of review” was not acknowledged.

Flawed Conclusions of Law.

The Hearing Officer, affirmed previously by EFSC, erred in finding that Mr. McAllister’s issue relating to ORS 469.370(13) as raised “falls outside Council’s jurisdiction” and was therefore “not properly raised for consideration in the contested case.” (Dec. 4, 2020 Amended Order on Party Status at p. 63 of 87). Mr. McAllister’s issue as raised falls squarely within the Council’s jurisdiction.¹⁰ Indeed, Mr. McAllister’s issue is encompassed in the very language of

⁹ The BLM released its Final Environmental Impact Statement on November 28, 2016. (accessible at <https://www.blm.gov/press-release/environmental-impact-statement-boardman-hemingway-project-released>)

¹⁰ In contrast, Mr. McAllister is not suggesting that EFSC review the BLM NEPA process for legal adequacy, which would be a subject for a federal appeal, and in that instance, would be outside of EFSC’s jurisdiction.

ORS 469.370 (Draft proposed order for hearing), a statute that is unequivocally within the Council’s jurisdiction.

As Mr. McAllister asserts, IPC and ODOE have not complied with ORS 469.370(13), which requires that:

For a facility that is subject to and has been or will be reviewed by a federal agency under the National Environmental Policy Act, 42 U.S.C. Section 4321, et seq., the council shall conduct its site certificate review, to the maximum extent feasible, in a manner that is consistent with and does not duplicate the federal agency review.

The B2H transmission line is “a facility that is subject to and has been...reviewed by a federal agency under [NEPA].” The reviewing federal agency (the BLM) had already identified its Agency preferred alternative route in 2014 after federal EIS and NEPA analysis.¹¹ As such, the Council must conduct its site certificate review, to the maximum extent feasible, in a manner that is consistent with and does not duplicate this— previously conducted—federal agency review. Indeed, EFSC acknowledges this requirement in the Second Amended Project Order, directing the following:

VII. USE OF INFORMATION IN THE FINAL ENVIRONMENTAL IMPACT STATEMENT

Pursuant to ORS 469.370(13), EFSC will review the application for site certificate, to the [maximum] extent feasible, in a manner that is consistent with and does not duplicate BLM review under NEPA. This includes elimination of duplicative study and reporting requirements and EFSC use of information prepared for the federal review.

(Second Amended Project Order, issued July 26, 2018 at p. 25 of 29).¹²

¹¹ The BLM’s Agency Preferred Route remained the same from Draft EIS (2014) and Final EIS (2016).

¹² The Second Amended Project Order omits the word “maximum.” This language is included in the statute itself. ORS 469.370(13)

ODOE/EFSC has not complied with this requirement in this case. Rather, it has disregarded the BLM's review under NEPA and the information prepared for federal review and, troublingly, has further claimed that it cannot consider the BLM's review under NEPA because such consideration of BLM review is, in fact, outside of its jurisdiction. Here, in order to comply with this mandate, BLM's Agency Preferred Route must be included in the Application for it to be "complete." It is ODOE's duty to review the ASC for completeness. OAR 345-015-0190. According to EFSC, "an application is complete ...when the applicant has responded to all the requirements in the project order." (Energy Facility Site Certificate Project Guide, July 2015 (citing OAR 345-015-0190(5)). Here, the Project Order, consistent with ORS 469.370(13) dictates that EFSC will review the application for site certificate, to the [maximum] extent feasible, in a manner that is consistent with and does not duplicate BLM review under NEPA, including through use of information prepared for the federal review. At the time IPC submitted both its preliminary ASC and ASC, the BLM had conducted review under NEPA. Accordingly, a complete application must include this route to allow EFSC to review the site certificate, "to the **maximum extent feasible**, in a manner that is consistent with and does not duplicate BLM review under NEPA, including through elimination of duplicative study and reporting requirements and EFSC use of information prepared for the federal review." In advancing an application that deliberately excluded the BLM reviewed route, ODOE processed an incomplete application, and failed to comply with the requirements of ORS 469.370(13), as Mr. McAllister claimed in his Petition for Party Status, and explained in numerous subsequent filings. Here, it is clear that EFSC has not conducted review consistent with the BLM review under NEPA to the **maximum extent feasible** where during the ASC process, the BLM conducted such review,

provided study and reports, and IPC and ODOE/EFSC knowingly disregarded the federal agency's study and findings.

The Hearing Officer's legal conclusion, affirmed previously by EFSC, entirely ignores the mandate of ORS 469.370(13). Indeed, her interpretation of the application of the statute in this case renders the requirement meaningless as it allows the applicant to sidestep the statute entirely by merely excluding routes that the federal agency has reviewed and studied in accordance with federal law, as IPC has done here. In fact, the perverse result of the Hearing Officer's interpretation (affirmed thus far by EFSC) as it is expressed is to encourage parties to circumvent the burden or inconvenience of complying with the statute and/or allow them to cater to private interests—precisely as IPC and ODOE have done—in direct contravention of the public interest by intentionally excluding routes that have been, or must be, reviewed by the appropriate federal agency consistent with NEPA.

Further, such interpretation leads to judicial inefficiencies and inconsistent results. Council Member Mary Winters, as the only attorney on the Council, addressed the problematic nature of the Hearing Officer's conclusion that Mr. McAllister's issue as raised fell outside EFSC's jurisdiction as follows:

It confused me, that while I understand the legal principal that we are bound by EFSC rules not by BLM and federal...what is outside our jurisdiction, it makes no sense to me that if the federal process had a preferred alternative through the EIS process that we could then choose a different route. How would that ever work if we did that? If they have a preferred alternative through that process, and say it went on appeal up to the Ninth Circuit...I have been involved in NEPA...up to the Ninth Circuit, and you have then a decision out of a federal agency that then becomes binding on that agency and the applicant; then if we decided something else, that would be a mess.¹³

¹³ Accessed at <https://soundcloud.com/odoe/november-energy-facility?in=odoe/sets/november-19-20-2020-efsc-meeting>.

(EFSC Council Meeting, November 19-20-2020 at minute 2:32:56 through 2:34:05).

In response, and in explaining that Mr. McAllister’s issue is purportedly outside of EFSC jurisdiction, EFSC’s attorney Jesse Ratcliffe stated that, “the Council’s decision is one of compliance with state laws... ” and proceeds to explain that, in the instance that the Council’s approval of an application is ultimately precluded by a federal agency decision, “[IPC] would need to come back to the Council and amend its application or submit a new one.” (Id. at 2:34:10 through 2:35:17). In this explanation, Attorney Ratcliffe failed to address Mr. McAllister’s invocation of ORS 469.370(13) and its requirements, which is a state—not federal—law with which the Council must comply. Attorney Ratcliffe further acknowledged the inefficiency and potential tension between the dual state and federal processes, and the “unfortunate” inconvenience levied on the public, which must follow and respond to two separate processes (Id. at 2:35:29 through 2:36:22). In doing so, he also failed to recognize that ORS 469.370(13), in fact, if followed, would harmonize the state and federal processes, and avoid the very potential issues that arise from the scenario posed by Council Member Winters.

CONCLUSION

For the foregoing reasons, Mr. McAllister seeks exception to the exclusion of his primary issue concerning maximum feasible consistency in BLM and EFSC review from the contested case proceeding.

/s/ Michael McAllister
Michael McAllister

Date: June 30, 2022

CERTIFICATE OF MAILING

On June 30, 2022, I certify that I filed the foregoing **Exception to the Proposed Contested Case Order** with the Hearings Coordinator, EFSC attorney Jesse Ratcliffe, and other parties via electronic mail, and with each party entitled to service, as noted below.

/s/ Michael McAllister
Michael McAllister

By: Arranged by Hand Delivery:

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EXHIBIT 1

EXHIBIT 1

Michael McAllister, 60069 Morgan Lake Road, La Grande, Oregon, 97850, (541) 786-1507

August 27, 2020

Alison Greene-Webster, Senior Administrative Law Judge
Oregon Department of Energy,
500 Capitol Street NE,
Salem OR 97301

SENT VIA EMAIL TO: OED OAH Referral@oregon.gov; Kellen.tardaewether@oregon.gov

Dear Honorable Judge Greene-Webster:

This letter is my petition for “Party Status” in the Contested Case Proceedings that will evaluate the Proposed Order on Application for Site Certificate for Boardman to Hemingway Transmission Line (July 2, 2020 Proposed Order).

As a concerned Oregon citizen with an empirical and professional knowledge of the state’s natural resources, I have been involved in this Idaho Power Corporation (IPC) facility siting analysis for more than 10 years. I now petition for “party” status following the criteria defined on page 5 of the Public Notice – Proposed Order Application for Site Certificate for Boardman to Hemingway Transmission Line. Below are the required contents of my Petition for Party Status as stated in the Public Notice issued July 2, 2020:

- 1) I am Michael McAllister, 60069 Morgan Lake Road, La Grande, Oregon, 97850. (541) 786-1507.
- 2) I am not represented by an attorney.
- 3) I am requesting “party” status because I am representing both a personal interest, and the public interest - which is multifaceted and is covered by various Oregon statutes and regulations.
- 4) I maintain multiple personal interests that I seek to protect through this public process. My land and property line is 0.25 miles from the proposed site of the B2H Transmission Line as it runs through Union County on IPC’s “Morgan Lake Alternative Route.” I am the nearest Morgan Lake estate to the transmission line on the route and the most directly and immediately impacted.¹ I purchased my property over 30 years ago precisely because of the unique extent of the wildland and diverse native integrity as demonstrated by the Morgan Lake wetlands at the top of the Blue Mountains, which are directly and adversely impacted by the relevant section of the proposed site (the Morgan Lake Alternative Route).² In

¹ Despite the close proximity of my property to the Morgan Lake Alternative Route, I have never received any notification, correspondence, or contact of any kind from Idaho Power Company regarding the proposed route.

² The line as proposed runs within a mere 500 feet, and in full view of La Grande’s Morgan Lake Park, which lies just above my property and is a place I visit almost daily. Morgan Lake Park

addition to the impact on the proximate wildlands, of particular concern to me is the increased fire risk associated with running the transmission line across the windy ridgetop just above my home and tree farm, which are at the ridgetop and within 1,500 feet of the B2H Transmission Line where it skirts the Morgan Lake Estates. Here, my residential property is the closest to the transmission line and directly to the east and downwind. Further, the southern boundary of my property (Union County Tax Lot 702) includes the thirty-inch diameter “trans-Alaska” natural gas pipeline. As applied for, the B2H Transmission Line crosses this gas line within 0.5 miles of my property. I consider this to be an unacceptable and potentially explosive situation.

Further, as a stakeholder in this matter with knowledge of the subject land in Union County, I have repeatedly proposed to IPC a least-impact alternative concerning a ten-mile segment of the B2H Transmission Line in Union County since approximately 2010. While IPC never communicated with me regarding my proposal, which, significantly, was later identified to be the appropriate route based on federal environmental impact analysis, IPC did respond to my neighbor in 2015, whose proposal became the basis for the current Morgan Lake Alternative Route across the subject ten-mile segment. It is unclear why my, federally corroborated route was disregarded, while my neighbor was able to influence the proposed siting.

My personal interest is further reflected in my oral and written comments during the Public Hearing on the Draft Proposed Order for the Boardman to Hemingway Transmission Line (June 18-20 and June 26-27, 2019), which I incorporate by reference and have attached hereto as **Exhibit A**.

- 5) As a petitioner, I am also seeking to represent the “public interests”: fisheries, forest, range, recreation, wildlife, and visual resources with which I have expertise and am intimately acquainted. Based on my own environmental analysis of the section of the project relating to Union County (the Morgan Lake Alternative Route), as well as the analysis of the Bureau of Land Management evaluating the least environmentally impactful route through Union County, IPC’s proposed siting on the “Morgan Lake Alternative Route” in Union County does not adequately consider its impact as it relates to the local environment and is not consistent with: OARs 345-022-022; 345-022-0100; 345-022-0040; 345-022-0080; 345-022-0060;³ 344-021-0010(b)(D); or ORS § 469.370(13).

IPC’s proposed B2H facility has been reviewed by the United States Department of Interior’s Bureau of Land Management (BLM) under the National Environmental Policy Act (NEPA),

Recreational Use Development Plan states: “A goal of minimum development of Morgan Lake Park should be maintained to preserve the maximum of natural setting and to encourage solitude, isolation, and limited visibility of users...”

³ The reasoning as to why IPC’s Morgan Lake Alternative Route in its application is inconsistent with these regulations is detailed in my environmental analysis submitted with my public comment, incorporated here by reference and attached in Exhibit A.

42 U.S.C. Section 4321, et seq. The BLM has, in fact, identified the least impactful route through Union County, which is depicted on the interactive map on IPC' website as the "Agency Selected Route (NEPA)."⁴ I participated in this public process and contributed to the information used to identify the "Agency Selected Route" for an approximate nine-mile segment in Union County. IPC has actively and admittedly disregarded this route identified by the BLM to be least impactful, and of which it has been aware since 2010. IPC has applied for site certificate across a different nine-mile route segment they call the Morgan Lake Alternative. For the public resources identified above, the Morgan Lake Alternative will result in greater negative impacts. As a petitioner, I am qualified to represent such public interests because: (1) I am a lifelong Oregon outdoorsman, the son of Oregon's widely respected outdoorsman – Thomas H. McAllister; (2) I possess a B.S. from the University of Idaho in Wildlife Resources and Communications; (3) I have lived on and managed natural resources across the subject landscape for over 40 years; (4) as an independent natural resource contractor, I have made a career specializing in natural resources inventory for: federal, state, tribal, and private land stewards. Primarily, I gather data (facts) that are used for planning purposes – most often for NEPA analysis; and (5) the record will show that since IPC first announced their intent to build B2H, I have been committed, at every step in their process, to getting the project sited in the manner that will least impact the people of Oregon and their precious natural resources.

- 6) Existing parties to the proceeding cannot adequately represent my interests for a number of reasons. First, I am uniquely situated as to my personal interests in the matter. Not only is IPC's proposed line only 0.25 miles from my property, I have never personally received any notification or communication from IPC regarding the route, my interests, or participation in the process in any way—despite the fact that I have personally been sending correspondence to IPC regarding the local siting of this project since 2008 (attached hereto as **Exhibit B** are my communications to IPC and the Oregon Department of Energy regarding the B2H project and siting). My unique long-term personal involvement in the matter (referenced in paragraph 5 above) and knowledge of the evolution of IPC's routes across the subject segment, is further reason why existing parties cannot adequately represent my interests here. Further, as stated above, I have specific and intimate knowledge of the subject land, which I have acquired both professionally and personally over the past 40 years. Finally, my public comments, both oral and written, are distinct in highlighting IPC's failure throughout the siting application process to adequately evaluate the line's local impact on environment, resources, recreation, and public safety as evidenced by the existence—and active exclusion—of the environmentally preferred route that had already been identified by the BLM as the appropriate route through Union County based on consideration of environmental impacts.
- 7) The focus of the issues I intend to raise in the contested case concern a nine-mile segment of the B2H Transmission Line in Union County. This segment is referred to as the **Morgan**

⁴ <https://www.boardmantohemingway.com/maps> (screenshot attached hereto as Exhibit C).

Lake Alternative in IPC's application. IPC compromised the process when they filed their Application for Site Certificate without following the Oregon Department of Energy process with respect to this route. Consistent with my public comments, I intend to raise that IPC has failed to adequately consider nearly every aspect of the Morgan Lake Alternative Route's impact on Union County's local resources and public safety. IPC's failure to adequately evaluate relevant factors in its corridor selection is laid bare by the fact that the least impactful route, consistent with the National Environmental Policy Act (NEPA), was, in fact, identified and this is not the route for which IPC has applied. In other words, the very existence of the Agency Selected NEPA Route, is evidence that IPC has not complied with OAR 344-021-0010(1)(b); and that the route applied for, as to Union County, is inconsistent with the considerations and goals of OARs 345-022-022; 345-022-0100; 345-022-0040; 345-022-0080; 345-022-0060. Further, IPC's application and deliberate exclusion of the NEPA route is inconsistent with ORS 469.370(13) which provides:

For a facility that is subject to and has been or will be reviewed by a federal agency under the National Environmental Policy Act, 42 U.S.C. Section 4321, et seq., the council shall conduct *its site certificate review, to the maximum extent feasible, in a manner that is consistent with and does not duplicate the federal agency review.* (Emphasis added).

IPC's failure to adequately evaluate relevant factors in selecting its corridor was made clear during a public meeting during which EFSC member Hanley Jenkin inquired as to why IPC had excluded the Agency Selected NEPA Route. IPC's response was as follows:

“Back when BLM was working on getting their ROD issue, the delays in their process happened, occurred. We had to move ahead with the state process late in the application. And by the time BLM came out with their ROD, their record of decision, it was too late for us to really go back at that point. Now when I had conversations with BLM's program manager about this and whether that created any issues for BLM, they recognized that the Glass Hill route that you're talking about and the Morgan Lake route were identical on parcels that were under control of BLM, federal government. So, the fact that in our state application we had the Morgan Lake route did not influence or impact BLM's record of decision in their process.”

(Public Hearing Tr. June 20, 2019, La Grande, OR at p. 151:1-18)(emphasis added). Thus, IPC concedes it disregarded the least impactful route despite its knowledge that it was environmentally preferred without any justification other than it purportedly was not required to include it. Significantly, IPC has been aware of a lesser impact route since 2010 when I first raised it to IPC, and of the BLM's assessment of this route as the preferred route based its environmental impact assessment in 2014, both before its site application including the current proposed Morgan Lake Alternative Route in July 2017. Accordingly, the inadequate justification provided in the public meeting also appears to be false based on the timeline of events. The admitted disregard without justification for an identified, NEPA-consistent (*i.e.*, least

environmental impact) route runs counter to OARs 345-022-022; 345-022-0100; 345-022-0040; 345-022-0080; 345-022-0060;⁵ 344-021-0010(b)(D); or ORS § 469.370(13).⁶

While the Oregon Department of Energy does not evaluate or consider alternative routes in evaluating the application for site certificate, it need not evaluate or compare the routes to find that the very existence of an identified, environmentally preferred route based on public interest considerations renders IPC's evaluation of the Morgan Lake Alternative inadequate and inconsistent with purpose of the regulations referenced above, and with the public interest. The fact that IPC did not, and could not, provide meaningful, or credible, justification to EFSC or the public as to why it ultimately disregarded the environmentally preferred route demonstrates that IPC has not adequately evaluated significant relevant factors with respect to the particular corridor selection.

I further wish to raise my environmental analysis (included in my public comment) of the impacts of IPC's Morgan Lake Alternative Route, which is consistent with the findings of the BLM and reflects why the BLM identified its preferred route.

- 8) My comments, both oral and written, addressing the issues outlined above are attached hereto as Exhibit A. Specifically, I address my concerns with respect to the aggregate environmental impacts of the Morgan Lake Alternative Route, and IPC's clear failure to adequately evaluate these impacts, evidenced by the exclusion of the Agency identified preferred, least impact route.

Sincerely,

Michael McAllister

60069 Morgan Lake Road
La Grande, OR 97850

⁵ The reasoning as to why IPC's Morgan Lake Alternative Route through Union County is inconsistent with these regulations is detailed in my environmental analysis submitted with my public comment, incorporated here by reference and attached as Exhibit A.

⁶ IPC's active disregard for the identified least impactful route is also directly counter to UCZPSO 20.09(5)(D) (ENVIRONMENTAL) which requires that consideration should be given to alternative sites in Union County for proposed development that which would create less of an environmental impact of any on the resources listed in Section 20.09(1), if alternatives are available. Contrary to the findings in the Proposed Order (p. 175:20-27), IPC cannot have conducted a comprehensive avoidance and minimization analysis for all environmental resources and other resources to create the least overall impact, as evidenced by the pre-existence of route with least overall impact, which, IPC admittedly ignores. (*See* Public Hearing Tr. June 20, 2019 at 151:1-18).

EXHIBIT A

EXHIBIT A



Oregon Department of Energy and the Energy Facility Siting Council

Public Hearing on the Draft Proposed Order
for the Boardman to Hemingway Transmission Line
June 18-20 and June 26-27, 2019, 4:30-8 p.m.
Public Written or Oral Testimony Registration

Name (mandatory) MICHAEL MCALLISTER

Mailing Address (mandatory) 60069 MORGAN LK RD
LA GRANDE OR 97850

Phone Number (optional) 541 786 1507 Email Address (optional) _____

Today's Date: 6/20

Do you wish to make oral public testimony at this Hearing: Yes No

Written comments can also be submitted today.

All written comments must be received by the deadline, July 23, 2019, 5 p.m. PDT to:

Kellen Tardaewether, Senior Siting Analyst
Oregon Department of Energy
550 Capitol Street NE
Salem, OR 97301
Fax: 503-378-6457
Email: B2H.DPOComments@oregon.gov

Note: by submitting written or oral testimony, you will receive a notice from the Oregon Department of Energy at a future date of the opportunity to request party status in a contested case hearing on the proposed facility.

Written Testimony

(Please print legibly – Use the back for additional space if needed. Additional written comments may be attached to this card.)

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1 litigation that had proven that. So I have to trust
 2 them on that, I guess.
 3 I think you'll have to understand, I'm a
 4 little bit skeptical about this. Idaho Power hasn't
 5 been -- I haven't been contacted -- I mean, I have now.
 6 But through this planning process, I really wasn't
 7 contacted. Nobody came to my place and looked at the
 8 site. I don't know if they know there is a pond right
 9 next to where they want to put this tower. I don't know
 10 if they understand I had to put a well in 700 feet deep,
 11 the water is amazing. I don't know if that will change.
 12 The road coming up Hawthorne has to have a lot
 13 of annual maintenance on it for just three houses. The
 14 idea of them hauling that heavy equipment, and I don't
 15 know what they are going to do to improve or better that
 16 road, my concern is they will make it worse. Only
 17 because of the limited history that I've had with them
 18 hasn't really been very supportive. Tonight was the
 19 first night that I got a chance to listen to this many
 20 people talk about their concerns.
 21 Honestly, I'm more concerned now than before I
 22 came in. I have heard a lot of information tonight that
 23 kind of would make, I think, anybody in my shoes afraid
 24 of the future of what's going to happen up there. I
 25 love this place. I think it's going to change

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1 dramatically. That is all I have.
 2 HEARING OFFICER WEBSTER: Thank you.
 3 Following Mr. McAllister we have Charles
 4 Gillis on deck.
 5 MR. MICHAEL McALLISTER: I'm Michael
 6 McAllister. I live at 60069 Morgan Lake Road right at
 7 the top where you confront the wind as you break the
 8 summit.
 9 I am of the Move B2H camp, an advocate of
 10 moving and have been for at least 10 years, when the
 11 initial proposed route was presented. I am a natural
 12 resource inventory expert, and made a career
 13 inventorying fish, forest, wildlife, range, ozone
 14 damage, carbon sequestration. I collect facts from the
 15 landscape and have been in La Grande since 1979, when I
 16 lived right below lower Morgan Lake, which apparently is
 17 not recognized by Idaho Power.
 18 The eagles built two nests right above my wall
 19 tent where I lived as I went to school here at Eastern
 20 Oregon University. And it's really a pleasure to be
 21 here tonight with the community and hearing all of their
 22 different concerns and considerations. It's always been
 23 above my mental capacity to explore the rightness or
 24 wrongness of the power line; so I have focused on moving
 25 B2H.

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1 For everybody here, if you are to looking at
 2 the computer screen that's up on the back wall, there is
 3 a third power line, which is the green route. There is
 4 red, green, and yellow. And I'm pleased to see that the
 5 green line was turned on this evening. It wasn't on
 6 when I originally looked at it.
 7 I also came in late and I was told that I'm
 8 not supposed to advocate for the western route
 9 recognized by the BLM and environmental analysis because
 10 it has not been applied for. That route is what I've
 11 been involved with advocating for for 10 years now,
 12 since day one, really.
 13 I think I probably wrote Adam Bless, with the
 14 Oregon Energy Council, probably the first letter he
 15 received with my concerns about siting this line through
 16 Union County here. And with an empirical background for
 17 virtually every acre of the stretch from Hilgard to Ladd
 18 Canyon that probably nobody else has, I feel like it's
 19 my community contribution to represent it as completely
 20 and as well as I can.
 21 The green route is by far the superior route
 22 when you consider just about any aspect; fish, forest,
 23 wildlife, range, fire, feasibility, all the above. In
 24 my analysis collecting facts relative to all these
 25 resources, the green route is by far the best route.

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1 And I can honestly say that it's a travesty that, for
 2 whatever reason, Idaho Power has chosen to completely
 3 disregard that route. I have seen no evidence in
 4 10 years that Idaho Power has shown any consideration of
 5 that route. I think it's appalling.
 6 I do credit Idaho Power for having in the
 7 10 years considered routes through John Day, extensively
 8 routes through the Blue Mountains, and having recognized
 9 the importance of not further fragmenting large-scale
 10 forest tracks, and that the I-84 corridor is probably
 11 the best route. But specifically through this neck of
 12 the woods, through Union County, Ladd Canyon, I think
 13 every concern I've heard here this evening can be
 14 mitigated by placing this transmission line on the
 15 environmentally-preferred route.
 16 And I am providing comment, written comment
 17 that will specify as well as I can with the time that I
 18 have. I don't believe it's up to me to demonstrate a
 19 burden of proof to this end, but I'm doing my best to do
 20 that.
 21 And I thank you all for your listening here
 22 this evening.
 23 HEARING OFFICER WEBSTER: Thank you.
 24 Following Mr. Gillis, we will hear from, I
 25 believe it's John Winters, if I'm reading that

Michael McAllister, 60069 Morgan Lake Road, La Grande, Oregon, 97850, (541) 786-1507.

June 23, 2019

Todd Cornett, Energy Facility Siting Division Administrator, Energy Facility Siting Division, Oregon Department of Energy, 550 Capitol Street NE, 1st Floor, Salem, OR, 97301, todd.cornett@oregon.gov .

Dear Mr Cornett,

On January 14, 2019, I delivered to you a letter (attached – page 2) to express my concerns about Idaho Power Corporations (IPC) “incomplete application” for *Site Certificate* of their **Boardman to Hemingway Transmission Line** through Union County. The application is incomplete because IPC did not include the Agency Selected Route, adopted by the National Environmental Planning Act (NEPA) process – conducted by the U.S. Department of Interior’s Bureau of Land Management.

This past Thursday – June 20, 2019 – the **Energy Facility Siting Council** held Public Hearing on the *Draft Proposed Order and Request for Comments* – here in Union County. I attended that meeting and I did make comments regarding my position with regards to Idaho Power Corporations Incomplete Application for Site Certificate.

In brief, the most significant point that I made was – the **Agency Identified Route A** would affectively mitigate nearly all the concerns expressed by the many attendee’s comments at that meeting.

Following the public comments, two representatives from Idaho Power were seated before the Siting Committee, this so that committee members could ask questions in response to the public comments previously made.

Committee Member Hanley Jenkins asked the only question and he phrased it this way – “**I am going to ask you one very hard question – why did Idaho Power Corporation not include the BLM Agency Identified Route into their Application**”?

Idaho Power’s Mark Stokes provided the following as an answer – **the BLM Agency Alternative was not included because their process was being drawn out – we were under time constraints to submit our application and went ahead without it.**

There were no further questions, and no further opportunity for the public to respond to this **Revelation.**

I have been involved over ten years in advocating for what is now the BLM Agency Identified Route A.

Idaho Power Corporation and others are currently processing an incomplete application. IPC has been asked to amend their application repeatedly, too include the **Agency Identified Route A**. This issue should not become a Contested Case.

Respectfully



Michael McAllister

RECEIVED

JUN 26 2019

DEPARTMENT OF ENERGY

Michael McAllister

January 14, 2019

Todd Cornett, Energy Facility Siting Division Administrator, Energy Facility Siting Division, Oregon Department of Energy, 550 Capitol Street NE, 1st Floor, Salem, OR, 97301, todd.cornett@oregon.gov .

Dear Mr Cornett,

I am gravely concerned that Idaho Power Corporation (IPC) has submitted an incomplete application to Oregon's Energy Facility Siting Council (EFSC). Their application for *Site Certificate* of the Boardman to Hemingway Transmission Line through Union County does not include for consideration, the Agency Selected Route, adopted by the National Environmental Planning Act (NEPA) process – conducted by the U.S. Department of Interior's Bureau of Land Management. The two routes that IPC has applied for: **Proposed Route (B)** and **Morgan Lake Alternative (3)**, were developed late in the NEPA process and have not undergone environmental analysis or public comment. IPC's failure to gather satisfactory evidence has limited the ability of the public, EFSC, and other regulators in their ability to make fully informed decisions in the public interest.

I am requesting that Idaho Power Corporation amend their Oregon EFSC Application for Site Certificate to include the U.S. Bureau of Land Management's **Agency Identified Route A** for consideration by the State of Oregon EFSC board members. It is the only route that was fully subjected to environmental analysis and public comment during the Federal EIS. It was established through community consultation and environmental review in a multi-year process. It must be on the table for full consideration by Oregon EFSC for a "Complete Application" review.

I am Michael McAllister, a long-time resident of Union County and private contractor specializing in natural resources inventory and management. I hold a Bachelor of Science degree, *Wildlife Resources*, from the University of Idaho. As a 40-year resident on Morgan Lake road, I have an intimate knowledge of the geology, habitat, environmental issues, wildfire hazards and recreational value of the area. My interest is both professional and personal.

Oregon Department of Energy and Idaho Power Corporation records show that, since 2008, I have been encouraging Idaho Power Corporation to site the Boardman to Hemingway (B2H) Transmission Line in a manner, whereby the cumulative impacts of the Right-Of-Way will have a minimal impact on Oregon's public and their natural resources.

Attached is my comparative analysis of IPC's two routes (B and 3) and the BLM's Agency Selected Route (A). This analysis demonstrates that the Agency Selected Route minimizes risks to public safety and imposes the least impacts on the natural resources of both the City of La Grande and Union County.

At this time, I ask that Idaho Power Corporation amend their Oregon EFSC Application for Site Certificate to include additional environmental and community evidence regarding their proposed routes and to include the BLM *Agency Identified Route A* for consideration.

Respectfully



Michael McAllister

Public Comment: Michael McAllister

**Proposed Boardman to Hemingway Transmission Line
Site Certificate Application Review**

June 23, 2019

Introduction

The reader is advised to follow along using the Google Earth maps provided at <http://www.boardmantohemingway.com/LandownerMaps.aspx>. Expand the map to full screen and zoom in on Routes A, B, and 3 near La Grande, Oregon. Note you can switch between Earth View, Map View, and Topography View using the tab at the top left of the screen. To see vegetation coverages, use Earth View. To see geographic features switch to Topography View.

Map 3 (Union County) Legend:

- (A) – BLM Agency Selected Route (NEPA) - Route Color is Green on Map;
- (B) – Proposed Route (EFSC) – Route Color is Red on Map;
- (3) – Morgan Lake Alternative (EFSEC) – Route Color is Blue on Map.

Proposed Route B (EFSC)

IPC's Proposed Route has been identified as a best attempt to site B2H along the existing 230 kV transmission line as it passes through Union County. In 2008 and again in 2012, I asked that IPC construct their new B2H transmission line adjacent to the existing 230 kV transmission line passing through La Grande and Union County. After much further review of the evidence presented, I deemed that such a route would not meet the screens for the 500 kV transmission line for the following reasons:

- 1) The valley slopes to the west above La Grande are steep, with unstable geology; many areas have been identified by the U.S. Geologic Survey as unsuitable for construction.
- 2) La Grande's western skyline viewshed would be severely impacted. Both the City of La Grande and Union County have asked IPC to keep B2H out of their viewshed.
- 3) The "Powerful Rocky" stretch of Oregon Trail, and its archaeological artifacts, would be desecrated by the construction and continued maintenance requirements of the B2H towers.
- 4) Impacts to Oregon's Ladd Marsh Wildlife Management Area would be severe and permanent. Ladd Marsh was established as a wildlife mitigation area for past federal projects and the refuge should not be compromised. IPC itself recognizes and designates Ladd Marsh as "irreplaceable."

Based upon the above considerations, **Proposed Route (B)** has *High Cumulative Impact*, and few mitigation options.

Comparative Analysis of BLM Agency Selected Route (A) and Morgan Lake Alternative Route (3)

From here forward I will explain and contrast the **Agency Selected Route A**, with the **Morgan Lake Route 3**. The analysis begins at the Divergence Point – where Routes A and 3 diverge. The analysis then proceeds from north (DP), then south to the Convergence Point (CP) of the two routes near Ladd Canyon. The distance between DP and CP is approximately eleven miles for both Routes: A and 3. The elevation at DP (north end) is approximately 3,400 feet. The Elevation at CP (south) is approximately 4,800 feet. The Divergence Point is located near the middle of section 7, Township 3 South, Range 37 East, approximately 1.5 miles south of the Highway 244 junction with Interstate 84 at Hilgard. It is approximately 0.75 miles south of Highway 244, traveling south on the Whiskey Creek Road.

Geographic Setting

The biggest difference between the two routes is how each of them has been established geographically. This can best be recognized by comparison in *Topography View*. Recognize that the Grande Ronde Valley is the dominant geographic feature for the region, and further that it is oriented in a slightly northwest by southeast alignment - as is the Blue Mountain Range along the valley's west side. Recognize that from Divergence Point (near the Grande Ronde River at Hilgard) that the landscape rises as you go south following the west side of Grande Ronde Valley, all the way to near the Convergence Point above Ladd Canyon.

Now notice how the two routes, A and 3, ascend from 3,400 feet up to just over 5,200 feet elevation near the high point at Glass Hill. And notice that between the two routes there is a series of parallel ridges and drainages that are also oriented in the northwest by southeast alignment. This alignment is caused by the orientation of the faults associated with the origins of the Grande Ronde Valley. The highest of the fault generated-ridges is the one following the Mill Creek Fault – which also establishes the west edge of the valley. This highest ridge is known by geologists as the Glass Hill Monocline – **Morgan Lake Route 3 sites the transmission line along this monocline ridgetop.**

Comparatively, the Agency Selected Route A is the lower elevation route where the mean elevation is approximately 4,100 feet. See that from DP Route A proceeds southerly at an azimuth of approximately 150 degrees, along the same northwest/southeast geologic alignment. Route A gains elevation slowly as it moves up “Graves Ridge” in a straight line for approximately 5.0 miles. “Graves Ridge” is a broad gentle slope, where the only vegetation is sparse grass and forbs – much of it is rocky scab vegetation. The Graves Ridge Road (East Fork of the Whiskey Creek Road) mostly parallels the Route A with an elevation gain of about 200 feet per mile – a slope grade of just 5 percent. Importantly, note that existing roads provide excellent road access for at least two thirds of the Route A. These roads are bladed across solid basalt with few corners and no steep grades. Route A then makes only one turn, easterly to approximately 110 degrees. On this course, **Agency Selected Route A crosses the Rock Creek drainage 8.5 miles upstream from the Grande Ronde River – above the lower 6 miles deemed important to Threatened Snake River Chinook Salmon.**

Comparatively, the Morgan Lake Route 3 on the other-hand, moves east from DP and away from the Whiskey Creek Road. Route 3 then crosses the Rock Creek watershed just three miles up-stream of the Grande Ronde River. Note that there are four distinct drainages that make up the Rock Creek Watershed, from west to east they are: Graves, Little Rock, Rock, and Sheep Creeks. Notice that all four of the drainages converge near to where Route 3 crosses Rock Creek. There are no real existing roads

that access the north two thirds of Route 3. After crossing Rock and Sheep Creeks, Route 3 then intersects the Glass Hill Monocline (near Morgan Lake), where it turns southerly and follows the ridgetop. **Morgan Lake Route 3 is the high elevation route where the mean elevation across the route is approximately 4,500 feet.**

Soil Protection - OAR 345-022-022

The 400 feet mean elevation difference between (A and 3) is the predominant variable responsible for the difference in soils. The higher elevations along the top of the Glass Hill Monocline gather more precipitation, summer temperatures are cooler, more layered vegetation provide more shading, and windblown snow and soil particulates accumulate. The variability in soils is well demonstrated when you superimpose the **Union County Soil Survey Map** over IPC's Route Map overlay. Using this soils inventory, I have identified the four predominant soil types for both: **Route A and Route 3. They are listed hear from most coverage, to least coverage:**

Agency Selected Route A, Soils are: 1) = 69C - *Watama-Gwinly complex*, is on biscuit-scabland uplands, vegetation is mainly bunchgrasses, and annual forbs; 2) = 35E – *Klicker-Anatone complex* - mountainous uplands where the native vegetation is mainly Ponderosa pine, bunchgrasses and elk sedge, a warm moist plant community suited to the production of pine, on a patchy basis - where soil is deep enough, also as rangeland and wildlife habitat. 3) = 4E *Anatone extremely stony loam* - is shallow, well-drained soil at ridgetops, and on south and west facing slopes where vegetation is mainly blue-bunch wheatgrass, Idaho fescue and stiff sage; used mainly as rangeland. 4) = 58E – *Starkey very stony silt loam* – shallow well drained soil on uplands, the vegetations is mainly bunchgrasses and annual forbs, Idaho fescue, blue-bunch wheatgrass and Sandberg bluegrass. The unit is used mainly for rangeland. Collectively, the soils makeup for Route A, tend to be shallower, and of residual decomposed basalt in its origin. The site index for timber production is lower, and shrubs are limited in the vegetation composition. **Agency Selected Route A crosses 44% forested acres - mostly warm dry plant communities. And it is noteworthy that Route A crosses 33% less timber acres than does Morgan Lake Route**

Morgan Lake Route 3, Soils are; 1) = 4E - *Anatone extremely stony loam*, is shallow, well drained, at ridgetops and on south and west facing slopes, derived predominately from basalt; vegetation in mainly blue-bunch wheatgrass, Idaho Fescue and stiff sage; used mainly as rangeland. 2) = 32E - *Kalema very stony silt loam*, moderately deep, well drained, mainly coniferous forest and an understory of shrubs, forbs and grasses; used mainly for timber production, also used for woodland grazing and wildlife habitat. 3) = 33E – *Klicker stony silt loam*, moderately deep, well drained, mountainous uplands, vegetation is mainly coniferous forest with bunchgrasses annual forbs and perennial shrubs, unit is used mainly for timber production, also for woodland grazing and wildlife habitat. 4) = 61E – *Ukiah-Starkey complex*, Ukiah moderately deep and well drained, vegetation mainly Idaho Fescue, Blue-bunch wheatgrass and Sandberg bluegrass; used mainly as rangeland. Collectively, the soils makeup for Route 3, tend to be deeper, loamier, of residual decomposed basalt, but with more volcanic ash composition. The site index for timber production is higher, where shrub composition is greater. **Morgan Lake Route 3 crosses 66 % forested acres mostly cool moist plant communities, and that is 33% more timber acres than does the Agency Selected Route A crosses.**

Recreation - OAR 345-022-0100

Protected Areas - OAR 345-022-0040

Scenic Resources – OAR 345-022-0080.

Morgan Lake Route 3 also establishes towers within 500 feet of Morgan Lake Park. Here, the impact on La Grande's public will be *High*. The first stated goal in the Morgan Lake Park Recreational Use and Development Plan (Section 1, Page 2) - *A goal of minimum development of Morgan Lake Park should be maintained to preserve the maximum of natural setting and to encourage solitude, isolation, and limited visibility of users while at the same time providing safe and sanitary condition for users.* Also noteworthy is the fact that the City of La Grande Chamber of Commerce has long promoted Morgan Lake Park as the #1 Recreation Tourist Destination in the La Grande Area. And the State of Oregon designated Morgan Lake Park as a State Wildlife Refuge in the 1960s. Today Oregon Department of Fish and Wildlife identifies the Lake as an easy access fishing destination for the handicapped.

Morgan Lake Park encompasses two separate Lakes. Morgan Lake is 70 acres in size and is developed with road access and camping. Twin Lake is 27 acres in size, undeveloped, and with no road access or camping. **Twin Lake has been identified by both Federal and State programs to conserve, restore, and protect wetlands.** Oregon has developed a **Wetland Conservation Strategy** (Oregon Division of Lands, 1993). This Strategy is implemented through the Oregon Wetlands Inventory and Wetlands Conservation Plans (See Webpage). This planning process allows local governments to balance wetlands protection with other land-use needs. **Twin Lake is recognized as an important, persistent, emergent vegetation wetlands, which includes both submersed and floating plants.**

Fish and Wildlife Habitat - OAR 345-022-0060,

Morgan Lake Route 3 crosses Rock Creek approximately 2.5 miles upstream from the Grande Ronde River - just below where Sheep Creek flows into Rock Creek. Here is where the best water quality and the coolest water temperatures exist during the heat of summer. And here is where Route 3 will cross. Rock Creek is not a Chinook Salmon spawning habitat. However, **the lower six miles of Rock Creek have been identified as important habitat for both Steelhead and Chinook Salmon smolts.**

Twin Lake, at 4,100 feet elevation, supports one of the most diverse waterfowl nesting communities in the Blue Mountain Ecoregion. Most unusual is the nesting by: Ring-necked Ducks, Red Head, Rudy Duck, Blue-winged Teal, Shoveler, and Pied-billed Grebe. The species diversity surrounding this wetlands anomaly at 4100 feet elevation, is enhanced by the natural basalt rim rocks forming the south and west sides of the lake. Here the vegetation is a diverse mixture of native shrubs, aspen, black Cottonwood, and Ponderosa pine. These surrounding shrub and tree communities support as rich an assortment of both migratory and nesting passerine birds as can be recognized across the Blue Mountain Ecoregion. **Also frequenting these habitats are two bird species identified on the Oregon Department of Fish and Wildlife – Sensitive Species List: Great Gray Owl, and White-headed Woodpecker.**

In 2013 a Pair of Bald Eagles constructed a nest in the top of a large Ponderosa pine at the west edge of Twin Lake where they fledged their first two young. GPS coordinates (Degrees, Minutes,

Seconds) for Nest-1 are: N 45*, 18', 06.0" by W118*, 08', 44.2". Route 3 places a Tower 580 feet from Nest 1. The pair of Eagles has since built Nest-2 at N 45*, 17', 45.9" by W118*, 08', 54.4". Route 3 places a Tower 0.31 miles east of Nest 2. Route 3 places the transmission line between the two nests. Here I will point out that IPC's Avoidance Criterion Identifies Bald Eagle Nests as High Avoidance – recognizing a Buffer of one mile. The Morgan Lake Route 3 demonstrates a disregard for these Bald Eagles. Here at the ridge-top, Morgan Lake supports an entire ecosystem of scale where the fall hawk migration follows south up the monocline ridge. Here, watching Bald Eagles and their interaction with fishing Ospreys is a popular nature spectacle. If the Morgan Lake Route 3 is built, the spectacle will become a loud "crackling" transmission line towering over Morgan Lake Park.

South of Morgan Lake, Route 3 advances southeast up the Glass Hill Monocline and into renowned high-density elk breeding grounds. Here in the upper reaches of Sheep Creek are numerous sedge meadow springs that are used heavily as elk wallows. All "muddied-up", large mature bulls now strut out onto the open bunchgrass slopes to breed on Cowboy and Sheep Ridges. Landowners here have a long history of promoting the Elk Resource as a viable economic and recreational endeavor. Oregon's Governor Pierce and Supreme Court Justice William O. Douglas once made this habitat their personal "getaway." One neighbor has made land acquisitions and established conservation easements to consolidate and preserve the native integrity of the area. The Rocky Mountain Elk Foundation is a cooperator in these efforts, as is the case with the Eastern Oregon University's Rebarrow Forest Project. Before the white-man's time, the Glass Hill Monocline was the gathering location for hundreds of horses that were summer pastured on what we now call the Starkey Range Lands. This is sacred ground, that has been long recognized for its richness and integrity of native vegetation.

Threatened and Endangered Species – OAR 345-022-0060

Morgan Lake Route 3 could impact Snake River Chinook Salmon habitat and water quality where the route crosses Rock Creek.

Oregon's Sensitive Species Rule – OAR 635-100-0040

Morgan Lake Route 3 will affect known Great Gray Owl and White-headed Woodpecker habitats across the 2.5 mile stretch between Rock Creek and Morgan Lake.

Health and Safety Standards for Siting Transmission Lines - OAR 345-024-0090

Specific Standards for Facilities Related to Underground Gas Storage Reservoirs - OAR 345-024-0030

At this point we need to consider the Transmission-line Tower that would stand closest to Morgan Lake recreationists. It is located within 100 feet of a thirty-inch diameter Natural Gas Line (Trans-Alaska, 1st leg constructed 1982). Here the gas-line is less than 600 feet from Morgan Lake Park. And here at the ridge-top is a known zone of weakness for said pipeline. From the top of the Glass Hill Monocline, the pipeline drops steep downslope in both directions – east and west. Over the years, there have been multiple pipeline ruptures less than a mile from Morgan Lake. This explosive potential exposes the residence of Morgan Lake Estates and the recreationist at Morgan Lake Park to unnecessary risk. IPC also needs to consider how their stray energy electrolysis will erode this Trans-Alaska Natural Gas Pipeline. The Morgan Lake Route 3 crosses the natural gas line twice - once at Morgan Lake, and again it crosses at Rock Creek – approximately 2.5 miles to the northwest. Even more noteworthy, is the fact that the Agency Selected Route A avoids pipeline crossing all together.

Looking at the statistics for American transmission lines, I see that between 1984 and 2006, approximately 44% of all power blackouts were weather-related, and of those – 11% were caused by lightning activity. As a resident of the Morgan Lake Estates, I am extremely concerned that IPC's transmission line may act as a source of ignition for leaking gas from an aging pipeline, as well as for uncontrolled wildfire - we have recently seen this in California. My residential property is within 100 feet of the pipeline, and within 900 feet of the Morgan Lake transmission-line/powerline crossing. In 2005, Union County conducted a County-wide Wildland Urban Interface Fire Hazard Analysis. The resulting Analysis was published using Federal grant monies. The document identifies fourteen different Wildland Urban Interface (WUI) Zones within Union County. Based upon a set of Risk Analysis Criterion, each of the 14 WUI Areas were ranked from High-1 to Low-14. The Morgan Lake Estates WUI was given the Highest (#1) Ranking. It is also noteworthy that along the Agency Identified Route A, there are no residences in any direction for well over a mile.

Of the three routes under consideration, the **Morgan Lake Route 3 gets the Highest Fire Risk Rating for the following reasons:** it follows across the top of the Glasshill Monocline adjacent to the Grande Ronde Valley. The construction of a 200-foot-tall transmission line towers, along the highest ridgetop, where they are exposed to the most turbulent weather conditions is a recipe for fire. Here at this high elevation, the Morgan Lake Route 3 will be cut through *Cold Moist Ecotypes* that are dominated by mixed-conifer forests. Here, dense volatile fuels are exposed, where winds are the norm, and fuels dry quickly. It is highly significant that this area of the Blue Mountains is in the major lightning path, where cumulus buildups move up from the southwest. The storms track across the Blue Mountains strengthening as they move northeasterly. And as the storms cross the Glass Hill Monocline and the adjacent Grande Ronde Valley, thermals increase lightning activity at the ridgetop – not a good place for a major transmission line. Note here that the **Agency Selected Route A rapidly drops (west) down from the Glass Hill Monocline and onto a lowland ridge where winds and weather are diminished, and where vegetative fuel is sparse short grass vegetation of low flammability.**

As a resident in the Morgan Lake Estates for 40 years, I have always considered **Morgan Lake to be our greatest Fire Fighting Asset.** At the ridgetop, Morgan Lake provides fire helicopters with buckets the ability to come and go from any direction without limitations. Morgan Lake is among the best water sources for helicopters in the region. **The proposed Morgan Lake Route 3 would significantly change helicopter activity around Morgan Lake, creating an unnecessary liability that puts us all at risk.**

Additionally, the Morgan Lake Route 3 (at the ridgetop) poses additional aviation liabilities that need consideration. Most air traffic in and out of La Grande Airport, the U.S. Forest Service Airtanker Base, and the Life Flight Base comes from and goes out to the west. Low Flying aircraft cross the Morgan Lake ridgetop commonly. Again, the **Morgan Lake Route B creates unnecessary liabilities that puts us all at risk. The Agency Identified Route A eliminates these liabilities.**

SUMMARY

Idaho Power's Proposed Routes offer Oregon decision makers a false choice. It is likely that **Idaho Power's Proposed Route B will not achieve License Approval by EFSC.** By default, IPC's request would become permit **Morgan Lake Route 3.** IPC put these two routes forward in the "11th hour" of the Final EIS. Neither route was evaluated by a credible environmental review team. I have dedicated my own time to comparing and contrasting **Morgan Lake Route 3 with the Agency Identified Route A**

because Oregon's decision makers and the public deserve a full vetted and evaluated alternative. The **Morgan Lake Route 3 is High Impact.**

At the ridgetop, the Morgan Lake Route 3 would have greater impacts on: protected areas, recreation, scenic resources, soils, forested acres, and fish and wildlife habitats. The Morgan Lake Route poses unnecessary risks to: public health and safety, the wildland urban interface, fire suppression support systems, and to aircraft transportation. Morgan Lake Route is more topographically complex, has very limited road access, and requires much more disruption to wildlands. **All said, I calculate that the Morgan Lake Route 3 is a significantly more expensive transmission line segment to build, and to maintain.**

Alternatively, the Agency Identified Route A is topographically simple, has extensive solid road access, and crosses uninhabited lowlands. Here, soils are thin, vegetation is sparse and of low flammability. **It is clear to me why Route A is the Agency Identified Route. And it remains a complete mystery - why IPC chooses to disregard the Agency Identified Route.**

Idaho Power has been asked repeatedly – why the **Agency Identified Route 3** was not included in the EFSC Application? On October 17, 2018, IPC and EFSC held a joint informational meeting at the Blue Mountain Conference Center in La Grande. A member of the audience asked IPC's Jim Maffuccio the question – **why are you not using the BLM's environmentally preferred route?** His vague answer was essentially - **we have been working with landowners; there are habitat concerns; the tribes have some concerns; we are communicating with the BLM.** There has been no further elaboration or publicly presented documentation.

I am now asking EFSC, to ask Idaho Power Corporation, to amend their Oregon Application for Site Certificate - Include the Agency Identified Route A for consideration.

Going forward, I also ask that EFSC consider seriously the issues of Health and Public Safety. And I ask that EFSC members consider the **Oregon Conservation Strategy (OCS)** as they weigh the impacts that each of the three routes: A, B, & 3. OCS is the state's overarching strategy for conserving fish and wildlife resources. It serves as the official State Wildlife Action Plan for Oregon, and it is a requirement for the federal State Wildlife Grant Program. The objective of OCS is to conserve fish and wildlife resources by maintaining and restoring *functioning habitats*. OCS breaks the state into *Ecoregions* - the entirety of Union County is within the *Blue Mountains Ecoregion*. It is critical that EFSC members understand that the setting for this transmission Line analysis is arguably in one of the Highest Functioning Habitat Areas in the Blue Mountains Ecoregion. The variability of topography, elevation, soils, native vegetation, and wildlife habitats along the breaks of the Grande Ronde Valley is very high, especially for a two-mile radius surrounding Morgan and Twin Lakes...

Respectfully 

Michael McAllister (Owner), Wildland Resource Enterprises, 60069 Morgan Lake Road, La Grande, OR, 97850, wildlandmm@netscape.net, (541) 786-1507 .

cc. EFSC Facility Siting team – energy.siting@oregon.gov, Mark Stokes – Applicant/Certificate holder – mstokes@idahopower.com, Scott Hartell – Planning Director for Union County - shartell@union-county.org , Don Gonzale – BLM B2H NEPA Coordinator – dgonzale@blm.gov .

EXHIBIT B

EXHIBIT B

Michael McAllister
Wildland Resource Enterprises
wildlandmm@netscape.net
541-786-1507

October 5, 2010

Keith Georgeson
Boardman to Hemingway Project Leader
kgeorgeson@idahopower.com
208-388-2034

Dear Mr. Georgeson:

Attached are the two letters that I have previously written responding to the BH2 Transmission Project. As you may recognize, I have made a genuine attempt to at providing input both on the project as a whole, as well as specifically on the line section identified as section C21. I have been satisfied with the responsiveness of Idaho Power's input process up to this point.

Yesterday, I was contacted by landowner John Williams – to whom you sent a letter(dated October 1st) and a map of describing a “new alternative route” that crosses through his property. In fact this in not a new alternative as I read it – it is the original route proposed by Idaho Power before any input what-so-ever. It was this “new alternative” that first drew my attention as an unacceptable route back in 2008.

Please recognize that I previously provided Idaho Power with hard copy USGS 7.5 minute topo quad maps with a very specific delineation for the sighting of section C21 which would have the least impact - taking the following into account: 1) View-scapes; 2) Use of existing Roads; 3) Forest Resources; 4) Wildlife Resources.

The south or western (alternate route) for section C21that the planners have developed is very close to the best sighting considering. And as I have previously stated, I stand committed to getting this sighting right.

I have to say that I am currently very uncomfortable with the way that you have now presented this “new alternative” to John Williams. I think that it is a bit tacky to now be playing landowner against landowner which is what you are doing in your October 1st letter to John Williams. As I read your letter, the “argument for this proposal” has little to no merit.

I look forward to participating in a more credible analysis for the specific sighting for section C21 of the BH2 Transmission Line.

Respectfully - Michael McAllister

Michael McAllister
Wildland Resources
60069 Morgan Lake Road
La Grande, Oregon 97850

January 31, 2008

Adam Bless
Oregon Department of Energy
625 Marion St. NE
Salem, Oregon 97301

I am writing to make input on the sighting proposal for the Idaho Power – Boardman to Hemingway Transmission Power-Line (BHTP). I understand that there was a short window of time to make input in early November. I was elk hunting in the high Wallowa Mountains at the time.

I am a lifelong resident of Oregon - I am also a Wildlife Resource graduate from the University of Idaho, and I work as a natural resources consultant. In 1981 I moved to the Rock Creek Ranch (now the Elk-song Ranch) outside of La Grande. The proposed BHTP route completely bisects these ranches across the top of the Blue Mountains to the crossing of the Grande Ronde River near Hilgard. I now own, and live on, a twenty seven acre forest tract in the Morgan Lake Estates just to the east. I am asking that you site BHTP “in my front yard” where I will view it on the existing Bonneville Power Administration corridor. I am asking for this because the proposed route will bisect, fragment, and impact what is one of Oregon’s premier pristine landscapes – the Starkey Range and Forest Lands that are world famous as one of North America’s most important Elk Ranges. I am empirically familiar with the entirety of this landscape and I know the extent to which these wild-lands will be visually impacted and interrupted.

This Starkey landscape slopes, as a broad plateau, from the south to the north – from the Elkhorn Mountain Range to the Grande Ronde River. The proposed power-line corridor will be visually intrusive across much of the entire plateau landscape of the Grande Ronde River basin – designated as a State Model Watershed.

Placement of BHTP on the proposed route from Ladd Canyon to Hilgard would come at too great of a cost to Oregon’s wild-lands. It should be situated on the existing BPA right-of-way which is routed through highly modified landscapes near the Interstate 84 corridor. Thank you for your very careful consideration of this matter.

Respectfully,

Michael L. McAllister

Cc: Dan Olmstead, Idaho Power.

Michael McAllister
Wildland Resources
60069 Morgan Lake Road
La Grande, Oregon 97850

January 6, 2010

Adam Bless
Oregon Department of Energy
625 Marion St. NE
Salem, Oregon 97301

On January 31, 2008 I wrote you a letter responding to the request for input on the siting proposal for the Idaho Power – Boardman to Hemingway Transmission Power-Line (BHTP). More recently I attended the Central Project Advisory Team Meeting #4, held in Baker City on December 17, 2009.

I was pleased to see that the advisory team has conducted a thorough analysis for a wide array of alternative route possibilities. After careful consideration of the various siting proposals, I see that the “I-84” route is both: most cost effective, and the least environmentally impacting. I state this because (as a contractor) I conduct a multitude of resource inventories across the, Malheur, Wallowa-Whitman, and Umatilla National Forests, as well as on lands administered by the Bureau of Land Management. The proposed routes, westerly, through Malheur and Grant Counties would interrupt and fragment very large areas of Oregon’s most expansive “wild-lands” - this in not acceptable by my assessment.

Assuming that the I-84 route is selected, there are currently two possible routes proposed for the section C-21. This section is challenged by two primary considerations: 1) - routing past the Grande Ronde (Great Round) Valley – largest in North America – hemmed continuously by mountains, and 2) – Routing across the Grande Ronde River basin. C-21 is the route section that I previously wrote to you about – expressing my concerns. And it appears that the planners have responded to the comments received. They now propose routing the line more westerly dropping it from high on the ridge – to the lower elevation in the Grand Ronde basin where the visual impacts will be greatly diminished. They have also proposed an alternate C-21 that would follow the existing BPA transmission route to the extent possible. The problem with this route is that it would have a maximal visual impact on the town of La Grande and much of the Great Round Valley. Having weighed various trade-offs, I am inclined to support the current western proposal for C-21 where it is routed across the Grande Ronde basin at the lowest elevations.

However, frustrated by a lack of more definitive maps, I have attempted to more specifically delineate the two modified C-21 routes onto three USGS. (1:24,000 scale) topographic quad maps. I have drawn the two routes on as best as I can interpret them.

Please evaluate my C-21 route delineations, verify, or redefine them as best you can. This will provide me the means to: better evaluate, share with others, and make additional input. I am empirically familiar with this landscape and its resources. If the power-line is to be sited through this area, I would like to contribute to getting it right. Please feel free to call me for more specifics and discussion – (541) 786-1507. After you review of the maps please forward them to Dan Olmstead at Idaho Power so that his Siting Team may also review them.

Respectfully,

Michael L. McAllister

Cc: Dan Olmstead, Idaho Power.

**Fwd: Ladd Canyon to Hilgard**

1 message

wildlandmm@netscape.net <wildlandmm@netscape.net>
Reply-To: wildlandmm@netscape.net
To: "haileyrose@gmail.com" <haileyrose@gmail.com>

Thu, Aug 27, 2020 at 9:44 AM

-----Original Message-----

From: wildlandmm@netscape.net
To: kgeorgeson@idahopower.com
Sent: Tue, Mar 22, 2011 6:56 pm
Subject: Fwd: Ladd Canyon to Hilgard

-----Original Message-----

From: wildlandmm <wildlandmm@netscape.net>
To: wildlandmm <wildlandmm@netscape.net>
Sent: Fri, Mar 18, 2011 4:23 pm
Subject: Re: Ladd Canyon to Hilgard

Kieth,
I am sorry to report that I am again confused by what appears to be inconsistent information at your B2H web site. I logged in on March 16th and looked at the proposed and alternative routes by typing in both John Williams and Seyfried as ownership names. The current display was the basis of my March 16 email to you thanking you for listening to the input made over the last 2.5 years. I have since been notified that the maps I was looking at on March 16 were in fact old maps that were developed out of the public scoping process - which I previously expressed support for. When I first emailed you, I expressed my concerns that Idaho Power had just dropped the routes developed through the public review process and put the original proposed route - again as the "current proposed route." I delineated for you the best possible route (wildlife and viewscape resources) and sent that to you. I am sorry to say that I am currently confused as to what the current proposed route is. Please go to your website and enter Seyfried as LANDOWNER. Are the proposed and alternative routes currently displayed current or out dated? If they are current - My thank-you note sent March 16th stands. If these routes are not correct - please respond and assist me in a correct frame-of reference - update the website. I am also curious - did you receive the hard copy maps that I mailed to you in January. Again - I am currently in Alaska participating in a commercial fishery.

Respectfully - Michael McAllister

-----Original Message-----

From: wildlandmm <wildlandmm@netscape.net>
To: kgeorgeson <kgeorgeson@idahopower.com>
Sent: Wed, Mar 16, 2011 12:14 pm
Subject: Ladd Canyon to Hilgard

Kieth,

Just a note to say thank you for paying attention to the input from us. Looking at the B2H website today, I see that you are zeroing in on the "best placement" from my empirical perspective. I am very pleased by the the current proposed and alternative routes. Count on me to provide site specific resource inputs as you move forward. Unfortunately I will not be able to make the Glass Hill group meeting coming up soon. I am in Sitka Alaska operating sonar for herring fishery. I will be back in the Blue Mountains (home) approx. April 10th.

Respectfully - Michael McAllister

Michael McAllister
60069 Morgan Lake Road
La Grande, OR 97850

(541) 786-1507

March 16, 2015

Idaho Power & Bureau of Land Management
B2H Project
P.O. Box 655
Vale, OR 97918

Comment on Draft Environmental Impact Statement -

As the record shows - I have been long involved in the siting analysis for the proposed 500 kV Transmission Line - Boardman, Oregon to Hemingway, Idaho. I first provided written input in 2008. I am well aware that Idaho Power has made an exhaustive effort to consider most options for siting this Line through both Oregon and Idaho. I recognize that a route following the Interstate 84 Corridor should be recognized as having the least cumulative effect on natural resources. However, in the final analysis, each segment of the Line must receive the most complete review possible - based upon changing resource circumstances.

Understand my frustration, and the disjointed nature of my inputs over time (copies of all past letters are attached). The project has been like trying to work with a transformer that is continuously changing shape and function. There has been repeated turnover of all project personnel. However, the focus of my input has been a constant. That focus is on one specific stretch of the Line - the bypass stretch that tracks the Line to the west around the town of La Grande - the stretch between the Grande Ronde River (at north) and Ladd Canyon (at south).

Recently I attended the B2H Open House in La Grande (January 7th, 2015) where the Bureau of Land Management (BLM) and Idaho Power shared with the public - their recently released Draft Environmental Impact Statement (DEIS). At the meeting I found a team of project analysis representatives that were respectful and very attentive to gathering additional details and information for consideration in making their final EIS analysis.

After making a cursory review of the DEIS I was interested to see that there is some talk about a No Action Alternative. The reading of this is not clear to me, and my best interpretation is that a No Action Alternative does not apply. It has been nearly ten years now since this B2H project was first proposed. Therefore I would ask that the No Action Alternative be something like a review of the justification for the project entirely. In the past 10 years, there have been many changes in conductive materials, technologies, energy conservation, and solar energy is developing rapidly now. I ask that a strong argument be made to the Oregon Energy Facility Siting Power Council (EFSC), that the project is "most justified" relative to other State and

National power planning options.

The focus of my comment is directed at the Glass Hill Alternate and the adjacent Proposed Route. I am commenting from an empirical frame of reference. For nearly 30 years I have lived on, inventoried, and managed forest, range and wildlife resources across this landscape. I have a BS degree in Wildlife Resources from the University of Idaho - 1984. This analysis is not guided by public or private land boundaries. The primary resource consideration here is the most exceptional Rocky Mountain Elk population that makes that landscape "home" during spring, summer, and fall. During the breeding season, 800 to 1200 elk gather and rut on and around "Cowboy Ridge" - the high ridge that divides between Rock Creek and Sheep Creek. The Proposed Route runs from north to south a distance of five miles, up the open west slopes of Cowboy Ridge, potentially subjecting this large breeding concentration of Starkey elk to the noise created by corona and electromagnetic fields of a 500 kV transmission line - clearly an impact worthy of "High Avoidance." Although Rocky Mountain Elk are clearly not threatened as a species, large concentrations such as exists on Cowboy Ridges are indeed threatened and deserve "Exclusion" from the impacts of the B2H project. It is also important to recognize that Cowboy Ridge is the high ground between the Grande Ronde Valley and the Upper Grande Ronde River Basin. This high ground has an ecological richness that is unique in the Blue Mountain Province. This richness has been long recognized.

It is noteworthy that the Cowboy Ridge has a long history of private landowners that have "bought in" where the attraction is the most unique wildlife habitats associated with this landscape. All private landowners that have stewarded Cowboy Ridge have been featuring the elk, and their habitat by management objective. Wildlife, Range, and Forest Conservation have long been the predominant use of the Cowboy Ridge and Rock Creek Watershed. Oregon's Governor Pierce owned this land for many years, and he took great pride in sharing this pristine landscape with William O. Douglas - the Federal Judge and among America's greatest wilderness advocates. It was also here, on this landscape, that Oregon's, Managed Fee Hunting or Ranching for Wildlife Program was first established. It was for this management endeavor that I started my business, Wildland Resource Enterprises, in 1984.

Based upon my comprehensive 30 years of analysis across this landscape - avoidance of said elk population is better achieved by routing the transmission line to the west of Cowboy Ridge approximately 2.5 miles. The Glasshill Alternate accomplishes this by routing the Line up Graves Ridge - a ridge that is broad, low slope, and with a well established road built across solid basalt and shallow soils.

However as proposed, the Glass Hill Alternate corners away from Graves Ridge, turning easterly and then spanning the canyons of Graves Creek, Little Rock Creek, Rock Creek, and then on to the Highest elevation of Cowboy Ridge. As proposed, the Glasshill Alternate

crosses the canyons at their deepest locations where Elk Habitat Effectiveness is the greatest - topographic cover, vegetative cover, and forage diversity. A slight modification to the Glass Hill Alternate could: reduce the impact on Habitat Effectiveness, greatly reduce visual presence, reduce miles of new roads, and minimize the technical logistics of steep ground.

This modification is accomplished by extending the Graves Ridge segment of the Glass Hill Alternate, south, on up Graves Ridge another 0.5 miles, and then turning easterly to an azimuth of 110 degrees. This Variation of the Line would follow a course that better blends the towers to the landscape. A bend in the Rock Creek Drainage allows for the route to “drop away” from Cowboy Ridge and the surrounding high ground - greatly reducing the visual impacts.

Also noteworthy is the fact that when Idaho timber (shortly) owned the Elk Song Ranch, they built a new haul road (1993 - not on any map) from Glass Hill Road - west down into the bend of Rock Creek where the said Variation to the Glass Hill Alternate is proposed. This road accesses most of the proposed Variation between Graves Ridge and Glass Hill. Look closely at how the proposed Variation results in few new roads. And look very closely at how the Proposed Corridor (up Cowboy Ridge) requires new roads the entire five miles.

Another very important consideration that warrants consideration is that the Glass Hill Alternate moves the line three miles to the west of the Morgan Lake viewing platform. Morgan Lake has been identified by the Union County Chamber of Commerce as #1 in their top 10 places to see in Union County. The park is a State Wildlife Refuge and the adjacent Twin Lake is also registered as a State Research Natural Area - dedicated as such for its unique emergent vegetation communities. These diverse communities support a species richness that is very rare in the Blue Mountains. Both the American Bald Eagle, and the Osprey nest here.

Attached is a map that presents the Proposed Corridor, the Glass Hill Alternate, and a Variation of the Glass Hill Alternate - described above. And the following are three GPS points (the two lines between these three point define the proposed Variation to the Glass Hill Alternate).

GPS Coordinates - WGS84:

- 1) 45.315112, -118.222980 (At Whiskey Creek Road)
- 2) 45.252549, -118.170649 (At south end Graves Ridge Road)
- 3) 45.235976, -118.100836 (At Glass Hill Road).

Additionally, I would like to comment that I recently had the opportunity to appreciate the more visually pleasing monopole transmission line towers down in the desert southwest. I strongly advocate for the use of the monopoles to the extent that this is possible. The oxidized finish does blend well with landscape colors and tones.

Thank you for your careful consideration of this unique landscape and the associated natural wonder - Oregon's most dense elk population and a their breeding "LECK" on Cowboy Ridge.

Respectfully

Michael McAllister

Michael McAllister, 60069 Morgan Lake Road, La Grande, OR, 97850 (541) 786-1507.

December 21, 2018

Jeff Maffucio, Siting Coordinator, Idaho Power Corporation, 1221 West Idaho Street, P.O.Box 70 Boise, Idaho, 83707.

cc. Kellen Tardaewether, Senior Siting Analysis, Energy Facility Siting Division, Oregon Department of Energy, 550 Capitol St. NE, 1st Floor, Salem, Oregon 97301

cc. Union County Board of Commissioners, 1106 K Avenue La Grande, Oregon 97850.

Your records will show that, since 2009, I have been encouraging Idaho Power Corporation (IPC) to site the Boardman to Hemingway (B2H) Transmission Line in a manner, whereby the cumulative impacts of the Right-Of-Way will have a minimal impact on Oregon's public and their natural resources. I am a long-term resident of Union County where I work as a private contractor specializing in Natural Resources Inventory. I hold a Bachelor of Science degree, *Wildlife Resources*, from the University of Idaho.

At this time, I am gravely concerned by the fact that IPC has submitted a "complete application" for *Site Certificate* to Oregon's Energy Facility Siting Council (EFSEC) without the *Agency Selected Route* - identified by the Bureau of Land Management (BLM) in their National Environmental Planning Act (NEPA) analysis – specifically through Union County. Rather, IPC applied for two routes that were developed late in the NEPA process, neither of IPC's routes have had an environmental analysis, or public comment. All three of the identified routes are identified at IPC's Boardman to Hemingway www.boardmantohemingway.com webpage. From this point on, the reader is advised to follow along with this website open. From the *Map Menu* select Map 3 - Union County.

Map 3 (Union County) Legend:

- (A) – Agency Selected Route (NEPA) - Route Color is Green on Map;
- (B) – Proposed Route (EFSC) – Route Color is Red on Map;
- (3) – Morgan Lake Alternative (EFSEC) – Route Color is Blue on Map.

Now select *Landowner Maps* - it opens in Google Earth Imagery. Expand map to full screen and zoom in on Routes A, B, and 3. Note the tab at top left of the screen - it allows the viewer to change between Earth View, Map View, and Topography View. To see vegetation coverages, use Earth View, too see geographic features switch to Topography View.

For the sake of this analysis, the three routes will be referred to as: **A, B, and 3** – as above. I am going to limit my discussion about **Route B** (Idaho Powers Proposed Route) to a brief and cursory overview. **Route B** has been identified as a best attempt to site B2H along the existing 230 kv transmission line as it passes through Union County. In my first letter to Idaho power (2009) I asked that Idaho power put the power line "in my front yard" and site it along the existing 230 kv transmission line

passing through La Grande. In 2012 I signed a petition circulated by a local group organized as the Glass Hill Coalition. After much consideration however, I determined that such a route would not meet the screens for the 500 kv transmission line.

- 1) The valley slopes to the west above La Grande are steep, with unstable geology.
- 2) La Grande's western skyline viewshed would be severely impacted. Both: the City of La Grande and Union County have asked IPC to keep B2H out of their viewshed.
- 3) The "Powerful Rocky" stretch of Oregon Trail, and its archaeological artifacts, would be desecrated.
- 4) Oregon's Ladd Marsh was established as a wildlife mitigation area for past federal projects: the refuge should not be comprised.
- 5) The residential ownership pattern between the La Grande and the Morgan Lake does not accommodate construction and access is very poor.

Based upon the above considerations, 1 through 5, I deem that the **Proposed Route (B)** has *High Cumulative Impact*, and with few mitigation options. Therefore, I will spend no more time considering Proposed Route B. All further analysis and discussion will focus on Agency Selected Route A, and on Morgan Lake Alternative Route 3.

From here forward I will explain and contrast **Route A** (Agency Selected Route (NEPA)), with **Route 3** (Morgan Lake Alternative (EFSC)). The analysis begins at the Divergence Point (DP) – where Routes A and 3 diverge. The analysis then proceeds from north (DP), then south to the Convergence Point (CP) of the two routes near Ladd Canyon. The distance between DP and CP is approximately eleven miles. The distance for both routes, **A** and **3**, are very similar. The elevation at DP (north end) is approximately 3,400 feet. The Elevation at CP (south) is approximately 4,800 feet.

The DP is located near the middle of section 7, Township 3 South, Range 37 East. DP is approximately 1.5 miles south of Highway 244 junction with Interstate 84 – at Hilgard. DP is approximately 0.75 miles south of Highway 244, traveling south on the Whiskey Creek Road.

The biggest difference between the two routes is how each of them has been established geographically. This can best be recognized by comparison in *Topography View*. Recognize that the Grande Ronde Valley is the dominant geographic feature for the region, and further that it is oriented in a slightly northwest by southeast alignment - as is the Blue Mountain Range along the valleys west side. Recognize that from DP (near the Grande Ronde River at Hilgard) that the landscape rises as you go south following the west side of Grande Ronde Valley, all the way to near CP above Ladd Canyon.

Now notice how the two routes ascend, from 3,400 feet elevation, up to just over 5,200 feet elevation near the high point at Glass Hill. And notice that between the two routes there is a series of parallel ridges and drainages that are also on the northwest by southeast alignment. This alignment is caused by the orientation of the faults associated with the origins of the Grande Ronde Valley. The highest of the fault generated ridges is the one following the Mill Creek Fault – which also establishes the west edge of the valley. This ridge is also known as the Glass Hill Monocline. **Route 3** sites the transmission line along this highest ridgetop.

Comparatively, **Route A** is the low elevation route where the mean elevation is approximately 4,100 feet. See that from DP **Route A** proceeds southerly at an azimuth of approximately 150 degrees, along the same northwest/southeast alignment. **Route A** gains elevation slowly as it moves up Graves Ridge in a straight line for approximately 5.0 miles. Graves Ridge is a broad gentle slope, where the only vegetation is sparse grass and forbs. *Whiskey Creek Road* mostly parallels the **Route A** with an elevation gain of about 200 feet per mile – a slope grade of just 5 percent. Note that the *Whiskey Creek Road* provides excellent road access for at least two thirds of the **Route A**. This road is built across block basalt with few corners and no steep grades. **Route A** then makes one turn easterly to approximately 110 degrees. On this course, **Route A** crosses the Rock Creek drainages well above Chinook Salmon Habitat.

Route 3, on the other-hand, moves east from DP and away from the Whiskey Creek Road, and crosses the Rock Creek watershed just three miles south of the Grande Ronde River. Note here that there are four distinct drainages that make up the Rock Creek Watershed, from west to east they are: Graves, Little Rock, Rock, and Sheep Creeks. Notice that all four of the drainages converge near the Route 3 crossing. Here, **Route 3** compromises Critical Habitat for Chinook Salmon in the lower Rock Creek Watershed. Rock Creek is not chinook salmon spawning habitat. However, the lower three miles of Rock Creek is used by chinook salmon smolts as a cool water refuge during the summer months when the Grande Ronde River is low, warm, and oxygen deficient. Also note that there are **no existing roads** here to access **Route 3**. However, if your look at landowner map # 63, you will see that IPC identifies the natural gas pipeline as “Glass Hill Road.” This is a flagrant deception that tricks the viewer. There is no existing road access for most of **Route 3**.

After crossing Sheep Creek, **Route 3** then intersects the Glass Hill Monocline (near Morgan Lake), where it turns southerly and follows the ridgetop. **Route 3** is the high elevation route where the mean elevation across the route is approximately 4,500 feet. The 400 feet mean elevation difference between (**A and 3**) is the predominant variable responsible for variability in soil characteristics. The higher elevations along the top of the Glass Hill Monocline gather more precipitation, summer temperatures are cooler, more layered vegetation provide more shading, and windblown snow and soil particulates accumulate. The variability in soils is well demonstrated when you superimpose the Union County Soil Survey Map over the Route Map overlay. I have identified the four predominant soil types for both: Route A and Route 3. They are listed hear from most coverage, to least coverage.

For **Route A**, they are: **1**) = 69C - *Watama-Gwinly complex*, is on biscuit-scabland uplands, vegetation is mainly bunchgrasses, and annual forbs; **2**) = 35E – *Klicker-Anatone complex* - mountainous uplands where the native vegetation is mainly Ponderosa pine, bunchgrasses and elk sedge, a warm moist plant community suited to the production of pine, on a patchy basis - where soil is deep enough, also as rangeland and wildlife habitat. **3**) = 4E *Anatone extremely stony loam* - is shallow, well-drained soil at ridgetops, and on south and west facing slopes where vegetation is mainly blue-bunch wheatgrass, Idaho fescue and stiff sage; used mainly as rangeland. **4**) = 58E – *Starkey very stony silt loam* – shallow well drained soil on uplands, the vegetations is mainly bunchgrasses and annual forbs, Idaho fescue, blue-bunch wheatgrass and Sandberg bluegrass. The unit is used mainly for rangeland. Collectively, the soils makeup for Route A, tend to be shallower, and of residual decomposed basalt in its origin. The site index for timber production is lower, and shrubs are limited in the vegetation composition. Route A

crosses 44% forested acres - mostly warm dry plant communities. It is noteworthy that Route A crosses 33% less timber acres than does Route 3

For **Route 3**, they are; **1)** = 4E - *Anatone extremely stony loam*, is shallow, well drained, at ridgetops and on south and west facing slopes, derived predominately from basalt; vegetation in mainly blue-bunch wheatgrass, Idaho Fescue and stiff sage; used mainly as rangeland. **2)** = 32E - *Kalema very stony silt loam*, moderately deep, well drained, mainly coniferous forest and an understory of shrubs, forbs and grasses; used mainly for timber production, also used for woodland grazing and wildlife habitat. **3)** = 33E - *Klicker stony silt loam*, moderately deep, well drained, mountainous uplands, vegetation is mainly coniferous forest with bunchgrasses annual forbs and perennial shrubs, unit is used mainly for timber production, also for woodland grazing and wildlife habitat. **4)** = 61E - *Ukiah-Starkey complex*, Ukiah moderately deep and well drained, vegetation mainly Idaho Fescue, Blue-bunch wheatgrass and Sandberg bluegrass; used mainly as rangeland. Collectively, the soils make for Route 3, tend to be deeper, loamier, of residual decomposed basalt, but with more volcanic ash composition. The site index for timber production is higher, where shrub composition is greater. Route 3 crosses 66 % forested acres mostly cool moist plant communities. Again, Route 3 crosses 33% more timber acres than does Route A.

MORGAN LAKE PARK

Route 3 also establishes towers within 500 feet of Morgan Lake Park. Here, the impact on La Grande's public will be High. The first stated goal in the Morgan Lake Park Recreational Use and Development Plan (Section 1, Page 2) - *A goal of minimum development of Morgan Lake Park should be maintained to preserve the maximum of natural setting and to encourage solitude, isolation, and limited visibility of users while at the same time providing safe and sanitary condition for users.* Also noteworthy is that the city of La Grande Chamber of Commerce has long promoted Morgan Lake Park as the #1 Recreation Tourist Destination in the La Grande Area. The State of Oregon designated Morgan Lake Park as a State Wildlife Refuge in the 1960s. Today Oregon Department of Fish and Wildlife identifies the Lake as an easy access fishing destination for the handy-capped.

Morgan Lake Park encompasses two separate Lakes; Morgan Lake is 70 acres in size and is developed with road access and camping. Twin Lake is 27 acres in size, undeveloped, and with no road access or camping. Twin Lake has been identified by both Federal and State efforts to conserve, restore, and protect wetlands. Oregon has developed a Wetland Conservation Strategy (Oregon Division of Lands, 1993). This Strategy is implemented through the Oregon Wetlands Inventory and Wetlands Conservation Plans (See Webpage). This planning process allows local governments to balance wetlands protection with other land-use needs. Twin Lake is recognized as an important - persistent emergent wetlands that includes both submersed and floating plants.

Twin Lake, at 4,100 feet elevation, supports one of the most unique waterfowl nesting communities in the Blue Mountains. Most unusual is the nesting by: Ring-necked Ducks, Red Head, Rudy Duck, Blue-winged Teal, Shoveler, and Pied-billed Grebe. Increasing the species

diversity surrounding this wetlands anomaly, the lake is created by natural basalt rim rocks along the south and west edge. Here the vegetation is a diverse mixture of native shrubs, aspen, black Cottonwood, and Ponderosa pine. These surrounding shrub and tree communities support as rich an assortment of both migratory and nesting passerine birds as can be recognized across the Blue Mountain Ecoregion.

In 2013 a Pair of Bald Eagles constructed a nest in at the top of a large Ponderosa pine at the west edge of Twin Lake where they fledged their first young. GPS coordinates (Degrees, Minutes, Seconds) for Nest-1 are: N 45*, 18', 06.0" by W118*, 08', 44.2". Route 3 places a Tower 580 feet from Nest 1. The pair of Eagles has since built Nest-2 at N 45*, 17', 45.9" by W118*, 08', 54.4". Route 3 places a Tower 0.31 miles east of Nest 2. Route 3 places the transmission line between the two nests. Here at the ridge-top, Morgan Lake supports an entire ecosystem of scale where the fall hawk migration follows south up the ridge. Watching Bald Eagle and fishing Osprey interactions at Morgan Lake is a popular nature spectacle. If Route 3 is built, the spectacle will become a loud "crackling" transmission line.

From Morgan Lake, **Route 3** moves southeast up the ridge and into renowned high-density elk breeding grounds. Here in the upper reaches of Sheep Creek are numerous sedge meadow springs used heavily as elk wallows. All muddied-up, large mature bulls strut out onto the open bunchgrass slopes to breed on Sheep Ridge – right where Route 3 would be constructed - at the ridgetop. This is also my neighborhood, and to the best of my knowledge all the neighbors are strong advocates of this elk population. Neighbors have made land acquisitions and established conservation easements to consolidate and preserve the native integrity. The Rocky Mountain Elk Foundation is a cooperator in these efforts, as is the case with the Eastern Oregon University's Rebarrow Forest Project.

HAZARD ANALYSIS

It is also noteworthy that the **Route 3** Tower that would stand closest to Morgan Lake recreationists is located within thirty feet of a thirty-inch diameter Natural Gas Line (Trans-Alaska, 1st leg constructed 1982). At the ridge-top, this is a known weak point in the pipeline. From the sharp basalt ridgetop, the line drops steep downslope in both directions. The pipeline is bedded in sand so that over time gravity stretches the pipeline at the high point. This stretching has resulted in multiple gas leaks, over time, near where **Route 3** will cross the natural gas pipeline – and within less than 600 feet of Morgan Lake Park. This explosive potential exposes the residence of Morgan Lake Estates and the recreationist at Morgan Lake Park to unnecessary risk. Also note that **Route A** (Agency Selected Route) does not cross the natural gas pipeline at any point.

As a resident of the Morgan Lake Estates, I am extremely concerned about catastrophic fire potential. In 2005, Union County conducted a County-wide Wildland Urban Interface Fire Hazard Analysis. The resulting Analysis was published using Federal grant monies. The document identifies fourteen different Wildland Urban Interface (WUI) Zones within Union County. Based upon a set of Risk Analysis Criterion, each of the 14 WUI Areas were rated from High to Low. The Morgan Lake Estates WUI was given the Highest (#1) Rating.

Of the three routes under consideration, **Route 3** gets the Highest Fire Risk Rating for the following reasons: **Route 3** follows the ridgetops across the Blue Mountain Range as it parallels the Grande Ronde Valley. Between the Grande Ronde River and Ladd Canyon the transmission line is at or near the ridgetop the entire distance. From the river, the route rises to 4,300 feet at Morgan Lake, and too above 5,200 feet as it proceeds south to Glass Hill – an abandoned State Lookout. It is highly significant that this area of the Blue Mountains is in a major lightning path where cumulus buildups move up the North Fork of the John Day River. These storms then strengthen and build as they move east across the Blue Mountains to the Grande Ronde Valley where valley thermals increase lightning activity at the ridgetops – not a good place for a major transmission line.

As a resident in the Morgan Lake Estates for 40 years, I have always considered Morgan Lake to be our greatest *Fire Fighting Asset*. At the ridgetop, Morgan Lake provides fire helicopters with buckets the ability to come and go from any direction without limitations. Morgan Lake is among the best water sources for helicopters in the region. **Route 3** would significantly change any helicopter activity around Morgan Lake, creating an unnecessary liability that puts us all at risk.

Additionally, **Route 3** (at the ridgetop) poses additional aviation liabilities that need consideration. Most air traffic in and out of La Grande Airport, the U.S. Forest Service Airtanker Base, and the Life Flight Base comes from and goes out to the west. Low Flying aircraft across the ridgetop (**Route 3**) are very common. Again **Route 3** will create unnecessary liability that puts us all at risk.

SUMMARY

In Summary, it is likely that **Idaho Powers Proposed Route B** will not achieve License Approval by EFSC. In that case, IPC's application can only default permitting to Idaho Powers Alternative – Morgan Lake **Route 3**. This route was put forth by Idaho Power in the 11th hour of the Final EIS. The route was never evaluated by a credible environmental review team. Therefore, I have dedicated my own time to making this comprehensive assessment. I have contrasted the **Morgan Lake Route 3** with the **Agency Identified Route A**, in hopes that it will have some merit in the eyes of others going forward. Across the full spectrum of Factors considered, the **Morgan Lake Route 3 is High Impact** as opposed to the **Agency Identified Route A** which has much less impact.

At the ridgetop, **Route 3** would have greater impacts on: public places, viewsheds, soils, forests, fisheries, and wildlife. **Route 3** poses great risks to: the wildland urban interface, fire suppression support systems, and to aircraft transportation. **Route 3** is more topographically complex, has very limited road access, and requires much more disruption to wildlands.

Alternatively, **Route A** is topographically simple, has extensive solid road access, and crosses more uninhabited lowlands. It is clear to me why **Route A** is the *Agency Identified Route*. It remains a complete **mystery why IPC disregards the Agency Identified Route A**.

Idaho Power has been asked repeatedly – why was **Route A** not included in the EFSC Application? The only answers provided by Idaho Power to this point are (EFSEC public meeting

at the Armory): **1)** we have been working with landowners – none specifically identified, and **2)** something about tribal concerns – nothing specific.

At this time, I ask Idaho Power Corporation to amend their Oregon EFSC Application for Site Certificate. Include the *Agency Identified Route A* for consideration.

Respectfully

Michael McAllister

Route 3 will require extreme logistical complications that will tax all existing road infrastructure.

The Web site map identifies roads and shows roads that don't exist and never did exist. In one case Glass Hill Road is show in the bottom of Rock Creek near Hilgard. There is no road as shown.

Again, thank you for all considerations and I am willing to provide additional support at your request.

Visual Considerations

Grande Ronde Valley – Great Round Valley – Valley of Peace to all Rival Tribes came to trade on collective sacred ground.

By Ballot initiative, Union County voted down wind mill “farms” so as to preserve the aesthetic integrity of their sacred Valley surrounded entirely by mountains.

Morgan Lake – Union County Chamber of Commerce Identifies and #1 destination Point of Interest.

Tower # at the Park Entrance will tower and crackle 850 feet above this City Park – an ecological jewel.

Residential Considerations. One of the big issues for the Proposed Route B is that it would have a High Impact on the Morgan Lake Estates and the entire backdrop viewshed above La Grande. Route 3 moves beyond the La Grande viewshed but still conflicts with Morgan Lake Estate residence. Route A moves west well (3 miles) beyond all Union County residential homesites.

Noise Considerations

Cultural Considerations

Cost Analysis

Fisheries Considerations

Rock Creek Analysis

La Grande Airport, Hotshot and Tanker Base.

Life Flight / Grande Ronde Hospital.

At the ridgetop, Morgan Lake as the most important water source for helicopter bucketing.

Hazards Analysis

Between 1992 and 2011, 78% of electrical outages in the USA are related to severe weather conditions, and that percentage is growing annually driven increasingly by climate change. Between 1984 and 2006, approximately 44% of all power blackouts were weather-related, and of those – 11% were caused by lightning activity.

All of the above considered, Idaho Power should recognize that Route A – Agency Selected Route (NEPA) is by far and away the route which will least impact the Residence of Union County, the extended Oregon Public, and their collective natural resources.

I am asking that Idaho Power Amend the EFSEC Application to include Route A. As is, the Application is an overreach that shows a clear disregard for all the years of public and institutional participation. I would go even further and say that the application shows a clear disregard for your own siting. and avoidance criteria.

Michael McAllister, 60069 Morgan Lake Road, La Grande, Oregon, 97850, (541) 786-1507.

June 23, 2019

Todd Cornett, Energy Facility Siting Division Administrator, Energy Facility Siting Division, Oregon Department of Energy, 550 Capitol Street NE, 1st Floor, Salem, OR, 97301, todd.cornett@oregon.gov .

Dear Mr. Cornett,

On January 14, 2019, I delivered to you a letter (attached – page 2) to express my concerns about Idaho Power Corporations (IPC) “incomplete application” for *Site Certificate* of their **Boardman to Hemingway Transmission Line** through Union County. The application is incomplete because IPC did not include the Agency Selected Route, adopted by the National Environmental Planning Act (NEPA) process – conducted by the U.S. Department of Interior’s Bureau of Land Management.

This past Thursday – June 20, 2019 – the **Energy Facility Siting Council** held Public Hearing on the *Draft Proposed Order and Request for Comments* – here in Union County. I attended that meeting and I did make comments regarding my position with regards to Idaho Power Corporations Incomplete Application for Site Certificate.

In brief, the most significant point that I made was – the **Agency Identified Route A** would effectively mitigate nearly all the concerns expressed by the many attendee’s comments at that meeting.

Following the public comments, two representatives from Idaho Power were seated before the Siting Committee, this so that committee members could ask questions in response to the public comments previously made.

Committee Member Hanley Jenkins asked the only question and he phrased it this way – **“I am going to ask you one very hard question – why did Idaho Power Corporation not include the BLM Agency Identified Route into their Application”?**

Idaho Power’s Mark Stokes provided the following as an answer – **the BLM Agency Alternative was not included because their process was being drawn out – we were under time constraints to submit our application and went ahead without it.**

There were no further questions, and no further opportunity for the public to respond to this **Revelation.**

I have been involved over ten years in advocating for what is now the BLM Agency Identified Route A.

Idaho Power Corporation and others are currently processing an incomplete application. IPC has been asked to amend their application repeatedly, too include the **Agency Identified Route A**. This issue should not become a Contested Case.

Respectfully

Michael McAllister

Michael McAllister

January 14, 2019

Todd Cornett, Energy Facility Siting Division Administrator, Energy Facility Siting Division, Oregon Department of Energy, 550 Capitol Street NE, 1st Floor, Salem, OR, 97301, todd.cornett@oregon.gov .

Dear Mr Cornett,

I am gravely concerned that Idaho Power Corporation (IPC) has submitted an incomplete application to Oregon's Energy Facility Siting Council (EFSC). Their application for *Site Certificate* of the **Boardman to Hemingway Transmission Line** through Union County does not include for consideration, the Agency Selected Route, adopted by the National Environmental Planning Act (NEPA) process – conducted by the U.S. Department of Interior's Bureau of Land Management. The two routes that IPC has applied for: **Proposed Route (B)** and **Morgan Lake Alternative (3)**, were developed late in the NEPA process and have not undergone environmental analysis or public comment. IPC's failure to gather satisfactory evidence has limited the ability of the public, EFSC, and other regulators in their ability to make fully informed decisions in the public interest.

I am requesting that Idaho Power Corporation amend their Oregon EFSC Application for Site Certificate to include the U.S. Bureau of Land Management's **Agency Identified Route A** for consideration by the State of Oregon EFSC board members. It is the only route that was fully subjected to environmental analysis and public comment during the Federal EIS. It was established through community consultation and environmental review in a multi-year process. It must be on the table for full consideration by Oregon EFSC for a "Complete Application" review.

I am Michael McAllister, a long-time resident of Union County and private contractor specializing in natural resources inventory and management. I hold a Bachelor of Science degree, *Wildlife Resources*, from the University of Idaho. As a 40-year resident on Morgan Lake road, I have an intimate knowledge of the geology, habitat, environmental issues, wildfire hazards and recreational value of the area. My interest is both professional and personal.

Oregon Department of Energy and Idaho Power Corporation records show that, since 2008, I have been encouraging Idaho Power Corporation to site the Boardman to Hemingway (B2H) Transmission Line in a manner, whereby the cumulative impacts of the Right-Of-Way will have a minimal impact on Oregon's public and their natural resources.

Attached is my comparative analysis of IPC's two routes (B and 3) and the BLM's Agency Selected Route (A). This analysis demonstrates that the Agency Selected Route minimizes risks to public safety and imposes the least impacts on the natural resources of both the City of La Grande and Union County.

At this time, I ask that Idaho Power Corporation amend their Oregon EFSC Application for Site Certificate to include additional environmental and community evidence regarding their proposed routes and to include the BLM *Agency Identified Route A* for consideration.

Respectfully

Michael McAllister

Public Comment: Michael McAllister

Proposed Boardman to Hemingway Transmission Line Site Certificate Application Review

January [14], 2019

Introduction

The reader is advised to follow along using the Google Earth maps provided at <http://www.boardmantohemingway.com/LandownerMaps.aspx>. Expand the map to full screen and zoom in on Routes A, B, and 3 near La Grande, Oregon. Note you can switch between Earth View, Map View, and Topography View using the tab at the top left of the screen. To see vegetation coverages, use Earth View. To see geographic features switch to Topography View.

Map 3 (Union County) Legend:

- (A) – BLM Agency Selected Route (NEPA) - Route Color is Green on Map;
- (B) – Proposed Route (EFSC) – Route Color is Red on Map;
- (3) – Morgan Lake Alternative (EFSEC) – Route Color is Blue on Map.

Proposed Route B (EFSC)

IPC's Proposed Route has been identified as a best attempt to site B2H along the existing 230 kV transmission line as it passes through Union County. In 2008 and again in 2012, I asked that IPC construct their new B2H transmission line adjacent to the existing 230 kV transmission line passing through La Grande and Union County. After much further review of the evidence presented, I deemed that such a route would not meet the screens for the 500 kV transmission line for the following reasons:

- 1) The valley slopes to the west above La Grande are steep, with unstable geology; many areas have been identified by the U.S. Geologic Survey as unsuitable for construction.
- 2) La Grande's western skyline viewshed would be severely impacted. Both the City of La Grande and Union County have asked IPC to keep B2H out of their viewshed.
- 3) The "Powerful Rocky" stretch of Oregon Trail, and its archaeological artifacts, would be desecrated by the construction and continued maintenance requirements of the B2H towers.
- 4) Impacts to Oregon's Ladd Marsh Wildlife Management Area would be severe and permanent. Ladd Marsh was established as a wildlife mitigation area for past federal projects and the refuge should not be compromised. IPC itself recognizes and designates Ladd Marsh as "irreplaceable."

Based upon the above considerations, **Proposed Route (B)** has *High Cumulative Impact*, and few mitigation options.

Comparative Analysis of BLM Agency Selected Route (A) and Morgan Lake Alternative Route (3)

From here forward I will explain and contrast the **Agency Selected Route A**, with the **Morgan Lake Route 3**. The analysis begins at the Divergence Point – where Routes A and 3 diverge. The analysis then proceeds from north (DP), then south to the Convergence Point (CP) of the two routes near Ladd Canyon. The distance between DP and CP is approximately eleven miles for both Routes: A and 3. The elevation at DP (north end) is approximately 3,400 feet. The Elevation at CP (south) is approximately 4,800 feet. The Divergence Point is located near the middle of section 7, Township 3 South, Range 37 East, approximately 1.5 miles south of the Highway 244 junction with Interstate 84 at Hilgard. It is approximately 0.75 miles south of Highway 244, traveling south on the Whiskey Creek Road.

Geographic Setting

The biggest difference between the two routes is how each of them has been established geographically. This can best be recognized by comparison in *Topography View*. Recognize that the Grande Ronde Valley is the dominant geographic feature for the region, and further that it is oriented in a slightly northwest by southeast alignment - as is the Blue Mountain Range along the valley's west side. Recognize that from Divergence Point (near the Grande Ronde River at Hilgard) that the landscape rises as you go south following the west side of Grande Ronde Valley, all the way to near the Convergence Point above Ladd Canyon.

Now notice how the two routes, A and 3, ascend from 3,400 feet up to just over 5,200 feet elevation near the high point at Glass Hill. And notice that between the two routes there is a series of parallel ridges and drainages that are also oriented in the northwest by southeast alignment. This alignment is caused by the orientation of the faults associated with the origins of the Grande Ronde Valley. The highest of the fault generated-ridges is the one following the Mill Creek Fault – which also establishes the west edge of the valley. This highest ridge is known by geologists as the Glass Hill Monocline – **Morgan Lake Route 3 sites the transmission line along this monocline ridgetop.**

Comparatively, the Agency Selected Route A is the lower elevation route where the mean elevation is approximately 4,100 feet. See that from DP Route A proceeds southerly at an azimuth of approximately 150 degrees, along the same northwest/southeast geologic alignment. Route A gains elevation slowly as it moves up “Graves Ridge” in a straight line for approximately 5.0 miles. “Graves Ridge” is a broad gentle slope, where the only vegetation is sparse grass and forbs – much of it is rocky scab vegetation. The Graves Ridge Road (East Fork of the Whiskey Creek Road) mostly parallels the Route A with an elevation gain of about 200 feet per mile – a slope grade of just 5 percent. Importantly, note that existing roads provide excellent road access for at least two thirds of the Route A. These roads are bladed across solid basalt with few corners and no steep grades. Route A then makes only one turn, easterly to approximately 110 degrees. On this course, **Agency Selected Route A crosses the Rock Creek drainage 8.5 miles upstream from the Grande Ronde River – above the lower 6 miles deemed important to Threatened Snake River Chinook Salmon.**

Comparatively, the Morgan Lake Route 3 on the other-hand, moves east from DP and away from the Whiskey Creek Road. Route 3 then crosses the Rock Creek watershed just three miles up-stream of the Grande Ronde River. Note that there are four distinct drainages that make up the Rock Creek Watershed, from west to east they are: Graves, Little Rock, Rock, and Sheep Creeks. Notice that all four of the drainages converge near to where Route 3 crosses Rock Creek. There are no real existing roads

that access the north two thirds of Route 3. After crossing Rock and Sheep Creeks, Route 3 then intersects the Glass Hill Monocline (near Morgan Lake), where it turns southerly and follows the ridgetop. **Morgan Lake Route 3 is the high elevation route where the mean elevation across the route is approximately 4,500 feet.**

Soil Protection - OAR 345-022-022

The 400 feet mean elevation difference between **(A and 3)** is the predominant variable responsible for the difference in soils. The higher elevations along the top of the Glass Hill Monocline gather more precipitation, summer temperatures are cooler, more layered vegetation provide more shading, and windblown snow and soil particulates accumulate. The variability in soils is well demonstrated when you superimpose the **Union County Soil Survey Map** over IPC's Route Map overlay. Using this soils inventory, **I have identified the four predominant soil types for both: Route A and Route 3. They are listed hear from most coverage, to least coverage:**

Agency Selected Route A, Soils are: **1)** = 69C - *Watama-Gwinly complex*, is on biscuit-scabland uplands, vegetation is mainly bunchgrasses, and annual forbs; **2)** = 35E – *Klicker-Anatone complex* - mountainous uplands where the native vegetation is mainly Ponderosa pine, bunchgrasses and elk sedge, a warm moist plant community suited to the production of pine, on a patchy basis - where soil is deep enough, also as rangeland and wildlife habitat. **3)** = 4E *Anatone extremely stony loam* - is shallow, well-drained soil at ridgetops, and on south and west facing slopes where vegetation is mainly blue-bunch wheatgrass, Idaho fescue and stiff sage; used mainly as rangeland. **4)** = 58E – *Starkey very stony silt loam* – shallow well drained soil on uplands, the vegetations is mainly bunchgrasses and annual forbs, Idaho fescue, blue-bunch wheatgrass and Sandberg bluegrass. The unit is used mainly for rangeland. Collectively, the soils makeup for Route A, tend to be shallower, and of residual decomposed basalt in its origin. The site index for timber production is lower, and shrubs are limited in the vegetation composition.

Agency Selected Route A crosses 44% forested acres - mostly warm dry plant communities. And it is noteworthy that Route A crosses 33% less timber acres than does Morgan Lake Route

Morgan Lake Route 3, Soils are; **1)** = 4E - *Anatone extremely stony loam*, is shallow, well drained, at ridgetops and on south and west facing slopes, derived predominately from basalt; vegetation in mainly blue-bunch wheatgrass, Idaho Fescue and stiff sage; used mainly as rangeland. **2)** = 32E - *Kalema very stony silt loam*, moderately deep, well drained, mainly coniferous forest and an understory of shrubs, forbs and grasses; used mainly for timber production, also used for woodland grazing and wildlife habitat. **3)** = 33E – *Klicker stony silt loam*, moderately deep, well drained, mountainous uplands, vegetation is mainly coniferous forest with bunchgrasses annual forbs and perennial shrubs, unit is used mainly for timber production, also for woodland grazing and wildlife habitat. **4)** = 61E – *Ukiah-Starkey complex*, Ukiah moderately deep and well drained, vegetation mainly Idaho Fescue, Blue-bunch wheatgrass and Sandberg bluegrass; used mainly as rangeland. Collectively, the soils makeup for Route 3, tend to be deeper, loamier, of residual decomposed basalt, but with more volcanic ash composition. The site index for timber production is higher, where shrub composition is greater. **Morgan Lake Route 3 crosses 66 % forested acres mostly cool moist plant communities, and that is 33% more timber acres than does the Agency Selected Route A crosses.**

Recreation - OAR 345-022-0100

Protected Areas - OAR 345-022-0040

Scenic Resources – OAR 345-022-0080.

Morgan Lake Route 3 also establishes towers within 500 feet of Morgan Lake Park. Here, the impact on La Grande's public will be *High*. The first stated goal in the Morgan Lake Park Recreational Use and Development Plan (Section 1, Page 2) - *A goal of minimum development of Morgan Lake Park should be maintained to preserve the maximum of natural setting and to encourage solitude, isolation, and limited visibility of users while at the same time providing safe and sanitary condition for users.* Also noteworthy is the fact that the **City of La Grande Chamber of Commerce** has long promoted Morgan Lake Park as the #1 Recreation Tourist Destination in the La Grande Area. And the State of Oregon designated **Morgan Lake Park as a State Wildlife Refuge** in the 1960s. Today Oregon Department of Fish and Wildlife identifies the Lake as an easy access fishing destination for the handicapped.

Morgan Lake Park encompasses two separate Lakes. Morgan Lake is 70 acres in size and is developed with road access and camping. Twin Lake is 27 acres in size, undeveloped, and with no road access or camping. **Twin Lake has been identified by both Federal and State programs to conserve, restore, and protect wetlands.** Oregon has developed a **Wetland Conservation Strategy** (Oregon Division of Lands, 1993). This Strategy is implemented through the Oregon Wetlands Inventory and Wetlands Conservation Plans (See Webpage). This planning process allows local governments to balance wetlands protection with other land-use needs. **Twin Lake is recognized as an important, persistent, emergent vegetation wetlands, which includes both submersed and floating plants.**

Fish and Wildlife Habitat - OAR 345-022-0060,

Morgan Lake Route 3 crosses Rock Creek approximately 2.5 miles upstream from the Grande Ronde River - just below where Sheep Creek flows into Rock Creek. Here is where the best water quality and the coolest water temperatures exist during the heat of summer. And here is where Route 3 will cross. Rock Creek is not a Chinook Salmon spawning habitat. However, **the lower six miles of Rock Creek have been identified as important habitat for both Steelhead and Chinook Salmon smolts.**

Twin Lake, at 4,100 feet elevation, supports one of the most diverse waterfowl nesting communities in the Blue Mountain Ecoregion. Most unusual is the nesting by: Ring-necked Ducks, Red Head, Rudy Duck, Blue-winged Teal, Shoveler, and Pied-billed Grebe. The species diversity surrounding this wetlands anomaly at 4100 feet elevation, is enhanced by the natural basalt rim rocks forming the south and west sides of the lake. Here the vegetation is a diverse mixture of native shrubs, aspen, black Cottonwood, and Ponderosa pine. These surrounding shrub and tree communities support as rich an assortment of both migratory and nesting passerine birds as can be recognized across the Blue Mountain Ecoregion. **Also frequenting these habitats are two bird species identified on the Oregon Department of Fish and Wildlife – Sensitive Species List: Great Gray Owl, and White-headed Woodpecker.**

In 2013 a Pair of Bald Eagles constructed a nest in the top of a large Ponderosa pine at the west edge of **Twin Lake** where they fledged their first two young. GPS coordinates (Degrees, Minutes,

Seconds) for **Nest-1** are: N 45*, 18', 06.0" by W118*, 08', 44.2". Route 3 places a **Tower 580 feet from Nest 1**. The pair of Eagles has since built **Nest-2** at N 45*, 17', 45.9" by W118*, 08', 54.4". Route 3 places a **Tower 0.31 miles east of Nest 2**. Route 3 places the transmission line between the two nests. **Here I will point out that IPC's Avoidance Criterion Identifies Bald Eagle Nests as High Avoidance – recognizing a Buffer of one mile.** The Morgan Lake Route 3 demonstrates a disregard for these Bald Eagles. Here at the ridge-top, Morgan Lake supports an entire ecosystem of scale where the fall hawk migration follows south up the monocline ridge. **Here, watching Bald Eagles and their interaction with fishing Ospreys is a popular nature spectacle. If the Morgan Lake Route 3 is built, the spectacle will become a loud "crackling" transmission line towering over Morgan Lake Park.**

South of Morgan Lake, Route 3 advances southeast up the Glass Hill Monocline and into renowned high-density elk breeding grounds. Here in the upper reaches of Sheep Creek are numerous sedge meadow springs that are used heavily as elk wallows. All "muddied-up", large mature bulls now strut out onto the open bunchgrass slopes to breed on Cowboy and Sheep Ridges. Landowners here have a long history of promoting the Elk Resource as a viable economic and recreational endeavor. Oregon's Governor Pierce and Supreme Court Justice William O. Douglas once made this habitat their personal "getaway." One neighbor has made land acquisitions and established conservation easements to consolidate and preserve the native integrity of the area. The Rocky Mountain Elk Foundation is a cooperator in these efforts, as is the case with the Eastern Oregon University's Rebarrow Forest Project. Before the white-man's time, the Glass Hill Monocline was the gathering location for hundreds of horses that were summer pastured on what we now call the Starkey Range Lands. This is sacred ground, that has been long recognized for its richness and integrity of native vegetation.

Threatened and Endangered Species – OAR 345-022-0060

Morgan Lake Route 3 could impact Snake River Chinook Salmon habitat and water quality where the route crosses Rock Creek.

Oregon's Sensitive Species Rule – OAR 635-100-0040

Morgan Lake Route 3 will affect known Great Gray Owl and White-headed Woodpecker habitats across the 2.5 mile stretch between Rock Creek and Morgan Lake.

Health and Safety Standards for Siting Transmission Lines - OAR 345-024-0090

Specific Standards for Facilities Related to Underground Gas Storage Reservoirs - OAR 345-024-0030

At this point we need to consider the Transmission-line Tower that would stand closest to Morgan Lake recreationists. It is located within 100 feet of a thirty-inch diameter Natural Gas Line (Trans-Alaska, 1st leg constructed 1982). Here the gas-line is less than 600 feet from Morgan Lake Park. And here at the ridge-top is a known zone of weakness for said pipeline. From the top of the Glass Hill Monocline, the pipeline drops steep downslope in both directions – east and west. Over the years, there have been multiple pipeline ruptures less than a mile from Morgan Lake. This explosive potential exposes the residence of Morgan Lake Estates and the recreationist at Morgan Lake Park to unnecessary risk. IPC also needs to consider how their stray energy electrolysis will erode this Trans-Alaska Natural Gas Pipeline. **The Morgan Lake Route 3 crosses the natural gas line twice - once at Morgan Lake, and again it crosses at Rock Creek – approximately 2.5 miles to the northwest. Even more noteworthy, is the fact that the Agency Selected Route A avoids pipeline crossing all together.**

Looking at the statistics for American transmission lines, I see that between 1984 and 2006, approximately 44% of all power blackouts were weather-related, and of those – **11% were caused by lightning activity**. As a resident of the Morgan Lake Estates, I am extremely concerned that IPC's transmission line may act as a source of ignition for leaking gas from an aging pipeline, as well as for uncontrolled wildfire - we have recently seen this in California. My residential property is within 100 feet of the pipeline, and within 900 feet of the Morgan Lake transmission-line/powerline crossing. In 2005, Union County conducted a County-wide Wildland Urban Interface Fire Hazard Analysis. The resulting Analysis was published using Federal grant monies. The document identifies fourteen different Wildland Urban Interface (WUI) Zones within Union County. Based upon a set of Risk Analysis Criterion, each of the 14 WUI Areas were ranked from High-1 to Low-14. The Morgan Lake Estates WUI was given the Highest (#1) Ranking. It is also noteworthy that along the **Agency Identified Route A, there are no residences in any direction for well over a mile.**

Of the three routes under consideration, the **Morgan Lake Route 3 gets the Highest Fire Risk Rating for the following reasons:** it follows across the top of the Glasshill Monocline adjacent to the Grande Ronde Valley. The construction of a 200-foot-tall transmission line towers, along the highest ridgetop, where they are exposed to the most turbulent weather conditions is a recipe for fire. Here at this high elevation, the Morgan Lake Route 3 will be cut through *Cold Moist Ecotypes* that are dominated by mixed-conifer forests. Here, dense volatile fuels are exposed, where winds are the norm, and fuels dry quickly. It is highly significant that this area of the Blue Mountains is in the major lightning path, where cumulus buildups move up from the southwest. The storms track across the Blue Mountains strengthening as they move northeasterly. And as the storms cross the Glass Hill Monocline and the adjacent Grande Ronde Valley, thermals increase lightning activity at the ridgetop – not a good place for a major transmission line. Note here that the **Agency Selected Route A rapidly drops (west) down from the Glass Hill Monocline and onto a lowland ridge where winds and weather are diminished, and where vegetative fuel is sparse short grass vegetation of low flammability.**

As a resident in the Morgan Lake Estates for 40 years, I have always considered **Morgan Lake to be our greatest Fire Fighting Asset**. At the ridgetop, Morgan Lake provides fire helicopters with buckets the ability to come and go from any direction without limitations. Morgan Lake is among the best water sources for helicopters in the region. **The proposed Morgan Lake Route 3 would significantly change helicopter activity around Morgan Lake, creating an unnecessary liability that puts us all at risk.**

Additionally, the Morgan Lake Route 3 (at the ridgetop) poses additional aviation liabilities that need consideration. Most air traffic in and out of La Grande Airport, the U.S. Forest Service Airtanker Base, and the Life Flight Base comes from and goes out to the west. Low Flying aircraft cross the Morgan Lake ridgetop commonly. Again, the **Morgan Lake Route B creates unnecessary liabilities that puts us all at risk. The Agency Identified Route A eliminates these liabilities.**

SUMMARY

Idaho Power's Proposed Routes offer Oregon decision makers a false choice. It is likely that **Idaho Power's Proposed Route B** will not achieve License Approval by EFSC. By default, IPC's request would become permit **Morgan Lake Route 3**. IPC put these two routes forward in the "11th hour" of the Final EIS. Neither route was evaluated by a credible environmental review team. I have dedicated my own time to comparing and contrasting **Morgan Lake Route 3** with the **Agency Identified Route A**

because Oregon's decision makers and the public deserve a full vetted and evaluated alternative. The **Morgan Lake Route 3 is High Impact.**

At the ridgetop, the Morgan Lake Route 3 would have greater impacts on: protected areas, recreation, scenic resources, soils, forested acres, and fish and wildlife habitats. The Morgan Lake Route poses unnecessary risks to: public health and safety, the wildland urban interface, fire suppression support systems, and to aircraft transportation. Morgan Lake Route is more topographically complex, has very limited road access, and requires much more disruption to wildlands. **All said, I calculate that the Morgan Lake Route 3 is a significantly more expensive transmission line segment to build, and to maintain.**

Alternatively, the Agency Identified Route A is topographically simple, has extensive solid road access, and crosses uninhabited lowlands. Here, soils are thin, vegetation is sparse and of low flammability. **It is clear to me why Route A is the Agency Identified Route. And it remains a complete mystery - why IPC chooses to disregard the Agency Identified Route.**

Idaho Power has been asked repeatedly – why the **Agency Identified Route 3** was not included in the EFSC Application? On October 17, 2018, IPC and EFSC held a joint informational meeting at the Blue Mountain Conference Center in La Grande. A member of the audience asked **IPC's Jim Maffuccio** the question – **why are you not using the BLM's environmentally preferred route?** His vague answer was essentially - **we have been working with landowners; there are habitat concerns; the tribes have some concerns; we are communicating with the BLM.** There has been no further elaboration or publicly presented documentation.

I am now asking EFSC, to ask Idaho Power Corporation, to amend their Oregon Application for Site Certificate - Include the Agency Identified Route A for consideration.

Going forward, I also ask that EFSC consider seriously the issues of Health and Public Safety. And I ask that EFSC members consider the **Oregon Conservation Strategy (OCS)** as they weigh the impacts that each of the three routes: A, B, & 3. OCS is the state's overarching strategy for conserving fish and wildlife resources. It serves as the official State Wildlife Action Plan for Oregon, and it is a requirement for the federal State Wildlife Grant Program. The objective of OCS is to conserve fish and wildlife resources by maintaining and restoring *functioning habitats*. OCS breaks the state into *Ecoregions* - the entirety of Union County is within the *Blue Mountains Ecoregion*. It is critical that EFSC members understand that the setting for this transmission line analysis is arguably in one of the Highest Functioning Habitat Areas in the Blue Mountains Ecoregion. The variability of topography, elevation, soils, native vegetation, and wildlife habitats along the breaks of the Grande Ronde Valley is very high, especially for a two-mile radius surrounding Morgan and Twin Lakes...

Respectfully

Michael McAllister (Owner), Wildland Resource Enterprises, 60069 Morgan Lake Road, La Grande, OR, 97850, wildlandmm@netscape.net, (541) 786-1507 .

cc. EFSC Facility Siting team – energy.siting@oregon.gov, Mark Stokes – Applicant/Certificate holder – mstokes@idahopower.com, Scott Hartell – Planning Director for Union County - shartell@union-county.org , Don Gonzale – BLM B2H NEPA Coordinator – dgonzale@blm.gov .

Stu Spence <sspence@cityoflagrande.org>

In response to your call for information (Date: Fri, Aug 11, 2017 at 11:16 AM - Subject: B2H Morgan Lake) – “The City of La Grande is currently providing input to Idaho Power for their Boardman to Hemingway Transmission Line Project. Their current proposed route crosses the boundary of Morgan Lake along the West and Southwest and I have some major concerns about the environmental impacts on Little Morgan Lake. That’s where I need your help.”

I encourage you to emphasize to Idaho Power that - the first stated goal in the Morgan Lake Park Recreational Use and Development Plan (Section 1, Page 2) - *A goal of minimum development of Morgan Lake Park should be maintained to preserve the maximum of natural setting and to encourage solitude, isolation, and limited visibility of users while at the same time providing safe and sanitary condition for users.*

Morgan Lake Park encompasses two separate Lakes; Morgan Lake is 70 acres in size and is developed with road access and camping. Lower Morgan Lake is 27 acres in size, undeveloped, and with no road access or camping. Here it is important that we make one important clarification that (although little known) Little Morgan Lake is officially recognized by both the State of Oregon, and by Federal Agencies as Twin Lake (See USGS – Hilgard Quadrangle Topographic Map). This is especially confusing because the City of La Grande’s Morgan Lake Park Plan recognizes Twin Lake as “Lower Morgan Lake.” Semantics yes, but here is the reason that Twin Lake be recognized for this discussion. Twin Lake has been identified by both Federal and State efforts to conserve, restore, and protect wetlands. Oregon has developed a Wetland Conservation Strategy (Oregon Division of Lands, 1993). This Strategy is implemented through the Oregon Wetlands Inventory and Wetlands Conservation Plans (See Webpage). This planning process allows local governments to balance wetlands protection with other land-use needs. Twin Lake was recognized as an important – persistent emergent wetlands that includes both submersed and floating plants.

Between 1979 and 1987, I lived on Sheep Creek – within ¼ mile of Twin Lake. Most days I walked the south shore of the lake on my way to Eastern Oregon University where I was a student. In 1985, I received a B.S. degree from the University of Idaho in Wildlife Resources. Since graduation I have worked as independent contractor specializing in wildlife and vegetation inventory. My very first contract was with the Nature Conservancy – Baseline Inventory of Wildlife and Vegetation for the Downey Lake Preserve in Wallowa County. There I mapped all vegetation communities, emergent to upland. Like Downey Lake, Twin Lake is recognized in the Oregon Wetlands Inventory. Both are distinct wetlands anomalies in the Blue Mountain Ecoregion

Although I have not mapped the wildlife and vegetation communities of Twin Lake, I am empirically familiar with them for the past 38 years. This pristine wetland, and the surrounding uplands, have been uniquely preserved over time. The native integrity of Twin Lake is virtually

unchanged. In fact, both the Osprey and the Bald Eagle have established nesting since I moved here.

Twin Lake, at 4,100 feet elevation, supports one of the most unique waterfowl nesting communities in the Blue Mountains. Most unusual is the nesting by: Ring-necked Ducks, Red Head, Rudy Duck, Blue-winged Teal and Pied-billed Grebe. Other nesting waterfowl include: Shoveler, Green-winged Teal, Mallard, and Canada Geese.

Rush Sedge and Marsh Birds.

Increasing the species diversity surrounding this wetlands anomaly, the lake is created by natural basalt rim rocks along the south and west edge. Here the vegetation is a diverse mixture of native shrubs, Aspen, Black Cottonwood, and Ponderosa Pine. These surrounding shrub and tree communities support as rich an assortment of both migratory and nesting passerine birds as can be recognized across the Blue Mountain Ecoregion.

And with this species richness, so come the Raptors – both nesting and migratory.

Clearly, I understand why you have major concerns about the environmental impacts that a 500 kv Transmission Line would have towering along the south and west sides of Twin Lake. I assume that it was impacts on resources like Twin Lake that resulted in the Bureau of Land Management (BLM) identifying the Glass Hill Alternate as having the Least Environmental Impact – Hilgard to Ladd Canyon Reach.

I hope that the City also expresses concerns about the visual impacts that this Transmission Line would have on one of La Grande's and Union Counties premier viewsheds. Every visitor to Morgan Lake, at the top of the Blue Mountains, would have to first confront a visual assault from Idaho Power.

I encourage you and the City of La Grande to advice Idaho Power to Amend their Application for Site Certificate to include the Glass Hill Alternate Route - the BLM's "Least Environmental Impact Route." This will give the State of Oregon the opportunity to evaluate what Idaho Power has clearly disregarded.

Respectfully

Michael McAllister, wildlandmm@netscape.net

EXHIBIT C

EXHIBIT C



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search



Boardman to Hemingway Transmission Line Project ⁽¹⁾

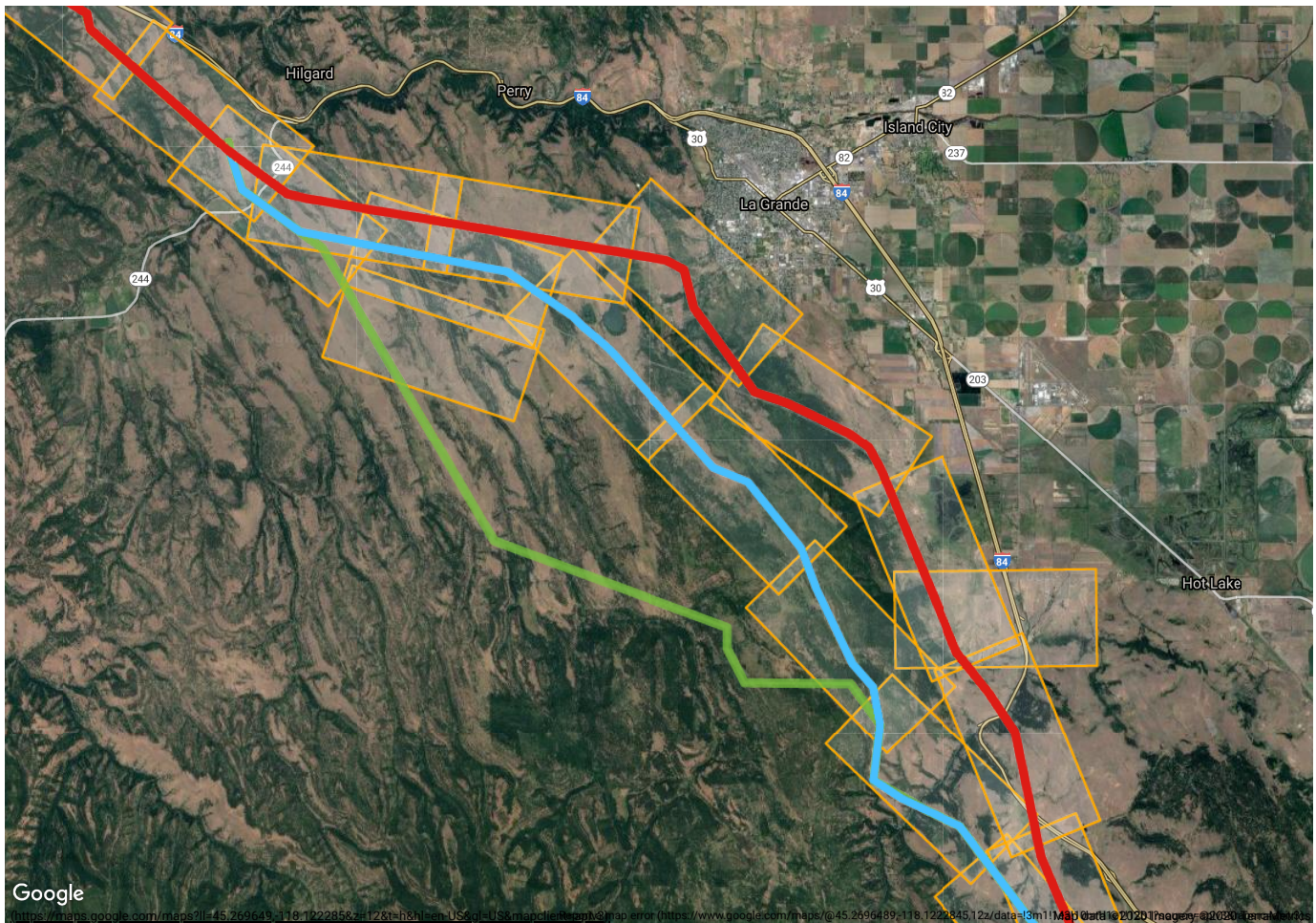
Interactive Map - Including landowner parcels

Property Search

Enter a physical address into the search box to find a property on the map.

Search

- Agency Selected Route (NEPA)
- Proposed Route (EFSC)
- Substations
- Detailed Maps



For questions, contact:

[Bureau of Land Management \(https://www.blm.gov/oregon-washington/energy-independence/boardman-hemingway\).](https://www.blm.gov/oregon-washington/energy-independence/boardman-hemingway)

[U.S. Forest Service \(https://www.fs.usda.gov/project/?project=26709&exp=overview\).](https://www.fs.usda.gov/project/?project=26709&exp=overview)

David Plummer
Wallowa-Whitman National Forest

EXHIBIT 2

EXHIBIT 2

Michael McAllister, 60069 Morgan Lake Road, La Grande, Oregon, 97850, (541) 786-1507

September 29, 2020

Alison Greene-Webster, Senior Administrative Law Judge
Oregon Department of Energy
500 Capitol Street NE
Salem OR 97301

SENT VIA EMAIL TO: OED OAH Referral@oregon.gov and service list

RE: Petitioner Michael McAllister's Reply to ODOE Response to Petition in the Matter of the ASC for B2H Transmission Line.

Dear Honorable Judge Greene-Webster:

During the Pre-hearing Conference in the above referenced matter held on September 25, 2020, the Court granted me leave to respond in writing to the Oregon Department of Energy's ("ODOE") Response to my petition for party status.

In my Petition for Party Status, I identified both a personal and public interest in the outcome of this proceeding, and my petition complies with the requirements of OAR 137-003-0005(3)(d)-(f). In my petition, I seek "Party" rather than "Limited Party" status. Without justification or explanation as to why I should be denied full party status, ODOE recommends in its response to my petition that I receive "limited party status." Given the lack of justification as to why I should be limited in this matter, I ask the Court grant me party status such that I am afforded the same rights as other parties to address all issues, particularly because I believe that ODOE is attempting to exclude me from issues that I raised during the public comment period by purporting I did not properly raise the issues that I discuss in my comments.

In its response to my petition, ODOE improperly dismisses nearly all the issues I raised during the public comment period as not properly raised or, with respect to what I see as the most significant issue I raised in my comments—that the site certificate review was not consistent with the federal agency (the Bureau of Land Management ("BLM")) review, that it was not raised at all. In attempting to limit this Court's consideration of the majority of issues I raised, ODOE does not fully or accurately represent my public comments.

First, and most significantly, ODOE claims with respect to "Issue 8" (EFSC did not conduct review, to the maximum extent feasible, in a manner consistent with the federal agency review), that I did not raise this issue on the record of the DPO. This is incorrect. The primary purpose, intent, and focus of my comments was the fact that the site certificate review (with respect to the segment of the transmission line with which my comments are concerned) was not consistent with federal agency review. Indeed, my public comments, as well as numerous letters I wrote to ODOE and Idaho Power Company ("IPC"), call out the failure to pursue consistency with the BLM (the relevant federal agency conducting review) and request that IPC and EFSC take action to ensure such consistency.

The BLM, conducted an analysis consistent with the National Environmental Policy Act (“NEPA”), which included the line’s siting through Union County on private lands. Imploring EFSC to conduct its site certificate review in a manner consistent with the federal agency review, I expressed my concern during the public comment period at issue—as well as on numerous occasions during the years proceeding—that EFSC was processing an “incomplete application” because, without justification, IPC excluded the NEPA-consistent route through Union County selected by the reviewing federal agency.

ODOE’s claim that I did not raise the issue of consistency with federal agency review in my DPO comment appears to be based on the fact that I, a non-attorney, did not expressly cite ORS 469.370(13). However, my primary goal throughout the public process (further evidenced by the numerous letters I have sent to ODOE) has been to ensure that EFSC’s review of the Union County segment of the transmission line was consistent with that of the BLM and with the greater public interest, which requires that impacts be properly mitigated. EFSC failed to ensure this consistency and, as a result, its review does not comply with ORS 469.370(13).

EFSC’s failure to comply with its statutory obligation to conduct review to the *maximum extent feasible* with the federal agency review, including but not limited to its failure to meet its obligation to use information generated for federal agency review and to rely on a joint record to address council standards,¹ is an important issue of great public concern, which ODOE seeks to exclude on a technicality. I now make the same request of this Court that I previously asked of EFSC: that it protect the public interest and the members of Union County by requiring consistency with the federal agency review when siting the transmission line through Union County.²

Again, contrary to ODOE’s assertion, I raised the issue of consistency with federal agency review in my public comment and I ask that the Court consider this critical issue in the contested case as allowing it to go unaddressed in this proceeding is directly contrary to the public interest.

Next, I turn to ODOE’s dismissal of numerous EFSC standards I raise in my comment in analyzing the inappropriateness of the Morgan Lake Alternative. Similar to ODOE’s attempt to eliminate the issue I raised regarding consistency with federal agency review, ODOE attempts to

¹ See ORS 469.370(13)(b), (c).

² Concerningly, ODOE states in its Proposed Order that, “[t]he Morgan Lake Alternative is the only alternative route proposed in Union County and was developed based on input from landowners.” (Proposed Order at p. 29). This is a complete and troubling misrepresentation. I have been representing local landowner interests with regards to the B2H Transmission Line since 2009. IPC does not identify, and it is entirely unclear, which local landowners worked with IPC to develop this route. I am, and have been, a local landowner at Morgan Lake for 40 years, and I know most if not all the local landowners. My property specifically lies a quarter mile from the transmission line on the Morgan Lake Route. IPC did not consult me or the vast majority of landowners whose properties will be significantly impacted by the Morgan Lake Route. I am only familiar with one local landowner—who bought his property in 2014—in favor of the Morgan Lake Route. He worked with IPC to develop that route in 2016. This landowner does not represent the interest of the majority of local landowner or the residents of Union County.

exclude all but one of the issues I identified with respect to the environmental impacts of the Morgan Lake Alternative through its characterizations of my comments that unfairly seek to limit them.

In my analysis of the environmental impacts of the Morgan Lake Alternative, throughout which I reference various EFSC standards and the impacts the route will have, which directly undermine the goals of each standard. In that analysis I compare the impacts of the Morgan Lake Alternative in comparison with the federal agency preferred route in both an effort to pursue consistency in this process with the federal agency review, and to provide evidence that the route is not consistent with mitigation goals recognized in Oregon law.

For example, in my comment I discuss the Morgan Lake Alternative route as contrary to OAR 345-022-0060 (Fish and Wildlife Habitat), which mandates that the Council must find construction and operation of the facility to be consistent with the general fish and wildlife habitat mitigation goals and standards of OAR 635-415-0025(1)-(6). While not reciting the relevant mitigation goals, I discuss with specific detail why the proposed Morgan Lake route is inconsistent with these goals. ODOE claims that I did not raise this issue with requisite specificity or *express concerns with the applicant's demonstration of compliance* under the standard. This again is incorrect. OAR 635-415-0025(1)-(6) provides that “[t]he Department shall act to protect [each category of habitat]...by recommending or requiring: **[a]voidance of impacts through alternative to the proposed development action...**” (emph. added). Contrary to ODOE’s representations, I did express my concerns with demonstrated compliance (*i.e.*, mitigation consistent with mitigation goals of OAR 635-415-0025(1)-(6), which requires avoidance of impacts through alternative routes) by pointing to the BLM alternative, which the reviewing federal agency deemed to be the appropriate route through Union County considering impact mitigation. Again, the existence of a route found by the reviewing federal agency to best mitigate environmental impacts, including those on fish and wildlife habit, demonstrates the applicant’s failure to comply with the standard, a point I raise in my comment.

In the interest of brevity, I do not directly address how ODOE unfairly construed each of the issues I raised in order to exclude them. However, I ask that this Court review the issues I raised in my comment, as I believe I have raised each with sufficient specificity.

Finally, I reiterate that throughout the life of this project, my primary concern has been siting the line such that impacts are properly mitigated, consistent with the BLM’s review and NEPA analysis. I express this in my public comments and in my letters to ODOE and IPC. The Court should not exclude from this hearing the critical issue of EFSC’s compliance with ORS 469.370(13) with respect the Union County segment.

Sincerely,

Michael McAllister

60069 Morgan Lake Road
La Grande, OR 97850

CERTIFICATE OF SERVICE

On September 29, 2020, I emailed the foregoing letter to the administrative law judge in OAH Case No. 2019-ABC-02833, with copies sent as follows.

By: Hand Delivery

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By: Electronic Mail:

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Michael McAllister
Petitioner

EXHIBIT 3

EXHIBIT 3

Michael McAllister, 60069 Morgan Lake Road, La Grande, Oregon, 97850, (541) 786-1507

October 2, 2020

Alison Greene-Webster, Senior Administrative Law Judge
Oregon Department of Energy
500 Capitol Street NE
Salem OR 97301

SENT VIA EMAIL TO: OED OAH Referral@oregon.gov and service list

RE: Petitioner Michael McAllister's Supplemental Reply to Parties' Response to Petition in the Matter of the ASC for B2H Transmission Line.

Dear Honorable Judge Greene-Webster:

After attending the continued Pre-hearing Conference in the above referenced matter held on October 1, 2020, I am supplementing my response filed Tuesday September 28, 2020 with the following.¹

First, I wish to underscore that I properly raised the issue that EFSC did not conduct its review, to the maximum extent feasible, in a manner consistent with the federal agency review (ORS 469.370(13)). In my public comment, I raised that, at that time, review could not be consistent with the federal agency review with respect to Union County because Idaho Power Company (IPC) was disregarding the Bureau of Land Management (BLM) review of the Union County segment, knowingly and intentionally excluding the BLM's environmentally preferred route in its application. In my comment I point out the inconsistency, ask that it be remedied, and point to how the Morgan Lake Alternative is not consistent with EFSC standards. Indeed, the entire thrust of my comment was to request EFSC to ensure consistency with the BLM review.

To assist the Court in understanding how I properly raised the issue of inconsistency with federal review in EFSC's review of the Application for Site Certificate (ASC), I provide below background on the process regarding the development and inclusion of the Morgan Lake Alternative. In doing so, I believe it imperative to bring to the Court's attention the troubling miscarriage of the proper process with respect to IPC's application for, and ODOE's approval of, the Morgan Lake Alternative. EFSC allowed IPC to disregard the federal agency review with respect to the Union County segment without any justification to the Siting Council, or to the public, as to why it would exclude the environmentally preferred route identified by the BLM. Allowing IPC to do this without justification—and certainly no reasonable justification—does not comply with ORS 469.370(13).

In 2014, the BLM's Draft Environmental Impact Statement (EIS) identified the Glass Hill Alternative, which is the same as the Agency's current environmentally preferred route, as the Preliminary Environmentally Preferred Alternative. In February of 2015, a landowner new to the area, submitted the Morgan Lake Alternative for consideration, which Idaho Power accepted and

¹ I have attached my initial response (Exhibit A) for the Court's convenience.

incorporated. On November 17, 2017, the BLM released its Record of Decision - where the Glass Hill Alternative was identified as the Agency Preferred Alternative. Before the BLM's Record of Decision was published, IPC submitted their ASC with two routes in Union County that were not vetted through environmental review – the Proposed Mill Creek Route and the Morgan Lake Alternative. Neither of these two route segments were adequately evaluated as to whether they meet EFSC standards and/or NEPA review.² EFSC never required IPC provide EFSC or the public with any meaningful explanation of why—after federal agency review—it chose to exclude what the BLM deemed to be the environmentally preferred route. The only inquiry regarding this disregard occurred at a public meeting on June 20, 2019 as follows:

25 VICE CHAIRMAN JENKINS: So Mark and David, I'm

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1 going to ask a really hard question tonight: Why wasn't
2 the BLM route proposed as a part of your application to
3 EFSC?

4 MR. MARK STOKES: Back when BLM was working on
5 getting their ROD issue, the delays in their process
6 happened, occurred. We had to move ahead with the state
7 process late in the application. And by the time BLM
8 came out with their ROD, their record of decision, it
9 was too late for us to really go back at that point.

10 Now, when I had conversations with BLM's
11 program manager about this and whether that created any
12 issues for BLM, they recognized that the Glass Hill
13 route that you're talking about and the Morgan Lake
14 route were identical on parcels that were under control
15 of BLM, federal government.

16 So the fact that in our state application we
17 had the Morgan Lake route did not influence or impact
18 BLM's record of decision in their process.

In sum, IPC's record justification for not including the environmentally preferred route is that it simply did not have to include it. This is the only answer EFSC and the public ever received as to why the public must forgo the Agency selected, environmentally preferred route through Union County. Thus, during the public process, EFSC allowed IPC to ignore the federal agency review and an environmentally preferred alternative without any meaningful justification. IPC's response, which EFSC accepted, is particularly inadequate given the fact that IPC included the Morgan Lake alternative *after* the BLM identified its environmentally preferred route, which was known to IPC by 2014.³ It is entirely unclear—and the public has been denied an answer—why

² This is the issue I raise in my comment in discussing how the Morgan Lake Alternative does not meet the EFSC standards I raise. It cannot be shown to meet these standards because no real study was never done on the route.

³ In fact, IPC knew about this route by 2010 because I, also a landowner and a professional well-versed in surveying for NEPA analysis, submitted that very route to IPC as the environmentally preferred siting through the area. Unlike, the landowner who bought his non-residential land in 2014, my recommendation (which later became the BLM's recommendation) was disregarded.

IPC would include the Morgan Lake Alternative in its application while disregarding the BLM's environmentally preferred route.

Further, to claim, as Idaho Power does, that the federal agency review and selection of an environmentally preferred route through Union County is irrelevant to this proceeding and cannot be considered now because Idaho Power knowingly and intentionally excluded the BLM preferred alternative directly undermines the goal of ORS 469.370(13). Indeed, it allows the parties to circumvent this requirement by merely excluding routes that have been reviewed by the federal agency, thereby rendering the requirement meaningless.

What appears to have happened in the case of the Union County segment is that EFSC allowed the public interests to be subverted by those of a *single* landowner. Again, I strongly refute the claim that ODOE advances in its Proposed Order that “[t]he Morgan Lake Alternative is the only alternative route proposed in Union County and was developed based on input from landowners.” (Proposed Order at p. 29). I, a long-term landowner and resident,⁴ never received any notice, information, or inquiry regarding the Morgan Lake Alternative that IPC now pursues, like many other local landowners directly impacted by the Morgan Lake Alternative route. Further, it is of grave concern that input from one local landowner has been given more credence in this process than input from the BLM—the federal agency concerned with identifying an environmentally appropriate route. ODOE's and IPC's efforts to exclude this very important issue from the hearing entirely are troubling. This is an issue of important public concern. I ask this Court, again, to construe my comment as I intended it—as addressing the inconsistency with the federal agency review and asking that this inconsistency be remedied.

Finally, I reiterate that throughout the life of this project, my primary concern has been siting the line such that impacts are properly mitigated, consistent with the BLM's review and NEPA analysis. EFSC did not conduct review, to the maximum extent feasible, consistent with the federal agency review. This is evidenced by its failure to require any reasonable justification from IPC as to why it chose to disregard the environmentally preferred route. My public comments, including my reference to the “incomplete application” speak directly to this issue. The Court should not exclude from its consideration the critical issue of EFSC's compliance with ORS 469.370(13) with respect to the Union County segment.

Sincerely,

Michael McAllister

60069 Morgan Lake Road
La Grande, OR 97850

⁴ The landowner who successfully influenced the current route, promoting the Morgan Lake Alternative, purchased his property in 2014 and does not reside on his land, as I and many other landowners IPC disregarded do. Again, I am a landowner who provided input consistent with the reviewing federal agency and I was ignored.

CERTIFICATE OF SERVICE

On October 2, 2020, I emailed the foregoing letter to the administrative law judge in OAH Case No. 2019-ABC-02833 at REFERRAL.OED_OAH_REFERRAL@oregon.gov with copies sent as follows.

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Michael McAllister
Petitioner

EXHIBIT A

EXHIBIT A

Michael McAllister, 60069 Morgan Lake Road, La Grande, Oregon, 97850, (541) 786-1507

September 29, 2020

Alison Greene-Webster, Senior Administrative Law Judge
Oregon Department of Energy
500 Capitol Street NE
Salem OR 97301

SENT VIA EMAIL TO: OED OAH Referral@oregon.gov and service list

RE: Petitioner Michael McAllister's Reply to ODOE Response to Petition in the Matter of the ASC for B2H Transmission Line.

Dear Honorable Judge Greene-Webster:

During the Pre-hearing Conference in the above referenced matter held on September 25, 2020, the Court granted me leave to respond in writing to the Oregon Department of Energy's ("ODOE") Response to my petition for party status.

In my Petition for Party Status, I identified both a personal and public interest in the outcome of this proceeding, and my petition complies with the requirements of OAR 137-003-0005(3)(d)-(f). In my petition, I seek "Party" rather than "Limited Party" status. Without justification or explanation as to why I should be denied full party status, ODOE recommends in its response to my petition that I receive "limited party status." Given the lack of justification as to why I should be limited in this matter, I ask the Court grant me party status such that I am afforded the same rights as other parties to address all issues, particularly because I believe that ODOE is attempting to exclude me from issues that I raised during the public comment period by purporting I did not properly raise the issues that I discuss in my comments.

In its response to my petition, ODOE improperly dismisses nearly all the issues I raised during the public comment period as not properly raised or, with respect to what I see as the most significant issue I raised in my comments—that the site certificate review was not consistent with the federal agency (the Bureau of Land Management ("BLM")) review, that it was not raised at all. In attempting to limit this Court's consideration of the majority of issues I raised, ODOE does not fully or accurately represent my public comments.

First, and most significantly, ODOE claims with respect to "Issue 8" (EFSC did not conduct review, to the maximum extent feasible, in a manner consistent with the federal agency review), that I did not raise this issue on the record of the DPO. This is incorrect. The primary purpose, intent, and focus of my comments was the fact that the site certificate review (with respect to the segment of the transmission line with which my comments are concerned) was not consistent with federal agency review. Indeed, my public comments, as well as numerous letters I wrote to ODOE and Idaho Power Company ("IPC"), call out the failure to pursue consistency with the BLM (the relevant federal agency conducting review) and request that IPC and EFSC take action to ensure such consistency.

The BLM, conducted an analysis consistent with the National Environmental Policy Act (“NEPA”), which included the line’s siting through Union County on private lands. Imploring EFSC to conduct its site certificate review in a manner consistent with the federal agency review, I expressed my concern during the public comment period at issue—as well as on numerous occasions during the years proceeding—that EFSC was processing an “incomplete application” because, without justification, IPC excluded the NEPA-consistent route through Union County selected by the reviewing federal agency.

ODOE’s claim that I did not raise the issue of consistency with federal agency review in my DPO comment appears to be based on the fact that I, a non-attorney, did not expressly cite ORS 469.370(13). However, my primary goal throughout the public process (further evidenced by the numerous letters I have sent to ODOE) has been to ensure that EFSC’s review of the Union County segment of the transmission line was consistent with that of the BLM and with the greater public interest, which requires that impacts be properly mitigated. EFSC failed to ensure this consistency and, as a result, its review does not comply with ORS 469.370(13).

EFSC’s failure to comply with its statutory obligation to conduct review to the *maximum extent feasible* with the federal agency review, including but not limited to its failure to meet its obligation to use information generated for federal agency review and to rely on a joint record to address council standards,¹ is an important issue of great public concern, which ODOE seeks to exclude on a technicality. I now make the same request of this Court that I previously asked of EFSC: that it protect the public interest and the members of Union County by requiring consistency with the federal agency review when siting the transmission line through Union County.²

Again, contrary to ODOE’s assertion, I raised the issue of consistency with federal agency review in my public comment and I ask that the Court consider this critical issue in the contested case as allowing it to go unaddressed in this proceeding is directly contrary to the public interest.

Next, I turn to ODOE’s dismissal of numerous EFSC standards I raise in my comment in analyzing the inappropriateness of the Morgan Lake Alternative. Similar to ODOE’s attempt to eliminate the issue I raised regarding consistency with federal agency review, ODOE attempts to

¹ See ORS 469.370(13)(b), (c).

² Concerningly, ODOE states in its Proposed Order that, “[t]he Morgan Lake Alternative is the only alternative route proposed in Union County and was developed based on input from landowners.” (Proposed Order at p. 29). This is a complete and troubling misrepresentation. I have been representing local landowner interests with regards to the B2H Transmission Line since 2009. IPC does not identify, and it is entirely unclear, which local landowners worked with IPC to develop this route. I am, and have been, a local landowner at Morgan Lake for 40 years, and I know most if not all the local landowners. My property specifically lies a quarter mile from the transmission line on the Morgan Lake Route. IPC did not consult me or the vast majority of landowners whose properties will be significantly impacted by the Morgan Lake Route. I am only familiar with one local landowner—who bought his property in 2014—in favor of the Morgan Lake Route. He worked with IPC to develop that route in 2016. This landowner does not represent the interest of the majority of local landowner or the residents of Union County.

exclude all but one of the issues I identified with respect to the environmental impacts of the Morgan Lake Alternative through its characterizations of my comments that unfairly seek to limit them.

In my analysis of the environmental impacts of the Morgan Lake Alternative, throughout which I reference various EFSC standards and the impacts the route will have, which directly undermine the goals of each standard. In that analysis I compare the impacts of the Morgan Lake Alternative in comparison with the federal agency preferred route in both an effort to pursue consistency in this process with the federal agency review, and to provide evidence that the route is not consistent with mitigation goals recognized in Oregon law.

For example, in my comment I discuss the Morgan Lake Alternative route as contrary to OAR 345-022-0060 (Fish and Wildlife Habitat), which mandates that the Council must find construction and operation of the facility to be consistent with the general fish and wildlife habitat mitigation goals and standards of OAR 635-415-0025(1)-(6). While not reciting the relevant mitigation goals, I discuss with specific detail why the proposed Morgan Lake route is inconsistent with these goals. ODOE claims that I did not raise this issue with requisite specificity or *express concerns with the applicant's demonstration of compliance* under the standard. This again is incorrect. OAR 635-415-0025(1)-(6) provides that “[t]he Department shall act to protect [each category of habitat]...by recommending or requiring: **[a]voidance of impacts through alternative to the proposed development action...**” (emph. added). Contrary to ODOE’s representations, I did express my concerns with demonstrated compliance (*i.e.*, mitigation consistent with mitigation goals of OAR 635-415-0025(1)-(6), which requires avoidance of impacts through alternative routes) by pointing to the BLM alternative, which the reviewing federal agency deemed to be the appropriate route through Union County considering impact mitigation. Again, the existence of a route found by the reviewing federal agency to best mitigate environmental impacts, including those on fish and wildlife habit, demonstrates the applicant’s failure to comply with the standard, a point I raise in my comment.

In the interest of brevity, I do not directly address how ODOE unfairly construed each of the issues I raised in order to exclude them. However, I ask that this Court review the issues I raised in my comment, as I believe I have raised each with sufficient specificity.

Finally, I reiterate that throughout the life of this project, my primary concern has been siting the line such that impacts are properly mitigated, consistent with the BLM’s review and NEPA analysis. I express this in my public comments and in my letters to ODOE and IPC. The Court should not exclude from this hearing the critical issue of EFSC’s compliance with ORS 469.370(13) with respect the Union County segment.

Sincerely,

Michael McAllister

60069 Morgan Lake Road
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CERTIFICATE OF SERVICE

On September 29, 2020, I emailed the foregoing letter to the administrative law judge in OAH Case No. 2019-ABC-02833, with copies sent as follows.

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Michael McAllister
Petitioner

EXHIBIT 4

EXHIBIT 4

Michael McAllister, 60069 Morgan Lake Road, La Grande, Oregon, 97850, (541) 786-1507

November 6, 2020

Chairman Hanley Jenkins, II
Energy Facilities Siting Council
Oregon Department of Energy
550 Capitol St. NE, 1st Floor
Salem, OR 97301

Alison Greene-Webster, Senior Administrative Law Judge
Oregon Department of Energy
500 Capitol Street NE
Salem OR 97301

SENT VIA EMAIL TO: energy.siting@oregon.gov; OED_OAH_REFERRAL@oregon.gov
and B2H Service List

RE: Petitioner Michael McAllister's Appeal to the Energy Facility Siting Council in the Matter of the ASC for B2H Transmission Line.

Dear Mr. Chairman Jenkins and the Council:

Please accept my appeal of Judge Greene-Webster's denial of full party status in the matter of The Application for Site Certificate for the Boardman to Hemingway Transmission Line, OAH Case No. 2019-ABC-02833, and her limitation on the issues I raised during the public comment period in the Order issued October 29, 2020 ("the Order").

To assist the Council, I have attached to this appeal and incorporate by reference my (1) Petition and (2) responses to Idaho Power Company's ("IPC") and the Oregon Department of Energy's ("ODOE") positions on my standing in the Contested Case and the specific issues I raised. In denying me fully party status and standing as to certain issues, the Order largely adopts IPC's and ODOE's statements, framing, and positions relating to the issues I raised. Accordingly, my previously submitted responses also apply to this appeal and are attached hereto as Exhibits 1-2.

I. Denial of Full Party Status

In my petition, I requested full party status and was denied without specific justification. In my Petition for Party Status, I expressly requested full party status as my issues have broad reach and overlap with other issues raised both by myself and by other petitioners. ORS 469.370(5) and OAR 345-015-0016 provide the eligibility requirements for party status. I have met this criteria, as established in my Petition for Party Status, attached hereto as Exhibit 2.

The primary justifications for denying me full party status appear to be: (1) the size and complexity of the case; (2) an unsupported conclusion—not specific to me—that I am not qualified to respond to additional issues (many of which I raised and from which I am now being excluded); (3) the language of OAR 137-003-005(8), which provides only that "[a] petition to

participate as a party may be treated as a petition to participate as a limited party.” I address each of these in turn below.

First, my right to participate in this proceeding should not be limited as a convenience measure due to the size and complexity of the case that clearly favors the interests of the parties to this case whose interests are adverse to mine. As stated in my Petition, I hold a clear and significant private and public interest in this case. I should not be denied participation rights merely because of the complexity of the case.

Second, the Order concludes without including any reasoning or justification—particularly none specific to me—that I am not qualified to respond to issues outside of the single issue to which the Order limits me. This is not so and contradicts the Hearing Officer’s finding that “Mr. McAllister established qualification to represent a public interest in fisheries, forest, range, recreation, wildlife, and visual resources of Union County.” (Order at p. 63). Specifically, I am qualified to respond to all of the issues I raised in my written public comment (attached hereto within Exhibit 2), almost all of which the Order excludes me from based on the characterization of the manner in which I raised them.¹ As I stated in my Petition, I am a stakeholder with intimate professional and personal knowledge of the subject land in Union County. As the Order acknowledges, as a petitioner I have sought specifically to represent the “public interests” with which I have expertise—fisheries, forest, range, recreation, wildlife, and visual resources. I possess a B.S. from the University of Idaho in Wildlife Resources and Communications; I have lived on and managed natural resources across the subject landscape for over 40 years; as an independent natural resource contractor, I have made a career specializing in natural resources inventory for: federal, state, tribal, and private land stewards. Primarily, I gather data (facts) used for planning purposes – most often for NEPA analysis. As such, I am qualified to respond to myriad issues that have been raised in this proceeding, particularly those that I have previously raised and from which the Order excludes me, which concern my area of expertise (*see* McAllister Public Comment in Ex. 2). Furthermore, the limitation of my issues, which I also challenge in this appeal, has created an unrealistic and unreasonable constraint on my case because the issue to which the Order limits me overlaps with a number of other issues raised—specifically with the issue that I expressly raised from which I am being excluded.

Third, while OAR 137-003-005(8), which the Hearing Officer frequently references in her denial, does appear to authorize the agency to treat a petition for party status as a petition for limited party status, **that is presumably for the situation where a person has failed or refused to provide all the information necessary to establish party status.** There is no basis articulated in the Rule for the agency to **force** someone who has provided all the information necessary to accept limited party status. Yet that is precisely what ODOE and IPC are proposing. Doing so would be contrary to the dictates of the APA, and OAR 137-003-0005(10) which specifies that parties are to be notified of their rights under ORS 183.413(2) – and those right include statutorily “the right to respond to **all issues** properly before the presiding officer and

¹ The Order largely adopts the recommendations of IPC and ODOE regarding the interpretation of my comments.

present evidence and witnesses on those issues.” ORS 183.413(2)(e)(emphasis added). *See also*, ORS 183.417(1) (same).

Idaho Power points to no authority that provides an opposing party with the authority to limit the status of opposing parties, by asking that they be forced into limited party status - even if they petitioned for full party status. It does not make sense that IPC (or ODOE) would be allowed to do that, because limiting the ability of other persons to participate would bias the proceeding in favor of a regulated entity that might be seeking to avoid a comprehensive challenge to its proposed activities. As an adverse party, it is only reasonable that a utility (or an agency) would want to weaken its opponents’ ability to participate in the process. But allowing that to happen would contravene the APA, and the due process rights of those such as myself who did timely petition for full party status.

In point of fact, IPC opposes *any* petitioner’s status (other than itself or ODOE) as a full-party. IPC tries to frame its position as one that seeks to balance dual purposes of Contested Case proceedings of ensuring public participation with a fair and orderly process. This argument is transparently an attempt to limit members of the public and public-interest organizations from having an ability to fully confront the issues faced in this proceeding.

II. Exclusion from Properly Raised Issues

The Hearing Officer, like IPC and ODOE, improperly frames and mischaracterizes the core issue of my public comment and ignores its clear meaning and intention in an apparent attempt to exclude this important issue from the Contested Case entirely (*see* Supplemental Reply included in Ex. 1).² In adopting the positions of IPC and ODOE, the Order ignores the arguments I raised in my responses entirely (*See* Exhibit 1 and attachment).³

a. Failure to Comply with ORS 469.370(13)

In my Petition and public comment, I specifically raised the issue that review of IPC’s application was not consistent with federal agency review, calling the application “incomplete” for this reason.⁴ ORS 469.370(13) specifically requires that the council *shall* conduct its site certificate review...in a manner that is consistent with and does not duplicate federal agency review, including development with the federal agency and reliance on a joint records to address applicable council standards. As I have previously raised, the Council did not, and to this day has

² I am one of two Petitioners that raised the issue of compliance with ORS 469.370(13), and the requirement to pursue consistency with federal agency review (Stop B2H also raised this issue). The Hearing Officer also denied Stop B2H standing as to this issue, thereby eliminating consideration of this issue of important public concern entirely from the Contested Case.

³ Exhibit 1 includes my initial response to the opponents position on my party status as an attachment to my Supplemental Reply, which are both applicable to this appeal.

⁴ While I did not cite the statute in my public comment, as I am not a lawyer, the very core of my comment seeks that Council conduct its review, with respect to the segment of the projection through Union County, consistent with the federal agency review, which it did not and has not done.

not, complied with this law as it relates to the Union County segment of the transmission line. Tellingly, in excluding the issue of whether the Council has complied with ORS 469.370—a matter that falls squarely within the Council’s jurisdiction—the Order does not address the language of the statute at all or the fact that I raised the issue of consistency of review during the process. Rather, it misstates the issue and ignores its primary intent, framing it in order to construe it as outside of the Council’s jurisdiction.

Among the arguments I raised in my responses to IPC and ODOE that the Order fails to address is how ODOE’s, and now the Hearing Officer’s, interpretation of the application of the statute in this case renders the requirement meaningless. In fact, the perverse result of the current interpretation as it is expressed in this matter is to encourage parties to circumvent the burden of complying with the statute in direct contravention of the public interest by intentionally excluding routes that have been, or must be, reviewed by the federal agency to ensure NEPA compliance.

Further, not only did I raise this issue of compliance with ORS 469.370(13) in my public comment, but I raised it with sufficient specificity such that Chairmen Jenkins expressly asked IPC why it had excluded the BLM’s identified environmentally preferred route at the public meeting to which IPC provided an entirely inadequate—if not false—justification (*see* transcript excerpt included in Ex. 1, p. 2). The Council asked no follow up questions and the public—outraged by IPC’s response—was denied the opportunity to do so.

b. Remaining EFSC Standards Raised in Public Comment

The Order also adopts ODOE’s dismissal of numerous EFSC standards I raise in my public comment in analyzing the inappropriateness of the Morgan Lake Alternative. Similar to the attempt to eliminate the issue I raised regarding consistency with federal agency review, the Order attempts to exclude all but one of the issues I identified with respect to the environmental impacts of the Morgan Lake Alternative through its characterizations of my comments that unfairly seek to limit them asserting that they were not raised with sufficient specificity. Contrary to the Order, I did offer facts and argument in support of the contention that the proposed facility fails to comply with each standard I raised.

In my detailed analysis of the environmental impacts of the Morgan Lake Alternative I raise various EFSC standards and the impacts the route will have that directly undermine the goals of each standard. In that analysis I compare the impacts of the Morgan Lake Alternative with the federal agency preferred route in both an effort to pursue consistency in this process with the federal agency review (as is required under ORS 469.370(13)), *and* to provide evidence that the route is not consistent with mitigation goals recognized in Oregon law.

For example, in my comment I discuss the Morgan Lake Alternative route as contrary to OAR 345-022-0060 (Fish and Wildlife Habitat), which mandates that the Council must find construction and operation of the facility to be consistent with the general fish and wildlife habitat mitigation goals and standards of OAR 635-415-0025(1)-(6). While not reciting the relevant mitigation goals, I discuss with specific detail why the proposed Morgan Lake route is inconsistent with these goals. The Order states that I did not raise this issue with requisite

specificity or *express concerns with the applicant's demonstration of compliance* under the standard. This again is incorrect. OAR 635-415-0025(1)-(6) provides that “[t]he Department shall act to protect [each category of habitat]...by recommending or requiring: **[a]voidance of impacts through alternative to the proposed development action...**” (emph. added). Contrary to the Order and opposing party representations, I did express my concerns with demonstrated compliance (*i.e.*, mitigation consistent with mitigation goals of OAR 635-415-0025(1)-(6), which requires avoidance of impacts through alternative routes) by pointing to the BLM alternative, which the reviewing federal agency deemed to be the appropriate route through Union County considering impact mitigation. Again, the existence of a route found by the reviewing federal agency to best mitigate environmental impacts, including those on fish and wildlife habit, demonstrates the applicant's failure to comply with the standard, a point I raise in my comment.

Finally, due to the unreasonable timeframe petitioners were given to appeal the Order to the Council, I do not directly address how the Order unfairly construed each of the issues I raised in order to exclude them because I was not provided adequate time to respond. I am a *pro se* petitioner and must continue to work, which requires me to be out in the field for weeks at a time. Consequently, I have had a single day to respond to an 88 page Order that denying me due process rights to participate in this matter that is of great importance to me. As such, I ask the Council to review and consider the issues I raised in my comment, as I believe I have raised each with sufficient specificity.

Sincerely,

Michael McAllister

60069 Morgan Lake Road
La Grande, OR 97850

EXHIBIT 1

EXHIBIT 1

Michael McAllister, 60069 Morgan Lake Road, La Grande, Oregon, 97850, (541) 786-1507

October 2, 2020

Alison Greene-Webster, Senior Administrative Law Judge
Oregon Department of Energy
500 Capitol Street NE
Salem OR 97301

SENT VIA EMAIL TO: OED OAH Referral@oregon.gov and service list

RE: Petitioner Michael McAllister's Supplemental Reply to Parties' Response to Petition in the Matter of the ASC for B2H Transmission Line.

Dear Honorable Judge Greene-Webster:

After attending the continued Pre-hearing Conference in the above referenced matter held on October 1, 2020, I am supplementing my response filed Tuesday September 28, 2020 with the following.¹

First, I wish to underscore that I properly raised the issue that EFSC did not conduct its review, to the maximum extent feasible, in a manner consistent with the federal agency review (ORS 469.370(13)). In my public comment, I raised that, at that time, review could not be consistent with the federal agency review with respect to Union County because Idaho Power Company (IPC) was disregarding the Bureau of Land Management (BLM) review of the Union County segment, knowingly and intentionally excluding the BLM's environmentally preferred route in its application. In my comment I point out the inconsistency, ask that it be remedied, and point to how the Morgan Lake Alternative is not consistent with EFSC standards. Indeed, the entire thrust of my comment was to request EFSC to ensure consistency with the BLM review.

To assist the Court in understanding how I properly raised the issue of inconsistency with federal review in EFSC's review of the Application for Site Certificate (ASC), I provide below background on the process regarding the development and inclusion of the Morgan Lake Alternative. In doing so, I believe it imperative to bring to the Court's attention the troubling miscarriage of the proper process with respect to IPC's application for, and ODOE's approval of, the Morgan Lake Alternative. EFSC allowed IPC to disregard the federal agency review with respect to the Union County segment without any justification to the Siting Council, or to the public, as to why it would exclude the environmentally preferred route identified by the BLM. Allowing IPC to do this without justification—and certainly no reasonable justification—does not comply with ORS 469.370(13).

In 2014, the BLM's Draft Environmental Impact Statement (EIS) identified the Glass Hill Alternative, which is the same as the Agency's current environmentally preferred route, as the Preliminary Environmentally Preferred Alternative. In February of 2015, a landowner new to the area, submitted the Morgan Lake Alternative for consideration, which Idaho Power accepted and

¹ I have attached my initial response (Exhibit A) for the Court's convenience.

incorporated. On November 17, 2017, the BLM released its Record of Decision - where the Glass Hill Alternative was identified as the Agency Preferred Alternative. Before the BLM's Record of Decision was published, IPC submitted their ASC with two routes in Union County that were not vetted through environmental review – the Proposed Mill Creek Route and the Morgan Lake Alternative. Neither of these two route segments were adequately evaluated as to whether they meet EFSC standards and/or NEPA review.² EFSC never required IPC provide EFSC or the public with any meaningful explanation of why—after federal agency review—it chose to exclude what the BLM deemed to be the environmentally preferred route. The only inquiry regarding this disregard occurred at a public meeting on June 20, 2019 as follows:

25 VICE CHAIRMAN JENKINS: So Mark and David, I'm

Page 151

1 going to ask a really hard question tonight: Why wasn't
2 the BLM route proposed as a part of your application to
3 EFSC?

4 MR. MARK STOKES: Back when BLM was working on
5 getting their ROD issue, the delays in their process
6 happened, occurred. We had to move ahead with the state
7 process late in the application. And by the time BLM
8 came out with their ROD, their record of decision, it
9 was too late for us to really go back at that point.

10 Now, when I had conversations with BLM's
11 program manager about this and whether that created any
12 issues for BLM, they recognized that the Glass Hill
13 route that you're talking about and the Morgan Lake
14 route were identical on parcels that were under control
15 of BLM, federal government.

16 So the fact that in our state application we
17 had the Morgan Lake route did not influence or impact
18 BLM's record of decision in their process.

In sum, IPC's record justification for not including the environmentally preferred route is that it simply did not have to include it. This is the only answer EFSC and the public ever received as to why the public must forgo the Agency selected, environmentally preferred route through Union County. Thus, during the public process, EFSC allowed IPC to ignore the federal agency review and an environmentally preferred alternative without any meaningful justification. IPC's response, which EFSC accepted, is particularly inadequate given the fact that IPC included the Morgan Lake alternative *after* the BLM identified its environmentally preferred route, which was known to IPC by 2014.³ It is entirely unclear—and the public has been denied an answer—why

² This is the issue I raise in my comment in discussing how the Morgan Lake Alternative does not meet the EFSC standards I raise. It cannot be shown to meet these standards because no real study was never done on the route.

³ In fact, IPC knew about this route by 2010 because I, also a landowner and a professional well-versed in surveying for NEPA analysis, submitted that very route to IPC as the environmentally preferred siting through the area. Unlike, the landowner who bought his non-residential land in 2014, my recommendation (which later became the BLM's recommendation) was disregarded.

IPC would include the Morgan Lake Alternative in its application while disregarding the BLM's environmentally preferred route.

Further, to claim, as Idaho Power does, that the federal agency review and selection of an environmentally preferred route through Union County is irrelevant to this proceeding and cannot be considered now because Idaho Power knowingly and intentionally excluded the BLM preferred alternative directly undermines the goal of ORS 469.370(13). Indeed, it allows the parties to circumvent this requirement by merely excluding routes that have been reviewed by the federal agency, thereby rendering the requirement meaningless.

What appears to have happened in the case of the Union County segment is that EFSC allowed the public interests to be subverted by those of a *single* landowner. Again, I strongly refute the claim that ODOE advances in its Proposed Order that “[t]he Morgan Lake Alternative is the only alternative route proposed in Union County and was developed based on input from landowners.” (Proposed Order at p. 29). I, a long-term landowner and resident,⁴ never received any notice, information, or inquiry regarding the Morgan Lake Alternative that IPC now pursues, like many other local landowners directly impacted by the Morgan Lake Alternative route. Further, it is of grave concern that input from one local landowner has been given more credence in this process than input from the BLM—the federal agency concerned with identifying an environmentally appropriate route. ODOE's and IPC's efforts to exclude this very important issue from the hearing entirely are troubling. This is an issue of important public concern. I ask this Court, again, to construe my comment as I intended it—as addressing the inconsistency with the federal agency review and asking that this inconsistency be remedied.

Finally, I reiterate that throughout the life of this project, my primary concern has been siting the line such that impacts are properly mitigated, consistent with the BLM's review and NEPA analysis. EFSC did not conduct review, to the maximum extent feasible, consistent with the federal agency review. This is evidenced by its failure to require any reasonable justification from IPC as to why it chose to disregard the environmentally preferred route. My public comments, including my reference to the “incomplete application” speak directly to this issue. The Court should not exclude from its consideration the critical issue of EFSC's compliance with ORS 469.370(13) with respect to the Union County segment.

Sincerely,

Michael McAllister

60069 Morgan Lake Road
La Grande, OR 97850

⁴ The landowner who successfully influenced the current route, promoting the Morgan Lake Alternative, purchased his property in 2014 and does not reside on his land, as I and many other landowners IPC disregarded do. Again, I am a landowner who provided input consistent with the reviewing federal agency and I was ignored.

EXHIBIT A

EXHIBIT A

Michael McAllister, 60069 Morgan Lake Road, La Grande, Oregon, 97850, (541) 786-1507

September 29, 2020

Alison Greene-Webster, Senior Administrative Law Judge
Oregon Department of Energy
500 Capitol Street NE
Salem OR 97301

SENT VIA EMAIL TO: OED OAH Referral@oregon.gov and service list

RE: Petitioner Michael McAllister's Reply to ODOE Response to Petition in the Matter of the ASC for B2H Transmission Line.

Dear Honorable Judge Greene-Webster:

During the Pre-hearing Conference in the above referenced matter held on September 25, 2020, the Court granted me leave to respond in writing to the Oregon Department of Energy's ("ODOE") Response to my petition for party status.

In my Petition for Party Status, I identified both a personal and public interest in the outcome of this proceeding, and my petition complies with the requirements of OAR 137-003-0005(3)(d)-(f). In my petition, I seek "Party" rather than "Limited Party" status. Without justification or explanation as to why I should be denied full party status, ODOE recommends in its response to my petition that I receive "limited party status." Given the lack of justification as to why I should be limited in this matter, I ask the Court grant me party status such that I am afforded the same rights as other parties to address all issues, particularly because I believe that ODOE is attempting to exclude me from issues that I raised during the public comment period by purporting I did not properly raise the issues that I discuss in my comments.

In its response to my petition, ODOE improperly dismisses nearly all the issues I raised during the public comment period as not properly raised or, with respect to what I see as the most significant issue I raised in my comments—that the site certificate review was not consistent with the federal agency (the Bureau of Land Management ("BLM")) review, that it was not raised at all. In attempting to limit this Court's consideration of the majority of issues I raised, ODOE does not fully or accurately represent my public comments.

First, and most significantly, ODOE claims with respect to "Issue 8" (EFSC did not conduct review, to the maximum extent feasible, in a manner consistent with the federal agency review), that I did not raise this issue on the record of the DPO. This is incorrect. The primary purpose, intent, and focus of my comments was the fact that the site certificate review (with respect to the segment of the transmission line with which my comments are concerned) was not consistent with federal agency review. Indeed, my public comments, as well as numerous letters I wrote to ODOE and Idaho Power Company ("IPC"), call out the failure to pursue consistency with the BLM (the relevant federal agency conducting review) and request that IPC and EFSC take action to ensure such consistency.

The BLM, conducted an analysis consistent with the National Environmental Policy Act (“NEPA”), which included the line’s siting through Union County on private lands. Imploring EFSC to conduct its site certificate review in a manner consistent with the federal agency review, I expressed my concern during the public comment period at issue—as well as on numerous occasions during the years proceeding—that EFSC was processing an “incomplete application” because, without justification, IPC excluded the NEPA-consistent route through Union County selected by the reviewing federal agency.

ODOE’s claim that I did not raise the issue of consistency with federal agency review in my DPO comment appears to be based on the fact that I, a non-attorney, did not expressly cite ORS 469.370(13). However, my primary goal throughout the public process (further evidenced by the numerous letters I have sent to ODOE) has been to ensure that EFSC’s review of the Union County segment of the transmission line was consistent with that of the BLM and with the greater public interest, which requires that impacts be properly mitigated. EFSC failed to ensure this consistency and, as a result, its review does not comply with ORS 469.370(13).

EFSC’s failure to comply with its statutory obligation to conduct review to the *maximum extent feasible* with the federal agency review, including but not limited to its failure to meet its obligation to use information generated for federal agency review and to rely on a joint record to address council standards,¹ is an important issue of great public concern, which ODOE seeks to exclude on a technicality. I now make the same request of this Court that I previously asked of EFSC: that it protect the public interest and the members of Union County by requiring consistency with the federal agency review when siting the transmission line through Union County.²

Again, contrary to ODOE’s assertion, I raised the issue of consistency with federal agency review in my public comment and I ask that the Court consider this critical issue in the contested case as allowing it to go unaddressed in this proceeding is directly contrary to the public interest.

Next, I turn to ODOE’s dismissal of numerous EFSC standards I raise in my comment in analyzing the inappropriateness of the Morgan Lake Alternative. Similar to ODOE’s attempt to eliminate the issue I raised regarding consistency with federal agency review, ODOE attempts to

¹ See ORS 469.370(13)(b), (c).

² Concerningly, ODOE states in its Proposed Order that, “[t]he Morgan Lake Alternative is the only alternative route proposed in Union County and was developed based on input from landowners.” (Proposed Order at p. 29). This is a complete and troubling misrepresentation. I have been representing local landowner interests with regards to the B2H Transmission Line since 2009. IPC does not identify, and it is entirely unclear, which local landowners worked with IPC to develop this route. I am, and have been, a local landowner at Morgan Lake for 40 years, and I know most if not all the local landowners. My property specifically lies a quarter mile from the transmission line on the Morgan Lake Route. IPC did not consult me or the vast majority of landowners whose properties will be significantly impacted by the Morgan Lake Route. I am only familiar with one local landowner—who bought his property in 2014—in favor of the Morgan Lake Route. He worked with IPC to develop that route in 2016. This landowner does not represent the interest of the majority of local landowner or the residents of Union County.

exclude all but one of the issues I identified with respect to the environmental impacts of the Morgan Lake Alternative through its characterizations of my comments that unfairly seek to limit them.

In my analysis of the environmental impacts of the Morgan Lake Alternative, throughout which I reference various EFSC standards and the impacts the route will have, which directly undermine the goals of each standard. In that analysis I compare the impacts of the Morgan Lake Alternative in comparison with the federal agency preferred route in both an effort to pursue consistency in this process with the federal agency review, and to provide evidence that the route is not consistent with mitigation goals recognized in Oregon law.

For example, in my comment I discuss the Morgan Lake Alternative route as contrary to OAR 345-022-0060 (Fish and Wildlife Habitat), which mandates that the Council must find construction and operation of the facility to be consistent with the general fish and wildlife habitat mitigation goals and standards of OAR 635-415-0025(1)-(6). While not reciting the relevant mitigation goals, I discuss with specific detail why the proposed Morgan Lake route is inconsistent with these goals. ODOE claims that I did not raise this issue with requisite specificity or *express concerns with the applicant's demonstration of compliance* under the standard. This again is incorrect. OAR 635-415-0025(1)-(6) provides that “[t]he Department shall act to protect [each category of habitat]...by recommending or requiring: **[a]voidance of impacts through alternative to the proposed development action...**” (emph. added). Contrary to ODOE’s representations, I did express my concerns with demonstrated compliance (*i.e.*, mitigation consistent with mitigation goals of OAR 635-415-0025(1)-(6), which requires avoidance of impacts through alternative routes) by pointing to the BLM alternative, which the reviewing federal agency deemed to be the appropriate route through Union County considering impact mitigation. Again, the existence of a route found by the reviewing federal agency to best mitigate environmental impacts, including those on fish and wildlife habit, demonstrates the applicant’s failure to comply with the standard, a point I raise in my comment.

In the interest of brevity, I do not directly address how ODOE unfairly construed each of the issues I raised in order to exclude them. However, I ask that this Court review the issues I raised in my comment, as I believe I have raised each with sufficient specificity.

Finally, I reiterate that throughout the life of this project, my primary concern has been siting the line such that impacts are properly mitigated, consistent with the BLM’s review and NEPA analysis. I express this in my public comments and in my letters to ODOE and IPC. The Court should not exclude from this hearing the critical issue of EFSC’s compliance with ORS 469.370(13) with respect the Union County segment.

Sincerely,

Michael McAllister

60069 Morgan Lake Road
La Grande, OR 97850

EXHIBIT 2

EXHIBIT 2

Michael McAllister, 60069 Morgan Lake Road, La Grande, Oregon, 97850, (541) 786-1507

August 27, 2020

Alison Greene-Webster, Senior Administrative Law Judge
Oregon Department of Energy,
500 Capitol Street NE,
Salem OR 97301

SENT VIA EMAIL TO: OED OAH Referral@oregon.gov; Kellen.tardaewether@oregon.gov

Dear Honorable Judge Greene-Webster:

This letter is my petition for “Party Status” in the Contested Case Proceedings that will evaluate the Proposed Order on Application for Site Certificate for Boardman to Hemingway Transmission Line (July 2, 2020 Proposed Order).

As a concerned Oregon citizen with an empirical and professional knowledge of the state’s natural resources, I have been involved in this Idaho Power Corporation (IPC) facility siting analysis for more than 10 years. I now petition for “party” status following the criteria defined on page 5 of the Public Notice – Proposed Order Application for Site Certificate for Boardman to Hemingway Transmission Line. Below are the required contents of my Petition for Party Status as stated in the Public Notice issued July 2, 2020:

- 1) I am Michael McAllister, 60069 Morgan Lake Road, La Grande, Oregon, 97850. (541) 786-1507.
- 2) I am not represented by an attorney.
- 3) I am requesting “party” status because I am representing both a personal interest, and the public interest - which is multifaceted and is covered by various Oregon statutes and regulations.
- 4) I maintain multiple personal interests that I seek to protect through this public process. My land and property line is 0.25 miles from the proposed site of the B2H Transmission Line as it runs through Union County on IPC’s “Morgan Lake Alternative Route.” I am the nearest Morgan Lake estate to the transmission line on the route and the most directly and immediately impacted.¹ I purchased my property over 30 years ago precisely because of the unique extent of the wildland and diverse native integrity as demonstrated by the Morgan Lake wetlands at the top of the Blue Mountains, which are directly and adversely impacted by the relevant section of the proposed site (the Morgan Lake Alternative Route).² In

¹ Despite the close proximity of my property to the Morgan Lake Alternative Route, I have never received any notification, correspondence, or contact of any kind from Idaho Power Company regarding the proposed route.

² The line as proposed runs within a mere 500 feet, and in full view of La Grande’s Morgan Lake Park, which lies just above my property and is a place I visit almost daily. Morgan Lake Park

addition to the impact on the proximate wildlands, of particular concern to me is the increased fire risk associated with running the transmission line across the windy ridgetop just above my home and tree farm, which are at the ridgetop and within 1,500 feet of the B2H Transmission Line where it skirts the Morgan Lake Estates. Here, my residential property is the closest to the transmission line and directly to the east and downwind. Further, the southern boundary of my property (Union County Tax Lot 702) includes the thirty-inch diameter “trans-Alaska” natural gas pipeline. As applied for, the B2H Transmission Line crosses this gas line within 0.5 miles of my property. I consider this to be an unacceptable and potentially explosive situation.

Further, as a stakeholder in this matter with knowledge of the subject land in Union County, I have repeatedly proposed to IPC a least-impact alternative concerning a ten-mile segment of the B2H Transmission Line in Union County since approximately 2010. While IPC never communicated with me regarding my proposal, which, significantly, was later identified to be the appropriate route based on federal environmental impact analysis, IPC did respond to my neighbor in 2015, whose proposal became the basis for the current Morgan Lake Alternative Route across the subject ten-mile segment. It is unclear why my, federally corroborated route was disregarded, while my neighbor was able to influence the proposed siting.

My personal interest is further reflected in my oral and written comments during the Public Hearing on the Draft Proposed Order for the Boardman to Hemingway Transmission Line (June 18-20 and June 26-27, 2019), which I incorporate by reference and have attached hereto as **Exhibit A**.

- 5) As a petitioner, I am also seeking to represent the “public interests”: fisheries, forest, range, recreation, wildlife, and visual resources with which I have expertise and am intimately acquainted. Based on my own environmental analysis of the section of the project relating to Union County (the Morgan Lake Alternative Route), as well as the analysis of the Bureau of Land Management evaluating the least environmentally impactful route through Union County, IPC’s proposed siting on the “Morgan Lake Alternative Route” in Union County does not adequately consider its impact as it relates to the local environment and is not consistent with: OARs 345-022-022; 345-022-0100; 345-022-0040; 345-022-0080; 345-022-0060;³ 344-021-0010(b)(D); or ORS § 469.370(13).

IPC’s proposed B2H facility has been reviewed by the United States Department of Interior’s Bureau of Land Management (BLM) under the National Environmental Policy Act (NEPA),

Recreational Use Development Plan states: “A goal of minimum development of Morgan Lake Park should be maintained to preserve the maximum of natural setting and to encourage solitude, isolation, and limited visibility of users...”

³ The reasoning as to why IPC’s Morgan Lake Alternative Route in its application is inconsistent with these regulations is detailed in my environmental analysis submitted with my public comment, incorporated here by reference and attached in Exhibit A.

42 U.S.C. Section 4321, et seq. The BLM has, in fact, identified the least impactful route through Union County, which is depicted on the interactive map on IPC’ website as the “Agency Selected Route (NEPA).”⁴ I participated in this public process and contributed to the information used to identify the “Agency Selected Route” for an approximate nine-mile segment in Union County. IPC has actively and admittedly disregarded this route identified by the BLM to be least impactful, and of which it has been aware since 2010. IPC has applied for site certificate across a different nine-mile route segment they call the Morgan Lake Alternative. For the public resources identified above, the Morgan Lake Alternative will result in greater negative impacts. As a petitioner, I am qualified to represent such public interests because: (1) I am a lifelong Oregon outdoorsman, the son of Oregon’s widely respected outdoorsman – Thomas H. McAllister; (2) I possess a B.S. from the University of Idaho in Wildlife Resources and Communications; (3) I have lived on and managed natural resources across the subject landscape for over 40 years; (4) as an independent natural resource contractor, I have made a career specializing in natural resources inventory for: federal, state, tribal, and private land stewards. Primarily, I gather data (facts) that are used for planning purposes – most often for NEPA analysis; and (5) the record will show that since IPC first announced their intent to build B2H, I have been committed, at every step in their process, to getting the project sited in the manner that will least impact the people of Oregon and their precious natural resources.

- 6) Existing parties to the proceeding cannot adequately represent my interests for a number of reasons. First, I am uniquely situated as to my personal interests in the matter. Not only is IPC’s proposed line only 0.25 miles from my property, I have never personally received any notification or communication from IPC regarding the route, my interests, or participation in the process in any way—despite the fact that I have personally been sending correspondence to IPC regarding the local siting of this project since 2008 (attached hereto as **Exhibit B** are my communications to IPC and the Oregon Department of Energy regarding the B2H project and siting). My unique long-term personal involvement in the matter (referenced in paragraph 5 above) and knowledge of the evolution of IPC’s routes across the subject segment, is further reason why existing parties cannot adequately represent my interests here. Further, as stated above, I have specific and intimate knowledge of the subject land, which I have acquired both professionally and personally over the past 40 years. Finally, my public comments, both oral and written, are distinct in highlighting IPC’s failure throughout the siting application process to adequately evaluate the line’s local impact on environment, resources, recreation, and public safety as evidenced by the existence—and active exclusion—of the environmentally preferred route that had already been identified by the BLM as the appropriate route through Union County based on consideration of environmental impacts.
- 7) The focus of the issues I intend to raise in the contested case concern a nine-mile segment of the B2H Transmission Line in Union County. This segment is referred to as the **Morgan**

⁴ <https://www.boardmantoohemingway.com/maps> (screenshot attached hereto as Exhibit C).

Lake Alternative in IPC's application. IPC compromised the process when they filed their Application for Site Certificate without following the Oregon Department of Energy process with respect to this route. Consistent with my public comments, I intend to raise that IPC has failed to adequately consider nearly every aspect of the Morgan Lake Alternative Route's impact on Union County's local resources and public safety. IPC's failure to adequately evaluate relevant factors in its corridor selection is laid bare by the fact that the least impactful route, consistent with the National Environmental Policy Act (NEPA), was, in fact, identified and this is not the route for which IPC has applied. In other words, the very existence of the Agency Selected NEPA Route, is evidence that IPC has not complied with OAR 344-021-0010(1)(b); and that the route applied for, as to Union County, is inconsistent with the considerations and goals of OARs 345-022-022; 345-022-0100; 345-022-0040; 345-022-0080; 345-022-0060. Further, IPC's application and deliberate exclusion of the NEPA route is inconsistent with ORS 469.370(13) which provides:

For a facility that is subject to and has been or will be reviewed by a federal agency under the National Environmental Policy Act, 42 U.S.C. Section 4321, et seq., the council shall conduct *its site certificate review, to the maximum extent feasible, in a manner that is consistent with and does not duplicate the federal agency review.* (Emphasis added).

IPC's failure to adequately evaluate relevant factors in selecting its corridor was made clear during a public meeting during which EFSC member Hanley Jenkin inquired as to why IPC had excluded the Agency Selected NEPA Route. IPC's response was as follows:

“Back when BLM was working on getting their ROD issue, the delays in their process happened, occurred. We had to move ahead with the state process late in the application. And by the time BLM came out with their ROD, their record of decision, it was too late for us to really go back at that point. Now when I had conversations with BLM's program manager about this and whether that created any issues for BLM, they recognized that the Glass Hill route that you're talking about and the Morgan Lake route were identical on parcels that were under control of BLM, federal government. So, the fact that in our state application we had the Morgan Lake route did not influence or impact BLM's record of decision in their process.”

(Public Hearing Tr. June 20, 2019, La Grande, OR at p. 151:1-18)(emphasis added). Thus, IPC concedes it disregarded the least impactful route despite its knowledge that it was environmentally preferred without any justification other than it purportedly was not required to include it. Significantly, IPC has been aware of a lesser impact route since 2010 when I first raised it to IPC, and of the BLM's assessment of this route as the preferred route based its environmental impact assessment in 2014, both before its site application including the current proposed Morgan Lake Alternative Route in July 2017. Accordingly, the inadequate justification provided in the public meeting also appears to be false based on the timeline of events. The admitted disregard without justification for an identified, NEPA-consistent (*i.e.*, least

environmental impact) route runs counter to OARs 345-022-022; 345-022-0100; 345-022-0040; 345-022-0080; 345-022-0060;⁵ 344-021-0010(b)(D); or ORS § 469.370(13).⁶

While the Oregon Department of Energy does not evaluate or consider alternative routes in evaluating the application for site certificate, it need not evaluate or compare the routes to find that the very existence of an identified, environmentally preferred route based on public interest considerations renders IPC's evaluation of the Morgan Lake Alternative inadequate and inconsistent with purpose of the regulations referenced above, and with the public interest. The fact that IPC did not, and could not, provide meaningful, or credible, justification to EFSC or the public as to why it ultimately disregarded the environmentally preferred route demonstrates that IPC has not adequately evaluated significant relevant factors with respect to the particular corridor selection.

I further wish to raise my environmental analysis (included in my public comment) of the impacts of IPC's Morgan Lake Alternative Route, which is consistent with the findings of the BLM and reflects why the BLM identified its preferred route.

- 8) My comments, both oral and written, addressing the issues outlined above are attached hereto as Exhibit A. Specifically, I address my concerns with respect to the aggregate environmental impacts of the Morgan Lake Alternative Route, and IPC's clear failure to adequately evaluate these impacts, evidenced by the exclusion of the Agency identified preferred, least impact route.

Sincerely,

Michael McAllister

60069 Morgan Lake Road
La Grande, OR 97850

⁵ The reasoning as to why IPC's Morgan Lake Alternative Route through Union County is inconsistent with these regulations is detailed in my environmental analysis submitted with my public comment, incorporated here by reference and attached as Exhibit A.

⁶ IPC's active disregard for the identified least impactful route is also directly counter to UCZPSO 20.09(5)(D) (ENVIRONMENTAL) which requires that consideration should be given to alternative sites in Union County for proposed development that which would create less of an environmental impact of any on the resources listed in Section 20.09(1), if alternatives are available. Contrary to the findings in the Proposed Order (p. 175:20-27), IPC cannot have conducted a comprehensive avoidance and minimization analysis for all environmental resources and other resources to create the least overall impact, as evidenced by the pre-existence of route with least overall impact, which, IPC admittedly ignores. (*See* Public Hearing Tr. June 20, 2019 at 151:1-18).

EXHIBIT A

EXHIBIT A



Oregon Department of Energy and the Energy Facility Siting Council

Public Hearing on the Draft Proposed Order
for the Boardman to Hemingway Transmission Line
June 18-20 and June 26-27, 2019, 4:30-8 p.m.
Public Written or Oral Testimony Registration

Name (mandatory) MICHAEL MCALLISTER

Mailing Address (mandatory) 60069 MORGAN LK RD
LA GRANDE OR 97850

Phone Number (optional) 541 786 1507 Email Address (optional) _____

Today's Date: 6/20

Do you wish to make oral public testimony at this Hearing: Yes No

Written comments can also be submitted today.

All written comments must be received by the deadline, July 23, 2019, 5 p.m. PDT to:

Kellen Tardaewether, Senior Siting Analyst
Oregon Department of Energy
550 Capitol Street NE
Salem, OR 97301
Fax: 503-378-6457
Email: B2H.DPOComments@oregon.gov

Note: by submitting written or oral testimony, you will receive a notice from the Oregon Department of Energy at a future date of the opportunity to request party status in a contested case hearing on the proposed facility.

Written Testimony

(Please print legibly – Use the back for additional space if needed. Additional written comments may be attached to this card.)

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1 litigation that had proven that. So I have to trust
 2 them on that, I guess.
 3 I think you'll have to understand, I'm a
 4 little bit skeptical about this. Idaho Power hasn't
 5 been -- I haven't been contacted -- I mean, I have now.
 6 But through this planning process, I really wasn't
 7 contacted. Nobody came to my place and looked at the
 8 site. I don't know if they know there is a pond right
 9 next to where they want to put this tower. I don't know
 10 if they understand I had to put a well in 700 feet deep,
 11 the water is amazing. I don't know if that will change.
 12 The road coming up Hawthorne has to have a lot
 13 of annual maintenance on it for just three houses. The
 14 idea of them hauling that heavy equipment, and I don't
 15 know what they are going to do to improve or better that
 16 road, my concern is they will make it worse. Only
 17 because of the limited history that I've had with them
 18 hasn't really been very supportive. Tonight was the
 19 first night that I got a chance to listen to this many
 20 people talk about their concerns.
 21 Honestly, I'm more concerned now than before I
 22 came in. I have heard a lot of information tonight that
 23 kind of would make, I think, anybody in my shoes afraid
 24 of the future of what's going to happen up there. I
 25 love this place. I think it's going to change

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1 dramatically. That is all I have.
 2 HEARING OFFICER WEBSTER: Thank you.
 3 Following Mr. McAllister we have Charles
 4 Gillis on deck.
 5 MR. MICHAEL McALLISTER: I'm Michael
 6 McAllister. I live at 60069 Morgan Lake Road right at
 7 the top where you confront the wind as you break the
 8 summit.
 9 I am of the Move B2H camp, an advocate of
 10 moving and have been for at least 10 years, when the
 11 initial proposed route was presented. I am a natural
 12 resource inventory expert, and made a career
 13 inventorying fish, forest, wildlife, range, ozone
 14 damage, carbon sequestration. I collect facts from the
 15 landscape and have been in La Grande since 1979, when I
 16 lived right below lower Morgan Lake, which apparently is
 17 not recognized by Idaho Power.
 18 The eagles built two nests right above my wall
 19 tent where I lived as I went to school here at Eastern
 20 Oregon University. And it's really a pleasure to be
 21 here tonight with the community and hearing all of their
 22 different concerns and considerations. It's always been
 23 above my mental capacity to explore the rightness or
 24 wrongness of the power line; so I have focused on moving
 25 B2H.

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1 For everybody here, if you are to looking at
 2 the computer screen that's up on the back wall, there is
 3 a third power line, which is the green route. There is
 4 red, green, and yellow. And I'm pleased to see that the
 5 green line was turned on this evening. It wasn't on
 6 when I originally looked at it.
 7 I also came in late and I was told that I'm
 8 not supposed to advocate for the western route
 9 recognized by the BLM and environmental analysis because
 10 it has not been applied for. That route is what I've
 11 been involved with advocating for for 10 years now,
 12 since day one, really.
 13 I think I probably wrote Adam Bless, with the
 14 Oregon Energy Council, probably the first letter he
 15 received with my concerns about siting this line through
 16 Union County here. And with an empirical background for
 17 virtually every acre of the stretch from Hilgard to Ladd
 18 Canyon that probably nobody else has, I feel like it's
 19 my community contribution to represent it as completely
 20 and as well as I can.
 21 The green route is by far the superior route
 22 when you consider just about any aspect; fish, forest,
 23 wildlife, range, fire, feasibility, all the above. In
 24 my analysis collecting facts relative to all these
 25 resources, the green route is by far the best route.

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1 And I can honestly say that it's a travesty that, for
 2 whatever reason, Idaho Power has chosen to completely
 3 disregard that route. I have seen no evidence in
 4 10 years that Idaho Power has shown any consideration of
 5 that route. I think it's appalling.
 6 I do credit Idaho Power for having in the
 7 10 years considered routes through John Day, extensively
 8 routes through the Blue Mountains, and having recognized
 9 the importance of not further fragmenting large-scale
 10 forest tracks, and that the I-84 corridor is probably
 11 the best route. But specifically through this neck of
 12 the woods, through Union County, Ladd Canyon, I think
 13 every concern I've heard here this evening can be
 14 mitigated by placing this transmission line on the
 15 environmentally-preferred route.
 16 And I am providing comment, written comment
 17 that will specify as well as I can with the time that I
 18 have. I don't believe it's up to me to demonstrate a
 19 burden of proof to this end, but I'm doing my best to do
 20 that.
 21 And I thank you all for your listening here
 22 this evening.
 23 HEARING OFFICER WEBSTER: Thank you.
 24 Following Mr. Gillis, we will hear from, I
 25 believe it's John Winters, if I'm reading that

Michael McAllister, 60069 Morgan Lake Road, La Grande, Oregon, 97850, (541) 786-1507.

June 23, 2019

Todd Cornett, Energy Facility Siting Division Administrator, Energy Facility Siting Division, Oregon Department of Energy, 550 Capitol Street NE, 1st Floor, Salem, OR, 97301, todd.cornett@oregon.gov .

Dear Mr Cornett,

On January 14, 2019, I delivered to you a letter (attached – page 2) to express my concerns about Idaho Power Corporations (IPC) “incomplete application” for *Site Certificate* of their **Boardman to Hemingway Transmission Line** through Union County. The application is incomplete because IPC did not include the Agency Selected Route, adopted by the National Environmental Planning Act (NEPA) process – conducted by the U.S. Department of Interior’s Bureau of Land Management.

This past Thursday – June 20, 2019 – the **Energy Facility Siting Council** held Public Hearing on the *Draft Proposed Order and Request for Comments* – here in Union County. I attended that meeting and I did make comments regarding my position with regards to Idaho Power Corporations Incomplete Application for Site Certificate.

In brief, the most significant point that I made was – the **Agency Identified Route A** would affectively mitigate nearly all the concerns expressed by the many attendee’s comments at that meeting.

Following the public comments, two representatives from Idaho Power were seated before the Siting Committee, this so that committee members could ask questions in response to the public comments previously made.

Committee Member Hanley Jenkins asked the only question and he phrased it this way – **“I am going to ask you one very hard question – why did Idaho Power Corporation not include the BLM Agency Identified Route into their Application”?**

Idaho Power’s Mark Stokes provided the following as an answer – **the BLM Agency Alternative was not included because their process was being drawn out – we were under time constraints to submit our application and went ahead without it.**

There were no further questions, and no further opportunity for the public to respond to this Revelation.

I have been involved over ten years in advocating for what is now the BLM Agency Identified Route A.

Idaho Power Corporation and others are currently processing an incomplete application. IPC has been asked to amend their application repeatedly, too include the **Agency Identified Route A**. This issue should not become a Contested Case.

Respectfully



Michael McAllister

RECEIVED

JUN 26 2019

DEPARTMENT OF ENERGY

Michael McAllister

January 14, 2019

Todd Cornett, Energy Facility Siting Division Administrator, Energy Facility Siting Division, Oregon Department of Energy, 550 Capitol Street NE, 1st Floor, Salem, OR, 97301, todd.cornett@oregon.gov .

Dear Mr Cornett,

I am gravely concerned that Idaho Power Corporation (IPC) has submitted an incomplete application to Oregon's Energy Facility Siting Council (EFSC). Their application for *Site Certificate* of the Boardman to Hemingway Transmission Line through Union County does not include for consideration, the Agency Selected Route, adopted by the National Environmental Planning Act (NEPA) process – conducted by the U.S. Department of Interior's Bureau of Land Management. The two routes that IPC has applied for: **Proposed Route (B)** and **Morgan Lake Alternative (3)**, were developed late in the NEPA process and have not undergone environmental analysis or public comment. IPC's failure to gather satisfactory evidence has limited the ability of the public, EFSC, and other regulators in their ability to make fully informed decisions in the public interest.

I am requesting that Idaho Power Corporation amend their Oregon EFSC Application for Site Certificate to include the U.S. Bureau of Land Management's **Agency Identified Route A** for consideration by the State of Oregon EFSC board members. It is the only route that was fully subjected to environmental analysis and public comment during the Federal EIS. It was established through community consultation and environmental review in a multi-year process. It must be on the table for full consideration by Oregon EFSC for a "Complete Application" review.

I am Michael McAllister, a long-time resident of Union County and private contractor specializing in natural resources inventory and management. I hold a Bachelor of Science degree, *Wildlife Resources*, from the University of Idaho. As a 40-year resident on Morgan Lake road, I have an intimate knowledge of the geology, habitat, environmental issues, wildfire hazards and recreational value of the area. My interest is both professional and personal.

Oregon Department of Energy and Idaho Power Corporation records show that, since 2008, I have been encouraging Idaho Power Corporation to site the Boardman to Hemingway (B2H) Transmission Line in a manner, whereby the cumulative impacts of the Right-Of-Way will have a minimal impact on Oregon's public and their natural resources.

Attached is my comparative analysis of IPC's two routes (B and 3) and the BLM's Agency Selected Route (A). This analysis demonstrates that the Agency Selected Route minimizes risks to public safety and imposes the least impacts on the natural resources of both the City of La Grande and Union County.

At this time, I ask that Idaho Power Corporation amend their Oregon EFSC Application for Site Certificate to include additional environmental and community evidence regarding their proposed routes and to include the BLM *Agency Identified Route A* for consideration.

Respectfully



Michael McAllister

Public Comment: Michael McAllister

**Proposed Boardman to Hemingway Transmission Line
Site Certificate Application Review**

June 23, 2019

Introduction

The reader is advised to follow along using the Google Earth maps provided at <http://www.boardmantohemingway.com/LandownerMaps.aspx>. Expand the map to full screen and zoom in on Routes A, B, and 3 near La Grande, Oregon. Note you can switch between Earth View, Map View, and Topography View using the tab at the top left of the screen. To see vegetation coverages, use Earth View. To see geographic features switch to Topography View.

Map 3 (Union County) Legend:

- (A) – BLM Agency Selected Route (NEPA) - Route Color is Green on Map;
- (B) – Proposed Route (EFSC) – Route Color is Red on Map;
- (3) – Morgan Lake Alternative (EFSEC) – Route Color is Blue on Map.

Proposed Route B (EFSC)

IPC's Proposed Route has been identified as a best attempt to site B2H along the existing 230 kV transmission line as it passes through Union County. In 2008 and again in 2012, I asked that IPC construct their new B2H transmission line adjacent to the existing 230 kV transmission line passing through La Grande and Union County. After much further review of the evidence presented, I deemed that such a route would not meet the screens for the 500 kV transmission line for the following reasons:

- 1) The valley slopes to the west above La Grande are steep, with unstable geology; many areas have been identified by the U.S. Geologic Survey as unsuitable for construction.
- 2) La Grande's western skyline viewshed would be severely impacted. Both the City of La Grande and Union County have asked IPC to keep B2H out of their viewshed.
- 3) The "Powerful Rocky" stretch of Oregon Trail, and its archaeological artifacts, would be desecrated by the construction and continued maintenance requirements of the B2H towers.
- 4) Impacts to Oregon's Ladd Marsh Wildlife Management Area would be severe and permanent. Ladd Marsh was established as a wildlife mitigation area for past federal projects and the refuge should not be compromised. IPC itself recognizes and designates Ladd Marsh as "irreplaceable."

Based upon the above considerations, **Proposed Route (B)** has *High Cumulative Impact*, and few mitigation options.

Comparative Analysis of BLM Agency Selected Route (A) and Morgan Lake Alternative Route (3)

From here forward I will explain and contrast the **Agency Selected Route A**, with the **Morgan Lake Route 3**. The analysis begins at the Divergence Point – where Routes A and 3 diverge. The analysis then proceeds from north (DP), then south to the Convergence Point (CP) of the two routes near Ladd Canyon. The distance between DP and CP is approximately eleven miles for both Routes: A and 3. The elevation at DP (north end) is approximately 3,400 feet. The Elevation at CP (south) is approximately 4,800 feet. The Divergence Point is located near the middle of section 7, Township 3 South, Range 37 East, approximately 1.5 miles south of the Highway 244 junction with Interstate 84 at Hilgard. It is approximately 0.75 miles south of Highway 244, traveling south on the Whiskey Creek Road.

Geographic Setting

The biggest difference between the two routes is how each of them has been established geographically. This can best be recognized by comparison in *Topography View*. Recognize that the Grande Ronde Valley is the dominant geographic feature for the region, and further that it is oriented in a slightly northwest by southeast alignment - as is the Blue Mountain Range along the valley's west side. Recognize that from Divergence Point (near the Grande Ronde River at Hilgard) that the landscape rises as you go south following the west side of Grande Ronde Valley, all the way to near the Convergence Point above Ladd Canyon.

Now notice how the two routes, A and 3, ascend from 3,400 feet up to just over 5,200 feet elevation near the high point at Glass Hill. And notice that between the two routes there is a series of parallel ridges and drainages that are also oriented in the northwest by southeast alignment. This alignment is caused by the orientation of the faults associated with the origins of the Grande Ronde Valley. The highest of the fault generated-ridges is the one following the Mill Creek Fault – which also establishes the west edge of the valley. This highest ridge is known by geologists as the Glass Hill Monocline – **Morgan Lake Route 3 sites the transmission line along this monocline ridgetop.**

Comparatively, the Agency Selected Route A is the lower elevation route where the mean elevation is approximately 4,100 feet. See that from DP Route A proceeds southerly at an azimuth of approximately 150 degrees, along the same northwest/southeast geologic alignment. Route A gains elevation slowly as it moves up “Graves Ridge” in a straight line for approximately 5.0 miles. “Graves Ridge” is a broad gentle slope, where the only vegetation is sparse grass and forbs – much of it is rocky scab vegetation. The Graves Ridge Road (East Fork of the Whiskey Creek Road) mostly parallels the Route A with an elevation gain of about 200 feet per mile – a slope grade of just 5 percent. Importantly, note that existing roads provide excellent road access for at least two thirds of the Route A. These roads are bladed across solid basalt with few corners and no steep grades. Route A then makes only one turn, easterly to approximately 110 degrees. On this course, **Agency Selected Route A crosses the Rock Creek drainage 8.5 miles upstream from the Grande Ronde River – above the lower 6 miles deemed important to Threatened Snake River Chinook Salmon.**

Comparatively, the Morgan Lake Route 3 on the other-hand, moves east from DP and away from the Whiskey Creek Road. Route 3 then crosses the Rock Creek watershed just three miles up-stream of the Grande Ronde River. Note that there are four distinct drainages that make up the Rock Creek Watershed, from west to east they are: Graves, Little Rock, Rock, and Sheep Creeks. Notice that all four of the drainages converge near to where Route 3 crosses Rock Creek. There are no real existing roads

that access the north two thirds of Route 3. After crossing Rock and Sheep Creeks, Route 3 then intersects the Glass Hill Monocline (near Morgan Lake), where it turns southerly and follows the ridgetop. **Morgan Lake Route 3 is the high elevation route where the mean elevation across the route is approximately 4,500 feet.**

Soil Protection - OAR 345-022-022

The 400 feet mean elevation difference between (A and 3) is the predominant variable responsible for the difference in soils. The higher elevations along the top of the Glass Hill Monocline gather more precipitation, summer temperatures are cooler, more layered vegetation provide more shading, and windblown snow and soil particulates accumulate. The variability in soils is well demonstrated when you superimpose the **Union County Soil Survey Map** over IPC's Route Map overlay. Using this soils inventory, I have identified the four predominant soil types for both: **Route A and Route 3. They are listed hear from most coverage, to least coverage:**

Agency Selected Route A, Soils are: 1) = 69C - *Watama-Gwinly complex*, is on biscuit-scabland uplands, vegetation is mainly bunchgrasses, and annual forbs; 2) = 35E – *Klicker-Anatone complex* - mountainous uplands where the native vegetation is mainly Ponderosa pine, bunchgrasses and elk sedge, a warm moist plant community suited to the production of pine, on a patchy basis - where soil is deep enough, also as rangeland and wildlife habitat. 3) = 4E *Anatone extremely stony loam* - is shallow, well-drained soil at ridgetops, and on south and west facing slopes where vegetation is mainly blue-bunch wheatgrass, Idaho fescue and stiff sage; used mainly as rangeland. 4) = 58E – *Starkey very stony silt loam* – shallow well drained soil on uplands, the vegetations is mainly bunchgrasses and annual forbs, Idaho fescue, blue-bunch wheatgrass and Sandberg bluegrass. The unit is used mainly for rangeland. Collectively, the soils makeup for Route A, tend to be shallower, and of residual decomposed basalt in its origin. The site index for timber production is lower, and shrubs are limited in the vegetation composition. **Agency Selected Route A crosses 44% forested acres - mostly warm dry plant communities. And it is noteworthy that Route A crosses 33% less timber acres than does Morgan Lake Route**

Morgan Lake Route 3, Soils are; 1) = 4E - *Anatone extremely stony loam*, is shallow, well drained, at ridgetops and on south and west facing slopes, derived predominately from basalt; vegetation in mainly blue-bunch wheatgrass, Idaho Fescue and stiff sage; used mainly as rangeland. 2) = 32E - *Kalema very stony silt loam*, moderately deep, well drained, mainly coniferous forest and an understory of shrubs, forbs and grasses; used mainly for timber production, also used for woodland grazing and wildlife habitat. 3) = 33E – *Klicker stony silt loam*, moderately deep, well drained, mountainous uplands, vegetation is mainly coniferous forest with bunchgrasses annual forbs and perennial shrubs, unit is used mainly for timber production, also for woodland grazing and wildlife habitat. 4) = 61E – *Ukiah-Starkey complex*, Ukiah moderately deep and well drained, vegetation mainly Idaho Fescue, Blue-bunch wheatgrass and Sandberg bluegrass; used mainly as rangeland. Collectively, the soils makeup for Route 3, tend to be deeper, loamier, of residual decomposed basalt, but with more volcanic ash composition. The site index for timber production is higher, where shrub composition is greater. **Morgan Lake Route 3 crosses 66 % forested acres mostly cool moist plant communities, and that is 33% more timber acres than does the Agency Selected Route A crosses.**

Recreation - OAR 345-022-0100

Protected Areas - OAR 345-022-0040

Scenic Resources – OAR 345-022-0080.

Morgan Lake Route 3 also establishes towers within 500 feet of Morgan Lake Park. Here, the impact on La Grande's public will be *High*. The first stated goal in the Morgan Lake Park Recreational Use and Development Plan (Section 1, Page 2) - *A goal of minimum development of Morgan Lake Park should be maintained to preserve the maximum of natural setting and to encourage solitude, isolation, and limited visibility of users while at the same time providing safe and sanitary condition for users.* Also noteworthy is the fact that the **City of La Grande Chamber of Commerce** has long promoted Morgan Lake Park as the #1 Recreation Tourist Destination in the La Grande Area. And the State of Oregon designated **Morgan Lake Park as a State Wildlife Refuge** in the 1960s. Today Oregon Department of Fish and Wildlife identifies the Lake as an easy access fishing destination for the handicapped.

Morgan Lake Park encompasses two separate Lakes. Morgan Lake is 70 acres in size and is developed with road access and camping. Twin Lake is 27 acres in size, undeveloped, and with no road access or camping. **Twin Lake has been identified by both Federal and State programs to conserve, restore, and protect wetlands.** Oregon has developed a **Wetland Conservation Strategy** (Oregon Division of Lands, 1993). This Strategy is implemented through the Oregon Wetlands Inventory and Wetlands Conservation Plans (See Webpage). This planning process allows local governments to balance wetlands protection with other land-use needs. **Twin Lake is recognized as an important, persistent, emergent vegetation wetlands, which includes both submersed and floating plants.**

Fish and Wildlife Habitat - OAR 345-022-0060,

Morgan Lake Route 3 crosses Rock Creek approximately 2.5 miles upstream from the Grande Ronde River - just below where Sheep Creek flows into Rock Creek. Here is where the best water quality and the coolest water temperatures exist during the heat of summer. And here is where Route 3 will cross. Rock Creek is not a Chinook Salmon spawning habitat. However, **the lower six miles of Rock Creek have been identified as important habitat for both Steelhead and Chinook Salmon smolts.**

Twin Lake, at 4,100 feet elevation, supports one of the most diverse waterfowl nesting communities in the Blue Mountain Ecoregion. Most unusual is the nesting by: Ring-necked Ducks, Red Head, Rudy Duck, Blue-winged Teal, Shoveler, and Pied-billed Grebe. The species diversity surrounding this wetlands anomaly at 4100 feet elevation, is enhanced by the natural basalt rim rocks forming the south and west sides of the lake. Here the vegetation is a diverse mixture of native shrubs, aspen, black Cottonwood, and Ponderosa pine. These surrounding shrub and tree communities support as rich an assortment of both migratory and nesting passerine birds as can be recognized across the Blue Mountain Ecoregion. **Also frequenting these habitats are two bird species identified on the Oregon Department of Fish and Wildlife – Sensitive Species List: Great Gray Owl, and White-headed Woodpecker.**

In 2013 a Pair of Bald Eagles constructed a nest in the top of a large Ponderosa pine at the west edge of Twin Lake where they fledged their first two young. GPS coordinates (Degrees, Minutes,

Seconds) for Nest-1 are: N 45°, 18', 06.0" by W118°, 08', 44.2". Route 3 places a Tower 580 feet from Nest 1. The pair of Eagles has since built Nest-2 at N 45°, 17', 45.9" by W118°, 08', 54.4". Route 3 places a Tower 0.31 miles east of Nest 2. Route 3 places the transmission line between the two nests. Here I will point out that IPC's Avoidance Criterion Identifies Bald Eagle Nests as High Avoidance – recognizing a Buffer of one mile. The Morgan Lake Route 3 demonstrates a disregard for these Bald Eagles. Here at the ridge-top, Morgan Lake supports an entire ecosystem of scale where the fall hawk migration follows south up the monocline ridge. Here, watching Bald Eagles and their interaction with fishing Ospreys is a popular nature spectacle. If the Morgan Lake Route 3 is built, the spectacle will become a loud "crackling" transmission line towering over Morgan Lake Park.

South of Morgan Lake, Route 3 advances southeast up the Glass Hill Monocline and into renowned high-density elk breeding grounds. Here in the upper reaches of Sheep Creek are numerous sedge meadow springs that are used heavily as elk wallows. All "muddied-up", large mature bulls now strut out onto the open bunchgrass slopes to breed on Cowboy and Sheep Ridges. Landowners here have a long history of promoting the Elk Resource as a viable economic and recreational endeavor. Oregon's Governor Pierce and Supreme Court Justice William O. Douglas once made this habitat their personal "getaway." One neighbor has made land acquisitions and established conservation easements to consolidate and preserve the native integrity of the area. The Rocky Mountain Elk Foundation is a cooperator in these efforts, as is the case with the Eastern Oregon University's Rebarrow Forest Project. Before the white-man's time, the Glass Hill Monocline was the gathering location for hundreds of horses that were summer pastured on what we now call the Starkey Range Lands. This is sacred ground, that has been long recognized for its richness and integrity of native vegetation.

Threatened and Endangered Species – OAR 345-022-0060

Morgan Lake Route 3 could impact Snake River Chinook Salmon habitat and water quality where the route crosses Rock Creek.

Oregon's Sensitive Species Rule – OAR 635-100-0040

Morgan Lake Route 3 will affect known Great Gray Owl and White-headed Woodpecker habitats across the 2.5 mile stretch between Rock Creek and Morgan Lake.

Health and Safety Standards for Siting Transmission Lines - OAR 345-024-0090

Specific Standards for Facilities Related to Underground Gas Storage Reservoirs - OAR 345-024-0030

At this point we need to consider the Transmission-line Tower that would stand closest to Morgan Lake recreationists. It is located within 100 feet of a thirty-inch diameter Natural Gas Line (Trans-Alaska, 1st leg constructed 1982). Here the gas-line is less than 600 feet from Morgan Lake Park. And here at the ridge-top is a known zone of weakness for said pipeline. From the top of the Glass Hill Monocline, the pipeline drops steep downslope in both directions – east and west. Over the years, there have been multiple pipeline ruptures less than a mile from Morgan Lake. This explosive potential exposes the residence of Morgan Lake Estates and the recreationist at Morgan Lake Park to unnecessary risk. IPC also needs to consider how their stray energy electrolysis will erode this Trans-Alaska Natural Gas Pipeline. The Morgan Lake Route 3 crosses the natural gas line twice - once at Morgan Lake, and again it crosses at Rock Creek – approximately 2.5 miles to the northwest. Even more noteworthy, is the fact that the Agency Selected Route A avoids pipeline crossing all together.

Looking at the statistics for American transmission lines, I see that between 1984 and 2006, approximately 44% of all power blackouts were weather-related, and of those – 11% were caused by lightning activity. As a resident of the Morgan Lake Estates, I am extremely concerned that IPC's transmission line may act as a source of ignition for leaking gas from an aging pipeline, as well as for uncontrolled wildfire - we have recently seen this in California. My residential property is within 100 feet of the pipeline, and within 900 feet of the Morgan Lake transmission-line/powerline crossing. In 2005, Union County conducted a County-wide Wildland Urban Interface Fire Hazard Analysis. The resulting Analysis was published using Federal grant monies. The document identifies fourteen different Wildland Urban Interface (WUI) Zones within Union County. Based upon a set of Risk Analysis Criterion, each of the 14 WUI Areas were ranked from High-1 to Low-14. The Morgan Lake Estates WUI was given the Highest (#1) Ranking. It is also noteworthy that along the Agency Identified Route A, there are no residences in any direction for well over a mile.

Of the three routes under consideration, the **Morgan Lake Route 3** gets the **Highest Fire Risk Rating for the following reasons**: it follows across the top of the Glasshill Monocline adjacent to the Grande Ronde Valley. The construction of a 200-foot-tall transmission line towers, along the highest ridgetop, where they are exposed to the most turbulent weather conditions is a recipe for fire. Here at this high elevation, the Morgan Lake Route 3 will be cut through *Cold Moist Ecotypes* that are dominated by mixed-conifer forests. Here, dense volatile fuels are exposed, where winds are the norm, and fuels dry quickly. It is highly significant that this area of the Blue Mountains is in the major lightning path, where cumulus buildups move up from the southwest. The storms track across the Blue Mountains strengthening as they move northeasterly. And as the storms cross the Glass Hill Monocline and the adjacent Grande Ronde Valley, thermals increase lightning activity at the ridgetop – not a good place for a major transmission line. Note here that the **Agency Selected Route A** rapidly drops (west) down from the Glass Hill Monocline and onto a lowland ridge where winds and weather are diminished, and where vegetative fuel is sparse short grass vegetation of low flammability.

As a resident in the Morgan Lake Estates for 40 years, I have always considered Morgan Lake to be our **greatest Fire Fighting Asset**. At the ridgetop, Morgan Lake provides fire helicopters with buckets the ability to come and go from any direction without limitations. Morgan Lake is among the best water sources for helicopters in the region. **The proposed Morgan Lake Route 3 would significantly change helicopter activity around Morgan Lake, creating an unnecessary liability that puts us all at risk.**

Additionally, the Morgan Lake Route 3 (at the ridgetop) poses additional aviation liabilities that need consideration. Most air traffic in and out of La Grande Airport, the U.S. Forest Service Airtanker Base, and the Life Flight Base comes from and goes out to the west. Low Flying aircraft cross the Morgan Lake ridgetop commonly. Again, the **Morgan Lake Route B** creates unnecessary liabilities that puts us all at risk. **The Agency Identified Route A** eliminates these liabilities.

SUMMARY

Idaho Power's Proposed Routes offer Oregon decision makers a false choice. It is likely that **Idaho Power's Proposed Route B** will not achieve License Approval by EFSC. By default, IPC's request would become permit **Morgan Lake Route 3**. IPC put these two routes forward in the "11th hour" of the Final EIS. Neither route was evaluated by a credible environmental review team. I have dedicated my own time to comparing and contrasting **Morgan Lake Route 3** with the **Agency Identified Route A**

because Oregon's decision makers and the public deserve a full vetted and evaluated alternative. The **Morgan Lake Route 3 is High Impact.**

At the ridgetop, the Morgan Lake Route 3 would have greater impacts on: protected areas, recreation, scenic resources, soils, forested acres, and fish and wildlife habitats. The Morgan Lake Route poses unnecessary risks to: public health and safety, the wildland urban interface, fire suppression support systems, and to aircraft transportation. Morgan Lake Route is more topographically complex, has very limited road access, and requires much more disruption to wildlands. **All said, I calculate that the Morgan Lake Route 3 is a significantly more expensive transmission line segment to build, and to maintain.**

Alternatively, the Agency Identified Route A is topographically simple, has extensive solid road access, and crosses uninhabited lowlands. Here, soils are thin, vegetation is sparse and of low flammability. **It is clear to me why Route A is the Agency Identified Route. And it remains a complete mystery - why IPC chooses to disregard the Agency Identified Route.**

Idaho Power has been asked repeatedly – why the **Agency Identified Route 3** was not included in the EFSC Application? On October 17, 2018, IPC and EFSC held a joint informational meeting at the Blue Mountain Conference Center in La Grande. A member of the audience asked IPC's Jim Maffuccio the question – **why are you not using the BLM's environmentally preferred route?** His vague answer was essentially - **we have been working with landowners; there are habitat concerns; the tribes have some concerns; we are communicating with the BLM.** There has been no further elaboration or publicly presented documentation.

I am now asking EFSC, to ask Idaho Power Corporation, to amend their Oregon Application for Site Certificate - Include the Agency Identified Route A for consideration.

Going forward, I also ask that EFSC consider seriously the issues of Health and Public Safety. And I ask that EFSC members consider the **Oregon Conservation Strategy (OCS)** as they weigh the impacts that each of the three routes: A, B, & 3. OCS is the state's overarching strategy for conserving fish and wildlife resources. It serves as the official State Wildlife Action Plan for Oregon, and it is a requirement for the federal State Wildlife Grant Program. The objective of OCS is to conserve fish and wildlife resources by maintaining and restoring *functioning habitats*. OCS breaks the state into *Ecoregions* - the entirety of Union County is within the *Blue Mountains Ecoregion*. It is critical that EFSC members understand that the setting for this transmission Line analysis is arguably in one of the Highest Functioning Habitat Areas in the Blue Mountains Ecoregion. The variability of topography, elevation, soils, native vegetation, and wildlife habitats along the breaks of the Grande Ronde Valley is very high, especially for a two-mile radius surrounding Morgan and Twin Lakes...

Respectfully 

Michael McAllister (Owner), Wildland Resource Enterprises, 60069 Morgan Lake Road, La Grande, OR, 97850, wildlandmm@netscape.net, (541) 786-1507 .

cc. EFSC Facility Siting team – energy.siting@oregon.gov, Mark Stokes – Applicant/Certificate holder – mstokes@idahopower.com, Scott Hartell – Planning Director for Union County - shartell@union-county.org , Don Gonzale – BLM B2H NEPA Coordinator – dgonzale@blm.gov .

EXHIBIT B

EXHIBIT B

Michael McAllister
Wildland Resource Enterprises
wildlandmm@netscape.net
541-786-1507

October 5, 2010

Keith Georgeson
Boardman to Hemingway Project Leader
kgeorgeson@idahopower.com
208-388-2034

Dear Mr. Georgeson:

Attached are the two letters that I have previously written responding to the BH2 Transmission Project. As you may recognize, I have made a genuine attempt to at providing input both on the project as a whole, as well as specifically on the line section identified as section C21. I have been satisfied with the responsiveness of Idaho Power's input process up to this point.

Yesterday, I was contacted by landowner John Williams – to whom you sent a letter(dated October 1st) and a map of describing a “new alternative route” that crosses through his property. In fact this in not a new alternative as I read it – it is the original route proposed by Idaho Power before any input what-so-ever. It was this “new alternative” that first drew my attention as an unacceptable route back in 2008.

Please recognize that I previously provided Idaho Power with hard copy USGS 7.5 minute topo quad maps with a very specific delineation for the sighting of section C21 which would have the least impact - taking the following into account: 1) View-scapes; 2) Use of existing Roads; 3) Forest Resources; 4) Wildlife Resources.

The south or western (alternate route) for section C21that the planners have developed is very close to the best sighting considering. And as I have previously stated, I stand committed to getting this sighting right.

I have to say that I am currently very uncomfortable with the way that you have now presented this “new alternative” to John Williams. I think that it is a bit tacky to now be playing landowner against landowner which is what you are doing in your October 1st letter to John Williams. As I read your letter, the “argument for this proposal” has little to no merit.

I look forward to participating in a more credible analysis for the specific sighting for section C21 of the BH2 Transmission Line.

Respectfully - Michael McAllister

Michael McAllister
Wildland Resources
60069 Morgan Lake Road
La Grande, Oregon 97850

January 31, 2008

Adam Bless
Oregon Department of Energy
625 Marion St. NE
Salem, Oregon 97301

I am writing to make input on the sighting proposal for the Idaho Power – Boardman to Hemingway Transmission Power-Line (BHTP). I understand that there was a short window of time to make input in early November. I was elk hunting in the high Wallowa Mountains at the time.

I am a lifelong resident of Oregon - I am also a Wildlife Resource graduate from the University of Idaho, and I work as a natural resources consultant. In 1981 I moved to the Rock Creek Ranch (now the Elk-song Ranch) outside of La Grande. The proposed BHTP route completely bisects these ranches across the top of the Blue Mountains to the crossing of the Grande Ronde River near Hilgard. I now own, and live on, a twenty seven acre forest tract in the Morgan Lake Estates just to the east. I am asking that you site BHTP “in my front yard” where I will view it on the existing Bonneville Power Administration corridor. I am asking for this because the proposed route will bisect, fragment, and impact what is one of Oregon’s premier pristine landscapes – the Starkey Range and Forest Lands that are world famous as one of North America’s most important Elk Ranges. I am empirically familiar with the entirety of this landscape and I know the extent to which these wild-lands will be visually impacted and interrupted.

This Starkey landscape slopes, as a broad plateau, from the south to the north – from the Elkhorn Mountain Range to the Grande Ronde River. The proposed power-line corridor will be visually intrusive across much of the entire plateau landscape of the Grande Ronde River basin – designated as a State Model Watershed.

Placement of BHTP on the proposed route from Ladd Canyon to Hilgard would come at too great of a cost to Oregon’s wild-lands. It should be situated on the existing BPA right-of-way which is routed through highly modified landscapes near the Interstate 84 corridor. Thank you for your very careful consideration of this matter.

Respectfully,

Michael L. McAllister

Cc: Dan Olmstead, Idaho Power.

Michael McAllister
Wildland Resources
60069 Morgan Lake Road
La Grande, Oregon 97850

January 6, 2010

Adam Bless
Oregon Department of Energy
625 Marion St. NE
Salem, Oregon 97301

On January 31, 2008 I wrote you a letter responding to the request for input on the siting proposal for the Idaho Power – Boardman to Hemingway Transmission Power-Line (BHTP). More recently I attended the Central Project Advisory Team Meeting #4, held in Baker City on December 17, 2009.

I was pleased to see that the advisory team has conducted a thorough analysis for a wide array of alternative route possibilities. After careful consideration of the various siting proposals, I see that the “I-84” route is both: most cost effective, and the least environmentally impacting. I state this because (as a contractor) I conduct a multitude of resource inventories across the, Malheur, Wallowa-Whitman, and Umatilla National Forests, as well as on lands administered by the Bureau of Land Management. The proposed routes, westerly, through Malheur and Grant Counties would interrupt and fragment very large areas of Oregon’s most expansive “wild-lands” - this in not acceptable by my assessment.

Assuming that the I-84 route is selected, there are currently two possible routes proposed for the section C-21. This section is challenged by two primary considerations: 1) - routing past the Grande Ronde (Great Round) Valley – largest in North America – hemmed continuously by mountains, and 2) – Routing across the Grande Ronde River basin. C-21 is the route section that I previously wrote to you about – expressing my concerns. And it appears that the planners have responded to the comments received. They now propose routing the line more westerly dropping it from high on the ridge – to the lower elevation in the Grand Ronde basin where the visual impacts will be greatly diminished. They have also proposed an alternate C-21 that would follow the existing BPA transmission route to the extent possible. The problem with this route is that it would have a maximal visual impact on the town of La Grande and much of the Great Round Valley. Having weighed various trade-offs, I am inclined to support the current western proposal for C-21 where it is routed across the Grande Ronde basin at the lowest elevations.

However, frustrated by a lack of more definitive maps, I have attempted to more specifically delineate the two modified C-21 routes onto three USGS. (1:24,000 scale) topographic quad maps. I have drawn the two routes on as best as I can interpret them.

Please evaluate my C-21 route delineations, verify, or redefine them as best you can. This will provide me the means to: better evaluate, share with others, and make additional input. I am empirically familiar with this landscape and its resources. If the power-line is to be sited through this area, I would like to contribute to getting it right. Please feel free to call me for more specifics and discussion – (541) 786-1507. After you review of the maps please forward them to Dan Olmstead at Idaho Power so that his Siting Team may also review them.

Respectfully,

Michael L. McAllister

Cc: Dan Olmstead, Idaho Power.

**Fwd: Ladd Canyon to Hilgard**

1 message

wildlandmm@netscape.net <wildlandmm@netscape.net>
Reply-To: wildlandmm@netscape.net
To: "haileyrose@gmail.com" <haileyrose@gmail.com>

Thu, Aug 27, 2020 at 9:44 AM

-----Original Message-----

From: wildlandmm@netscape.net
To: kgeorgeson@idahopower.com
Sent: Tue, Mar 22, 2011 6:56 pm
Subject: Fwd: Ladd Canyon to Hilgard

-----Original Message-----

From: wildlandmm <wildlandmm@netscape.net>
To: wildlandmm <wildlandmm@netscape.net>
Sent: Fri, Mar 18, 2011 4:23 pm
Subject: Re: Ladd Canyon to Hilgard

Kieth,
I am sorry to report that I am again confused by what appears to be inconsistent information at your B2H web site. I logged in on March 16th and looked at the proposed and alternative routes by typing in both John Williams and Seyfried as ownership names. The current display was the basis of my March 16 email to you thanking you for listening to the input made over the last 2.5 years. I have since been notified that the maps I was looking at on March 16 were in fact old maps that were developed out of the public scoping process - which I previously expressed support for. When I first emailed you, I expressed my concerns that Idaho Power had just dropped the routes developed through the public review process and put the original proposed route - again as the "current proposed route." I delineated for you the best possible route (wildlife and viewscape resources) and sent that to you. I am sorry to say that I am currently confused as to what the current proposed route is. Please go to your website and enter Seyfried as LANDOWNER. Are the proposed and alternative routes currently displayed current or out dated? If they are current - My thank-you note sent March 16th stands. If these routes are not correct - please respond and assist me in a correct frame-of reference - update the website. I am also curious - did you receive the hard copy maps that I mailed to you in January. Again - I am currently in Alaska participating in a commercial fishery.

Respectfully - Michael McAllister

-----Original Message-----

From: wildlandmm <wildlandmm@netscape.net>
To: kgeorgeson <kgeorgeson@idahopower.com>
Sent: Wed, Mar 16, 2011 12:14 pm
Subject: Ladd Canyon to Hilgard

Kieth,

Just a note to say thank you for paying attention to the input from us. Looking at the B2H website today, I see that you are zeroing in on the "best placement" from my empirical perspective. I am very pleased by the the current proposed and alternative routes. Count on me to provide site specific resource inputs as you move forward. Unfortunately I will not be able to make the Glass Hill group meeting coming up soon. I am in Sitka Alaska operating sonar for herring fishery. I will be back in the Blue Mountains (home) approx. April 10th.

Respectfully - Michael McAllister

Michael McAllister
60069 Morgan Lake Road
La Grande, OR 97850

(541) 786-1507

March 16, 2015

Idaho Power & Bureau of Land Management
B2H Project
P.O. Box 655
Vale, OR 97918

Comment on Draft Environmental Impact Statement -

As the record shows - I have been long involved in the siting analysis for the proposed 500 kV Transmission Line - Boardman, Oregon to Hemingway, Idaho. I first provided written input in 2008. I am well aware that Idaho Power has made an exhaustive effort to consider most options for siting this Line through both Oregon and Idaho. I recognize that a route following the Interstate 84 Corridor should be recognized as having the least cumulative effect on natural resources. However, in the final analysis, each segment of the Line must receive the most complete review possible - based upon changing resource circumstances.

Understand my frustration, and the disjointed nature of my inputs over time (copies of all past letters are attached). The project has been like trying to work with a transformer that is continuously changing shape and function. There has been repeated turnover of all project personnel. However, the focus of my input has been a constant. That focus is on one specific stretch of the Line - the bypass stretch that tracks the Line to the west around the town of La Grande - the stretch between the Grande Ronde River (at north) and Ladd Canyon (at south).

Recently I attended the B2H Open House in La Grande (January 7th, 2015) where the Bureau of Land Management (BLM) and Idaho Power shared with the public - their recently released Draft Environmental Impact Statement (DEIS). At the meeting I found a team of project analysis representatives that were respectful and very attentive to gathering additional details and information for consideration in making their final EIS analysis.

After making a cursory review of the DEIS I was interested to see that there is some talk about a No Action Alternative. The reading of this is not clear to me, and my best interpretation is that a No Action Alternative does not apply. It has been nearly ten years now since this B2H project was first proposed. Therefore I would ask that the No Action Alternative be something like a review of the justification for the project entirely. In the past 10 years, there have been many changes in conductive materials, technologies, energy conservation, and solar energy is developing rapidly now. I ask that a strong argument be made to the Oregon Energy Facility Siting Power Council (EFSC), that the project is "most justified" relative to other State and

National power planning options.

The focus of my comment is directed at the Glass Hill Alternate and the adjacent Proposed Route. I am commenting from an empirical frame of reference. For nearly 30 years I have lived on, inventoried, and managed forest, range and wildlife resources across this landscape. I have a BS degree in Wildlife Resources from the University of Idaho - 1984. This analysis is not guided by public or private land boundaries. The primary resource consideration here is the most exceptional Rocky Mountain Elk population that makes that landscape "home" during spring, summer, and fall. During the breeding season, 800 to 1200 elk gather and rut on and around "Cowboy Ridge" - the high ridge that divides between Rock Creek and Sheep Creek. The Proposed Route runs from north to south a distance of five miles, up the open west slopes of Cowboy Ridge, potentially subjecting this large breeding concentration of Starkey elk to the noise created by corona and electromagnetic fields of a 500 kV transmission line - clearly an impact worthy of "High Avoidance." Although Rocky Mountain Elk are clearly not threatened as a species, large concentrations such as exists on Cowboy Ridges are indeed threatened and deserve "Exclusion" from the impacts of the B2H project. It is also important to recognize that Cowboy Ridge is the high ground between the Grande Ronde Valley and the Upper Grande Ronde River Basin. This high ground has an ecological richness that is unique in the Blue Mountain Province. This richness has been long recognized.

It is noteworthy that the Cowboy Ridge has a long history of private landowners that have "bought in" where the attraction is the most unique wildlife habitats associated with this landscape. All private landowners that have stewarded Cowboy Ridge have been featuring the elk, and their habitat by management objective. Wildlife, Range, and Forest Conservation have long been the predominant use of the Cowboy Ridge and Rock Creek Watershed. Oregon's Governor Pierce owned this land for many years, and he took great pride in sharing this pristine landscape with William O. Douglas - the Federal Judge and among America's greatest wilderness advocates. It was also here, on this landscape, that Oregon's, Managed Fee Hunting or Ranching for Wildlife Program was first established. It was for this management endeavor that I started my business, Wildland Resource Enterprises, in 1984.

Based upon my comprehensive 30 years of analysis across this landscape - avoidance of said elk population is better achieved by routing the transmission line to the west of Cowboy Ridge approximately 2.5 miles. The Glasshill Alternate accomplishes this by routing the Line up Graves Ridge - a ridge that is broad, low slope, and with a well established road built across solid basalt and shallow soils.

However as proposed, the Glass Hill Alternate corners away from Graves Ridge, turning easterly and then spanning the canyons of Graves Creek, Little Rock Creek, Rock Creek, and then on to the Highest elevation of Cowboy Ridge. As proposed, the Glasshill Alternate

crosses the canyons at their deepest locations where Elk Habitat Effectiveness is the greatest - topographic cover, vegetative cover, and forage diversity. A slight modification to the Glass Hill Alternate could: reduce the impact on Habitat Effectiveness, greatly reduce visual presence, reduce miles of new roads, and minimize the technical logistics of steep ground.

This modification is accomplished by extending the Graves Ridge segment of the Glass Hill Alternate, south, on up Graves Ridge another 0.5 miles, and then turning easterly to an azimuth of 110 degrees. This Variation of the Line would follow a course that better blends the towers to the landscape. A bend in the Rock Creek Drainage allows for the route to “drop away” from Cowboy Ridge and the surrounding high ground - greatly reducing the visual impacts.

Also noteworthy is the fact that when Idaho timber (shortly) owned the Elk Song Ranch, they built a new haul road (1993 - not on any map) from Glass Hill Road - west down into the bend of Rock Creek where the said Variation to the Glass Hill Alternate is proposed. This road accesses most of the proposed Variation between Graves Ridge and Glass Hill. Look closely at how the proposed Variation results in few new roads. And look very closely at how the Proposed Corridor (up Cowboy Ridge) requires new roads the entire five miles.

Another very important consideration that warrants consideration is that the Glass Hill Alternate moves the line three miles to the west of the Morgan Lake viewing platform. Morgan Lake has been identified by the Union County Chamber of Commerce as #1 in their top 10 places to see in Union County. The park is a State Wildlife Refuge and the adjacent Twin Lake is also registered as a State Research Natural Area - dedicated as such for its unique emergent vegetation communities. These diverse communities support a species richness that is very rare in the Blue Mountains. Both the American Bald Eagle, and the Osprey nest here.

Attached is a map that presents the Proposed Corridor, the Glass Hill Alternate, and a Variation of the Glass Hill Alternate - described above. And the following are three GPS points (the two lines between these three point define the proposed Variation to the Glass Hill Alternate).

GPS Coordinates - WGS84:

- 1) 45.315112, -118.222980 (At Whiskey Creek Road)
- 2) 45.252549, -118.170649 (At south end Graves Ridge Road)
- 3) 45.235976, -118.100836 (At Glass Hill Road).

Additionally, I would like to comment that I recently had the opportunity to appreciate the more visually pleasing monopole transmission line towers down in the desert southwest. I strongly advocate for the use of the monopoles to the extent that this is possible. The oxidized finish does blend well with landscape colors and tones.

Thank you for your careful consideration of this unique landscape and the associated natural wonder - Oregon's most dense elk population and a their breeding "LECK" on Cowboy Ridge.

Respectfully

Michael McAllister

Michael McAllister, 60069 Morgan Lake Road, La Grande, OR, 97850 (541) 786-1507.

December 21, 2018

Jeff Maffucio, Siting Coordinator, Idaho Power Corporation, 1221 West Idaho Street, P.O.Box 70 Boise, Idaho, 83707.

cc. Kellen Tardaewether, Senior Siting Analysis, Energy Facility Siting Division, Oregon Department of Energy, 550 Capitol St. NE, 1st Floor, Salem, Oregon 97301

cc. Union County Board of Commissioners, 1106 K Avenue La Grande, Oregon 97850.

Your records will show that, since 2009, I have been encouraging Idaho Power Corporation (IPC) to site the Boardman to Hemingway (B2H) Transmission Line in a manner, whereby the cumulative impacts of the Right-Of-Way will have a minimal impact on Oregon's public and their natural resources. I am a long-term resident of Union County where I work as a private contractor specializing in Natural Resources Inventory. I hold a Bachelor of Science degree, *Wildlife Resources*, from the University of Idaho.

At this time, I am gravely concerned by the fact that IPC has submitted a "complete application" for *Site Certificate* to Oregon's Energy Facility Siting Council (EFSEC) without the *Agency Selected Route* - identified by the Bureau of Land Management (BLM) in their National Environmental Planning Act (NEPA) analysis – specifically through Union County. Rather, IPC applied for two routes that were developed late in the NEPA process, neither of IPC's routes have had an environmental analysis, or public comment. All three of the identified routes are identified at IPC's Boardman to Hemingway www.boardmantohemingway.com webpage. From this point on, the reader is advised to follow along with this website open. From the *Map Menu* select Map 3 - Union County.

Map 3 (Union County) Legend:

- (A) – Agency Selected Route (NEPA) - Route Color is Green on Map;
- (B) – Proposed Route (EFSC) – Route Color is Red on Map;
- (3) – Morgan Lake Alternative (EFSEC) – Route Color is Blue on Map.

Now select *Landowner Maps* - it opens in Google Earth Imagery. Expand map to full screen and zoom in on Routes A, B, and 3. Note the tab at top left of the screen - it allows the viewer to change between Earth View, Map View, and Topography View. To see vegetation coverages, use Earth View, too see geographic features switch to Topography View.

For the sake of this analysis, the three routes will be referred to as: **A, B, and 3** – as above. I am going to limit my discussion about **Route B** (Idaho Powers Proposed Route) to a brief and cursory overview. **Route B** has been identified as a best attempt to site B2H along the existing 230 kv transmission line as it passes through Union County. In my first letter to Idaho power (2009) I asked that Idaho power put the power line "in my front yard" and site it along the existing 230 kv transmission line

passing through La Grande. In 2012 I signed a petition circulated by a local group organized as the Glass Hill Coalition. After much consideration however, I determined that such a route would not meet the screens for the 500 kv transmission line.

- 1) The valley slopes to the west above La Grande are steep, with unstable geology.
- 2) La Grande's western skyline viewshed would be severely impacted. Both: the City of La Grande and Union County have asked IPC to keep B2H out of their viewshed.
- 3) The "Powerful Rocky" stretch of Oregon Trail, and its archaeological artifacts, would be desecrated.
- 4) Oregon's Ladd Marsh was established as a wildlife mitigation area for past federal projects: the refuge should not be comprised.
- 5) The residential ownership pattern between the La Grande and the Morgan Lake does not accommodate construction and access is very poor.

Based upon the above considerations, 1 through 5, I deem that the **Proposed Route (B)** has *High Cumulative Impact*, and with few mitigation options. Therefore, I will spend no more time considering Proposed Route B. All further analysis and discussion will focus on Agency Selected Route A, and on Morgan Lake Alternative Route 3.

From here forward I will explain and contrast **Route A** (Agency Selected Route (NEPA)), with **Route 3** (Morgan Lake Alternative (EFSC)). The analysis begins at the Divergence Point (DP) – where Routes A and 3 diverge. The analysis then proceeds from north (DP), then south to the Convergence Point (CP) of the two routes near Ladd Canyon. The distance between DP and CP is approximately eleven miles. The distance for both routes, **A** and **3**, are very similar. The elevation at DP (north end) is approximately 3,400 feet. The Elevation at CP (south) is approximately 4,800 feet.

The DP is located near the middle of section 7, Township 3 South, Range 37 East. DP is approximately 1.5 miles south of Highway 244 junction with Interstate 84 – at Hilgard. DP is approximately 0.75 miles south of Highway 244, traveling south on the Whiskey Creek Road.

The biggest difference between the two routes is how each of them has been established geographically. This can best be recognized by comparison in *Topography View*. Recognize that the Grande Ronde Valley is the dominant geographic feature for the region, and further that it is oriented in a slightly northwest by southeast alignment - as is the Blue Mountain Range along the valleys west side. Recognize that from DP (near the Grande Ronde River at Hilgard) that the landscape rises as you go south following the west side of Grande Ronde Valley, all the way to near CP above Ladd Canyon.

Now notice how the two routes ascend, from 3,400 feet elevation, up to just over 5,200 feet elevation near the high point at Glass Hill. And notice that between the two routes there is a series of parallel ridges and drainages that are also on the northwest by southeast alignment. This alignment is caused by the orientation of the faults associated with the origins of the Grande Ronde Valley. The highest of the fault generated ridges is the one following the Mill Creek Fault – which also establishes the west edge of the valley. This ridge is also known as the Glass Hill Monocline. **Route 3** sites the transmission line along this highest ridgetop.

Comparatively, **Route A** is the low elevation route where the mean elevation is approximately 4,100 feet. See that from DP **Route A** proceeds southerly at an azimuth of approximately 150 degrees, along the same northwest/southeast alignment. **Route A** gains elevation slowly as it moves up Graves Ridge in a straight line for approximately 5.0 miles. Graves Ridge is a broad gentle slope, where the only vegetation is sparse grass and forbs. *Whiskey Creek Road* mostly parallels the **Route A** with an elevation gain of about 200 feet per mile – a slope grade of just 5 percent. Note that the *Whiskey Creek Road* provides excellent road access for at least two thirds of the **Route A**. This road is built across block basalt with few corners and no steep grades. **Route A** then makes one turn easterly to approximately 110 degrees. On this course, **Route A** crosses the Rock Creek drainages well above Chinook Salmon Habitat.

Route 3, on the other-hand, moves east from DP and away from the Whiskey Creek Road, and crosses the Rock Creek watershed just three miles south of the Grande Ronde River. Note here that there are four distinct drainages that make up the Rock Creek Watershed, from west to east they are: Graves, Little Rock, Rock, and Sheep Creeks. Notice that all four of the drainages converge near the Route 3 crossing. Here, **Route 3** compromises Critical Habitat for Chinook Salmon in the lower Rock Creek Watershed. Rock Creek is not chinook salmon spawning habitat. However, the lower three miles of Rock Creek is used by chinook salmon smolts as a cool water refuge during the summer months when the Grande Ronde River is low, warm, and oxygen deficient. Also note that there are **no existing roads** here to access **Route 3**. However, if you look at landowner map # 63, you will see that IPC identifies the natural gas pipeline as “Glass Hill Road.” This is a flagrant deception that tricks the viewer. There is no existing road access for most of **Route 3**.

After crossing Sheep Creek, **Route 3** then intersects the Glass Hill Monocline (near Morgan Lake), where it turns southerly and follows the ridgetop. **Route 3** is the high elevation route where the mean elevation across the route is approximately 4,500 feet. The 400 feet mean elevation difference between (**A and 3**) is the predominant variable responsible for variability in soil characteristics. The higher elevations along the top of the Glass Hill Monocline gather more precipitation, summer temperatures are cooler, more layered vegetation provide more shading, and windblown snow and soil particulates accumulate. The variability in soils is well demonstrated when you superimpose the Union County Soil Survey Map over the Route Map overlay. I have identified the four predominant soil types for both: Route A and Route 3. They are listed hear from most coverage, to least coverage.

For **Route A**, they are: **1**) = 69C - *Watama-Gwinly complex*, is on biscuit-scabland uplands, vegetation is mainly bunchgrasses, and annual forbs; **2**) = 35E – *Klicker-Anatone complex* - mountainous uplands where the native vegetation is mainly Ponderosa pine, bunchgrasses and elk sedge, a warm moist plant community suited to the production of pine, on a patchy basis - where soil is deep enough, also as rangeland and wildlife habitat. **3**) = 4E *Anatone extremely stony loam* - is shallow, well-drained soil at ridgetops, and on south and west facing slopes where vegetation is mainly blue-bunch wheatgrass, Idaho fescue and stiff sage; used mainly as rangeland. **4**) = 58E – *Starkey very stony silt loam* – shallow well drained soil on uplands, the vegetations is mainly bunchgrasses and annual forbs, Idaho fescue, blue-bunch wheatgrass and Sandberg bluegrass. The unit is used mainly for rangeland. Collectively, the soils makeup for Route A, tend to be shallower, and of residual decomposed basalt in its origin. The site index for timber production is lower, and shrubs are limited in the vegetation composition. Route A

crosses 44% forested acres - mostly warm dry plant communities. It is noteworthy that Route A crosses 33% less timber acres than does Route 3

For **Route 3**, they are; **1)** = 4E - *Anatone extremely stony loam*, is shallow, well drained, at ridgetops and on south and west facing slopes, derived predominately from basalt; vegetation in mainly blue-bunch wheatgrass, Idaho Fescue and stiff sage; used mainly as rangeland. **2)** = 32E - *Kalema very stony silt loam*, moderately deep, well drained, mainly coniferous forest and an understory of shrubs, forbs and grasses; used mainly for timber production, also used for woodland grazing and wildlife habitat. **3)** = 33E - *Klicker stony silt loam*, moderately deep, well drained, mountainous uplands, vegetation is mainly coniferous forest with bunchgrasses annual forbs and perennial shrubs, unit is used mainly for timber production, also for woodland grazing and wildlife habitat. **4)** = 61E - *Ukiah-Starkey complex*, Ukiah moderately deep and well drained, vegetation mainly Idaho Fescue, Blue-bunch wheatgrass and Sandberg bluegrass; used mainly as rangeland. Collectively, the soils make for Route 3, tend to be deeper, loamier, of residual decomposed basalt, but with more volcanic ash composition. The site index for timber production is higher, where shrub composition is greater. Route 3 crosses 66 % forested acres mostly cool moist plant communities. Again, Route 3 crosses 33% more timber acres than does Route A.

MORGAN LAKE PARK

Route 3 also establishes towers within 500 feet of Morgan Lake Park. Here, the impact on La Grande's public will be High. The first stated goal in the Morgan Lake Park Recreational Use and Development Plan (Section 1, Page 2) - *A goal of minimum development of Morgan Lake Park should be maintained to preserve the maximum of natural setting and to encourage solitude, isolation, and limited visibility of users while at the same time providing safe and sanitary condition for users.* Also noteworthy is that the city of La Grande Chamber of Commerce has long promoted Morgan Lake Park as the #1 Recreation Tourist Destination in the La Grande Area. The State of Oregon designated Morgan Lake Park as a State Wildlife Refuge in the 1960s. Today Oregon Department of Fish and Wildlife identifies the Lake as an easy access fishing destination for the handy-capped.

Morgan Lake Park encompasses two separate Lakes; Morgan Lake is 70 acres in size and is developed with road access and camping. Twin Lake is 27 acres in size, undeveloped, and with no road access or camping. Twin Lake has been identified by both Federal and State efforts to conserve, restore, and protect wetlands. Oregon has developed a Wetland Conservation Strategy (Oregon Division of Lands, 1993). This Strategy is implemented through the Oregon Wetlands Inventory and Wetlands Conservation Plans (See Webpage). This planning process allows local governments to balance wetlands protection with other land-use needs. Twin Lake is recognized as an important - persistent emergent wetlands that includes both submersed and floating plants.

Twin Lake, at 4,100 feet elevation, supports one of the most unique waterfowl nesting communities in the Blue Mountains. Most unusual is the nesting by: Ring-necked Ducks, Red Head, Rudy Duck, Blue-winged Teal, Shoveler, and Pied-billed Grebe. Increasing the species

diversity surrounding this wetlands anomaly, the lake is created by natural basalt rim rocks along the south and west edge. Here the vegetation is a diverse mixture of native shrubs, aspen, black Cottonwood, and Ponderosa pine. These surrounding shrub and tree communities support as rich an assortment of both migratory and nesting passerine birds as can be recognized across the Blue Mountain Ecoregion.

In 2013 a Pair of Bald Eagles constructed a nest in at the top of a large Ponderosa pine at the west edge of Twin Lake where they fledged their first young. GPS coordinates (Degrees, Minutes, Seconds) for Nest-1 are: N 45*, 18', 06.0" by W118*, 08', 44.2". Route 3 places a Tower 580 feet from Nest 1. The pair of Eagles has since built Nest-2 at N 45*, 17', 45.9" by W118*, 08',54.4". Route 3 places a Tower 0.31 miles east of Nest 2. Route 3 places the transmission line between the two nests. Here at the ridge-top, Morgan Lake supports an entire ecosystem of scale where the fall hawk migration follows south up the ridge. Watching Bald Eagle and fishing Osprey interactions at Morgan Lake is a popular nature spectacle. If Route 3 is built, the spectacle will become a loud "crackling" transmission line.

From Morgan Lake, **Route 3** moves southeast up the ridge and into renowned high-density elk breeding grounds. Here in the upper reaches of Sheep Creek are numerous sedge meadow springs used heavily as elk wallows. All muddied-up, large mature bulls strut out onto the open bunchgrass slopes to breed on Sheep Ridge – right where Route 3 would be constructed - at the ridgetop. This is also my neighborhood, and to the best of my knowledge all the neighbors are strong advocates of this elk population. Neighbors have made land acquisitions and established conservation easements to consolidate and preserve the native integrity. The Rocky Mountain Elk Foundation is a cooperator in these efforts, as is the case with the Eastern Oregon University's Rebarrow Forest Project.

HAZARD ANALYSIS

It is also noteworthy that the **Route 3** Tower that would stand closest to Morgan Lake recreationists is located within thirty feet of a thirty-inch diameter Natural Gas Line (Trans-Alaska, 1st leg constructed 1982). At the ridge-top, this is a known weak point in the pipeline. From the sharp basalt ridgetop, the line drops steep downslope in both directions. The pipeline is bedded in sand so that over time gravity stretches the pipeline at the high point. This stretching has resulted in multiple gas leaks, over time, near where **Route 3** will cross the natural gas pipeline – and within less than 600 feet of Morgan Lake Park. This explosive potential exposes the residence of Morgan Lake Estates and the recreationist at Morgan Lake Park to unnecessary risk. Also note that **Route A** (Agency Selected Route) does not cross the natural gas pipeline at any point.

As a resident of the Morgan Lake Estates, I am extremely concerned about catastrophic fire potential. In 2005, Union County conducted a County-wide Wildland Urban Interface Fire Hazard Analysis. The resulting Analysis was published using Federal grant monies. The document identifies fourteen different Wildland Urban Interface (WUI) Zones within Union County. Based upon a set of Risk Analysis Criterion, each of the 14 WUI Areas were rated from High to Low. The Morgan Lake Estates WUI was given the Highest (#1) Rating.

Of the three routes under consideration, **Route 3** gets the Highest Fire Risk Rating for the following reasons: **Route 3** follows the ridgetops across the Blue Mountain Range as it parallels the Grande Ronde Valley. Between the Grande Ronde River and Ladd Canyon the transmission line is at or near the ridgetop the entire distance. From the river, the route rises to 4,300 feet at Morgan Lake, and too above 5,200 feet as it proceeds south to Glass Hill – an abandoned State Lookout. It is highly significant that this area of the Blue Mountains is in a major lightning path where cumulus buildups move up the North Fork of the John Day River. These storms then strengthen and build as they move east across the Blue Mountains to the Grande Ronde Valley where valley thermals increase lightning activity at the ridgetops – not a good place for a major transmission line.

As a resident in the Morgan Lake Estates for 40 years, I have always considered Morgan Lake to be our greatest *Fire Fighting Asset*. At the ridgetop, Morgan Lake provides fire helicopters with buckets the ability to come and go from any direction without limitations. Morgan Lake is among the best water sources for helicopters in the region. **Route 3** would significantly change any helicopter activity around Morgan Lake, creating an unnecessary liability that puts us all at risk.

Additionally, **Route 3** (at the ridgetop) poses additional aviation liabilities that need consideration. Most air traffic in and out of La Grande Airport, the U.S. Forest Service Airtanker Base, and the Life Flight Base comes from and goes out to the west. Low Flying aircraft across the ridgetop (**Route 3**) are very common. Again **Route 3** will create unnecessary liability that puts us all at risk.

SUMMARY

In Summary, it is likely that **Idaho Powers Proposed Route B** will not achieve License Approval by EFSC. In that case, IPC's application can only default permitting to Idaho Powers Alternative – Morgan Lake **Route 3**. This route was put forth by Idaho Power in the 11th hour of the Final EIS. The route was never evaluated by a credible environmental review team. Therefore, I have dedicated my own time to making this comprehensive assessment. I have contrasted the **Morgan Lake Route 3** with the **Agency Identified Route A**, in hopes that it will have some merit in the eyes of others going forward. Across the full spectrum of Factors considered, the **Morgan Lake Route 3 is High Impact** as opposed to the **Agency Identified Route A** which has much less impact.

At the ridgetop, **Route 3** would have greater impacts on: public places, viewsheds, soils, forests, fisheries, and wildlife. **Route 3** poses great risks to: the wildland urban interface, fire suppression support systems, and to aircraft transportation. **Route 3** is more topographically complex, has very limited road access, and requires much more disruption to wildlands.

Alternatively, **Route A** is topographically simple, has extensive solid road access, and crosses more uninhabited lowlands. It is clear to me why **Route A** is the *Agency Identified Route*. It remains a complete **mystery why IPC disregards the Agency Identified Route A**.

Idaho Power has been asked repeatedly – why was **Route A** not included in the EFSC Application? The only answers provided by Idaho Power to this point are (EFSEC public meeting

at the Armory): **1)** we have been working with landowners – none specifically identified, and **2)** something about tribal concerns – nothing specific.

At this time, I ask Idaho Power Corporation to amend their Oregon EFSC Application for Site Certificate. Include the *Agency Identified Route A* for consideration.

Respectfully

Michael McAllister

Route 3 will require extreme logistical complications that will tax all existing road infrastructure.

The Web site map identifies roads and shows roads that don't exist and never did exist. In one case Glass Hill Road is show in the bottom of Rock Creek near Hilgard. There is no road as shown.

Again, thank you for all considerations and I am willing to provide additional support at your request.

Visual Considerations

Grande Ronde Valley – Great Round Valley – Valley of Peace to all Rival Tribes came to trade on collective sacred ground.

By Ballot initiative, Union County voted down wind mill “farms” so as to preserve the aesthetic integrity of their sacred Valley surrounded entirely by mountains.

Morgan Lake – Union County Chamber of Commerce Identifies and #1 destination Point of Interest.

Tower # at the Park Entrance will tower and crackle 850 feet above this City Park – an ecological jewel.

Residential Considerations. One of the big issues for the Proposed Route B is that it would have a High Impact on the Morgan Lake Estates and the entire backdrop viewshed above La Grande. Route 3 moves beyond the La Grande viewshed but still conflicts with Morgan Lake Estate residence. Route A moves west well (3 miles) beyond all Union County residential homesites.

Noise Considerations

Cultural Considerations

Cost Analysis

Fisheries Considerations

Rock Creek Analysis

La Grande Airport, Hotshot and Tanker Base.

Life Flight / Grande Ronde Hospital.

At the ridgetop, Morgan Lake as the most important water source for helicopter bucketing.

Hazards Analysis

Between 1992 and 2011, 78% of electrical outages in the USA are related to severe weather conditions, and that percentage is growing annually driven increasingly by climate change. Between 1984 and 2006, approximately 44% of all power blackouts were weather-related, and of those – 11% were caused by lightning activity.

All of the above considered, Idaho Power should recognize that Route A – Agency Selected Route (NEPA) is by far and away the route which will least impact the Residence of Union County, the extended Oregon Public, and their collective natural resources.

I am asking that Idaho Power Amend the EFSEC Application to include Route A. As is, the Application is an overreach that shows a clear disregard for all the years of public and institutional participation. I would go even further and say that the application shows a clear disregard for your own siting. and avoidance criteria.

Michael McAllister, 60069 Morgan Lake Road, La Grande, Oregon, 97850, (541) 786-1507.

June 23, 2019

Todd Cornett, Energy Facility Siting Division Administrator, Energy Facility Siting Division, Oregon Department of Energy, 550 Capitol Street NE, 1st Floor, Salem, OR, 97301, todd.cornett@oregon.gov .

Dear Mr. Cornett,

On January 14, 2019, I delivered to you a letter (attached – page 2) to express my concerns about Idaho Power Corporations (IPC) “incomplete application” for *Site Certificate* of their **Boardman to Hemingway Transmission Line** through Union County. The application is incomplete because IPC did not include the Agency Selected Route, adopted by the National Environmental Planning Act (NEPA) process – conducted by the U.S. Department of Interior’s Bureau of Land Management.

This past Thursday – June 20, 2019 – the **Energy Facility Siting Council** held Public Hearing on the *Draft Proposed Order and Request for Comments* – here in Union County. I attended that meeting and I did make comments regarding my position with regards to Idaho Power Corporations Incomplete Application for Site Certificate.

In brief, the most significant point that I made was – the **Agency Identified Route A** would effectively mitigate nearly all the concerns expressed by the many attendee’s comments at that meeting.

Following the public comments, two representatives from Idaho Power were seated before the Siting Committee, this so that committee members could ask questions in response to the public comments previously made.

Committee Member Hanley Jenkins asked the only question and he phrased it this way – **“I am going to ask you one very hard question – why did Idaho Power Corporation not include the BLM Agency Identified Route into their Application”?**

Idaho Power’s Mark Stokes provided the following as an answer – **the BLM Agency Alternative was not included because their process was being drawn out – we were under time constraints to submit our application and went ahead without it.**

There were no further questions, and no further opportunity for the public to respond to this **Revelation.**

I have been involved over ten years in advocating for what is now the BLM Agency Identified Route A.

Idaho Power Corporation and others are currently processing an incomplete application. IPC has been asked to amend their application repeatedly, too include the **Agency Identified Route A**. This issue should not become a Contested Case.

Respectfully

Michael McAllister

Michael McAllister

January 14, 2019

Todd Cornett, Energy Facility Siting Division Administrator, Energy Facility Siting Division, Oregon Department of Energy, 550 Capitol Street NE, 1st Floor, Salem, OR, 97301, todd.cornett@oregon.gov .

Dear Mr Cornett,

I am gravely concerned that Idaho Power Corporation (IPC) has submitted an incomplete application to Oregon's Energy Facility Siting Council (EFSC). Their application for *Site Certificate* of the **Boardman to Hemingway Transmission Line** through Union County does not include for consideration, the Agency Selected Route, adopted by the National Environmental Planning Act (NEPA) process – conducted by the U.S. Department of Interior's Bureau of Land Management. The two routes that IPC has applied for: **Proposed Route (B)** and **Morgan Lake Alternative (3)**, were developed late in the NEPA process and have not undergone environmental analysis or public comment. IPC's failure to gather satisfactory evidence has limited the ability of the public, EFSC, and other regulators in their ability to make fully informed decisions in the public interest.

I am requesting that Idaho Power Corporation amend their Oregon EFSC Application for Site Certificate to include the U.S. Bureau of Land Management's **Agency Identified Route A** for consideration by the State of Oregon EFSC board members. It is the only route that was fully subjected to environmental analysis and public comment during the Federal EIS. It was established through community consultation and environmental review in a multi-year process. It must be on the table for full consideration by Oregon EFSC for a "Complete Application" review.

I am Michael McAllister, a long-time resident of Union County and private contractor specializing in natural resources inventory and management. I hold a Bachelor of Science degree, *Wildlife Resources*, from the University of Idaho. As a 40-year resident on Morgan Lake road, I have an intimate knowledge of the geology, habitat, environmental issues, wildfire hazards and recreational value of the area. My interest is both professional and personal.

Oregon Department of Energy and Idaho Power Corporation records show that, since 2008, I have been encouraging Idaho Power Corporation to site the Boardman to Hemingway (B2H) Transmission Line in a manner, whereby the cumulative impacts of the Right-Of-Way will have a minimal impact on Oregon's public and their natural resources.

Attached is my comparative analysis of IPC's two routes (B and 3) and the BLM's Agency Selected Route (A). This analysis demonstrates that the Agency Selected Route minimizes risks to public safety and imposes the least impacts on the natural resources of both the City of La Grande and Union County.

At this time, I ask that Idaho Power Corporation amend their Oregon EFSC Application for Site Certificate to include additional environmental and community evidence regarding their proposed routes and to include the BLM *Agency Identified Route A* for consideration.

Respectfully

Michael McAllister

Public Comment: Michael McAllister

Proposed Boardman to Hemingway Transmission Line Site Certificate Application Review

January [14], 2019

Introduction

The reader is advised to follow along using the Google Earth maps provided at <http://www.boardmantohemingway.com/LandownerMaps.aspx>. Expand the map to full screen and zoom in on Routes A, B, and 3 near La Grande, Oregon. Note you can switch between Earth View, Map View, and Topography View using the tab at the top left of the screen. To see vegetation coverages, use Earth View. To see geographic features switch to Topography View.

Map 3 (Union County) Legend:

- (A) – BLM Agency Selected Route (NEPA) - Route Color is Green on Map;
- (B) – Proposed Route (EFSC) – Route Color is Red on Map;
- (3) – Morgan Lake Alternative (EFSEC) – Route Color is Blue on Map.

Proposed Route B (EFSC)

IPC's Proposed Route has been identified as a best attempt to site B2H along the existing 230 kV transmission line as it passes through Union County. In 2008 and again in 2012, I asked that IPC construct their new B2H transmission line adjacent to the existing 230 kV transmission line passing through La Grande and Union County. After much further review of the evidence presented, I deemed that such a route would not meet the screens for the 500 kV transmission line for the following reasons:

- 1) The valley slopes to the west above La Grande are steep, with unstable geology; many areas have been identified by the U.S. Geologic Survey as unsuitable for construction.
- 2) La Grande's western skyline viewshed would be severely impacted. Both the City of La Grande and Union County have asked IPC to keep B2H out of their viewshed.
- 3) The "Powerful Rocky" stretch of Oregon Trail, and its archaeological artifacts, would be desecrated by the construction and continued maintenance requirements of the B2H towers.
- 4) Impacts to Oregon's Ladd Marsh Wildlife Management Area would be severe and permanent. Ladd Marsh was established as a wildlife mitigation area for past federal projects and the refuge should not be compromised. IPC itself recognizes and designates Ladd Marsh as "irreplaceable."

Based upon the above considerations, **Proposed Route (B)** has *High Cumulative Impact*, and few mitigation options.

Comparative Analysis of BLM Agency Selected Route (A) and Morgan Lake Alternative Route (3)

From here forward I will explain and contrast the **Agency Selected Route A**, with the **Morgan Lake Route 3**. The analysis begins at the Divergence Point – where Routes A and 3 diverge. The analysis then proceeds from north (DP), then south to the Convergence Point (CP) of the two routes near Ladd Canyon. The distance between DP and CP is approximately eleven miles for both Routes: A and 3. The elevation at DP (north end) is approximately 3,400 feet. The Elevation at CP (south) is approximately 4,800 feet. The Divergence Point is located near the middle of section 7, Township 3 South, Range 37 East, approximately 1.5 miles south of the Highway 244 junction with Interstate 84 at Hilgard. It is approximately 0.75 miles south of Highway 244, traveling south on the Whiskey Creek Road.

Geographic Setting

The biggest difference between the two routes is how each of them has been established geographically. This can best be recognized by comparison in *Topography View*. Recognize that the Grande Ronde Valley is the dominant geographic feature for the region, and further that it is oriented in a slightly northwest by southeast alignment - as is the Blue Mountain Range along the valley's west side. Recognize that from Divergence Point (near the Grande Ronde River at Hilgard) that the landscape rises as you go south following the west side of Grande Ronde Valley, all the way to near the Convergence Point above Ladd Canyon.

Now notice how the two routes, A and 3, ascend from 3,400 feet up to just over 5,200 feet elevation near the high point at Glass Hill. And notice that between the two routes there is a series of parallel ridges and drainages that are also oriented in the northwest by southeast alignment. This alignment is caused by the orientation of the faults associated with the origins of the Grande Ronde Valley. The highest of the fault generated-ridges is the one following the Mill Creek Fault – which also establishes the west edge of the valley. This highest ridge is known by geologists as the Glass Hill Monocline – **Morgan Lake Route 3 sites the transmission line along this monocline ridgetop.**

Comparatively, the Agency Selected Route A is the lower elevation route where the mean elevation is approximately 4,100 feet. See that from DP Route A proceeds southerly at an azimuth of approximately 150 degrees, along the same northwest/southeast geologic alignment. Route A gains elevation slowly as it moves up “Graves Ridge” in a straight line for approximately 5.0 miles. “Graves Ridge” is a broad gentle slope, where the only vegetation is sparse grass and forbs – much of it is rocky scab vegetation. The Graves Ridge Road (East Fork of the Whiskey Creek Road) mostly parallels the Route A with an elevation gain of about 200 feet per mile – a slope grade of just 5 percent. Importantly, note that existing roads provide excellent road access for at least two thirds of the Route A. These roads are bladed across solid basalt with few corners and no steep grades. Route A then makes only one turn, easterly to approximately 110 degrees. On this course, **Agency Selected Route A crosses the Rock Creek drainage 8.5 miles upstream from the Grande Ronde River – above the lower 6 miles deemed important to Threatened Snake River Chinook Salmon.**

Comparatively, the Morgan Lake Route 3 on the other-hand, moves east from DP and away from the Whiskey Creek Road. Route 3 then crosses the Rock Creek watershed just three miles up-stream of the Grande Ronde River. Note that there are four distinct drainages that make up the Rock Creek Watershed, from west to east they are: Graves, Little Rock, Rock, and Sheep Creeks. Notice that all four of the drainages converge near to where Route 3 crosses Rock Creek. There are no real existing roads

that access the north two thirds of Route 3. After crossing Rock and Sheep Creeks, Route 3 then intersects the Glass Hill Monocline (near Morgan Lake), where it turns southerly and follows the ridgetop. **Morgan Lake Route 3 is the high elevation route where the mean elevation across the route is approximately 4,500 feet.**

Soil Protection - OAR 345-022-022

The 400 feet mean elevation difference between **(A and 3)** is the predominant variable responsible for the difference in soils. The higher elevations along the top of the Glass Hill Monocline gather more precipitation, summer temperatures are cooler, more layered vegetation provide more shading, and windblown snow and soil particulates accumulate. The variability in soils is well demonstrated when you superimpose the **Union County Soil Survey Map** over IPC's Route Map overlay. Using this soils inventory, **I have identified the four predominant soil types for both: Route A and Route 3. They are listed hear from most coverage, to least coverage:**

Agency Selected Route A, Soils are: **1)** = 69C - *Watama-Gwinly complex*, is on biscuit-scabland uplands, vegetation is mainly bunchgrasses, and annual forbs; **2)** = 35E – *Klicker-Anatone complex* - mountainous uplands where the native vegetation is mainly Ponderosa pine, bunchgrasses and elk sedge, a warm moist plant community suited to the production of pine, on a patchy basis - where soil is deep enough, also as rangeland and wildlife habitat. **3)** = 4E *Anatone extremely stony loam* - is shallow, well-drained soil at ridgetops, and on south and west facing slopes where vegetation is mainly blue-bunch wheatgrass, Idaho fescue and stiff sage; used mainly as rangeland. **4)** = 58E – *Starkey very stony silt loam* – shallow well drained soil on uplands, the vegetations is mainly bunchgrasses and annual forbs, Idaho fescue, blue-bunch wheatgrass and Sandberg bluegrass. The unit is used mainly for rangeland. Collectively, the soils makeup for Route A, tend to be shallower, and of residual decomposed basalt in its origin. The site index for timber production is lower, and shrubs are limited in the vegetation composition.

Agency Selected Route A crosses 44% forested acres - mostly warm dry plant communities. And it is noteworthy that Route A crosses 33% less timber acres than does Morgan Lake Route

Morgan Lake Route 3, Soils are; **1)** = 4E - *Anatone extremely stony loam*, is shallow, well drained, at ridgetops and on south and west facing slopes, derived predominately from basalt; vegetation in mainly blue-bunch wheatgrass, Idaho Fescue and stiff sage; used mainly as rangeland. **2)** = 32E - *Kalema very stony silt loam*, moderately deep, well drained, mainly coniferous forest and an understory of shrubs, forbs and grasses; used mainly for timber production, also used for woodland grazing and wildlife habitat. **3)** = 33E – *Klicker stony silt loam*, moderately deep, well drained, mountainous uplands, vegetation is mainly coniferous forest with bunchgrasses annual forbs and perennial shrubs, unit is used mainly for timber production, also for woodland grazing and wildlife habitat. **4)** = 61E – *Ukiah-Starkey complex*, Ukiah moderately deep and well drained, vegetation mainly Idaho Fescue, Blue-bunch wheatgrass and Sandberg bluegrass; used mainly as rangeland. Collectively, the soils makeup for Route 3, tend to be deeper, loamier, of residual decomposed basalt, but with more volcanic ash composition. The site index for timber production is higher, where shrub composition is greater. **Morgan Lake Route 3 crosses 66 % forested acres mostly cool moist plant communities, and that is 33% more timber acres than does the Agency Selected Route A crosses.**

Recreation - OAR 345-022-0100

Protected Areas - OAR 345-022-0040

Scenic Resources – OAR 345-022-0080.

Morgan Lake Route 3 also establishes towers within 500 feet of Morgan Lake Park. Here, the impact on La Grande's public will be *High*. The first stated goal in the Morgan Lake Park Recreational Use and Development Plan (Section 1, Page 2) - *A goal of minimum development of Morgan Lake Park should be maintained to preserve the maximum of natural setting and to encourage solitude, isolation, and limited visibility of users while at the same time providing safe and sanitary condition for users.* Also noteworthy is the fact that the **City of La Grande Chamber of Commerce** has long promoted Morgan Lake Park as the #1 Recreation Tourist Destination in the La Grande Area. And the State of Oregon designated **Morgan Lake Park as a State Wildlife Refuge** in the 1960s. Today Oregon Department of Fish and Wildlife identifies the Lake as an easy access fishing destination for the handicapped.

Morgan Lake Park encompasses two separate Lakes. Morgan Lake is 70 acres in size and is developed with road access and camping. Twin Lake is 27 acres in size, undeveloped, and with no road access or camping. **Twin Lake has been identified by both Federal and State programs to conserve, restore, and protect wetlands.** Oregon has developed a **Wetland Conservation Strategy** (Oregon Division of Lands, 1993). This Strategy is implemented through the Oregon Wetlands Inventory and Wetlands Conservation Plans (See Webpage). This planning process allows local governments to balance wetlands protection with other land-use needs. **Twin Lake is recognized as an important, persistent, emergent vegetation wetlands, which includes both submersed and floating plants.**

Fish and Wildlife Habitat - OAR 345-022-0060,

Morgan Lake Route 3 crosses Rock Creek approximately 2.5 miles upstream from the Grande Ronde River - just below where Sheep Creek flows into Rock Creek. Here is where the best water quality and the coolest water temperatures exist during the heat of summer. And here is where Route 3 will cross. Rock Creek is not a Chinook Salmon spawning habitat. However, **the lower six miles of Rock Creek have been identified as important habitat for both Steelhead and Chinook Salmon smolts.**

Twin Lake, at 4,100 feet elevation, supports one of the most diverse waterfowl nesting communities in the Blue Mountain Ecoregion. Most unusual is the nesting by: Ring-necked Ducks, Red Head, Rudy Duck, Blue-winged Teal, Shoveler, and Pied-billed Grebe. The species diversity surrounding this wetlands anomaly at 4100 feet elevation, is enhanced by the natural basalt rim rocks forming the south and west sides of the lake. Here the vegetation is a diverse mixture of native shrubs, aspen, black Cottonwood, and Ponderosa pine. These surrounding shrub and tree communities support as rich an assortment of both migratory and nesting passerine birds as can be recognized across the Blue Mountain Ecoregion. **Also frequenting these habitats are two bird species identified on the Oregon Department of Fish and Wildlife – Sensitive Species List: Great Gray Owl, and White-headed Woodpecker.**

In 2013 a Pair of Bald Eagles constructed a nest in the top of a large Ponderosa pine at the west edge of **Twin Lake** where they fledged their first two young. GPS coordinates (Degrees, Minutes,

Seconds) for **Nest-1** are: N 45*, 18', 06.0" by W118*, 08', 44.2". Route 3 places a **Tower 580 feet from Nest 1**. The pair of Eagles has since built **Nest-2** at N 45*, 17', 45.9" by W118*, 08', 54.4". Route 3 places a **Tower 0.31 miles east of Nest 2**. Route 3 places the transmission line between the two nests. **Here I will point out that IPC's Avoidance Criterion Identifies Bald Eagle Nests as High Avoidance – recognizing a Buffer of one mile.** The Morgan Lake Route 3 demonstrates a disregard for these Bald Eagles. Here at the ridge-top, Morgan Lake supports an entire ecosystem of scale where the fall hawk migration follows south up the monocline ridge. **Here, watching Bald Eagles and their interaction with fishing Ospreys is a popular nature spectacle. If the Morgan Lake Route 3 is built, the spectacle will become a loud "crackling" transmission line towering over Morgan Lake Park.**

South of Morgan Lake, Route 3 advances southeast up the Glass Hill Monocline and into renowned high-density elk breeding grounds. Here in the upper reaches of Sheep Creek are numerous sedge meadow springs that are used heavily as elk wallows. All "muddied-up", large mature bulls now strut out onto the open bunchgrass slopes to breed on Cowboy and Sheep Ridges. Landowners here have a long history of promoting the Elk Resource as a viable economic and recreational endeavor. Oregon's Governor Pierce and Supreme Court Justice William O. Douglas once made this habitat their personal "getaway." One neighbor has made land acquisitions and established conservation easements to consolidate and preserve the native integrity of the area. The Rocky Mountain Elk Foundation is a cooperator in these efforts, as is the case with the Eastern Oregon University's Rebarrow Forest Project. Before the white-man's time, the Glass Hill Monocline was the gathering location for hundreds of horses that were summer pastured on what we now call the Starkey Range Lands. This is sacred ground, that has been long recognized for its richness and integrity of native vegetation.

Threatened and Endangered Species – OAR 345-022-0060

Morgan Lake Route 3 could impact Snake River Chinook Salmon habitat and water quality where the route crosses Rock Creek.

Oregon's Sensitive Species Rule – OAR 635-100-0040

Morgan Lake Route 3 will affect known Great Gray Owl and White-headed Woodpecker habitats across the 2.5 mile stretch between Rock Creek and Morgan Lake.

Health and Safety Standards for Siting Transmission Lines - OAR 345-024-0090

Specific Standards for Facilities Related to Underground Gas Storage Reservoirs - OAR 345-024-0030

At this point we need to consider the Transmission-line Tower that would stand closest to Morgan Lake recreationists. It is located within 100 feet of a thirty-inch diameter Natural Gas Line (Trans-Alaska, 1st leg constructed 1982). Here the gas-line is less than 600 feet from Morgan Lake Park. And here at the ridge-top is a known zone of weakness for said pipeline. From the top of the Glass Hill Monocline, the pipeline drops steep downslope in both directions – east and west. Over the years, there have been multiple pipeline ruptures less than a mile from Morgan Lake. This explosive potential exposes the residence of Morgan Lake Estates and the recreationist at Morgan Lake Park to unnecessary risk. IPC also needs to consider how their stray energy electrolysis will erode this Trans-Alaska Natural Gas Pipeline. **The Morgan Lake Route 3 crosses the natural gas line twice - once at Morgan Lake, and again it crosses at Rock Creek – approximately 2.5 miles to the northwest. Even more noteworthy, is the fact that the Agency Selected Route A avoids pipeline crossing all together.**

Looking at the statistics for American transmission lines, I see that between 1984 and 2006, approximately 44% of all power blackouts were weather-related, and of those – **11% were caused by lightning activity**. As a resident of the Morgan Lake Estates, I am extremely concerned that IPC's transmission line may act as a source of ignition for leaking gas from an aging pipeline, as well as for uncontrolled wildfire - we have recently seen this in California. My residential property is within 100 feet of the pipeline, and within 900 feet of the Morgan Lake transmission-line/powerline crossing. In 2005, Union County conducted a County-wide Wildland Urban Interface Fire Hazard Analysis. The resulting Analysis was published using Federal grant monies. The document identifies fourteen different Wildland Urban Interface (WUI) Zones within Union County. Based upon a set of Risk Analysis Criterion, each of the 14 WUI Areas were ranked from High-1 to Low-14. The Morgan Lake Estates WUI was given the Highest (#1) Ranking. It is also noteworthy that along the **Agency Identified Route A, there are no residences in any direction for well over a mile.**

Of the three routes under consideration, the **Morgan Lake Route 3 gets the Highest Fire Risk Rating for the following reasons:** it follows across the top of the Glasshill Monocline adjacent to the Grande Ronde Valley. The construction of a 200-foot-tall transmission line towers, along the highest ridgetop, where they are exposed to the most turbulent weather conditions is a recipe for fire. Here at this high elevation, the Morgan Lake Route 3 will be cut through *Cold Moist Ecotypes* that are dominated by mixed-conifer forests. Here, dense volatile fuels are exposed, where winds are the norm, and fuels dry quickly. It is highly significant that this area of the Blue Mountains is in the major lightning path, where cumulus buildups move up from the southwest. The storms track across the Blue Mountains strengthening as they move northeasterly. And as the storms cross the Glass Hill Monocline and the adjacent Grande Ronde Valley, thermals increase lightning activity at the ridgetop – not a good place for a major transmission line. Note here that the **Agency Selected Route A rapidly drops (west) down from the Glass Hill Monocline and onto a lowland ridge where winds and weather are diminished, and where vegetative fuel is sparse short grass vegetation of low flammability.**

As a resident in the Morgan Lake Estates for 40 years, I have always considered **Morgan Lake to be our greatest Fire Fighting Asset**. At the ridgetop, Morgan Lake provides fire helicopters with buckets the ability to come and go from any direction without limitations. Morgan Lake is among the best water sources for helicopters in the region. **The proposed Morgan Lake Route 3 would significantly change helicopter activity around Morgan Lake, creating an unnecessary liability that puts us all at risk.**

Additionally, the Morgan Lake Route 3 (at the ridgetop) poses additional aviation liabilities that need consideration. Most air traffic in and out of La Grande Airport, the U.S. Forest Service Airtanker Base, and the Life Flight Base comes from and goes out to the west. Low Flying aircraft cross the Morgan Lake ridgetop commonly. Again, the **Morgan Lake Route B creates unnecessary liabilities that puts us all at risk. The Agency Identified Route A eliminates these liabilities.**

SUMMARY

Idaho Power's Proposed Routes offer Oregon decision makers a false choice. It is likely that **Idaho Power's Proposed Route B** will not achieve License Approval by EFSC. By default, IPC's request would become permit **Morgan Lake Route 3**. IPC put these two routes forward in the "11th hour" of the Final EIS. Neither route was evaluated by a credible environmental review team. I have dedicated my own time to comparing and contrasting **Morgan Lake Route 3** with the **Agency Identified Route A**

because Oregon's decision makers and the public deserve a full vetted and evaluated alternative. The **Morgan Lake Route 3 is High Impact.**

At the ridgetop, the Morgan Lake Route 3 would have greater impacts on: protected areas, recreation, scenic resources, soils, forested acres, and fish and wildlife habitats. The Morgan Lake Route poses unnecessary risks to: public health and safety, the wildland urban interface, fire suppression support systems, and to aircraft transportation. Morgan Lake Route is more topographically complex, has very limited road access, and requires much more disruption to wildlands. **All said, I calculate that the Morgan Lake Route 3 is a significantly more expensive transmission line segment to build, and to maintain.**

Alternatively, the Agency Identified Route A is topographically simple, has extensive solid road access, and crosses uninhabited lowlands. Here, soils are thin, vegetation is sparse and of low flammability. **It is clear to me why Route A is the Agency Identified Route. And it remains a complete mystery - why IPC chooses to disregard the Agency Identified Route.**

Idaho Power has been asked repeatedly – why the **Agency Identified Route 3** was not included in the EFSC Application? On October 17, 2018, IPC and EFSC held a joint informational meeting at the Blue Mountain Conference Center in La Grande. A member of the audience asked **IPC's Jim Maffuccio** the question – **why are you not using the BLM's environmentally preferred route?** His vague answer was essentially - **we have been working with landowners; there are habitat concerns; the tribes have some concerns; we are communicating with the BLM.** There has been no further elaboration or publicly presented documentation.

I am now asking EFSC, to ask Idaho Power Corporation, to amend their Oregon Application for Site Certificate - Include the Agency Identified Route A for consideration.

Going forward, I also ask that EFSC consider seriously the issues of Health and Public Safety. And I ask that EFSC members consider the **Oregon Conservation Strategy (OCS)** as they weigh the impacts that each of the three routes: A, B, & 3. OCS is the state's overarching strategy for conserving fish and wildlife resources. It serves as the official State Wildlife Action Plan for Oregon, and it is a requirement for the federal State Wildlife Grant Program. The objective of OCS is to conserve fish and wildlife resources by maintaining and restoring *functioning habitats*. OCS breaks the state into *Ecoregions* - the entirety of Union County is within the *Blue Mountains Ecoregion*. It is critical that EFSC members understand that the setting for this transmission line analysis is arguably in one of the Highest Functioning Habitat Areas in the Blue Mountains Ecoregion. The variability of topography, elevation, soils, native vegetation, and wildlife habitats along the breaks of the Grande Ronde Valley is very high, especially for a two-mile radius surrounding Morgan and Twin Lakes...

Respectfully

Michael McAllister (Owner), Wildland Resource Enterprises, 60069 Morgan Lake Road, La Grande, OR, 97850, wildlandmm@netscape.net, (541) 786-1507 .

cc. EFSC Facility Siting team – energy.siting@oregon.gov, Mark Stokes – Applicant/Certificate holder – mstokes@idahopower.com, Scott Hartell – Planning Director for Union County - shartell@union-county.org , Don Gonzale – BLM B2H NEPA Coordinator – dgonzale@blm.gov .

Stu Spence <sspence@cityoflagrande.org>

In response to your call for information (Date: Fri, Aug 11, 2017 at 11:16 AM - Subject: B2H Morgan Lake) – “The City of La Grande is currently providing input to Idaho Power for their Boardman to Hemingway Transmission Line Project. Their current proposed route crosses the boundary of Morgan Lake along the West and Southwest and I have some major concerns about the environmental impacts on Little Morgan Lake. That’s where I need your help.”

I encourage you to emphasize to Idaho Power that - the first stated goal in the Morgan Lake Park Recreational Use and Development Plan (Section 1, Page 2) - *A goal of minimum development of Morgan Lake Park should be maintained to preserve the maximum of natural setting and to encourage solitude, isolation, and limited visibility of users while at the same time providing safe and sanitary condition for users.*

Morgan Lake Park encompasses two separate Lakes; Morgan Lake is 70 acres in size and is developed with road access and camping. Lower Morgan Lake is 27 acres in size, undeveloped, and with no road access or camping. Here it is important that we make one important clarification that (although little known) Little Morgan Lake is officially recognized by both the State of Oregon, and by Federal Agencies as Twin Lake (See USGS – Hilgard Quadrangle Topographic Map). This is especially confusing because the City of La Grande’s Morgan Lake Park Plan recognizes Twin Lake as “Lower Morgan Lake.” Semantics yes, but here is the reason that Twin Lake be recognized for this discussion. Twin Lake has been identified by both Federal and State efforts to conserve, restore, and protect wetlands. Oregon has developed a Wetland Conservation Strategy (Oregon Division of Lands, 1993). This Strategy is implemented through the Oregon Wetlands Inventory and Wetlands Conservation Plans (See Webpage). This planning process allows local governments to balance wetlands protection with other land-use needs. Twin Lake was recognized as an important – persistent emergent wetlands that includes both submersed and floating plants.

Between 1979 and 1987, I lived on Sheep Creek – within ¼ mile of Twin Lake. Most days I walked the south shore of the lake on my way to Eastern Oregon University where I was a student. In 1985, I received a B.S. degree from the University of Idaho in Wildlife Resources. Since graduation I have worked as independent contractor specializing in wildlife and vegetation inventory. My very first contract was with the Nature Conservancy – Baseline Inventory of Wildlife and Vegetation for the Downey Lake Preserve in Wallowa County. There I mapped all vegetation communities, emergent to upland. Like Downey Lake, Twin Lake is recognized in the Oregon Wetlands Inventory. Both are distinct wetlands anomalies in the Blue Mountain Ecoregion

Although I have not mapped the wildlife and vegetation communities of Twin Lake, I am empirically familiar with them for the past 38 years. This pristine wetland, and the surrounding uplands, have been uniquely preserved over time. The native integrity of Twin Lake is virtually

unchanged. In fact, both the Osprey and the Bald Eagle have established nesting since I moved here.

Twin Lake, at 4,100 feet elevation, supports one of the most unique waterfowl nesting communities in the Blue Mountains. Most unusual is the nesting by: Ring-necked Ducks, Red Head, Rudy Duck, Blue-winged Teal and Pied-billed Grebe. Other nesting waterfowl include: Shoveler, Green-winged Teal, Mallard, and Canada Geese.

Rush Sedge and Marsh Birds.

Increasing the species diversity surrounding this wetlands anomaly, the lake is created by natural basalt rim rocks along the south and west edge. Here the vegetation is a diverse mixture of native shrubs, Aspen, Black Cottonwood, and Ponderosa Pine. These surrounding shrub and tree communities support as rich an assortment of both migratory and nesting passerine birds as can be recognized across the Blue Mountain Ecoregion.

And with this species richness, so come the Raptors – both nesting and migratory.

Clearly, I understand why you have major concerns about the environmental impacts that a 500 kv Transmission Line would have towering along the south and west sides of Twin Lake. I assume that it was impacts on resources like Twin Lake that resulted in the Bureau of Land Management (BLM) identifying the Glass Hill Alternate as having the Least Environmental Impact – Hilgard to Ladd Canyon Reach.

I hope that the City also expresses concerns about the visual impacts that this Transmission Line would have on one of La Grande's and Union Counties premier viewsheds. Every visitor to Morgan Lake, at the top of the Blue Mountains, would have to first confront a visual assault from Idaho Power.

I encourage you and the City of La Grande to advise Idaho Power to Amend their Application for Site Certificate to include the Glass Hill Alternate Route - the BLM's "Least Environmental Impact Route." This will give the State of Oregon the opportunity to evaluate what Idaho Power has clearly disregarded.

Respectfully

Michael McAllister, wildlandmm@netscape.net

EXHIBIT C

EXHIBIT C



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search



Boardman to Hemingway Transmission Line Project ⁽¹⁾

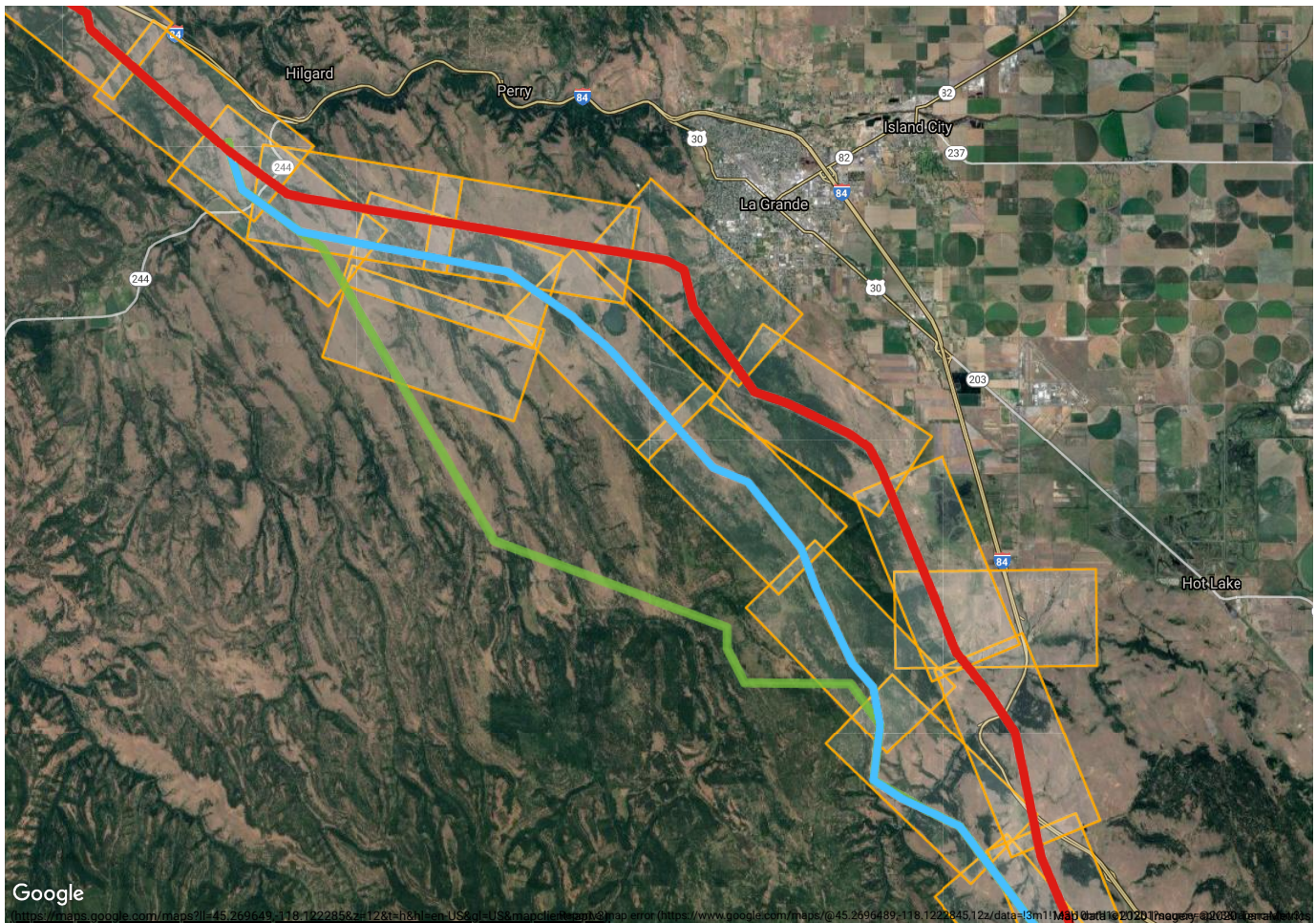
Interactive Map - Including landowner parcels

Property Search

Enter a physical address into the search box to find a property on the map.

Search

- Agency Selected Route (NEPA)
- Proposed Route (EFSC)
- Substations
- Detailed Maps



For questions, contact:

Bureau of Land Management (<https://www.blm.gov/oregon-washington/energy-independence/boardman-hemingway>).

U.S. Forest Service (<https://www.fs.usda.gov/project/?project=26709&exp=overview>).

David Plummer
Wallowa-Whitman National Forest

CERTIFICATE OF SERVICE

On November 6, 2020, I emailed the foregoing letter to the administrative law judge in OAH Case No. 2019-ABC-02833 at REFERRAL.OED_OAH_REFERRAL@oregon.gov and energy.siting@oregon.gov with copies sent as follows:

By: Hand Delivery

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La Grande, OR 97850

By: Electronic Mail:

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Michael McAllister
Petitioner

EXHIBIT 5

EXHIBIT 5

Michael McAllister, 60069 Morgan Lake Road, La Grande, Oregon, 97850, (541) 786-1507

December 6, 2020

Alison Greene-Webster, Senior Administrative Law Judge
Oregon Department of Energy
500 Capitol Street NE
Salem OR 97301

SENT VIA EMAIL TO: OED OAH Referral@oregon.gov and service list

RE: EFSC Denial of Petitioner Michael McAllister's Appeal to Include the Issue of Compliance with ORS 469.370(13) from Contested Case in the Matter of the ASC for B2H Transmission Line.

Dear Honorable Judge Greene-Webster:

In my public comment, my petition to participate in this proceeding, and my appeal of the Court's Interim Order to the Energy Facility Siting Council (EFSC), I have specifically raised the issue that review of IPC's application was not consistent with federal agency review calling the application "incomplete" based on the stated requirements and language of Oregon Department of Energy's (ODOE) Project Order (attached as Exhibit A). ODOE stated in the cover letter to the Project Order that "issues [contained within the Project Order] must be addressed adequately in the Application for Site Certificate **in order for ODOE to find the application complete.**" (emph. added) Further, ODOE directs:

Consideration of Alternate Routes

EFSC expects Idaho Power to seriously consider alternate routes that are feasible and would reduce impact on private land. This may involve changing the proposed route and examining routes that were not previously considered. We understand that this will take more effort and more time, and could cause the application to be submitted at a later date than originally projected. However, this step is necessary for the Council to find that the project minimizes adverse impacts on the resources protected by its standards.

(Ex. A, ODOE letter at p. 2).¹

¹ As I argued in my appeal to EFSC, which EFSC denied, Idaho Power's response and justification on the record for disregarding the BLM's environmentally preferred route was that 1) the federal agency was taking too long and 2) the Union County parcels involve non-federal lands and therefore they could ignore the federal agency review here. The Council asked no follow up questions, and the public was denied the opportunity to do so. Thus, the public has been forced to accept this inadequate justification for why we will be denied the expertise of the reviewing federal agency. This runs entirely counter to ORS 469.370(13), which is properly within this Court's jurisdiction, and ODOE's Project Order.

Further, Section XII of ODOE's Project Order expressly directs the use of information in the Environmental Impact Statement and is not limited to federal lands. (Ex. A, Project Order at p. 30).

Confusingly, despite the directives in ODOE's attached 2009 Project Order and letter and the fact that ORS 469.370(13) *is* within Council's jurisdiction here, EFSC has excluded this issue from consideration in the Contested Case.² I believe this has been wrongly decided and intend to appeal the decision. ODOE has taken the position in this proceeding that the Council's Order on Appeals of the Hearings Officer's Order on Petitions for Party Status is not appealable / subject to judicial review at this time because, it asserts, the denial of issues to be heard in the Contested Case does not constitute an appealable Final Order (Patrick Rowe email submitted Nov. 30, 2020). Confusingly, this position defies judicial efficiency, requiring the parties to fully litigate the case before there is "final order" on the preliminary matter of whether issues were improperly excluded from consideration in this matter. More troubling still is that I have no way to appeal the denial of the primary issue that I have raised in my request for standing in the contested case before you: whether EFSC has complied with ORS 469.370(13) in evaluating Idaho Power Company's (IPC) Application for Site Certificate.

Specifically, my only objection to IPC's application for site certificate is that, 10 years after ODOE issued the Project Order for the Boardman to Hemingway (B2H) transmission, IPC ignored EFSC's prior directive to "consider alternate routes that are feasible and would reduce impact on private land" (Ex. A, ODOE letter at p. 2) and to use information from the EIS, consistent with the dictates of ORS 469.370(13). Again, this has not been done. IPC ignored NEPA's preferred route (the Glass Hill Alternative) and instead inserted the Mill Creek Route and Morgan Lake Alternative, neither of which were scientifically evaluated or screened through public comment.

In 2008, I first volunteered to advise ODOE's Adam Bless and IPC in their collective effort to evaluate B2H through the NEPA process in a manner that identified issues are adequately addressed in IPC's Application for Site Certificate and such that ODOE may find IPC's application **complete**.

Attached is ODOE's January 26, 2009 Project Order and cover letter from Adam Bless, sent to IPC's Eric Hackett. Section XII – **USE OF INFORMATION IN THE ENVIRONMENTAL IMPACT STATEMENT** states:

"Pursuant to ORS 469.370(13), EFSC will review the application for site certificate, to the extent feasible, in a manner that is consistent with and does not duplicate BLM's review under

² In denying consideration of the issue of compliance with ORS 469.370(13) in the case, EFSC has improperly issued a merits decision at the standing stage. There can be no question, and the Court and Council have recognized in excluding this issue, that ORS 469.370(13) is within Court's jurisdiction. The question that remains is whether the parties have complied with this requirement in this case. That is a merits determination that has been prematurely and improperly decided in excluding the issue from consideration based on confusing reasoning that, for purposes of this case, ORS 469.370(13) falls outside of Court's jurisdiction.

NEPA.” ODOE’s 2009 Project Order and EFSC’s current stated position do not square. Both in my oral and written appeals to IPC’s ASC, I have referred to IPC’s ASC as “incomplete” because it does not meet the conditions of ORS 469.370(13) nor does it meet the conditions for “complete application” as identified in the Project Order.

As a layperson in this process, I am confused by EFSC’s treatment of the issue of compliance with ORS 469.370(13), and by ODOE’s position that this is not appealable at this time. I now request clarification as to the timing and forum for petitioners’ appeals of issues that the Council has excluded entirely from being heard in the Contested Case.

Sincerely,

Michael McAllister

EXHIBIT A

EXHIBIT A



Oregon

Theodore R. Kulongoski, Governor



OREGON
DEPARTMENT OF
ENERGY

625 Marion St. NE
Salem, OR 97301-3737
Phone: (503) 378-4040
Toll Free: 1-800-221-8035
FAX: (503) 373-7806
www.Oregon.gov/ENERGY

Mr. Eric Hackett
Idaho Power Corp.
P.O.Box 70
Boise, Idaho 83707

January 26, 2009

Dear Eric,

Attached is the Project Order for the proposed Boardman to Hemingway transmission line.

The project order is based on the Notice of Intent (NOI) that Idaho Power submitted to the Oregon Department of Energy on August 28, 2009. It reflects comments made by state agencies and the commissions of all five Oregon counties affected by the proposed project.

The project order also reflects the comments on the NOI made by the public at the joint public information meetings that were held in October 2008, received through the project website, or sent directly to the Department by email or US mail.

Although the Project Order is a long document, there are key points that ODOE wants to emphasize. These issues were raised repeatedly in public and agency comments, particularly from the commissioners of the five Oregon counties. Many of these issues relate directly to the proposed project's ability to comply with the rules of EFSC, other state agencies and local governments. These issues must be addressed adequately in the Application for Site Certificate in order for ODOE to find the application complete. This could mean providing mitigation, but it could also mean modifying the route to avoid the impact. In particular, the application must address the following:

Impact on land in the Oregon Exclusive Farm Use Zone:

ODOE is particularly concerned about the many public and agency comments stating that Idaho Power must do more to avoid land in Oregon zoned Exclusive Farm Use (EFU). Much of the route described in the NOI is located in the EFU zone. Oregon land use law strongly protects EFU land, and allows its use only if alternatives were seriously considered and were shown not to be feasible according to criteria prescribed in the statute. Idaho Power must seriously consider route alternatives through other lands before using the EFU zone in Oregon. This includes alternatives that bypass part of Oregon by using a more direct route through Idaho.

If the line must be sited in the EFU zone, Idaho Power must demonstrate compatibility with the prevailing farm use and with practices such as irrigation and pest and weed control.

Use of Federal Land

Many residents and elected officials expressed concern about the large use of private land, compared to the much smaller use of BLM or US Forest Service land. ODOE recognizes that only those federal agencies have the authority to grant right of way on the lands that they manage, subject to the federal regulations and state and federal mitigation requirements. However, EFSC must consider the impact on private lands as well as public lands. ODOE expects Idaho Power to work with BLM on route alternatives that minimize impact on private land, particularly farm land, even if that means requesting additional right of way from the federal agencies. If Idaho Power cannot avoid private land by seeking right of way on federal land, then that prohibition must be based on applicable federal regulations and must be documented by the federal agencies.

Habitat Impacts on Private Land

Many of the comments on the NOI documented habitat values on private land. For example, some property owners have managed their property for habitat value under agreements with ODFW or federal agencies.

The EFSC habitat standard is based on habitat value, regardless of whether the land is public or private. High category (category 1 or 2) habitat on private land is afforded the same protection under EFSC standards as similar category public land. Comments from resource agencies have focused largely on the sage grouse, but ODFW has also noted that Big Game Range is considered Habitat Category 2.

Consideration of Alternate Routes

Many comments included alternate route suggestions. Some suggestions were short detours along the route described in the NOI, and others involve a major reroute.

EFSC expects Idaho Power to seriously consider alternate routes that are feasible and would reduce impact on private land. This may involve changing the proposed route and examining routes that were not previously considered. We understand that this will take more effort and more time, and could cause the application to be submitted at a later date than originally projected. However, this step is necessary for the Council to find that the project minimizes adverse impacts on the resources protected by its standards.

ODOE would like to discuss the contents of this Project Order with you in detail and in person. Please contact the Project Officer, Adam Bless, or the Siting Manager, Tom Stoops to arrange a date when we can go over this order in detail. As always, feel free to contact ODOE at any time.

We would like to thank Idaho Power for the high level of outreach and consultation with reviewing agencies, local county governments and other stakeholders to date. We look forward to working with you in reviewing a proposal for the transmission line that meets the company's needs and is acceptable to the many stakeholders along the route.

Sincerely,

Adam Bless
Oregon Department of Energy

OREGON DEPARTMENT OF ENERGY

Regarding Statutes, Administrative Rules and
Other Requirements Applicable to the Proposed)
Idaho Power Boardman to Hemingway) PROJECT ORDER
Transmission Line Project)

1
2 On August 28, 2008, the Oregon Department of Energy (ODOE) received a Notice of Intent
3 (NOI) to apply to build a new aboveground 500-kV single-circuit transmission line that would
4 connect an existing power plant near Boardman, Oregon, and the planned Hemingway substation
5 near Murphy, Idaho. The Applicant is Idaho Power Company (IPC). The proposed transmission
6 line would run approximately 298 miles through five Oregon counties and three Idaho counties
7 and connect with transmission lines on either end of the project to convey electricity on a
8 regional scale. An additional in-line substation will be located in the vicinity of Sand Hollow,
9 Idaho. As described in the NOI, approximately 86% of the transmission line would be located on
10 private land, with the remainder on federal land managed by the US Bureau of Land
11 Management (BLM) or the US Forest Service (USFS)¹. The facility would require a Site
12 Certificate from the Oregon Energy Facility Siting Council (EFSC or the “Council”) and
13 approval under the National Environmental Policy Act (NEPA) process, which is required for
14 any proposed action on federally-managed lands.

15
16 On September 4, 2008, ODOE prepared the memorandum described in OAR 345-015-0120 and
17 distributed it, together with reference to the website location of the NOI (and the offer to forward
18 a printed copy of the NOI on request) to the officers, agencies, and tribes described in OAR 345-
19 020-0040. In the memorandum, ODOE requested agency comments on the NOI by October 10,
20 2008. ODOE received comments from the Oregon Department of Environmental Quality,
21 Oregon Water Resources Department, Oregon Department of Transportation, Oregon Parks and
22 Recreation Department, Oregon Department of Fish and Wildlife, the Confederated Tribes of the
23 Umatilla Indian Reservation, and the U.S. Department of the Interior, Bureau of Reclamation.
24 Local governments including Malheur County, Umatilla County, Union County, and the cities of
25 Ontario, Pilot Rock, Vale, Echo, and Boardman commented in writing.

26
27 On September 12, 2008, BLM published an NOI to prepare an environmental impact statement
28 for this project in the Federal Register, to notify the public and affected agencies of the
29 preliminary issues associated with this project². On September 25, 2008, ODOE issued a public
30 notice of the EFSC NOI to the EFSC mailing list and to adjacent property owners as defined in
31 OAR 345-020-0011(1)(f). This public notice was distributed jointly with the BLM to satisfy both
32 NEPA and EFSC requirements. The notice announced a series of public information meetings to
33 be held in Marsing, Idaho on October 21; Ontario, Oregon on October 22; Baker City, Oregon on
34 October 23; Island City, Oregon on October 28; Pendleton Oregon, on October 29; and

¹ These percentages are preliminary and are likely to change as the applicant finalizes the proposed route.

² The NOI that BLM published in the Federal Register is a different document from the EFSC NOI that Idaho Power submitted under OAR 345 Division 20. In this project order, the term “NOI” refers to the document submitted to the Oregon Department of Energy by the applicant under OAR 345 Division 20 unless specified otherwise.

1 Boardman, Oregon on October 30, 2008. In the notice, ODOE requested public comments on
2 the NOI by November 14, 2008.

3
4 Under Oregon law, ODOE must issue a project order following receipt of a Notice of Intent
5 (ORS 469.330(3)). OAR 345-015-0160(1) requires in relevant sections that ODOE issue a
6 project order that establishes the following:

- 7
- 8 (a) All state statutes and administrative rules containing standards or criteria that
9 must be met for the Council to issue a site certificate for the proposed facility,
10 including applicable standards of OAR Chapter 345, Divisions 22, 23 and 24;
11
 - 12 (b) All local government ordinances applicable to the Council's decision on the
13 proposed facility;
14
 - 15 (c) All application requirements in OAR 345-021-0010 applicable to the proposed
16 facility;
17
 - 18 (d) All state and local permits necessary to the construction and operation of the
19 proposed facility and the name of each agency with the authority to issue such
20 permits;
21
 - 22 (e) Any other data and information that must be included in the application for a site
23 certificate to allow the Council to determine whether the proposed facility will
24 comply with applicable statutes, administrative rules and local government
25 ordinances;
26
 - 27 (f) The analysis areas for the proposed facility;
28
 - 29 (g) Public concerns that address matters within the jurisdiction of the Council that the
30 applicant shall consider and discuss in the application for a site certificate, based
31 on comments the Department has received;
32
 - 33 (h) If the applicant has identified one or more proposed corridors in Exhibit D of the
34 NOI as required in OAR 345-020-0011(1)(d), any adjustments to the corridor(s)
35 that the applicant shall evaluate in the corridor selection assessment described in
36 OAR 345-021-0010(1)(b);
37
 - 38 (i) If the applicant chooses to demonstrate need for a proposed electric transmission
39 line under the economically reasonable rules, OAR 345-023-0030 and 345-023-
40 0040, the alternatives the applicant must evaluate in the application for site
41 certificate in lieu of construction and operation of the proposed facility in addition
42 to the alternatives described in 0010(1)(n)(E) or (F), if any; and
43
 - 44 (j) The expiration of the NOI, according to OAR 345-020-0060(1).
- 45

46 ORS 469.401(4) provides that a site certificate issued by the Council does not govern certain
47 matters. This Project Order does not consider matters outside the Council's jurisdiction. IPC must

1 nevertheless comply with all statutes, regulations and local ordinances applicable to the proposed
2 facility.

3 As provided in ORS 469.330(4), ODOE or the Council may amend this Project Order at any
4 time. The definitions in ORS 469.300 and OAR 345-001-0010 apply to the terms used in this
5 Project Order, except where otherwise stated or where the context indicates otherwise.

6
7 THEREFORE, pursuant to 345-015-0160(1), the Oregon Department of Energy orders that:

8
9 **I. DEFINITIONS (see ORS 469.300 and OAR 345-001-0010)**

10 As used in this Project Order:

11
12
13 "Energy facility" means the proposed high voltage transmission line. The term "energy facility"
14 does not include any related or supporting facility. If a reference is intended to apply to both the
15 energy facility and its related or supporting facilities, the term "facility" is used.

16
17 "Related or supporting facilities" means any structure, proposed by the applicant, to be
18 constructed in connection with the construction of the energy facility. The Council interprets the
19 terms "structure, proposed by the applicant, to be constructed in connection with" as meaning
20 that a structure is a related or supporting facility if it would not be built but for construction or
21 operation of the energy facility.

22
23 "Facility" means an energy facility together with any related or supporting facilities.

24
25 "Energy facility site" means all land upon which an energy facility is located or proposed to be
26 located.

27
28 "Related or supporting facilities site" means all land upon which related or supporting facilities
29 for an energy facility are located or proposed to be located. For pipelines, this includes the right
30 of way, any construction right of way and associated laydown or staging area.

31
32 "Site" means all land upon which a facility is located or proposed to be located.

33
34 **II. STATUTES, ADMINISTRATIVE RULES, RELATED PERMITS OR OTHER**
35 **APPROVALS AND DISCUSSION OF SPECIFIC INFORMATION**

36
37 This section identifies the Oregon statutes and administrative rules that IPC must address
38 in the application and related state permits and approvals. This section discusses specific
39 information to be included in the application.

40
41 **1. Energy Facility Siting Council**

42
43 **Statute and Rule References:** Statutes pertaining to the regulation of energy facilities,
44 starting at ORS 469.300, Administrative rules in OAR Chapter 345, Divisions 1, 21, 22,
45 24, 26 and 27.

1 **Permit:** An energy facility site certificate is required before construction or operation.

2
3 **Discussion:** Section V below describes specific application requirements under OAR
4 345-021-0010.

5
6 All general standards in OAR Chapter 345, Division 22, apply to the proposed facility. If
7 the Council issues a site certificate for the proposed facility, the certificate holder must
8 implement a compliance plan, as described in OAR 345-026-0048. The site certificate
9 will contain the mandatory conditions, applicable site-specific conditions, and monitoring
10 conditions described in OAR 345-027-0020, -0023 and -0028.

11 12 **2. Oregon Department of Agriculture – Plant Conservation Biology Program**

13
14 **Statute and Rule References:** ORS Chapter 564, OAR Chapter 603, Division 73

15
16 **Permit:** None required.

17
18 **Discussion:** The Oregon Department of Agriculture (“ODA”) provides technical review
19 and recommendations regarding compliance with the Council’s threatened and
20 endangered species standard (OAR 345-022-0070) as it relates to plant species.

21 OAR 603-073-0070 contains the state list of endangered and threatened plant species.
22 OAR 603-073-0080 gives ODA the authority to designate candidate plants. If IPC finds
23 any state-listed threatened or endangered plant species that may be affected by the
24 proposed facility, IPC must address the requirements of OAR 603-073-0090(5)(d)(A)-(E)
25 in the application.

26
27 IPC should include in its application a list of both state- and federally-listed endangered,
28 threatened, and candidate plant species that have potential to occur in the analysis area.
29 IPC should identify these species based on a review of literature, consultation with
30 knowledgeable individuals, and reference to the list of species on the Oregon Natural
31 Heritage Program.³

32
33 IPC should include in its application a description and the results of a field survey for the
34 listed plant species. A qualified individual shall conduct the field survey during the
35 season or seasons appropriate to the plant species under consideration. The field survey
36 report should include written descriptions of the survey methods and areas surveyed. IPC
37 should consult with the Oregon Department of Agriculture, Native Plant Conservation
38 Program, regarding field survey methods, appropriate survey seasons and qualifications
39 of field survey personnel.
40

³ OAR 345-022-0070 applies only to state-listed plant and animal species. However, OAR 345-021-0010(1)(q) requires applicants to consider plant and animal species listed as endangered or threatened under both state and federal law. This requirement applies because the Council, in making its decision, must be mindful of possible adverse impacts to federally listed species. Note also that OAR 345-022-0070 applies to all lands affected by a proposed facility including state, federal and private lands.

1
2 **3. Department of Environmental Quality – Water Quality**
3

4 **Statute and Rule References:** ORS Chapters 468 and 468B, OAR Chapter 340, Division
5 45.
6

7 **Permits:** NPDES Construction Storm Water 1200-C Permit (“NPDES”) and Clean Water
8 Act Section 401 Water Quality Certificate
9

10 Preliminary agency comments on the NOI request that IPC determine the potential for
11 stormwater discharge to a surface water body and total disturbed area in order to evaluate
12 whether the 1200-C construction stormwater permit is required for the proposed project.
13 Projects less than one acre or without the potential for discharge to a surface water body
14 or conveyance to surface water (e.g. drainage ditch or storm sewer) are not required to
15 obtain coverage under the 1200-C construction stormwater permit.
16

17 Under OAR 345-021-0000(7), the ODOE shall not find a site certificate application
18 complete unless the applicant has submitted to the ODOE a copy of each federally-
19 delegated permit application. The applicant must also provide a letter or other indication
20 from the Oregon Department of Environmental Quality (DEQ) stating that the agency has
21 received a permit application from the applicant, identifying any additional information
22 the agency is likely to need from the applicant based on the agency’s review of the
23 application as submitted and estimating the date when the agency will complete its
24 review and issue a permit decision.
25

26 The U.S. Environmental Protection Agency has delegated authority to DEQ to issue
27 NPDES Storm Water Discharge permits for construction and operation activities. The
28 Council does not have jurisdiction over the federally-delegated NPDES permit, but the
29 Council may rely on the determinations of compliance and the conditions in the
30 federally-delegated permit in making its determination about whether other standards and
31 requirements under the Council’s jurisdiction are met. In particular, site certificate
32 holders have frequently relied on the Erosion and Sediment Control Program (ESCP) that
33 is required for the 1200-C permit as evidence of compliance with the EFSC Soil
34 Protection standard and with some applicable land use ordinances. If Idaho Power will
35 cite the ESCP in support of compliance with Council standards, then the complete ESCP
36 must be provided for the application to be complete.
37

38 **4. Department of Environmental Quality – Hazardous Materials**
39

40 **Statute and Rule References:** ORS Chapters 465 and 466; OAR Chapter 340, Divisions
41 100 through 122
42

43 **Permit:** None required
44

45 **Discussion:** IPC must include in the application a list of all hazardous materials that
46 potentially would be stored or used at the facility site during construction and operation.

1 IPC must comply with DEQ regulations concerning the use, clean up and disposal of
2 hazardous materials.

3
4 The DEQ hazardous materials program implements requirements of the US EPA and is
5 considered a federally delegated program. However, information on hazardous materials
6 use and storage is important in determining the potential for spills that could adversely
7 impact soils and potentially affect the cost and success of site restoration. Therefore, the
8 application should include sufficient information on hazardous materials use and storage
9 to assess compliance with the Soils and Retirement standards. A complete application
10 would include sufficient information on plans and programs for hazardous materials
11 storage for DEQ to comment on their adequacy in the course of their comments on the
12 Application for Site Certificate.

13 14 **5. Department of Environmental Quality – Noise Control Regulations**

15
16 **Statute and Rule References:** ORS 467.020, ORS 467.030, OAR 340-035-0035

17
18 **Permit:** None required

19
20 **Discussion:** The proposed facility must comply with the noise control regulations
21 applicable to industrial facilities at OAR 340-035-0035. The requirement is incorporated
22 in the general standard of review, OAR 345-022-0000.

23
24 IPC shall include a noise analysis in the application. The analysis must contain
25 information to support a finding by the Council that the proposed facility would comply
26 with the requirements of OAR 340-035-0035.

27
28 The DEQ noise regulations have been most frequently applied to fixed site industrial
29 facilities such as power plants. However, the regulations apply to all energy facilities.
30 The application should provide the distance between the transmission line and the nearest
31 noise sensitive receptors as that term is defined by DEQ. The application should include
32 baseline sound measurements at the noise sensitive receptors most likely to be affected.
33 Because of the effect that terrain has on noise transmission, multiple baseline noise
34 measurement will probably be necessary. Baseline noise measurements must be taken
35 under conditions when low ambient noise is expected. The application should include
36 information on noise from the transmission line under reasonably expected weather
37 conditions, including weather conditions that typically result in greater noise production.
38 The application should not rely on literature or projected data for sound production from
39 the transmission lines, but should be based on actual measurements of existing
40 transmission lines of similar design under similar weather conditions. If IPC requests a
41 wide corridor, the noise analysis must be conservatively based on the assumption that the
42 transmission line will not be in the center of the corridor but will be placed on the edge of
43 the corridor that is closest to the most limiting noise sensitive receptors. The application
44 should provide evidence that the noise from the transmission line, as measured at the
45 maximally affected noise sensitive receptor, will not exceed the ambient degradation rule
46 of 10 dB above baseline, or the absolute levels listed in Table 8 of OAR 345-035-035.

1
2 **6. Oregon Department of Fish and Wildlife**
3

4 **Statute and Rule References:** ORS Chapters 496, 498, 506, and 509; OAR Chapter 635,
5 Divisions 100, 415, and 425
6

7 **Permit:** None required
8

9 **Discussion:** The Oregon Department of Fish and Wildlife (ODFW) provides technical
10 review and recommendations on compliance with Council rules set forth in OAR
11 345-021-0010(1)(p) and (q) and 345-022-0040, -0060 and -0070. ODFW will base its
12 review and recommendations on state policies concerning Wildlife, Threatened and
13 Endangered Wildlife Species, Protection and Propagation of Fish, Food Fish
14 Management, Fish Passage and Screening Devices, and Placing Explosives in Waters.
15

16 OAR Chapter 635, Division 100 provides authority for adoption of the state sensitive
17 species list and the Wildlife Diversity Plan, and contains the state list of threatened and
18 endangered wildlife species.
19

20 OAR Chapter 635, Division 415 describes six habitat categories and establishes a
21 mitigation goal for each category. The application for a site certificate must identify the
22 appropriate habitat category for all areas affected by the proposed facility and provide the
23 basis for each category designation, subject to ODFW review. IPC must show how it
24 would comply with the habitat mitigation goals and standards by appropriate monitoring
25 and mitigation.
26

27 OAR Chapter 635, Division 425 contains requirements for in-water blasting. In the event
28 that construction of the facility would require the use of explosives on, under, or in
29 Oregon waters or in a location that might affect fish or other wildlife or their habitat, an
30 in-water blasting permit would be required. An application for an in-water blasting permit
31 must include the information necessary to meet the requirements of ORS 509.140 and
32 OAR 635-425-0000 through 635-425-0050 and be submitted to ODFW for approval. An
33 application for an in-water blasting permit must be submitted 90 days prior to the date of
34 blasting.
35

36 Although most communication from ODFW so far has emphasized the protection of the
37 sage grouse, Idaho Power must also meet ODFW requirements for big game range. The
38 Union County district biologist in particular has emphasized the protection of big game
39 range, and on October 31, 2008 ODFW confirmed in writing that big game winter range is
40 classified as Habitat Category 2.
41

42 ODFW provided detailed comments on the NOI by letter dated October 20, 2008. The
43 main contact person for ODFW for the proposed project will be Rose Owens at
44 headquarters and Colleen Fagan in the La Grande office.
45

1 **7. Department of Geology and Mineral Industries**

2
3 **Statute and Rule References:** OAR 345-021-0010 and 345-022-0020

4
5 **Permit:** None required.

6
7 **Discussion:** The Department of Geology and Mineral Industries (DOGAMI) provides
8 technical review and recommendations on compliance with the Council’s structural
9 standard, OAR 345-022-0020. In its application, IPC must include a geotechnical report
10 that includes, as a minimum, the information required by OAR 345-021-0010(1)(h). IPC
11 should submit a full geotechnical report meeting the guidelines of DOGAMI open file
12 report 00-04 “Guidelines for Engineering Geologic Reports and Site Specific Seismic
13 Hazard Reports”. Also relevant is the information required by OAR 345-021-0010(1)(i).

14
15 ODOE recognizes that detailed onsite geotechnical work usually cannot take place until
16 the final route is selected and access from landowners is obtained. If a geotechnical
17 report at the level of detail described in the DOGAMI open file report cannot be prepared
18 for these reasons, IPC should include the conclusions reached in a direct consultation
19 with DOGAMI regarding the level of geotechnical investigation practical for the
20 application, and DOGAMI’s concurrence with IPC’s plans to complete the geotechnical
21 investigation prior to start of construction.

22
23 **8. Oregon Parks and Recreation Department**

24
25 **Statute and Rule References:** ORS 97.740 and ORS 358.905, OAR Chapter 736,
26 Division 51

27
28 **Permit:** An archaeological permit may be required to conduct archaeological
29 investigations of the site.

30
31 **Discussion:** The Oregon Parks and Recreation Department provides technical review and
32 recommendations on compliance with Council standards in OAR 345-022-0040
33 (Protected Areas), OAR 345-022-0080 (Scenic and Aesthetic Values), and OAR 345-
34 022-0100 (Recreation).

35
36 The State Historic Preservation Office (SHPO) provides technical review and
37 recommendations in reference to the Council’s Historic, Cultural and Archaeological
38 Resources Standard (OAR 345-022-0090). Protection for archaeological sites, objects,
39 and human remains on both state and private lands is the primary concern of SHPO,
40 including compliance with Section 106 of the National Historic Preservation Act.

41
42 SHPO anticipates IPC’s compliance with Section 106 through the applicant’s
43 communication with SHPO, the EFSC process, and the BLM’s Environmental Impact
44 Statement. The application should include an archaeological and cultural survey
45 conducted by a qualified archaeologist. The ODOE recommends that IPC work as early

1 as possible with the SHPO to ensure that IPC provides required information in SHPO's
2 preferred formats.

3 4 **9. Oregon Department of State Lands – Removal-Fill**

5
6 **Statute and Rule References:** ORS 196, OAR Chapter 141, Division 85

7
8 **Permit:** A removal-fill permit is required if 50 cubic yards or more of material is
9 removed, filled or altered within a jurisdictional water of the State (OAR 141-085-0015).

10 **Discussion:** IPC should include information in the application to support a finding of
11 whether a removal-fill permit is or is not needed. The application should include
12 complete wetland delineation for all areas to be affected by the proposed facility. If a
13 removal-fill permit is needed, the application must include an itemized demonstration of
14 compliance with each applicable provision of ORS 196.825 and OAR 141-085-0029.

15
16 In Oregon, the removal fill permit is issued by the Department of State Lands (DSL)
17 separately from the 404 permit issued by the US Army Corps. DSL will review a joint
18 permit application (JPA) for compliance with DSL wetland mitigation requirements.
19 Note that in some cases the DSL wetland mitigation success criteria may differ from and
20 exceed those of the Corps.

21
22 To be complete, the application must include a wetland delineation of the entire width of
23 the proposed corridor. DSL must concur with the delineation. If jurisdictional wetlands
24 occur within the proposed corridor then the Council may impose conditions requiring
25 their avoidance. ODOE expects that the transmission line will span wetlands. However,
26 access roads and temporary laydown area are considered part of the site and must be
27 delineated as well.

28 29 **10. Oregon Department of State Lands – Easement**

30
31 **Statute and Rule References:** ORS 273, OAR Chapter 141, Division 112

32
33 **Permit:** Easement for constructing transmission line on state land

34
35 **Discussion:** IPC should include an application for an easement on trust and non-trust
36 land in their facility application. The facility application must include an itemized
37 demonstration of compliance with each applicable provision of OAR 141-122.

38 39 **11. Water Resources Department – Water Rights Division**

40
41 **Statute and Rule References:** ORS Chapters 537 and 540, OAR Chapter 690, Divisions
42 1 through 410, ORS Chapter 538 (withdrawal of municipal/county water)

43
44 **Permit:** A Limited Water Rights permit is required if new water rights are necessary for
45 the project.

1 **Discussion:** The uses of water anticipated for this facility are for construction purposes,
2 road watering and dust abatement. IPC should include information in the application to
3 support a finding of whether a water right is or is not needed. The application must
4 identify the sources of water to be used during construction and operation of the proposed
5 facility, the quantity of water needed, and the means of disposal of all water discharges
6 from the proposed facility.
7

8 Unless obtained from a Municipal supplier, water used in the construction, dust
9 abatement, and road watering will require Limited Licenses. Such licenses cannot
10 authorize use or discharge of water outside a single basin; therefore multiple Limited
11 Licenses may be required.
12

13 Jerry Sauter of WRD commented on the NOI in writing. Mr. Sauter's comments are
14 attached and are incorporated in this Project Order.
15

16 **12. Oregon Department of Land Conservation and Development**

17
18 **Statute and Rule References:** ORS Chapter 469, Division 504
19

20 **Permit:** None required
21

22 **Discussion:** The proposed facility must comply with the Council's General Standard
23 regarding Land Use (OAR 345-022-0030) to ensure the facility complies with statewide
24 planning goals adopted by the Land Conservation and Development Commission. IPC
25 has indicated in the NOI that it will seek a Council determination under ORS
26 469.504(1)(b) for compliance with applicable statewide planning goals. The final
27 selection of land use path is not made until the application for site certificate is submitted.
28 However, once made in the application, the election of land use path is final.
29

30 The Department of Land Conservation and Development (DLCD) issues no permit but
31 will provide additional review for compliance with statewide planning goals and with
32 directly applicable DLCD rules.
33

34 **13. Oregon Department of Transportation**

35
36 **Statute and Rule References:** OAR 734-051, OAR 734-055
37

38 **Permit:** Access Management permit and Utility Facility permit
39

40 **Discussion:** Any utility installations within the right of way of a state highway in Oregon
41 will require a utility permit issued by the Oregon Department of Transportation (ODOT).
42 No utilities may be installed within an interstate highway right of way. Utilities may
43 cross an interstate highway but may not be sited longitudinally within the operating
44 interstate highway right of way.
45

1 Any access from Oregon state highways would require an access permit, which also
2 would be issued by the Pendleton District ODOT Office. ODOT does not typically allow
3 access to utilities from an interstate highway. Randy Randolph of the Pendleton office
4 would be coordinating the permit work for this project. He can be reached at 541-278-
5 3450.

6 7 **III. TRIBES**

8
9 **Statute and Rule References:** OAR 345-020-0011(p)

10
11 **Permit:** None required.

12
13 **Discussion:** The application should include evidence of consultation with affected tribes
14 regarding archaeological and cultural sites and materials that may be found on the
15 proposed site of the facility, and natural and cultural resource issues to ensure protection
16 for tribal rights and resources. In preparing the NOI, IPC contacted the State Commission
17 on Indian Services requesting that it identify appropriate tribes for future consultation.
18 Tribes identified as being expected to have an interest in the proposed project (including
19 alternate corridors) are the Burns-Paiute Tribe, Confederated Tribes of the Umatilla
20 Indian Reservation (CTUIR), Confederate Tribes of Warm Springs, Nez Perce Tribe, and
21 Confederate Tribes of the Colville Reservation.

22
23 In addition to EFSC approval, the project requires a BLM Right-of-Way Grant. Part of
24 BLM's responsibility includes government-to-government consultation with affected
25 Indian tribes.

26
27 ODOE understands that CTUIR has made a written request for government-to-
28 government consultation with BLM. In a letter dated October 20, 2008, CTUIR also
29 requested government-to-government consultation with the Oregon Department of
30 Energy. ODOE and CTUIR representatives held a kickoff meeting at the CTUIR
31 headquarters on October 31, 2008. A representative of BLM Vale District also attended.
32 CTUIR raised certain issues that are of concern and are not addressed by any State
33 agency. CTUIR also indicated that it would provide comments and applicable tribal
34 concerns in writing.

35
36 Particular concerns raised by the CTUIR included but were not limited to:

- 37
38 1. Certain viewsheds may have cultural significance even though they are
39 outside the formal reservation. CTUIR states that those viewsheds should
40 be protected.
- 41
42 2. Some viewsheds and habitat areas cannot be surveyed yet because they are
43 in roadless areas. Moreover, some of these viewsheds and habitat areas
44 cannot be accessed during the winter. This creates a "chicken and egg"
45 situation, where the applicant must explain how it determined that a
46 certain route is appropriate without being able to access it during winter

1 months. ODOE concurs and believes the Application should explain how
2 IPC can select segments of the route that it cannot physically access.
3 Aerial photography may provide limited information if this is dense
4 canopy.

5
6 3. CTUIR asked if the transmission line would enable certain wind facilities,
7 in particular the one at Burnt River. If so, CTUIR believes that impacts of
8 those enabled facilities should be part of the environmental impact
9 evaluation. Under the regulatory framework laid out in Oregon law, EFSC
10 can only review the facility being applied for, and cannot make findings or
11 impose conditions regarding other facilities that may be proposed by
12 someone else. However, the question of other enabled facilities may apply
13 to the BLM review under NEPA.

14
15 4. CTUIR noted that during route selection, it is more concerned about the
16 overall environmental impact and on impact to cultural resources on all
17 lands included ceded lands, rather than just on whether or not the route
18 crosses the formal reservation.

19
20 **IV. APPLICABLE LOCAL GOVERNMENT ORDINANCES**

21
22 **Statute and Rule References:** Applicable Substantive Criteria from Comprehensive
23 Land Use plans of Malheur, Baker, Union, Umatilla and Morrow Counties.

24
25 **Permit:** Conditional Use Permits and Zoning Permits.

26
27 **Discussion:** In the memorandum described at OAR 345-015-120 and distributed on
28 September 4, 2008, the Department requested the rules and local government ordinances
29 that apply to the facility, the list of local permits required for the project, and information
30 required by the affected local governments in their review of the application for site
31 certificate. At its meeting in Boardman, Oregon, on July 25, 2008, the EFSC appointed
32 the commissions for these counties as a “Special Advisory Group”.

33
34 Union and Umatilla County have responded in writing with applicable rules, ordinances
35 and comprehensive plan goals and polices. The criteria and comments provided by those
36 counties are included in this Project Order in their entirety.

37
38 ODOE has received draft land use criteria and comments from Morrow County and
39 anticipates final criteria and comments. ODOE has contacted Baker and Malheur
40 Counties and anticipates applicable substantive land use criteria from those counties as
41 well. The application should therefore address each applicable ordinance, rule, and
42 comprehensive plan goal and policy as it would for a conditional use permit directly from
43 the counties.

1 Malheur County has not yet supplied substantive criteria but has sent written comments
2 in a letter signed by all three members of the County Court. That letter is incorporated
3 into this Project Order.
4

5 **ORS 215.275:** Regardless of route selected, it appears that large portions of the corridor
6 will be in the exclusive farm use (EFU) zone. The application must therefore establish
7 whether the facility is a “utility facility necessary for public service” under ORS
8 215.283(1)(d). That definition in turn is defined in more detail at ORS 215.275. The
9 analysis of compliance with ORS 215.275 will therefore be an important element of
10 Exhibit K. Although the transmission line may be a permitted use in the EFU zone if the
11 criteria set forth in ORS 215.275(2) are met, DLCD rules and county substantive criteria
12 regarding the avoidance of significant adverse impact on farming practices or increases in
13 the cost of farming operations still apply. A detailed Agricultural Impact Mitigation Plan
14 is required and the facility must meet the requirements of sections (4) and (5) of ORS
15 215.275 regarding mitigation and minimization of agricultural impacts. In particular,
16 ODOE received many public comments regarding weed control, compatibility with aerial
17 spraying and with irrigation. The effect of stray voltage on agriculture was also raised in
18 public comment. The ORS 215.275 analysis must show that these potential impacts will
19 not create a significant adverse impact or significant cost increase on farming operations
20 on EFU land in Oregon.
21

22 The core of the 215.275 analysis is the alternatives analysis. The statute requires that IPC
23 consider reasonable alternatives to the EFU zone. Land that not currently in active farm
24 use but is in the EFU zone should still be treated as part of the EFU zone.
25

26 The 215.275 analysis must include a project purpose. That project purpose is different
27 from the IRP review performed by the Public Utility Commission. It must clearly state
28 why only a transmission line that begins in the Hemingway area and ends somewhere
29 near Boardman (Eastern Morrow or Western Umatilla counties) can allow Idaho Power
30 to meet its obligations.
31

32 Federal lands and other habitat lands are an alternative to the farm zone that must be
33 seriously considered. Although the project must also meet the EFSC Habitat standard,
34 that alone is not reason to use the EFU zone unless use of the alternative would violate
35 another rule or statute or cannot be used for one of the other factors in ORS 215.275(2).
36 In the South Mist pipeline case, the Council found that the EFU zone could be used if
37 necessary to avoid ODFW Category 1 or 2, but not category 3 or lower. ODOE
38 recognizes that the resource agencies, such as USFS and BLM, prefer that habitat lands
39 be avoided. However, that preference is not reason enough to eliminate those lands
40 unless that preference is required by regulation. For example, if federal or state rules
41 allow use of habitat land with mitigation, then a corridor using habitat land would be
42 considered a reasonable alternative to the EFU zone.
43

44 If there are certain locations that the transmission lines “must” cross, the application must
45 explain why. For example, the Sand Hollow substation appears to be a key location.
46 EFSC does not regulate the transmission line in Idaho, but locating a route in Idaho must

1 be considered an alternative to locating in the Oregon EFU zone. If the Sand Hollow
2 substation drives part of the route in Oregon (for example, if it precludes following the
3 existing PPL line to the south of Malheur valley), then the application must demonstrate
4 that the substation is essential to the project and cannot be relocated someplace that
5 allows avoidance of the EFU zone in Malheur county.
6

7 The issue of cost is one in which the statute calls for some judgment. The statute states
8 that cost associated with one or more of the factors at 215.275(2) can be a consideration
9 but not the sole consideration. The Council has found in the past that if an increase in
10 cost would render the project infeasible, then a cost of that magnitude is a valid
11 consideration. But, if the project can avoid EFU zone by adding some length, or if the
12 impacts associated with use of non-farm alternatives can be mitigated at additional cost,
13 those costs cannot be the sole reason for use of the EFU zone.
14

15 Cities that commented include Vale, Ontario, Echo, Pilot Rock, and Boardman, Oregon.
16 Malheur and Umatilla Counties, in particular, suggested alternative routes. As a
17 minimum, the alternate routes noted in the section of this order on public and agency
18 comments must be considered. If one of those alternate routes would enable Idaho Power
19 to avoid the EFU zone, then that route must be used unless it is infeasible according to
20 the criteria of ORS 215.275(2). In some cases, the people who suggested alternate routes
21 provided detailed maps. In other cases the alternate routes were in the form of general
22 suggestions. In such cases, we expect Idaho Power to make a good faith effort to explore
23 those possible routes and give them sufficient consideration to see if a reasonable way to
24 avoid the EFU zone can be found. Idaho Power's efforts to consider the alternate routes
25 that avoid the EFU zone must be described in full detail, especially if the application
26 states that an alternate was not practical for one of the reasons listed in ORS 215.275(2).
27 All of the public and agency comments were forwarded to the applicant, the EFSC
28 members, and to BLM in their entirety and in their original form.
29

30 **V. FEDERAL REQUIREMENTS**

31
32 Although federal permitting requirements are matters outside the Council's jurisdiction, IPC
33 must comply with all federal requirements applicable to the proposed facility. ODOE received
34 comments from the Department of the Navy and the Bureau of Reclamation, which will be
35 forwarded to the applicant and to BLM. This list is not a comprehensive list of federal permits
36 or requirements, but only those that commented on the proposed project.
37

38 **VI. OTHER CONSTRUCTION-RELATED REGULATIONS**

39
40 If the Council issues a site certificate, the certificate holder must comply with construction-
41 related regulations that apply to the proposed facility. As provided under ORS 469.401(4), the
42 site certificate does not address these regulations.
43

44 **VII. APPLICABLE REQUIREMENTS FROM OAR CHAPTER 345, DIVISION 21**

1 The Application for a Site Certificate (ASC) should include the information described in OAR
2 345-021-0010(1), as discussed below. The application should include the information described
3 in OAR 345-021-0010(2) and (3). IPC must also submit the information required by OAR 345-
4 021-0000, particularly the information in sections (6) and (7) regarding the status of non-
5 federally-delegated and federally delegated permits.

6
7 (a) Exhibit A – General Information about the Applicant

8
9 Paragraphs (A) through (D) apply. Note that paragraph (B) calls for a list of
10 “participating persons, other than individuals.” “Person” is defined in OAR
11 345-001-0010(45). Include in the application information about all third-party
12 entities (persons other than individuals) that are important to the project.

13
14 (b) Exhibit B – General Information about the Proposed Facility

15
16 All paragraphs apply except (A)(i), (A)(vi), (A)(vii), and (A)(viii).

17
18 The description of the proposed facility in the application will form the basis for
19 the description of the facility in the site certificate. The site certificate will require
20 that IPC will build the facility “substantially as described”. Exhibit B will also
21 provide the basis for the project description in the notice of application that
22 ODOE will issue to reviewing agencies and public. Therefore, Exhibit B should
23 describe the project in enough detail for members of the public and reviewing
24 agencies to make informed comments. It should describe the project sufficiently
25 for ODOE staff to verify that the constructed project meets any representations
26 that were the basis for any findings of compliance with applicable regulations for
27 standards but need not include descriptive material that IPC would not want to be
28 held to in a condition.

29
30 Some members of the public were confused by the descriptions of corridor width
31 in the Notice of Intent. The Application for Site Certificate should be very clear
32 about the width of the proposed corridor. It should provide the reader with a clear
33 understanding of the difference between corridor and right of way. For purposes
34 of this Project Order, the term “corridor” refers to the area that EFSC would find
35 in compliance with applicable standards and would authorize the transmission
36 line. “Right of way” is the area where Idaho Power has acquired an easement
37 from the land owner, and is the area within which the line would actually be
38 constructed. The corridor could be a wide area, in order to allow flexibility in
39 selecting the final alignment. However, the right of way must be no wider than
40 required for construction and operation.

41
42 The application must explain the reason for the width of right of way that is
43 selected. If Idaho Power states that a wide right of way is needed for
44 construction, it must explain clearly why construction could not be done on
45 narrower right of way. EFSC may direct Idaho Power to acquire a narrower right
46 of way in areas that are important for agriculture or for habitat, and it may allow

1 wider right of way at certain locations for laydown and staging. The application
2 must specify how much permanent right of way Idaho Power will request, and it
3 must justify that width of right of way. The application must also explain in detail
4 what limitations would be placed on the property owner in transmission line right
5 of way, such as limitations on structures, crops, or other uses.
6

7 The description of the proposed facility should include sufficient information to
8 allow for verification of the estimated cost of facility retirement and site
9 restoration. Pertinent information would include, but not be limited to, the
10 following: (1) types and sizes of transmission line support structures, including
11 height, width, and weight of steel; (2) amount of concrete above three feet below
12 grade included in transmission line support structure foundations; (3) spacing of
13 transmission line support structures; (4) number of conductors to be mounted on
14 the transmission line support structures; (5) length, width and surfacing of new
15 access roads in Oregon; (6) scope, size and types of related or supporting facilities
16 to be located in Oregon; (7) estimated area of temporary disturbance in Oregon
17 during construction of the proposed facility; and (8) estimated area of permanent
18 disturbance in Oregon during operation of the proposed facility. The information
19 regarding these factors can be placed in Exhibit B or in the exhibit demonstrating
20 compliance with the retirement standard, but it should be clear enough for ODOE
21 staff to review it.
22

23 The alternatives analysis described in section (D) of this exhibit must be
24 consistent with the analysis required by ORS 215.275, and it also includes factors
25 not listed in ORS 215.275. For example, OAR 354-021-0010(1)(b)(D) requires
26 the applicant to consider “least percentage of the total length that would be in land
27 zoned EFU”. This “least length requirement” is not found at ORS 215.275 but
28 nonetheless must be addressed in Exhibit B of the application. Other factors in
29 this section require least percentage on high category habitat lands, greatest
30 percentage using existing rights of way including road right of way, and other
31 factors. EFSC recognizes that some of these factors compete with one another
32 (for example, the apparent conflict between avoiding habitat land and avoiding
33 farm land) but expects the application to demonstrate that both factors were
34 considered.
35

36 ODOE received suggestions for route changes from counties and in public
37 comment. The proposed route changes suggested in public comment should be
38 addressed in this section. In particular, two counties in Oregon suggested major
39 route changes that would be almost completely new corridors. If those routes are
40 not used, the application must provide the basis for their rejection.
41

42 Malheur County, along with many of its residents, strongly advocated a corridor
43 in Idaho from Hemingway to Sand Hollow. Cities in Malheur County argue that
44 the EFU zone in that county is required to be preserved for farm use by strict land
45 use laws that exist in Oregon but not Idaho. ODOE expects IPC to strongly
46 consider changing the route to a direct one in Canyon County. Residents of

1 Malheur County also proposed routes that follow the existing PPL line to the
2 south, turning north towards Durkee in one case, or proceeding farther west to
3 produce a corridor largely on federal land. These alternatives must be seriously
4 considered for use.

5
6 Umatilla County also proposed two alternatives. One option makes more use of
7 the interstate highway. The other travels south of Pilot Rock toward Ukiah.
8 ODOE understands that Idaho Power has met directly with the Umatilla County
9 Planning Department to work on the southerly alternative. The Council
10 encourages such direct consultation between the applicant and the county. The
11 application for site certificate must describe the alternate route that emerges from
12 this direct consultation. If Idaho Power does not eventually choose to use that
13 route, the application should describe the basis for its rejection. If Idaho Power
14 does choose this route, it must still meet all of the other applicable standards of
15 EFSC and other state agencies.

16
17 ODOE recognizes that a route following the interstate highway would include
18 land belonging to the Confederated Tribes of the Umatilla (CTUIR). However,
19 the CTUIR has requested government to government consultation with both
20 EFSC and BLM. In its initial meeting with EFSC, the CTUIR did not state that
21 use of the interstate highway should be precluded.

22
23 Preferences of federal agencies cannot be the sole reason for avoiding federal land
24 or highway right of way unless required by law. For example, a statement that
25 “USDOT prefers not to have the power line on highway right of way” would not
26 be considered sufficient unless that USDOT has cited a regulation precluding its
27 use. The prohibition must be stated in writing. Similarly, a preference by a federal
28 agency such as US Fish and Wildlife Service cannot be the sole reason for
29 avoiding federal land, unless the Service has stated in writing that the use would
30 violate an applicable federal regulation.

31
32 Other less extensive route alterations suggested in public comment should also be
33 addressed in this section, but EFSC will apply the factors at OAR 354-021-
34 0010(1)(b)(D) and ORS 215.275 in evaluating the application.

35
36 (c) Exhibit C – Location

37
38 All paragraphs apply. Maps included in Exhibit C should provide enough
39 information for property owners potentially affected by the facility to determine
40 whether their property is within or adjacent to the site. Major roads should be
41 named. The application should include identification of lands enrolled in the
42 Conservation Reserve Program and lands currently zoned EFU.

43
44 There is no map format prescribed in rule. The resource maps presented at the
45 scoping hearings were useful for the resource agencies but the maps in the

1 Application for Site Certificate need to more helpful to the private property
2 owners in helping them determine how the project affects them personally.

3
4 For fixed sites, ODOE has found USGS quads or maps of scale 1 inch = 2000
5 feet to be a reasonable format. However, for this project, that format may not
6 work. One past applicant supplied a set of two-foot by two-foot aerial photos,
7 with each photo covering roughly a mile and a half. For the B2H project, this
8 would result in a set of about 200 photos. However, the aerial photograph
9 approach, with all roads identified, worked well for members of the public. Maps
10 should clearly show the boundaries of the proposed corridor within which the
11 transmission line could be constructed, and should include familiar landmarks
12 such as roads and existing power lines that reviewing agencies and affected
13 landowners may use to identify the proposed route.

14
15 Some counties have GIS capability and IPC is encouraged to provide the GIS data
16 that those counties can input to their own mapping capabilities.

17
18 All proposed access and temporary laydown sites, with their site boundaries, must
19 be marked. IPC should be aware that access and temporary laydown areas are part
20 of the site, just as the corridor itself is.

21
22 Maps should indicate the “site boundary” as defined in OAR 345-001-0010(53).
23 For resources where the Analysis Area boundary is different from the site
24 boundary, please include maps showing the analysis area boundaries in the
25 exhibits devoted to those resources.

26
27 (d) Exhibit D – Organizational Expertise

28
29 All paragraphs apply. Regarding the ability to successfully construct the project
30 “in accordance with site certificate conditions”, the Council’s review is not
31 limited to IPC’s ability to construct a transmission line. The application must also
32 demonstrate that IPC can honor all commitments and conditions regarding
33 minimization and mitigation of impacts on the resources protected by Council
34 standards and applicable regulations of other agencies. Citations resulting from
35 other similar projects (for example, wetland permits) must be disclosed.

36
37 (e) Exhibit E – Permits

38
39 All paragraphs apply. Although the Council does not review for compliance with
40 federal permits, the application should describe federal permits particularly as
41 federal permitting requirements are often relied on as evidence of compliance
42 with EFSC or local standards.

43
44 (f) Exhibit F – Property Owners

1 Much of the proposed transmission line corridor crosses farm and forest zones.
2 Accordingly, the distance in paragraph (C) applies. In preparation for the NOI, the
3 Oregon Department of Agriculture recommended notice of landowners within
4 750 feet of the proposed corridor to be consistent with local land use
5 requirements. ODOE recommends the 750-foot distance.
6

7 Because of the importance of issuing proper notice, Exhibit F must document the
8 steps Idaho Power takes to ensure that all property owners who meet the criteria at
9 OAR 345-020-0010(1)(f) are included. The rule states that property owners are
10 found by consulting the most recent property tax assessment roll. Exhibit F
11 should demonstrate that Idaho Power worked with the assessor to ensure that all
12 property owners meeting these criteria are listed in the Exhibit.
13

14 The property owner list must be checked and updated at each phase of the
15 process. In past projects ODOE has seen cases where recent property purchasers
16 who were not yet listed on the property tax rolls have claimed that notice of the
17 proceeding was inadequate.
18

19 Some properties have multiple owners. The notification requirement is for notice
20 to all persons who own property within the specified distance from the proposed
21 corridor. If a property has multiple owners, all must be listed.
22

23 (g) Exhibit G – Materials Analysis
24

25 All paragraphs apply. See discussion above under “Department of Environmental
26 Quality” regarding the importance of listing hazardous materials used and stored
27 at the facility, or at temporary access and laydown areas. ODOE also uses the
28 materials analysis to identify any hazardous materials whose storage could affect
29 site restoration.
30

31 (h) Exhibit H – Geology
32

33 All paragraphs apply except (E). The application should include all results of field
34 and laboratory investigations and any other geotechnical and geologic hazard
35 evaluation work. A thorough ground shaking amplification, liquefaction, and
36 lateral spread analysis with all of the calculations, methodologies, and
37 recommendations based on this site-specific analysis will be required. See the
38 discussion above under “Department of Geology” regarding the applicability of
39 DOGAMI Open File Report 00-04 and the advisability of pre-application
40 conferences with DOGAMI regarding the level of geotechnical investigation that
41 must be done prior to the application.
42

43 (i) Exhibit I – Soils
44

45 All paragraphs apply. IPC must demonstrate that the proposed facility would have
46 minimal impact on soil productivity in farm zones. The applicant may take credit

1 for any Erosion and Sediment Control Program (ESCP) and 1200-C and 1200-Z
2 permit applications provided to DEQ.

3
4 (j) Exhibit J – Wetlands

5
6 All paragraphs apply. See above discussion under Department of State Lands.

7
8 (k) Exhibit K – Land Use (Statewide Planning Goals)

9
10 The NOI states that IPC will seek a Council determination of compliance with the
11 Council’s Land Use Standard under ORS 469.504(1)(b). IPC can change this
12 election, but the election is final when the ASC is submitted. Accordingly, all
13 paragraphs apply except (B).

14
15 (l) Exhibit L – Protected Areas

16
17 All paragraphs apply. Note that many specific properties in the five Oregon
18 counties are listed on the Oregon National Heritage website. ODOE expects
19 Idaho Power to research all of the protected areas listed at OAR 345-0022-0040 to
20 determine if they are potentially affected by the transmission line.

21
22 (m) Exhibit M – Financial Capability

23
24 All paragraphs apply. The Council’s Financial Assurance Standard and
25 Mandatory Conditions at OAR 345-027-0020 clearly spell out the requirement for
26 a surety such as bond or letter of credit. Please note that devices such as escrow
27 accounts and corporate guaranties have been proposed in the past and have been
28 rejected. The Council has not accepted scrap value as part of the finding for
29 retirement and site restoration. However, this policy is not codified in rule, and
30 EFSC is mindful of recent bank failures and the changes in the financial markets.
31 If IPC believes an approach other than the one prescribed in OAR 345-027-0020
32 is necessary, it should discuss options with ODOE before writing the application.
33 A Council decision may be required, and rulemaking is a possibility.

34
35 (n) Exhibit N – Need for the Facility

36
37 The applicant must address need for the facility under OAR 345-023-005(1). IPC
38 states in the NOI that the proposed transmission line can satisfy the Need standard
39 based on OAR 345-023-0030 (System Reliability Rule) and in part on OAR 345-
40 023-0020(1) (Least Cost Plan Rule).

41
42 It appears that IPC intends to rely on both rules to demonstrate Need. If IPC will
43 rely on the System Reliability Rule, OAR 345-023-0030, then the application
44 must include all of the information at Division 21 Exhibit N section Note that the
45 System Reliability Rule was written in 1992 and has never been updated. If the
46 transmission line, or a substantially equivalent project, is identified in the most

1 recent Integrated Resource Plan (IRP) acknowledged by the Oregon Public Utility
2 Commission, the Council's "Least Cost Plan" rule fits this project. If the "Least
3 Cost Plan" rule is not the basis for a finding of Need then ODOE would
4 recommend that EFSC consider rulemaking to update the standard. Note that
5 Idaho Power or any interested person can petition EFSC for rulemaking under
6 OAR 137-001-0070.
7

8 The current version of Idaho Power's IRP was submitted to the PUC in 2006 and
9 does not include a transmission line that matches the proposed Boardman to
10 Hemingway line. IPC should notify ODOE when it submits the update to its IRP,
11 and indicate the PUC's expected timeline for IRP review. The application for site
12 certificate will not be deemed complete until OPUC issues an order
13 acknowledging the IRP update that includes the Boardman Hemingway line.
14

15 (o) Exhibit O – Water Use

16
17 All paragraphs apply, except (D). Please see the specific comments of Jerry
18 Sauter of WRD.
19

20 (p) Exhibit P – Fish and Wildlife Habitat

21
22 All paragraphs apply. Please see the direct comments of ODFW and the
23 discussion above regarding ODFW habitat mitigation goals and polices.
24

25 (q) Exhibit Q – Threatened and Endangered Species

26
27 All paragraphs apply.
28

29 (r) Exhibit R – Scenic Resources

30
31 All paragraphs apply. The application should include visual impact analysis on all
32 scenic resources listed in land management plans, county inventories, or other
33 designations. The Scenic and Aesthetic Standard only considers scenic resources
34 listed in a land use or land management plan inventory. However, IPC should
35 describe and minimize impact on scenic resources identified in local government
36 comments, such as Malheur Butte.
37

38 (s) Exhibit S – Historic, Cultural and Archaeological Resources

39
40 All paragraphs apply. IPC should pay particular attention to the Oregon Trail. The
41 application should include a map showing where the site is in relation to the
42 Oregon Trail, and should document the source of information regarding the
43 Oregon Trail's location. Because the site will include some federal lands, the
44 application must address statutes identified by the State Historic Preservation
45 Office as applicable on public lands.
46

1 The State Historic Preservation Officer has advised that documenting the
2 requirements of Section 106 of the National Historic Preservation Act will satisfy
3 applicable SHPO rules.

4
5 (t) Exhibit T – Recreation
6

7 All paragraphs apply. Many public comments on the NOI raised concern over the
8 potential impact on recreational activities ranging from tourism, cycle and
9 motorcycle rallies, and in the case of Malheur County, golf. The application
10 should carefully analyze the importance of recreational opportunities using the
11 consideration factors listed in OAR Chapter 345, Divisions 21 and 22, and must
12 present evidence that the project, net of mitigation, is unlikely to have a
13 significant adverse impact on “important” recreational resources. IPC should
14 address all of the recreational resources cited in the many public comments.
15

16 The ASC should particularly address potential impact on tourism. Tourism is a
17 key recreational opportunity and component in the economy throughout Eastern
18 Oregon. In particular, ODOE received comments stating that the transmission
19 line would degrade the scenic views that tourists expect.
20

21 Many public comments expressed concern about the potential impact on the
22 Oregon Trail, particularly on the Oregon Trail Interpretive Center in Baker
23 County. Most comments were not specific about which standard would cover the
24 Interpretive Center. However, ODOE expects the application to carefully analyze
25 the potential impact of the transmission line on the interpretive center to
26 determine whether or not it would have a significant adverse impact.
27

28 Scenic byways, while not listed in county inventories or land management plans,
29 could be considered an important recreational opportunity under this rule. Some
30 public comments stated that the annual motorcycle and Cycle Oregon rides would
31 not choose the scenic byways if the transmission line is located there.⁴ Other
32 areas that have been managed for hunting or wildlife viewing may not qualify as
33 ODFW Category 1 or 2 habitat but might nonetheless be considered important or
34 unique recreational facilities⁵ The application must describe reasonable efforts to
35 avoid such impacts by route adjustments or project design, or it must describe
36 why alternate alignments were not available.
37

38 (u) Exhibit U – Public Services
39

40 All paragraphs apply. The ASC should include an analysis of estimated facility-
41 related traffic during construction and operation and the potential impact on
42 traffic safety. Discuss transportation of heavy equipment and shipments of facility

⁴ See for example comments of Alice Trindle, Diane Naglee, Allison Valerio and Holly Gustafson.

⁵ See for example comments of Ross Seyfield, Elk Song Ranch.

1 components during construction. If the proposed transmission line would be
2 located near hospitals or health care facilities, then the application must contain
3 sufficient evidence that the line will not interfere with those facilities or with the
4 welfare of the patients either through direct health effects or by affecting
5 electronic instruments in use.⁶
6

7 Other comments stated that the transmission line could increase the likelihood of
8 fires in forested zones. The application must assess this likelihood relative to
9 other initiating events for fires. To meet the standard, the application must
10 demonstrate that the transmission line will not adversely affect the ability of local
11 or volunteer fire fighting organizations to maintain fire safety.
12

13 One commenter noted that the effect on farming and loss of farm revenue would
14 create a reduction in state and local tax revenues, which would increase the
15 already existing revenue shortfall at the state and local level.⁷
16

17 (v) Exhibit V – Solid Waste and Wastewater

18 All paragraphs apply.
19

20 (w) Exhibit W – Facility Retirement

21 All paragraphs apply. ODOE realizes that transmission lines do not generally
22 have the 30-year life associated with fixed-site facilities. Nonetheless, the
23 retirement standard requires a reasonable engineering estimate of the cost to retire
24 an energy facility and restore the site to a useful condition consistent with the site
25 zoning. The requirement is that the site be restored to the condition suitable for
26 its zoned use. If the site is on EFU land, for example, then the site must be
27 restored to a condition suitable for the agricultural use prevalent in the
28 surrounding vicinity.
29

30 In 2003, EFSC adopted a policy rejecting retirement cost estimates that include
31 scrap value to offset retirement cost. Any position by IPC that this practice
32 should be modified should be presented well before the application is submitted.
33

34 ODOE has used a standard retirement cost estimating method, first developed for
35 generation plants but since applied to other facilities. The method is available for
36 download and is intended to provide guidance. However, if IPC uses a different
37 cost estimate methodology it should demonstrate that the estimate is realistic, and
38 the estimate should be discussed with ODOE before submitting the application.
39
40
41

⁶ See public comment of Nancy Peyron.

⁷ Comment of Matt Ure, Jan 19, 2009

1 (x) Exhibit X – Noise

2
3 All paragraphs apply. See above discussion of DEQ noise standard.

4
5 (y) Exhibit Y – Carbon Dioxide Emissions

6
7 Exhibit Y does not apply.

8
9 (z) Exhibit Z – Cooling Tower Impacts

10
11 Exhibit Z does not apply.

12
13 (aa) Exhibit AA – Electric and Magnetic Fields

14
15 All paragraphs apply. The Council has previously addressed the impact of EMF,
16 citing studies by the National Institute of Health and the California PUC.

17
18 ODOE recommends that IPC review the Final Order for the “COB” generating
19 plant to see the most recent Council discussion of the issue. However, the B2H is
20 a much larger project and crosses a wider variety of lands. IPC should not rely
21 entirely on the findings in the COB order, but should provide a complete and up
22 to date analysis

23
24 A thorough analysis will include studies done since mid-2004 both in the United
25 States and in other countries, such as the Swiss study referenced in several of the
26 scoping comments. The analysis must address the many comments on this topic.

27
28 Although the Council does not have an “EMF standard”, it does have a statutory
29 mandate to adopt any conditions needed to ensure public health and safety. This
30 mandate provides the regulatory basis for any findings or conditions, including
31 setbacks, based on EMF considerations.

32
33 (bb) Exhibit BB – Other Information

34
35 Any information requested in this Project Order that is not addressed in any other
36 exhibit, such as issues raised in public comment.

37
38 (cc) Exhibit CC – Other Law

39
40 Exhibit CC applies.

41
42 (dd) Exhibit DD – Facilities for which the Council has Adopted Specific Standards

43
44 The Council applies specific standards for transmission lines under its jurisdiction
45 in OAR 345-024-0090. Accordingly, paragraph (C) applies.

VIII. ANALYSIS AREAS FOR THE PROPOSED FACILITY

The analysis areas are the minimum areas that IPC must study for potential impacts from the construction and operation of the proposed facility. The analysis areas described in this Project Order do not limit the applicant’s responsibility to assess the potential impacts of the facility. They are the areas in which significant adverse impacts from the proposed facility are likely to occur. If significant impacts could occur beyond the analysis areas described here, then IPC must assess those impacts in the application and show how the facility would comply with the applicable standard with regard to the larger area where impacts could occur.

For all potential impacts, the analysis area includes all the area within the site boundary. “Site boundary” means “the perimeter of the site of the proposed energy facility, its related or supporting facilities, [and] all temporary laydown and staging areas” (OAR 345-001-0010(53)). In its application, IPC must specifically describe the site boundary and provide a map showing the proposed site boundary. The minimum required analysis areas are as listed in Table 1.

<u>Affected Standard or Resource</u>	<u>Exhibit</u>	<u>Analysis Area</u>
Structural Standard	Exh. H	The area within the site boundary.
Soils	Exh. I	The area within the site boundary.
Wetlands	Exh. J	The area within the site boundary.
Land Use	Exh. K	The area within the site boundary and one-half mile from the site boundary.
Protected Areas	Exh. L	The area within the site boundary and 20 miles from the site boundary, including areas outside the state.
Water Use	Exh. O	The area within the site boundary.
Fish and Wildlife Habitat	Exh. P	The area within the site boundary and within 1000 feet from all ground disturbing activities, unless otherwise described in an ODFW- and ODOE-approved protocol.
Threatened and Endangered Species	Exh. Q	The area within the site boundary and 5 miles from the site boundary.
Scenic and Aesthetic Values	Exh. R	The area within the site boundary and 10 miles from the site boundary.
Historic, Cultural and Archaeological Resources	Exh. S	The area within the site boundary.
Recreation	Exh. T	The area within the site boundary and five miles from the site boundary.
Public Services	Exh. U	The area within the site boundary and 30 miles from the site boundary.
Noise	Exh. X	The distance to the maximally affected noise-sensitive receptors.
Electric Transmission Lines	Exh. AA	The area within the site boundary.

IX. EXPIRATION DATE (OAR 345-015-0160(1)(j))

1
2 Pursuant to OAR 345-20-0060(1) this NOI shall expire 18 months following the date this Project
3 Order is issued. The date of expiration is July 26, 2010. IPC may petition the Council to extend
4 the duration of the NOI for the Boardman to Hemingway Transmission Line Project beyond that
5 date as provided under OAR 345-020-0060(1).
6

7 If an application for a site certificate for the facility for which this Project Order is issued has not
8 been submitted prior to July 26, 2010 or the date of any extension granted by the Council, a new
9 NOI must be submitted for the facility in order to satisfy ORS 469.330.
10

11 **X. AMENDMENT AND COMPLETENESS**

12

13 The Council or the ODOE may amend this Project Order at any time (ORS 469.330(4)).
14 Amendment may include changes to the analysis areas. To issue a site certificate, the Council
15 must determine that the proposed facility complies with Oregon statutes and administrative rules
16 identified in the Project Order, as amended, as applicable to the issuance of a site certificate for
17 the proposed facility (ORS 469.503(3)).
18

19 Under OAR 345-015-0190(4), when the ODOE determines the application contains adequate
20 information for the Council to make findings on all applicable Council standards, the ODOE
21 may determine the application complete, regardless of whether the application contains all
22 information required under OAR 345-021-0010. Notwithstanding a determination that an
23 application is complete, the ODOE may require additional information from the applicant if the
24 ODOE identifies a need for that information during its review of the application. OAR 345-015-
25 0190(7).
26

27 **XI. PUBLIC COMMENTS THAT THE APPLICANT SHOULD ADDRESS**

28

29 In addition to the applicable statutes, rules, and local land use requirements listed in Section II of
30 this Project Order, the application must address issues arising from public comments following
31 an Informational Meeting on a Notice of Intent (OAR 345-015-0130). Pursuant to OAR 345-
32 015-0160(1)(g), the issues raised in public comments are summarized in this Project Order.
33

34 ODOE and BLM heard public comments and concerns at the joint scoping meetings held on
35 October 22, 23, 28, 29, and 30 in Ontario, Baker City, La Grande, Pendleton, and Boardman,
36 respectively. The public comment period on the NOI extended from the date the NOI was
37 received until November 14, 2008. ODOE received over 300 comments electronically and via
38 US Mail. All comments were forwarded to the applicant and to BLM in their entirety and in their
39 original form.
40

41 Because there was considerable duplication among comments, ODOE has identified in the
42 summary below the issues raised that IPC should address in its Application for Site Certificate.
43 Not all issues and questions raised in the public comments are matters within EFSC jurisdiction;
44 however, ODOE expects IPC to work directly with the public and with local governments to
45 address comments to the extent practical. The enclosed summary below is not a substitute for the
46 original comments, nor do they represent the opinions of ODOE or EFSC.

1
2 **1. Comments Specific to Impacts on Farmland**

- 3 (a) The lines will prevent the aerial application of insecticides and herbicides on nearby
4 farmland.
5 (b) The lines will pose a danger to aerial applicators.
6 (c) Sprinkler lines are the required irrigation method, but pivot and wheel line sprinkler
7 (d) systems cannot be used close to the towers.
8 (e) Transmission towers will be a hazard to tractors, and some farm equipment is taller than
9 the transmission line minimum clearance.
10 (f) Transmission towers will disrupt gravity irrigation paths.
11 (g) The constant hum of high power voltage lines will disturb noise-sensitive dairy cattle.
12 (h) There is concern about gopher management along lines.
13 (i) There is concern about soil erosion from Right of Way construction and maintenance.
14 (j) Herbicides for noxious weeds will need to be compatible with adjacent crops.
15 (k) Induced currents from the powerline will cause a hazard on irrigation piping.
16 (l) Effect of transmission line on organic certification is unknown.

17 **2. Comments Related to Environmental/Cultural Impacts**

- 18 (a) The project will negatively impact the Oregon Trail and other historical area markings
19 and observation points.⁸
20 (b) Invasive plant species will grow along transmission lines.⁹
21 (c) Wildlife habitat concerns regarding the elimination, destruction or inhibition of areas
22 where animals live, hunt, or otherwise reside.⁵
23 (d) The corridor route is upon the territory of endangered, near endangered or sensitive
24 species of plants and/or animals.¹⁰
25 (e) The soils found in the Malheur and Snake River drainage are highly vulnerable to
26 erosion.¹¹
27 (f) The tower pads can impact water levels near artesian wells.⁷
28 (g) The possibility of groundwater contamination is of concern.⁷
29 (h) The removal of trees would impact soil and water temperatures, encourage erosion, and
30 negatively impact the soil's ability to absorb moisture.⁷

⁸ This issue needs to be addressed under the historic, cultural and archaeological resource standards of OAR 345-022-0090 in Exhibit S of the Application for Site Certificate.

⁹ This issue needs to be addressed under the fish and wildlife habitat standard of OAR 345-022-0060 in Exhibit P of the Application for Site Certificate.

¹⁰ This issue needs to be addressed under the threatened and endangered species standards of OAR 345-022-0070 in Exhibit Q of the Application for Site Certificate.

¹¹ This issue needs to be addressed under the soil protection standards of OAR 345-022-0022 in Exhibit I of the Application for Site Certificate.

- 1 (i) The transmission line would reverse efforts by property owners to manage their property
2 for habitat value¹²

3 **3. Comments Related to Public Safety and Wellbeing**

- 4 (a) The power lines are dangerous to airplane traffic from local airports.¹³
5 (b) The proposed alternate route along Highway 203 will conflict with an existing
6 approach/departure corridor to an existing private use airport.⁸
7 (c) The power lines will cause health problems for inhabitants.⁸
8 (d) Transmission lines may interrupt telephone reception, creating a hazard for residences in
9 need of emergency assistance.⁸
10 (e) There will be offensive noise that will never quit.¹⁴
11 (f) Loss of property value will reduce local property taxes, causing a shortfall in county tax
12 revenue that cannot be made up from other sources¹⁵

13 **4. Comments Specific to Proposed Corridor Selection**

- 14 (a) Corridors already established for this type of utility should be used.¹⁶
15 (b) Exclusive Farm Use land should not be used.
16 (c) Most commenters prefer a corridor other than those proposed (some commenters prefer
17 the proposed corridor; some commenters prefer the alternate route).
18 (d) Alternate proposed route would create excess waste/emissions during construction (does
19 not meet Waste Minimization Standard).

20 **5. Comments Suggesting Specific Alternate Routes or Adjustments**

- 21 (a) IPC should consider bringing the transmission line across the Snake River near other
22 power facilities and take it down the Idaho side through the Midvale, Idaho area.
23 (b) IPC should move the line one mile west from a point north of the town of Adrian to a
24 point a few miles north of the proposed Hemingway substation.¹⁷
25 (c) Transmission lines would be less disruptive if they were placed west of Highway 201 on
26 BLM land.
27 (d) The transmission lines should be placed underground.

¹² See for example comments of Kitchen Creek Ranch, Elk Song Ranch and others. This issue would be addressed under the Habitat Standard and the Recreational Standard.

¹³ This issue needs to be addressed in Exhibit AA (electric transmission line) of the Application for Site Certificate.

¹⁴ This issue needs to be addressed under the noise standards of OAR 340-35-0035 in Exhibit X of the Application for Site Certificate.

¹⁵ This issue needs to be addressed under the Council's Public Services Standard.

¹⁶ These issues need to be addressed as required in OAR 345-021-0010(1)(b)(D) in Exhibit B (corridor selection assessment) of the Application for Site Certificate.

¹⁷ Please refer to the map attached to the November 14, 2008 letter from Jeffery and Linda Hess.

- 1 (e) The lines should go through the rangeland east of Magpie Peak along the Salt Creek
2 drainage and then through the uninhabited range land up toward the Keating cutoff. The
3 line can then travel toward Pleasant Valley.
- 4 (f) The lines should be sited along the railroad tracks or on the north side of I-84, where old
5 Idaho Power lines exist in Baker County.
- 6 (g) The lines should be buried in between the north and southbound lanes of I-84 or along
7 either shoulder of the freeway from Hemingway to Boardman.
- 8 (h) The transmission lines should be placed near Hwy 203 between Baker Valley and Salt
9 Creek with the existing generators near Telocaset.
- 10 (i) The lines should take a more direct route from Durkee to the Hemingway substation or
11 move the route across the Snake River and take it down the Idaho side to the Hemingway
12 substation.¹⁸
- 13 (j) A more direct route from Umatilla County to the Sandhallow Substation is proposed.¹⁹
- 14 (k) Three alternative routes are proposed from Union County, Durkee or near Huntington to
15 the Hemingway substation.²⁰
- 16

17 **6. Comments Related to Recreational Uses**

- 18 (a) Cycling paths will be no longer available or appealing.²¹
- 19 (b) Private use of land will decrease as public (utility) use of land increases.
- 20 (c) Transmission lines may inhibit the use of land for recreational 4-wheel driving.

21 **7. Comments Related to Aesthetics**

- 22 (a) Transmission lines and towers will obstruct views and impact historical or otherwise
23 aesthetically valuable land, such as Malheur Butte, Mitchell Butte, Chalk Butte, the
24 Oregon Trail, the Starvation Camp site and others.^{4, 11}

25 **8. Other Comments**

- 26 a. The need for a new power line should be reassessed in light of the recession.
- 27 b. If an advisory council is created, the council must have representatives from each
28 affected area that do not hold a personal stake in the project's success.

29 **9. Other Comments²²**

¹⁸ Please refer to the maps attached to the November 9, 2008 letter from Rod and Patti Price.

¹⁹ Please refer to the map attached to the November 7, 2009 comment form from Joanne Voile.

²⁰ Please refer to the map attached to the letter from Roger and Jean Findley.

²¹ This issue needs to be addressed under the recreation standards of OAR 345-022-0100 in Exhibit T of the Application for Site Certificate.

²² Although these comments are not tied directly to an EFSC standard, the applicant should address these comments to minimize public uncertainty about the proposed project. Include these issues in Exhibit BB of the Application for Site Certificate.

- 1 (a) Transmission towers (and associated access roads) placed on private property will
- 2 facilitate trespassing.
- 3 (b) Light pollution caused by future wind projects resulting from transmission lines
- 4 (c) The transmission lines may be targeted by terrorists.
- 5 (d) Transmission lines and the general project may have adverse effects on the inhabitants'
- 6 psychological state.
- 7 (e) There are concerns that property values will decline due to transmission lines.
- 8 (f) Grants may no longer be awarded by organizations such as Cycle Oregon which funds
- 9 areas that it utilizes for rides/events.
- 10 (g) Tourist revenue will drop due to lack of aesthetic appeal.
- 11 (h) Power lines may interfere with 2-way radio, AM/FM radio, and television signals.

12 13 **XII. USE OF INFORMATION IN THE ENVIRONMENTAL IMPACT STATEMENT**

14
15 Pursuant to ORS 469.370(13), EFSC will review the application for site certificate, to the extent
16 feasible, in a manner that is consistent with and does not duplicate BLM's review under NEPA.
17 This includes elimination of duplicative study and reporting requirements and EFSC use of
18 information prepared for the federal review.

19
20 Many EFSC standards and rules of other state agencies in Oregon require field work to gather
21 the information needed to demonstrate compliance. ODOE is working with DOGAMI, ODFW,
22 SHPO, CTUIR and county planners to ensure that the field work required for the site certificate
23 application and for the NEPA review can be done concurrently and by the same teams of field
24 scientists. A single technical report describing the results of site investigations for each subject
25 should be able to cover the requirements of both NEPA and EFSC.

26
27 However, the NEPA requirements and EFSC standards are different, and compliance with NEPA
28 does not necessarily ensure compliance with an EFSC standard. For example, the ODFW Habitat
29 Mitigation Policies implement a "no net loss" standard for high quality habitats. ODOE is not
30 aware that NEPA requires no net loss. The level of geotechnical investigation required by the
31 EFSC Structural Standard appears to also exceed NEPA requirements. Farm land protection is a
32 third example where Oregon requirements in the Soil Standard and Land Use standard appear to
33 exceed NEPA requirements. On the other hand, the SHPO has advised that the Section 106
34 process required by the National Historic Preservation Act could well be adequate to meet
35 Oregon SHPO requirements.

36
37 Some apparent differences between NEPA and EFSC requirements include:

- 38
- 39 (a) Habitat assessment – In addition to characterizing habitat, endangered species,
- 40 wetland areas, and other information required for the EIS, the Application for Site
- 41 Certificate must address ODFW habitat protection and mitigation standards (as
- 42 described in OAR 635-415-0025) and meet the Council's no-net-loss standards.
- 43

- 1 (b) It is not clear to what extent farm land and soils are protected in the NEPA review.
2 We assume the EIS will address erosion issues, but it is not clear that soil productivity
3 and compatibility with existing farm practices are addressed in NEPA adequately to
4 meet the Council's Soil standard.
5
- 6 (c) Recreation may be addressed in the EIS but it is unclear as to whether the information
7 that will be provided in the EIS will be enough to meet the Council "no significant
8 adverse impact" standard.
9
- 10 (d) We understand that private land easements may not be acquired until late in the EIS
11 process, and biological/cultural resource studies may therefore lag behind the NEPA
12 process. However, the application must provide evidence of compliance with EFSC
13 standards for all lands, public and private.
14

15 For this reason, work plans for drafting the EIS should be written to ensure that one set of ground
16 studies collects all the information needed for both the EIS and the Application for Site
17 Certificate. Where mitigation is proposed, the scientists drafting the mitigation plans should be
18 made aware that it will be more efficient if they propose a single mitigation plan that meets both
19 BLM and EFSC requirements. This may increase the scope of the EIS, but it will avoid having to
20 write completely separate sets of studies and mitigation plans for the federal and state reviews.
21

22 To the extent that IPC will rely on the draft EIS for evidence of compliance with EFSC
23 standards, ODOE suggests that IPC develop a document that cross references the information
24 you will collect for the EIS with the information that you understand to be needed for the EFSC
25 application. This document could be prepared before the application for site certificate is
26 submitted. This would help identify areas where the EIS alone will not have enough information
27 for a complete EFSC application, so that IPC can supply the needed additional information in the
28 application for site certificate.
29

30 **XIII. APPLICABILITY**

31
32 Failure to include an applicable statute, rule, ordinance, permit or other requirement in this
33 Project Order does not render that statute, rule, ordinance, permit or other requirement
34 inapplicable, nor in any way relieve applicant from the duty to comply with the same.
35
36

37 **OREGON DEPARTMENT OF ENERGY**

38
39
40
41 _____
42 Thomas M. Stoops, Siting Manager
43 Oregon Department of Energy

44 Date of Issuance: _____, 2009

CERTIFICATE OF SERVICE

On December 6, 2020, I emailed the foregoing letter to the administrative law judge in OAH Case No. 2019-ABC-02833, with copies sent as follows.

By: Hand Delivery

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EXHIBIT 6

EXHIBIT 6

From: Patrick.G.Rowe@doj.state.or.us,

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Cc: OED_OAH_REFERRAL@oregon.gov,

Subject: RE: In the Matter of Boardman To Hemingway Transmission Line / OAH Case No. 2019-ABC-02833: Energy Facility Siting Council Order on Appeals of Hearing Officer's Order on Party Status, Authorized Representatives and Issues

Date: Mon, Nov 30, 2020 4:16 pm

Attachments:

Mr. Anuta,

Responding to your November 25 email below. It is the Department's position that, except upon a showing as described in ORS 183.480(3), the Council's Order on Appeals of the Hearing Officer's Order on Petitions for Party Status is not appealable / subject to judicial review at this time because it is not a final order in the contested case nor a final order on the application for site certificate.

After the contested case hearing, the Hearing Officer will serve on all parties a proposed contested case order stating the hearing officer's findings of fact, conclusions of law and recommended site certificate conditions (OAR 345-015-0085(3)). Parties and limited parties may file exceptions to the proposed contested case order (OAR 345-015-0085(5)). After the period for filing responses to exceptions, Council will issue a final order on the application for site certificate, adopting, modifying or rejecting the Hearing Officer's proposed contested case_order and granting or denying issuance of the site certificate (OAR 345-015-0085(7) and (8)). That final order is appealable to the Supreme Court of Oregon (ORS 469.403(3)).

The Department believes this approach is consistent with the APA and model rules for contested cases. (See, e.g., ORS 183.470(2), and OAR 137-003-0070, describing a final order in a contested case).

Patrick Rowe

Senior Assistant Attorney General

Oregon Department of Justice

Natural Resources Section

(503) 947-4520

Cell (971) 600-8959

From: Karl Anuta <kga@integra.net>

Sent: Wednesday, November 25, 2020 6:15 PM

To: Seeley Jeffery <jeff.seeley@doj.state.or.us>; dstanish@idahopower.com; lisa@mrg-law.com; jocelyn@mrg-law.com; jstippel@idahopower.com; cburford@eou.edu; Kellen.tardaewether@oregon.gov; sam.myers84@gmail.com; susanmgeer@gmail.com; deschnerwhit@yahoo.com; mccgcarb@bendbroadband.com; charlie@gillis-law.com; moyald@gmail.com; dutto@eoni.com; jmfisherman9@gmail.com; lkathrynandrew@gmail.com; jerryhampton61@gmail.com; ken_marsha@comcast.net; larkingreg34@gmail.com; cndyrela@eoni.com; staciajwebster@gmail.com; danno@bighdesign.biz; garymarlette@yahoo.com; dirtfarmerjohn@gmail.com; kantell@eou.edu; ncimon@oregontrail.net; joehorst@eoni.com; mcooperpiano@gmail.com; dmammen@eoni.com; onthehoof1@gmail.com; tranquilhorizonscooperative@gmail.com; marvinroadman@gmail.com; diannebgray@gmail.com; tranquilhorizonscooperative@gmail.com; owyheeoasis@gmail.com; suzannefouty2004@gmail.com; sbadgerjones@eoni.com; wildlandmm@netscape.net; loisbarry31@gmail.com; amarch@eoni.com; amarch@eoni.com; candrew@eou.edu; petebarry99@yahoo.com; squirrel@eoni.com; rutnut@eoni.com; amorter79@gmail.com; fuji@stopb2h.org; ott.irene@frontier.com; kskovlin@gmail.com; larkingreg34@gmail.com; browner@eou.edu; jondwhite418@gmail.com; d.janehowell@gmail.com; wintersnd@gmail.com; lotusbsilly@eoni.com; samhartley57@gmail.com; carlmorton2000@gmail.com; bpdoherthy@hughes.net; suemc@eoni.com; alisha@mrg-law.com; jkreider@campblackdog.org; nichole.milbrath@centurylink.com; Rowe Patrick G <Patrick.G.Rowe@doj.state.or.us>; mike@oxbowlaw.com; Sarah.Esterson@oregon.gov; Ratcliffe Jesse D <jesse.d.ratcliffe@doj.state.or.us>

Cc: OED_OAH_REFERRAL@oregon.gov

Subject: RE: In the Matter of Boardman To Hemingway Transmission Line / OAH Case No. 2019-ABC-02833: Energy Facility Siting Council Order on Appeals of Hearing Officer's Order on Party Status, Authorized Representatives and Issues

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*CAUTION EXTERNAL EMAIL***

Thank you Mr. Seeley.

I ask the Mr. Rowe and Mr. Ratcliff please advise on the agency position on whether this Order is appealable now – as a final Order in a Contested Case – or if it is allegedly not appealable now, what the agency’s basis for that position is. We look forward to hearing from the agency on these issues.

Karl G. Anuta

503-827-0320

From: Seeley Jeffery <jeff.seeley@doj.state.or.us>

Sent: Wednesday, November 25, 2020 5:13 PM

To: dstanish@idahopower.com; lisa@mrg-law.com; jocelyn@mrg-law.com; jstippel@idahopower.com; cburford@eou.edu; Kellen.tardaewether@oregon.gov; sam.myers84@gmail.com; susanmgeer@gmail.com; deschnerwhit@yahoo.com; mcgcarb@bendbroadband.com; charlie@gillis-law.com; moyald@gmail.com; dutto@eoni.com; jmfisherman9@gmail.com; lkathrynandrew@gmail.com; jerryhampton61@gmail.com; ken_marsha@comcast.net; larkingreg34@gmail.com; cndyrela@eoni.com; staciajwebster@gmail.com; danno@bighdesign.biz; garymarlette@yahoo.com; dirtfarmerjohn@gmail.com; kantell@eou.edu; ncimon@oregontrail.net; joehorst@eoni.com; mcooperpiano@gmail.com; dmammen@eoni.com; onthehoof1@gmail.com; tranquilhorizonscooperative@gmail.com; marvinroadman@gmail.com; diannebgray@gmail.com; tranquilhorizonscooperative@gmail.com; owyheeoasis@gmail.com; suzannefouty2004@gmail.com; sbadgerjones@eoni.com; wildlandmm@netscape.net; loisbarry31@gmail.com; amarch@eoni.com; amarch@eoni.com; candrew@eou.edu; petebarry99@yahoo.com; squirrel@eoni.com; rutnut@eoni.com; amorter79@gmail.com; fuji@stopb2h.org; ott.irene@frontier.com; kskovlin@gmail.com; larkingreg34@gmail.com; browner@eou.edu; jondwhite418@gmail.com; d.janehowell@gmail.com; wintersnd@gmail.com; lotusbsilly@eoni.com; samhartley57@gmail.com; carlmorton2000@gmail.com; bpdoherly@hughes.net; suemc@eoni.com; alisha@mrg-law.com; jkreider@campblackdog.org; nichole.milbrath@centurylink.com; Rowe Patrick G <Patrick.G.Rowe@doj.state.or.us>; Seeley Jeffery <jeff.seeley@doj.state.or.us>; mike@oxbowlaw.com; kga@integra.net; Sarah.Esterson@oregon.gov; Ratcliffe Jesse D <jesse.d.ratcliffe@doj.state.or.us>

Cc: OED_OAH_REFERRAL@oregon.gov

Subject: In the Matter of Boardman To Hemingway Transmission Line / OAH Case No. 2019-ABC-02833: Energy Facility Siting Council Order on Appeals of Hearing Officer's Order on Party Status, Authorized Representatives and Issues

The attached document was electronically filed to the Office of Administrative Hearings today.

Jeffery R. Seeley

Legal Secretary

General Counsel Division | Natural Resources Section

Oregon Department of Justice

1162 Court Street NE, Salem, OR 97301-4096

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Please note: I am checking voicemail and returning calls while teleworking, but e-mail is the fastest way to reach me.

Telework Hours: 7:30 a.m. to 4:30 p.m. (Mondays thru Fridays)



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EXHIBIT 7

EXHIBIT 7

May 28, 2021

Alison Greene Webster, Senior Administrative Law Judge
Oregon Department of Energy
500 Capitol Street NE
Salem OR 97301

SENT VIA EMAIL TO: OED OAH Referral@oregon.gov and service list

RE: OAH-2019-ABC-02833 Petitioner McAllister’s Rebuttal to Idaho Power Company’s Ex Parte Communication with the Energy Facility Siting Council.

Dear ALJ Green Webster,

I greatly appreciate the opportunity to respond to Idaho Power Company’s (IPC) improper ex parte communication to the Energy Facility Siting Council (EFSC) seeking to influence the outcome of this case. It is troubling that IPC presumably regarded such attempts to influence the decision-maker on matters directly related to issues parties are currently litigating to be appropriate and raises further concerns of undisclosed past conduct and communications, which have been sought and denied in discovery.¹ Here, IPC not only asks EFSC to halt its rulemaking duties, but to ensure that Oregon Department of Energy (ODOE) will not interfere with IPC’s transmission line to the detriment of Oregon’s protected areas, scenic resources, recreation resources, and the interests of its residents.

IPC Misconstrues the Project History to Claim Unfair Surprise.

IPC’s most recent ex parte attempt to improperly influence the outcome of this case is consistent with a past pattern of misconstruing facts, the record, and the history of this project in order to achieve IPC objectives that provide no benefit to the Oregon public. Significantly here, while IPC claims the rulemaking in question would unfairly prejudice IPC such that the Council should “pause the rulemaking entirely” and direct ODOE staff to ensure that the B2H project is not impacted, any prejudice IPC suffers is a result of its own making. Not only has IPC long been aware of the issues relating to Protected Areas, Scenic Resources, and Recreation on the Morgan Lake Alternative, which petitioners are now litigating in this case, it chose to pursue this high impact route instead of the Bureau of Land Management’s (BLM) Agency Preferred Route—identified as the Agency Preferred Alternative since 2014—that obviates the issues IPC details in its ex parte communication.

¹I sought such communications in my discovery requests and subsequent motion for discovery order, which was denied on the basis of relevance. IPC’s April 22, 2021 letter to EFSC underscores the relevance of communications I requested but have been withheld. I respectfully request that the ALJ reconsider my Motion for Discovery Order with respect to my requests for IPC communications.

Among material misrepresentations IPC has made in its Application for Site Certificate (ASC) relevant to its current claim of unfair prejudice are those found in **IPC’s Application for Site Certificate, Exhibit B Project Description**, and the associated **Attachment B-6 2017 Supplemental Siting Study**. Indeed, the entire Supplemental Siting Study as it relates to the routes with which IPC’s ex parte communication is concerned (Mill Creek and Morgan Lake Alternative) is founded on false premises including that (1) the Mill Creek route was the BLM’s agency preferred route in its FEIS (it was not), and (2) that the actual Agency Preferred Route in the FEIS, the Glass Hill Alternative, was not carried forward (it was). Here, IPC misrepresents, among other things: the origin of both its Proposed Mill Creek Route and its Morgan Lake Alternative; the BLM’s study of identified routes; the BLM’s conclusions in its Final Environmental Impact Statement (FEIS); and the BLM’s fundamental role in this process, falsely claiming the BLM *developed* the Mill Creek route.² Importantly, IPC’s concerns expressed in its April 22, 2021 ex parte communication primarily, if not entirely, pertain to this stretch of the transmission line through Union County and the contested case issues relating to Protected Areas, Scenic Resources, and Recreation on this segment—the standards subject to the current rulemaking with which IPC is concerned.

Understanding the significance of the falsehoods contained in **Attachment B-6 2017 Supplemental Siting Study** requires explanation. In December of 2014, the BLM identified the Glass Hill Alternative Route (referenced in the ASC) as the Agency Preferred Alternative for this project. In November 2016, the BLM identified this same route as its Agency Preferred Alternative pursuant to its analysis of proposed routes under National Environmental Policy Act (NEPA). Contrary to this well-documented fact, IPC represents in its 2018 Exhibit B Project Description that the “*Glass Hill Alternative Corridor Segment was not carried forward by BLM as the agency preferred route*” as its “Basis for Corridor Change.” See Table B-6, Page B-39 of **Exhibit B (IPC Basis for Corridor Change)**. This is patently false. In fact, the Glass Hill Alternative Corridor, has been the Agency Preferred Route since 2014 when it was identified as the NEPA preliminary preferred alternative in the Draft Environmental Impact Statement (DEIS).

Further, IPC falsely represents that the Mill Creek Route (rather than the Glass Hill Route) is the BLM’s Agency Preferred NEPA Alternative. For example, Table 3.1.1 “Summary of the EFSC and NEPA Status of the Routes and Stations Considered in the Amended pASC” (Attachment B-6 at p. 3) represents the following:

² The BLM did not “develop” any routes for this project. The BLM only evaluated routes that were developed by others and presented for comparative analysis.

Table 3.1-1. Summary of the EFSC and NEPA Status of the Routes and Stations Considered in the Amended pASC

Route Originator	Route Designation	EFSC Status	Status in FEIS
Union County			
IPC	Proposed Route	Proposed Route in the Amended pASC.	BLM's Agency Preferred Alternative in the FEIS.
IPC	Morgan Lake	Not Analyzed in the Draft Amended pASC. IPC Alternative Route in the Amended pASC.	Not Analyzed in the FEIS.
BLM	Mill Creek	Not Analyzed in the Draft Amended pASC. Proposed Route in the Amended pASC.	BLM's Agency Preferred Alternative in the FEIS.

As stated above, Mill Creek is not the BLM’s Agency Preferred Alternative in the FEIS. The BLM did not analyze this route. IPC further states that “In Union County, the Proposed Route includes portions of the Proposed Route that were included in the Draft Amended pASC and the Mill Creek Route that was developed by the BLM.” (Exhibit B, Attachment B-6 at p.9) This is, again, a gross misrepresentation of the Mill Creek (IPC Proposed) Route. Not only is the Mill Creek Route not the Agency Preferred Alternative, as conveyed throughout IPC’s ASC, the Mill Creek route was not developed by the BLM. As stated above, the BLM did not “develop” routes for this project, but evaluated routes presented, which did not include either the Mill Creek or Morgan Lake Route.

IPC has since acknowledged in its discovery responses that the Mill Creek Route is **not the BLM’s Agency Preferred Alternative** in the FEIS, as it falsely claimed in its ASC. Specifically, in response to McAllister Request No. 13, IPC states “Table 3.1-1 indicating that the Mill Creek route was part of BLM's agency preferred alternative in the Final EIS, that statement is incorrect.” (See attached Exhibit 1, IPC Discovery Responses). IPC has also represented to the Hearing Officer that this is a “typographical error.” (See Applicant Idaho Power Company’s Objections to Discovery Requests at p.129, submitted to ALJ March 5, 2021). This is clearly not so, as the misrepresentation is consistently perpetuated throughout the Exhibit B Project Description (2018) and Attachment B-6 Supplemental Siting Study. See Exhibit B at p.40 (omitting that the Glass Hill Alternative was the BLM selected route in the DEIS); p. 41 (inferring that the Glass Hill Alternative was eliminated by the BLM); p. 44 (again failing to recognize the Glass Hill Alternative was identified as the Agency Preferred Alternative); Attachment B-6 at p.1 (falsely asserting that in March 2016, BLM “developed a revised Agency Preferred Alternative” when, in fact, the only route that the BLM has ever identified as its preferred alternative is the Glass Hill Route)). Thus, IPC’s claim this is a typo is not credible and implies that either IPC is unaware of the contents of its own application or that it purposefully misrepresented this fact to ODOE.

IPC further falsely claims in its Supplemental Siting Study that “*The Morgan Lake Alternative was developed by IPC with input from local Land owners*” (Attachment B-6 at p. 9, 3.2.3.3 IPC’s Morgan Lake Alternative). In reality, the majority of landowners opposed the Morgan Lake Alternative due to impacts on the natural resources, including Scenic Resources, Recreation Resources, and land meeting Protected Area criteria. Troublingly, a single landowner, who had recently acquired land in the area, developed and proposed the Morgan Lake Route, which IPC readily adopted and has since pursued. This fact is reflected in IPC’s private correspondence with this landowner, attached hereto as Exhibit 2, stating IPC intended to adopt the route the landowner proposed (now called the Morgan Lake Alternative). While the Glass Hill Alternative was developed to minimize impacts on sensitive resources including Protected Areas, Scenic Resources, and Recreation, the Morgan Lake Alternative was developed to minimize impacts to one new landowner’s personal interest. And, unlike the Glass Hill Alternative, IPC’s Morgan Lake Route was not studied or subjected to public comment.

IPC’s misrepresentations outlined above and its course of action during the application process undermine its claims of unfair prejudice if EFSC continues with “the current direction of the rulemaking to update the standards related to Protected Areas, Scenic Resources, and Recreation Resources.” For reasons that remain unclear, IPC chose to exclude the actual Agency Preferred Alternative identified in the FEIS and evaluated pursuant to NEPA from its application, while at the same time falsely representing to ODOE that the Mill Creek Route (for which it has applied) was the Agency Preferred Route in the FEIS. In reality, in the eleventh hour of the project, IPC opted to apply for multiple routes through Union County that had never been studied, and remain unevaluated by the BLM.³ IPC chose to pursue one of these unevaluated routes, the Morgan Lake Alternative, in favor of a single land owner who proposed the route to IPC.

Significantly, the concerns IPC raised to the Council in its ex parte communication would be moot if IPC had pursued the route the reviewing federal agency identified pursuant to NEPA analysis. NEPA’s stated purpose is to “encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation.” 42 USC § 4321. This is consistent with ODOE’s stated mission and values,⁴ the purpose of EFSC oversight which seeks to “ensure that **Oregon** has an adequate energy supply while **protecting Oregon’s environment and public safety**,⁵ and the discussed updates to EFSC’s Protected Areas, Scenic Resources, and Recreation standards that IPC contests.

Contrary to IPC’s claims, “the current direction of the rulemaking” does not unfairly prejudice IPC. IPC chose to (1) exclude the BLM’s agency evaluated and preferred route from the ASC,

³ The issue of the need for the BLM to conduct supplemental study on these newly added routes is currently being litigated in federal district court. Case No. 2:19-cv-01822-SU.

⁴ See <https://www.oregon.gov/energy/About-Us/Pages/Mission-Values.aspx>

⁵ <https://www.oregon.gov/energy/facilities-safety/facilities/pages/about-the-council.aspx#:~:text=The%20Energy%20Facility%20Siting%20Council,disposal%20sites%2C%20and%20other%20projects.>

(2) include routes that have not been studied, and (3) pursue a route that has been the source of public concern since it became known to the public due to its impacts on, among other things, Scenic Resources, Recreation Resources, and sensitive areas that meet the Protected Area criteria. IPC and ODOE have advanced the position that an applicant may apply for any route it chooses, regardless of NEPA and the federal agency review—or the underlying motives driving selection of a specific route—so long as the applied for route comports with EFSC standards.⁶ Accordingly, IPC must accept the outcomes of its decision to apply for, or not apply for, a particular route. Now, after excluding the actual Agency Preferred Route evaluated pursuant to NEPA, which obviates the issues giving rise to IPC’s current concerns, IPC asks that EFSC conform its standards and rulemaking procedures to ensure IPC’s success to the detriment of Oregon’s protected areas, scenic resources, recreational resources, and the interests of its residents. Oregonians should not suffer the consequences of IPC’s poor business decisions.

IPC’s Claims Regarding “Other Problems with ODOE’s Proposals” are Baseless.

Finally, IPC’s contentions in **Section III** of its April 22, 2021 ex parte communication further undermine IPC’s credibility and expose IPC’s claims of potential prejudice as a red herring. Here, IPC appears to purport that it relied on an absurd interpretation of OAR 345-022-0040(2) in its *Alternative Route Analysis*, which runs counter to the interpretation ODOE provided to IPC in the Second Amended Project Order. Specifically, ODOE states:

Note that OAR 345-022-0040(1) generally prohibits siting of transmission lines through protected areas, which include state parks. However, under OAR 345-022-0040(2), EFSC may approve a route that passes through a protected area if the council determines that other routes outside the protected area would “have greater impacts.” If the transmission line routing proposed by the applicant will pass through a protected area, the applicant shall describe in detail the alternative routes it studied and provide analysis in the application to support a finding that routing the transmission line through the protected area would have less impacts than the alternatives. (Second Amended Project Order, July 26, 2018, at p. 14).

In the subsequent ODOE rulemaking project that IPC contests, ODOE explains that “Staff believes this rule is intended to allow a transmission line...to pass through a protected area when greater impacts cannot be avoided, but the construction implies that a linear facility could be sited on a protected area when other lesser impact alternatives may be available.” (October 22-23 EFSC Meeting, Agenda Item D (October 9, 2020)). The proposed amendment only seeks to clarify that the original intent of the rule is to allow the project to pass through a protected area only when Council finds that no alternative routes or sites would have lesser impacts, which is the logical interpretation.

⁶ This position conflicts with ORS 469.370(13) requiring that that the council *shall* conduct its site certificate review...in a manner that is consistent with and does not duplicate federal agency review, including development with the federal agency and reliance on a joint records to address applicable council standards.

The analytical framework has never changed. Rather, ODOE seeks to clarify the construction of the language so as not to achieve an absurd result. IPC appears to argue that the proper analytical framework is to conclude that an alternative may pass through protected areas if that alternative has *greater* impacts than other routes. This is nonsensical and has clearly never been the intent of OAR 345-022-0040(2). If IPC relied on this perverse interpretation, as it appears to claim, this exposes troubling fundamental issues with its route analysis.

IPC's ex parte communication asking EFSC to halt required, common-sense rulemaking claiming unfair prejudice, at its core, intends to obscure the fact that, in the eleventh hour of what IPC points out was a 12-year process, it added new routes that had never been studied, while excluding the Agency Preferred NEPA route, which adequately addressed the issues of Protected Areas, Scenic Resources, and Recreation that are the basis of IPC's current concern. EFSC should not bend standards and procedures to suit the needs of an Idaho corporation at the expense of Oregon's natural resources and the public interest of Oregonians.

Sincerely,

Michael McAllister
Petitioner

CERTIFICATE OF SERVICE

On May 28, 2021, I emailed the foregoing Rebuttal to Idaho Power Company's Ex Parte Communications to the Administrative Law Judge in OAH Case No. 2019-ABC-02833, with copies sent as follows:

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Michael McAllister
Petitioner

EXHIBIT 1

EXHIBIT 1

February 5, 2021

Subject: OAH Case No. 2019-ABC-02833 - Boardman to Hemingway Transmission Line – Idaho Power Company’s Responses to Michael McAllister Discovery Request Nos. 1-46

Issue No. R-2, SP-2, FW-13

MICHAEL MCALLISTER’S DISCOVERY REQUEST NO. 1:

Identify all individuals likely to have discoverable information that you may use to support your claim that the Morgan Lake Alternative Route (“MLA”) complies with OAR-345-022-0100, OAR-345-022-0060 (incorporated OAR 635-415-0025), and OAR-345-022-0022.

IDAHO POWER’S RESPONSE TO MICHAEL MCALLISTER’S DISCOVERY REQUEST NO. 1:

Idaho Power objects to this request as vague, ambiguous, and overbroad. Without waiving this objection, Idaho Power identified its witnesses for these issues (to the extent the identity of such witnesses is known at this time) below in response to Question 2.

February 5, 2021

Issue No. R-2, SP-2, FW-13

MICHAEL MCALLISTER'S DISCOVERY REQUEST NO. 13:

Explain the basis for your claim in Attachment B-6 of the ASC that the Mill Creek Route is the Agency Preferred Alternative in the FEIS.

- a. Produce the documents on which you rely to make this claim.

IDAHO POWER'S RESPONSE TO MICHAEL MCALLISTER'S DISCOVERY REQUEST NO. 13:

Idaho Power objects to this request as vague and ambiguous, as it is unclear what statement in Attachment B-6 you are referring to.

Without waiving that objection, if this request is referring to the statement in Table 3.1-1 indicating that the Mill Creek route was part of BLM's agency preferred alternative in the Final EIS, that statement is incorrect and an error on Idaho Power's part. For the Blues Mountain segment of the project, in the Final EIS, BLM identified the Glass Hill Alternative as modified by route variations S2-A2, S2-D2, and S2-F2 as the Environmentally Preferable Action Alternative Route and BLM's Agency Preferred Alternative Route.

EXHIBIT 2

EXHIBIT 2

27 February 2015

Brad Allen
Via electronic mail

Subject: Elk Song Ranch Alternative Routes

Dear Brad and June Allen:

Thank you for providing an alternative route for Boardman to Hemingway Transmission Line Project where it crosses your property known as the Elk Song Ranch. We took your proposed route and modified it slightly to avoid known constraints in the area. Both your proposed route (red dashed line) and the modified routes (orange line and yellow line) are shown on the attached map and explained below.

Your proposed route follows the general route of the Glass Hill Road area you state has a higher human presence than the location of the proposed route. In the siting of a transmission line we must consider the impacts to the human as well as the natural environment. We modified your proposed route to avoid passing over several structures and to be further away from Morgan Lake, a local recreation site. We also developed an alternative route (yellow line) that would further reduce impacts to Morgan Lake. The above recommendations reflect the same methodology we used for routing along the entire length of the project.

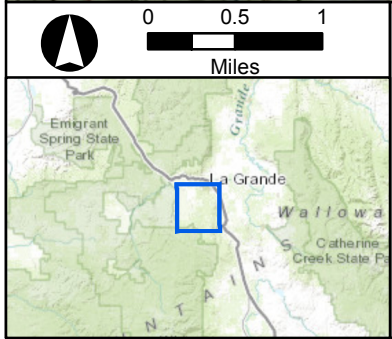
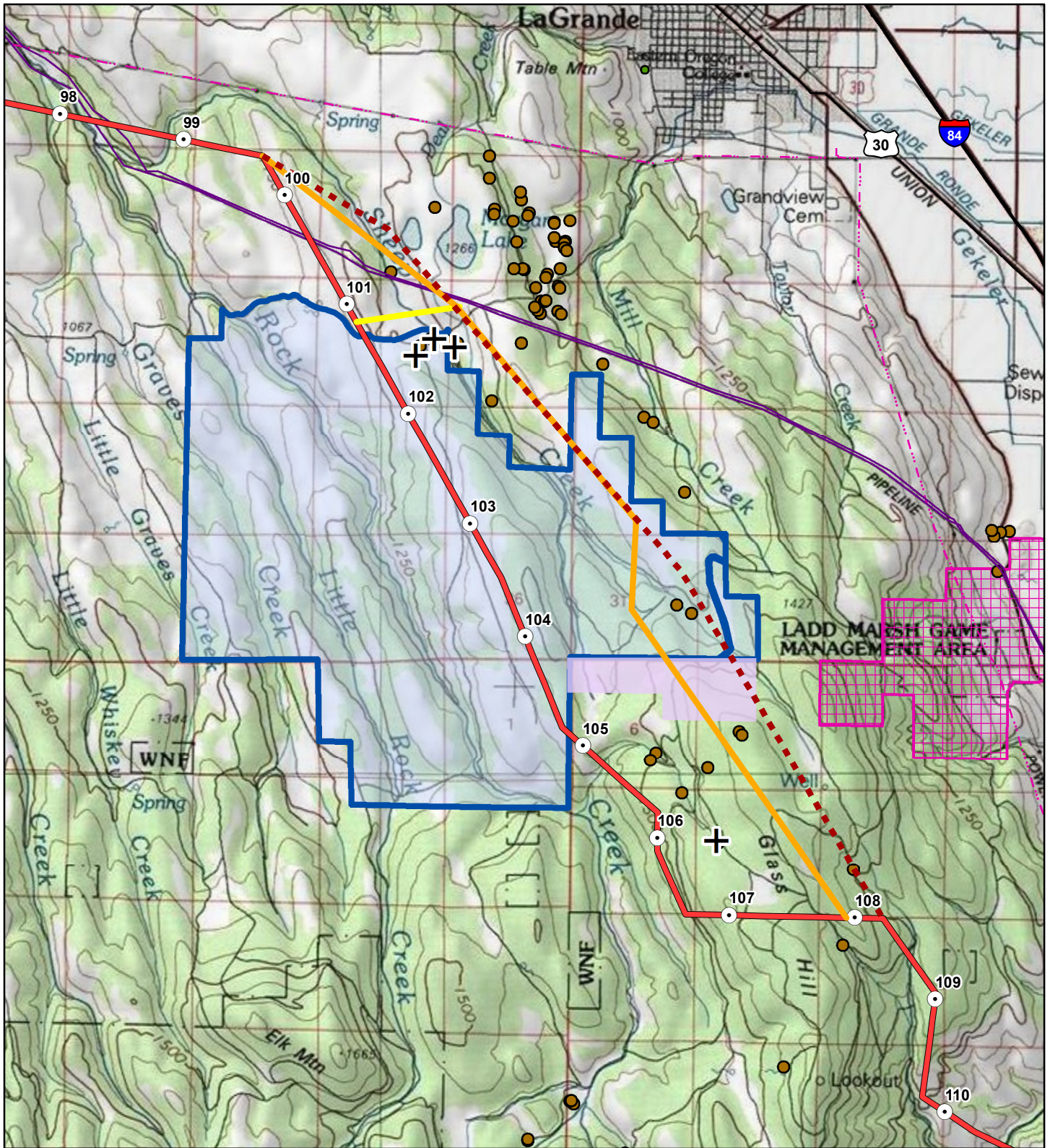
A site visit to the area by Idaho Power transmission engineers and final design of the transmission line could result in further refinement of the modified route on the Elk Song Ranch. Please contact me if you would like to discuss any aspect of the routing.

Regards,

Todd Adams
B2H Project Leader

Enc: map

cc: D Gonzalez BLM
T Gertch BLM
R Straub BLM
Z Funkhouser IPC
M Colburn IPC




<p>B2H Project</p> <ul style="list-style-type: none"> — Proposed Corridor ○ Mile Marker <p>Elk Song Re-Routes</p> <ul style="list-style-type: none"> — Proposed by Stakeholder — IPC Proposed Alternate — IPC Proposed Alternate Variation <p>Existing Transmission</p> <ul style="list-style-type: none"> — 230 kV 	<ul style="list-style-type: none"> Elk Song Ranch Glass Hill Rebarrow Forest Wildlife Management Area — Existing Pipeline ● Structures (Not Verified) ⊕ NSR
---	---

**Elk Song Ranch
Alternative Routes**

Boardman to Hemingway
Transmission Line Project
Oregon - Idaho

February 2015



AN IDACORP company

-----Original Message-----
From: Brad Allen <bradallen4030@hotmail.com>
To: wildlandmm@netscape.net <wildlandmm@netscape.net>
Sent: Sat, Mar 7, 2015 9:09 am
Subject: Fwd: B2H Elk Song Ranch Alternative Route

Sent from my iPhone

Begin forwarded message:

From: "Adams, Todd" <TAdams@idahopower.com>
To: ""bradallen4030@hotmail.com"" <bradallen4030@hotmail.com>
Cc: "Don Gonzalez" <dgonzale@blm.gov>, "Gertsch, Tamara" <tgertsch@blm.gov>, "Renee L 'Straub" <rstraub@blm.gov>, "Funkhouser, Zach" <ZFunkhouser@idahopower.com>, "Colburn, Mitchel" <MColburn@idahopower.com>
Subject: B2H Elk Song Ranch Alternative Route

Brad,

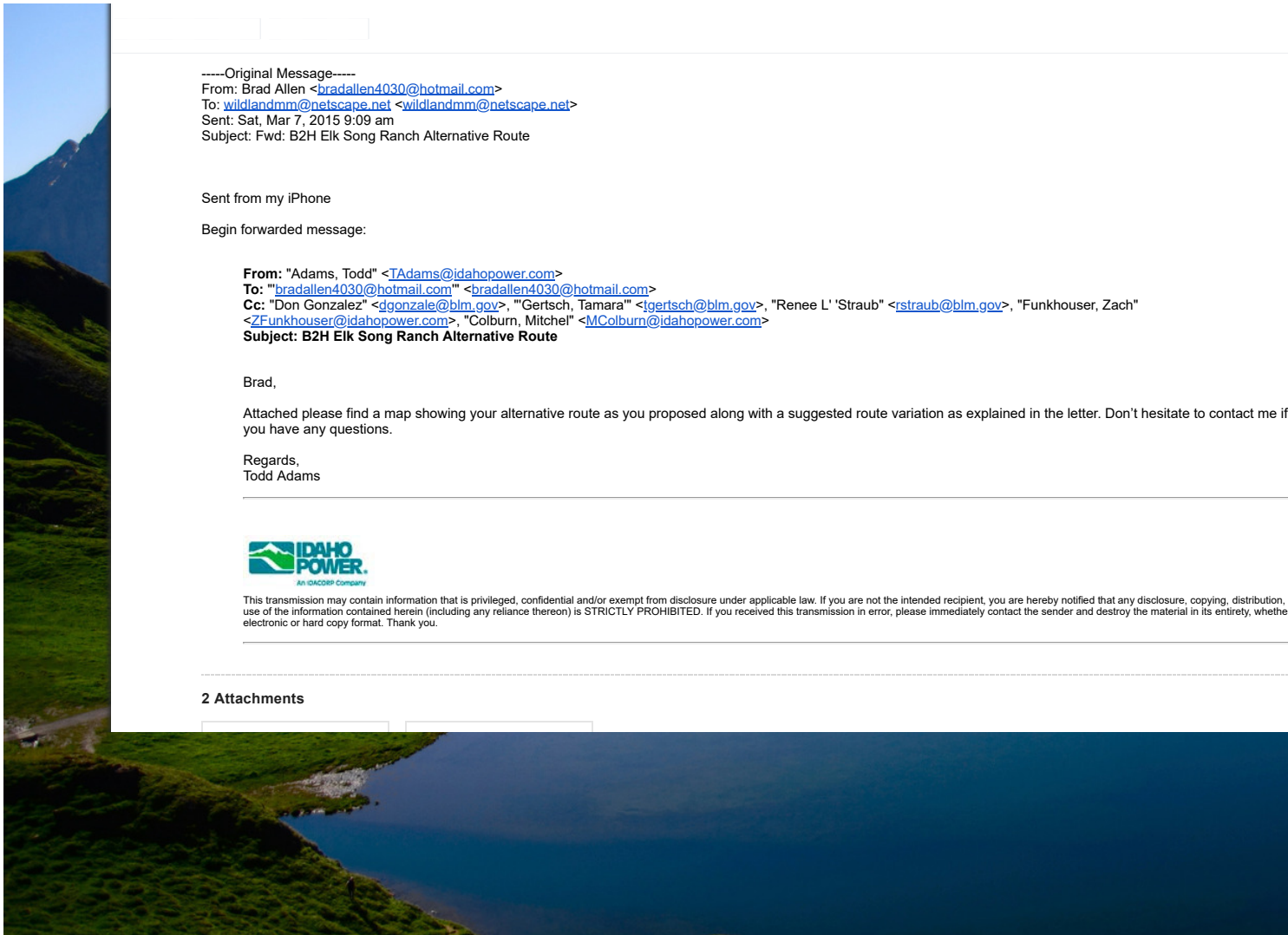
Attached please find a map showing your alternative route as you proposed along with a suggested route variation as explained in the letter. Don't hesitate to contact me if you have any questions.

Regards,
Todd Adams



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2 Attachments



**Applicant Idaho Power Company's Response to Limited Parties' Exception for
Procedural Issues**

**BEFORE THE ENERGY FACILITY SITING COUNCIL
OF THE STATE OF OREGON**

In the Matter of the Application for Site
Certificate for the

BOARDMAN TO HEMINGWAY
TRANSMISSION LINE

APPLICANT IDAHO POWER
COMPANY'S RESPONSE TO LIMITED
PARTIES' EXCEPTIONS FOR
PROCEDURAL ISSUES

OAH Case No. 2019-ABC-02833

July 15, 2022

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I. INTRODUCTION

Pursuant to OAR 345-015-0085(6) and the May 31, 2022 Proposed Contested Case Order, Applicant Idaho Power Company (“Idaho Power” or the “Company”) submits its Response to Limited Parties’ Exceptions for Procedural Issues.

II. STANDARD OF LAW

In a contested case before the Energy Facility Siting Council (“EFSC” or the “Council”), the applicant bears the burden of proof to establish by a “preponderance of the evidence”¹ that the proposed facility complies with the Council’s statutes, ORS 469.300 to 469.570, and that the Application for Site Certificate (“ASC”) and proposed site conditions—as modified in the Oregon Department of Energy’s (“ODOE”) Proposed Order—satisfy each of the Council’s siting standards.² Proof by a preponderance of the evidence means that the fact finder is persuaded that the facts asserted are more likely than not true.³ Furthermore, the applicant must demonstrate by a preponderance of evidence that the facility complies with all other statutes, administrative rules, and local government ordinances “identified in the project order, as amended, as applicable to the issuance of a site certificate for the proposed facility.”⁴

Parties or limited parties “with specific challenges to findings, conclusions and/or recommended site certificate conditions in [ODOE’s] Proposed Order bear the burden” of producing evidence in support of the facts or positions they have asserted, and the burden of convincing the trier of fact that their alleged facts are true or their position on the identified issue

¹ OAR 345-021-0100(2) (“The applicant has the burden of proving, by a preponderance of the evidence in the decision record, that the facility complies with all applicable statutes, administrative rules and applicable local government ordinances.”); *see also* ORS 183.450(2) (“The burden of presenting evidence to support a fact or position in a contested case rests on the proponent of the fact or position.”).

² OAR 345-022-0000(1)(a).

³ *Riley Hill General Contractor v. Tandy Corp.*, 303 Or 390, 402 (1987).

⁴ OAR 345-021-0100(2); OAR 345-022-0000(1)(b).

1 is correct.⁵ In particular, the parties or limited parties must establish how the applicant failed to
2 satisfy EFSC’s siting standards and/or how ODOE “erred in its findings, conclusions and/or
3 recommended site certificate conditions.”⁶ To meet this burden of proof, parties or limited parties
4 challenging the Proposed Order must provide factual testimony or evidence to substantiate their
5 asserted claims;⁷ unsubstantiated factual arguments or legal conclusions are insufficient to
6 demonstrate the applicant’s failure to establish compliance with any applicable standard.⁸

7 After the hearing and briefing phases of a contested case, the Hearing Officer must issue a
8 Proposed Contested Case Order stating the Hearing Officer’s findings of fact and conclusions of
9 law.⁹ Parties and limited parties may then file any exceptions to the Proposed Contested Case
10 Order for the Council’s consideration.¹⁰ If the parties or limited parties file exceptions, the parties
11 or limited parties must identify for each exception the finding of fact, conclusion of law, or
12 recommended site certificate condition to which the parties or limited parties except and must state
13 the basis for their exception.¹¹

14 **III. RESPONSE TO EXCEPTIONS**

15 Limited parties STOP B2H Coalition (“STOP B2H”) and Irene Gilbert filed exceptions to
16 the Proposed Contested Case Order raising procedural challenges to the process used during the

⁵ Order on Case Management Matters and Contested Case Schedule at 11 (Jan. 14, 2021) (emphasis in original) [hereinafter, “First Order on Case Management”]; Second Order on Case Management Matters and Contested Case Schedule at 7 (Aug. 31, 2021) (emphasis in original) [hereinafter, “Second Order on Case Management”]; *see also* ORS 183.450(2) (the burden of presenting evidence to support a fact or position in a contested case rests on the proponent of the fact or position); *see also* Ruling on Idaho Power Company’s Motion to Dismiss Issues FW-5, HCA-6, LU-4, LU-7, LU-8, PS-1, PS-5, SS-1, and SS-2 at 3 (Nov. 2, 2021).

⁶ First Order on Case Management at 11; Second Order on Case Management at 7.

⁷ First Order on Case Management at 11; Second Order on Case Management at 7.

⁸ First Order on Case Management at 11; Second Order on Case Management at 7. Idaho Power has no obligation to disprove unsubstantiated claims and allegations raised by the limited parties. *See* Ruling on Idaho Power Company’s Motion to Dismiss Issues FW-5, HCA-6, LU-4, LU-7, LU-8, PS-1, PS-5, SS-1, and SS-2 at 3.

⁹ OAR 345-015-0085(4).

¹⁰ OAR 345-015-0085(5).

¹¹ OAR 345-015-0085(5).

1 contested case and the Hearing Officer’s preparation of the Proposed Contested Case Order.
2 Additionally, limited party Michael McAllister filed an exception in which he argues that an issue
3 he raised in his comments on the Draft Proposed Order (“DPO Comments”) was improperly
4 excluded from consideration in the contested case.¹² In this Response to Exceptions, Idaho Power
5 addresses the limited parties’ challenges to procedural aspects of the contested case.

6 The Council should reject the limited parties’ exceptions for the following reasons. First,
7 the Council’s rule provides that “[p]arties and limited parties may file exceptions . . . after the
8 hearing officer issues the proposed order,” and in an exception, the party “shall specifically identify
9 the finding of fact, conclusion of law or, . . . recommended site certificate condition to which the
10 party excepts and shall state the basis for the exception.”¹³ On its face, the rule does not
11 contemplate that parties would file exceptions to procedural rulings that were made over the course
12 of the contested case. The Council may decline to consider the exceptions on that basis alone.

13 Nevertheless, Idaho Power provides a substantive response in the event that the Council is
14 inclined to consider the limited parties’ arguments. The record demonstrates that the contested
15 case was properly conducted in accordance with Oregon laws and regulations, and as such, Idaho
16 Power requests that the Council adopt the Hearing Officer’s findings of fact and conclusions of
17 law without modification.

18 **A. Gilbert Procedural Exceptions**

19 Ms. Gilbert filed exceptions challenging various procedural decisions that the Hearing
20 Officer made throughout the contested case. For the reasons discussed below, Ms. Gilbert’s
21 exceptions should be rejected.

¹² McAllister’s Exception to Administrative Law Judge Webster’s Contested Case Order and Exclusion of Properly Raised Issue from Proceeding (June 30, 2022).

¹³ OAR 345-015-0085(5).

1 **1. Gilbert Exception 1 – Fair and Neutral Proceeding**

2 In her Exceptions to Procedures, Ms. Gilbert takes exception to the contested case process,
3 asserting that there was a failure to provide a “full, fair and impartial contested case hearing.”¹⁴ In
4 support of this assertion, Ms. Gilbert raises four discrete factual assertions relating to the Hearing
5 Officer’s factual findings.¹⁵

6 Ms. Gilbert argues that the Hearing Officer’s factual findings in the Proposed Contested
7 Case Order are not properly supported because the findings: (1) “accept[] the statements in the
8 ‘Proposed Order’ as facts without addressing whether the file documents their validity”; (2)
9 include findings that Idaho Power “proposes,” “states,” or “indicates” certain facts “as findings of
10 fact absent references to documentation to support them”; (3) relies on statements that ODOE and
11 Idaho Power “agree with one another”; and (4) “fails to include most arguments from the
12 petitioners” even though they provided “documentation” to support those facts.¹⁶ However, none
13 of Ms. Gilbert’s assertions supports her position that the Hearing Officer’s factual findings lack
14 support in the record.

15 *First*, Ms. Gilbert fails to provide any citation to the Hearing Officer’s findings of fact to
16 which she is taking exception. As such, Idaho Power addresses Ms. Gilbert’s assertions generally
17 as they are too vague to directly respond to.

18 *Second*, Ms. Gilbert’s assertion that the Hearing Officer accepted unsupported findings
19 from the Proposed Order takes the Hearing Officer’s findings of fact out of context. The Hearing

¹⁴ Irene Gilbert’s Exceptions to Procedures used During B2H Contested Case Process and Request for Exception to Summary Determination FW-4, LU-5, NC-5, M-2, FW-9, FW-10, FW-11 at 2 (June 30, 2022) [hereinafter Gilbert Procedural Exceptions] at 2.

¹⁵ In her exceptions, Ms. Gilbert cites to five that she argues support her claims of a biased proceeding and raises four discrete factual assertions. Idaho Power interprets Ms. Gilbert’s list as merely identifying sources of law that she believes are relevant to other arguments she raises in her exceptions. Idaho Power addresses the cases and statutes Ms. Gilbert cites below in response to the relevant exception.

¹⁶ Gilbert Procedural Exceptions at 4.

1 Officer quoted the Proposed Order to provide the procedural background that preceded this
2 contested case. The Hearing Officer did not err by identifying what conclusions ODOE reached
3 in the Proposed Order, because the Hearing Officer did *not* rely on the Proposed Order to address
4 the issues the limited parties raised. Rather, the Hearing Officer relied on and cited the evidence
5 and testimony submitted into the record of this contested case.

6 *Third*, Ms. Gilbert’s challenge to the Hearing Officer’s findings of fact related to Idaho
7 Power’s statements and proposals is unclear. The Hearing Officer made various findings regarding
8 commitments that the Company has made in this contested case, but those factual findings are all
9 based on evidence that Idaho Power filed into the record.

10 *Fourth*, the Hearing Officer did not conclude that factual assertions were true solely based
11 on the fact that Idaho Power and ODOE agreed. The Hearing Officer noted several issues on
12 which Idaho Power and ODOE agreed on the ultimate facts, but those facts were separately
13 supported by the evidence that Idaho Power or ODOE filed.

14 *Finally*, the fact that the Hearing Officer frequently cited evidence from Idaho Power in
15 support of her factual findings does not support Ms. Gilbert’s allegation that those findings are
16 unsupported. Under Oregon law, where there are multiple opinions filed as evidence, the Hearing
17 Officer is not required to explain why all other opinions than the ones she relied on are less
18 persuasive, or present both sides of the argument to present her analysis.¹⁷ If the factfinder agrees
19 with one party’s theory of a case, then the factual findings must be supported by the evidence in
20 the record.¹⁸ In this case, Idaho Power has provided substantial evidence to support its position

¹⁷ See, e.g., *Noble v. Or. Water Res. Dep’t*, 264 Or App 110, 123 (2014) (“[I]n a case in which expert opinions have been offered on both sides of an issue, it is usually clear that a factfinder has found one or the other more persuasive, and substantial evidence and reason will exist to support the finding, without further explanation.”) (quoting *Castro v. Board of Parole*, 232 Or App. 75, 84 (2009) (citing *Armstrong v. Asten-Hill Co.*, 90 Or App 200, 206 (1988))).

¹⁸ See ORS 183.482(8)(c) (requiring that a final order be “supported by substantial evidence in the record”).

1 on all issues of fact, and the Hearing Officer did not err simply because she found Idaho Power’s
2 evidence persuasive. Moreover, contrary to Ms. Gilbert’s assertions, the Opinion section of the
3 Proposed Contested Case Order demonstrates that the Hearing Officer sifted through the evidence
4 offered by the parties and limited parties, weighed the evidence, and described the evidence that
5 she found to be persuasive.¹⁹ The fact that the Hearing Officer did not reference all Ms. Gilbert’s
6 evidence or did not find Ms. Gilbert’s evidence persuasive does not affect the validity of the
7 Hearing Officer’s findings.

8 For these reasons, the Council should reject Ms. Gilbert’s Exception 1 and adopt the
9 Proposed Contested Case Order without modification.

10 **2. Gilbert Exception 2 – Use of EFSC Contested Case Rules Regarding Party**
11 **Status**

12 Ms. Gilbert takes exception with the “Attorney General’s Exemption Under
13 ORS 183.630(2) for Contested Cases” (“Attorney General Exemption”)²⁰ that applied to this
14 case.²¹ Specifically, Ms. Gilbert argues that this contested case was originally conducted pursuant
15 to the Attorney General’s Model Rules at OAR 137-003-0501 through OAR 137-003-700 (“OAH
16 Rules”),²² and EFSC then “changed” the rules to instead apply the Council’s own rules after
17 petitioners filed their petitions for party status.²³ According to Ms. Gilbert, the Council’s rules for
18 granting party status are “stricter” than the OAH Rules, and for that reason the Council’s decision
19 to apply its own rules prejudiced the limited parties.²⁴ Relatedly, Ms. Gilbert also asserts that the

¹⁹ See, e.g., Proposed Contested Case Order starting at page 143 (Opinion).

²⁰ See Attorney General’s Exemption Under ORS 183.630(2) for Contested Cases (Oct. 21, 2020).

²¹ Gilbert Procedural Exceptions at 5.

²² As discussed below, OAR 137-003-0501 through OAR 137-003-700 apply only in proceedings before a Hearing Officer from the Office of Administrative Hearings. For the reader’s convenience, Idaho Power refers to these as the “OAH Rules.”

²³ Gilbert Procedural Exceptions at 5.

²⁴ Gilbert Procedural Exceptions at 5.

1 Council applied its standard for granting petitions for party status too strictly.²⁵ Ms. Gilbert also
2 asserts that the Attorney General’s order exempting the Council from applying the OAH Rules
3 was improper, and that conduct by ODOE’s attorney, Patrick Rowe, was improper.²⁶ Idaho Power
4 addresses these assertions below.

5 *a. The Council Properly Applied Its Own Rules of Procedure in This*
6 *Contested Case.*

7 Ms. Gilbert’s assertions are inconsistent with the plain language of the applicable rules and
8 Ms. Gilbert’s assertions of prejudice are not supported by the record.

9 ORS 183.431(1) authorizes the Attorney General to prepare model rules of procedure and
10 allows any agency to “adopt all or part of the model rules by reference[.]” Pursuant to that
11 authority, the Attorney General promulgated its “Model Rules of Procedure for Contested Cases”²⁷
12 (“Model Rules”). Per the terms of the Model Rules, the OAH Rules apply only when an
13 administrative law judge assigned from the Office of Administrative Hearings conducts a
14 contested case hearing for the agency,²⁸ unless the “Attorney General, by order, has exempted the
15 agency or a category of the agency’s cases from the application of such rules in whole or in part.”²⁹

16 For purposes of its contested cases, the Council adopted only OAR 137-003-0001 through
17 OAR 137-003-0092,³⁰ and did *not* adopt the OAH Rules (OAR 137-003-0501 through
18 OAR 137-003-700). Additionally, the Council relies on its own rules in OAR Chapter 345,
19 Division 15, which “establish procedures governing Department of Energy and Council review
20 processes, including contested case hearings.”³¹ The Council applies both the Chapter 345,

²⁵ Gilbert Procedural Exceptions at 10.
²⁶ Gilbert Procedural Exceptions at 6-7.
²⁷ See generally OAR, Chapter 137, Division 003.
²⁸ OAR 137-003-0000(2).
²⁹ OAR 137-003-0000(2)(b).
³⁰ OAR 345-001-0005(1).
³¹ OAR 345-015-0001.

1 Division 15 Rules and the Model Rules (OAR 137-003-0001 through OAR 137-003-0092), and if
2 there is any conflict between the Model Rules that the Council has adopted and the rules the
3 Council has promulgated, then the Council will apply its own rules.³²

4 Because the Council has entered into an agreement to use OAH administrative law judges
5 for EFSC’s contested cases, the Council obtained an exemption from the Attorney General on
6 October 21, 2020.³³ The exemption applied to every contested case commenced before June 30,
7 2021, and further stated:

- 8 • “The Council’s contested cases are currently governed by a combination of Model
9 Rules of Procedure for Contested Cases (OAR 137-003-001 through 137-003-0092)
10 and the Council’s own contested case rules (OAR Chapter 345, Division 015).”
- 11 • The Council sought to apply its own contested case rules because those rules “are
12 tailored to the unique nature of the energy facility siting process, and the Council has
13 extensive experience applying them.” The Attorney General found these reasons
14 sufficient.
- 15 • The Attorney General “note[d] that [the Council’s] rules do not contain a specific rule
16 regarding [Motions for Summary Determination (“MSDs”)]” and she left it to “the
17 Council, presiding ALJ, and the parties” to determine whether to apply MSDs.³⁴

18 In her exception, Ms. Gilbert asserts that the limited parties believed that the Council would
19 apply the OAH Rules in this contested case, instead of the Council’s own rules,³⁵ and that EFSC’s

³² OAR 345-001-0005(3).

³³ Ms. Gilbert is correct that the Council obtained the exemption from the Attorney General after the beginning of this contested case. However, Ms. Gilbert incorrectly states that “OAR 137-003-0501 through OAR 137-003-0700 which were being followed during the first 17 months of this contested case.” Gilbert Procedural Exceptions at 9. This contested case began on July 2, 2020, and the Attorney General issued her first exemption two months later. Moreover, as discussed below, even before this exemption ODOE did not apply the OAH Rules in this case.

³⁴ Attorney General Exemption at 1.

³⁵ Gilbert Procedural Exceptions at 5.

1 decision to obtain an exemption from the Attorney General prejudiced the limited parties because
2 the Council then applied its own “stricter requirements” to the DPO Comments that petitioners
3 had already filed.³⁶ This argument is flawed for two reasons.

4 First, Ms. Gilbert is incorrect in implying that the OAH Rules applied to the limited parties’
5 DPO Comments. The OAH Rules apply only to contested cases³⁷—which in the case of EFSC’s
6 review of an ASC would not commence until *after* ODOE issues the proposed order.³⁸ In fact, the
7 Council’s rules specifically state that the DPO hearing “is not a contested case hearing.”³⁹ Instead,
8 the hearings on the DPO are governed only by the Council’s rules and governing statutes.⁴⁰
9 Moreover, as noted in the Attorney General Exemption, prior to obtaining the exemption the
10 Council’s practice was to apply “a combination of Model Rules of Procedure for Contested Cases
11 (OAR 137-003-001 through 137-003-0092) and the Council’s own contested case rules[.]”⁴¹
12 Thus, there is no support for Ms. Gilbert’s assertion that the DPO hearings were conducted
13 pursuant to the OAH Rules.

14 Moreover, Ms. Gilbert’s assertion that the limited parties were prejudiced by the Council’s
15 application of its own rules is inconsistent with the evidence in the record. Ms. Gilbert appears to
16 assert that the limited parties were unaware that they must raise an issue in their DPO Comments
17 with “sufficient specificity” in order to raise that issue in the contested case. However,

³⁶ Gilbert Procedural Exceptions at 5.

³⁷ OAR 137-003-0000(1).

³⁸ ORS 469.370(5) (“Following receipt of the proposed order from the department, the council shall conduct a contested case hearing on the application for a site certificate in accordance with the applicable provisions of ORS chapter 183 and any procedures adopted by the council.”).

³⁹ OAR 345-015-0220(1).

⁴⁰ See ORS 469.370(2) (“Following issuance of the draft proposed order, the Energy Facility Siting Council shall hold one or more public hearings on the application for a site certificate in the affected area and elsewhere, as the council considers necessary.”); OAR 345-015-0220(1) (“After the issuance of the draft proposed order described in OAR 345-015-0210, the Council or its hearing officer must conduct at least one public hearing on the draft proposed order in the vicinity of the site of the proposed facility.”).

⁴¹ Attorney General Exemption at 1.

1 Ms. Gilbert’s assertion is inconsistent with the record in this contested case, which clearly
2 demonstrates that EFSC informed commenters of that requirement. The Council’s governing
3 statutes require that the notice for the DPO hearings “[s]tate that failure to raise an issue in person
4 or in writing prior to the close of the record of the public hearing with sufficient specificity to
5 afford the decision maker an opportunity to respond to the issue precludes consideration of the
6 issue in a contested case.”⁴² Additionally, at the beginning of the DPO hearing, the presiding
7 officer must inform the attendees that any “person who intends to raise any issue that may be the
8 basis for a contested case must raise the issue in person at the hearing or in a written comment
9 submitted to the Department before the deadline stated in the notice of the public hearing[.]”⁴³
10 The record in this contested case clearly demonstrates that the Council complied with both these
11 obligations. The notice for the DPO specifically stated:

12 To be eligible to participate in a contested case on this ASC or DPO, a person must
13 raise an issue either in person at the public hearing(s) or in a written comment
14 submitted on or after May 22, 2019 and received by ODOE before the record closes
15 on July 23, 2019 at 5 p.m. (PDT). Even if a person commented before May 22,
16 2019, that person must raise an issue(s), either in person at the public hearing(s) or
17 in writing during the comment period to be eligible to participate in the contested
18 case. *For consideration in the contested case, issues raised must be within the*
19 *EFSC’s jurisdiction and must be raised with sufficient specificity so that EFSC, the*
20 *Department, and the applicant understand the issue being raised and are afforded*
21 *an opportunity to respond to the issue. To raise an issue with sufficient specificity,*
22 *a person must present facts that support the person’s position on the issue.*⁴⁴

23 The Hearing Officer or ODOE staff members then repeated this requirement at the beginning of
24 every hearing on the DPO, informing those who provided oral comment that “for consideration in
25 the contested case, your issues must be raised with sufficient specificity so that the Council, the

⁴² ORS 469.370(2)(e).

⁴³ OAR 345-015-0220(5)(a).

⁴⁴ Public Notice, Boardman to Hemingway Transmission Line Public Hearings on the Draft Proposed Order and Request for Comments at 2 (ODOE - B2HAPPDoc2 DPO Public Notice 2019-05-22. Page 2 of 4) (emphasis added).

1 Department, and the applicant are afforded the opportunity to respond.”⁴⁵ The Council held five
2 DPO hearings, and Irene Gilbert attended and provided oral comment at four of them.⁴⁶ Therefore,
3 whether the limited parties provided oral or written comment, the Council’s notices properly
4 informed commenters that they must raise the issue with sufficient specificity in their DPO
5 Comments in order to raise the issue in the contested case, and as it relates to Irene Gilbert, she
6 would have heard the statement regarding sufficient specificity at least four times by virtue of
7 having attended the DPO hearings.

8 For the reasons stated above, the Hearing Officer properly applied the Council’s rules for
9 contested cases in this contested case. Ms. Gilbert’s assertion that applying the Council’s rules
10 prejudiced the limited parties is without merit and her exception should be rejected.

11 *b. The Council Properly Applied Its “Sufficient Specificity” Standard.*

12 In her exceptions, Ms. Gilbert cites three Land Use Board of Appeals (“LUBA”) opinions
13 addressing LUBA’s issue preservation standards.⁴⁷ As an initial matter, those cases are not binding
14 precedent because they were applying the LCDC’s statutes set forth in ORS Chapter 197, and not
15 the Council’s standards and rules.

⁴⁵ Input on Draft Proposed Order for the Boardman to Hemingway Transmission Line, Hearing Transcript at page 18, lines 5-10 (June 19, 2019) (ODOE - B2HAPPDoc7 DPO Hearing Transcripts All_Condensed Version_Court Reporter Benjamin, Beverly 2019-06-18 thru 27. Page 7 of 239).

⁴⁶ ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02. Pages 2326, 2336, 2341, and 2344 of 10016.

⁴⁷ Gilbert Procedural Exceptions at 3. Ms. Gilbert also cites to *Gonzales v. Oregon*, 546 U.S. 243 (1997) for the position that the Courts “only support[] an agency interpretation of its [sic] own rules when they are ambiguous.” *Id.* at 4. However, Ms. Gilbert does not otherwise raise any exceptions relating to the interpretation of ambiguous statutes. However, to the extent Ms. Gilbert intended to raise this concern in her exceptions, Idaho Power offers this response. *Gonzales* is not applicable to this contested case because *Gonzales* applies only to federal agencies—EFSC is a state agency. Oregon courts do not follow *Gonzales*, and instead will defer to an agency’s interpretation of its own administrative rules if the interpretation is “plausible.” *Friends of the Columbia Gorge, Inc. v. Columbia River Gorge Comm’n*, 346 Or 366, 410 (2009); *Don’t Waste Or. Comm. v. Energy Facility Siting Council*, 320 Or 132, 142 (1994). The doctrine of “plausibility” was established in *Don’t Waste Oregon Committee v. Energy Facility Siting Council*, which stated that when an “agency’s plausible interpretation of its own rule cannot be shown either to be inconsistent with the wording of the rule itself, or with the rule’s context, or with any other source of law, there is no basis on which this court can assert that the rule has been interpreted ‘erroneously.’” *Don’t Waste Or. Comm.*, 320 Or at 142.

1 Regardless, the cases cited by Ms. Gilbert are distinguished on their facts, where the issues
2 had been clearly raised and were clearly addressed below. In *Department of Land Conversation*
3 *and Development (“DLCD”) v. Tillamook County*, intervenors argued that the petitioner had failed
4 to raise an argument below regarding the “interpretation” of a particular land use ordinance. The
5 LUBA found that (a) the LCDC’s issue preservation statute, ORS 197.835(3), does not require a
6 petitioner to raise particular arguments during the local proceedings in order to address those
7 arguments on appeal, provided the relevant issue was raised below; and (b) while the petitioner
8 did not use the word “interpretation” in its written challenge to the county’s implementation of the
9 relevant land use ordinance, the record was “abundantly clear” that all the parties were fully aware
10 that questions regarding interpretation of the ordinance were at issue, as evidenced by the fact that
11 the ordinance had been the “focal point of the county’s final decision.”⁴⁸

12 In *DLCD v. Curry County*, petitioner challenged a county’s decision to rezone 10 acres of
13 a 24-acre parcel from Goal 4 forest lands to residential.⁴⁹ On appeal, the petitioner argued that the
14 county had erred by interpreting the applicable ordinance to permit it to evaluate only the 10-acre
15 portion for compliance with relevant criteria in the Goal 3 or 4 definitions, in isolation from the
16 remainder of the 24-acre parcel or surrounding lands.⁵⁰ Although the petitioner had argued below
17 that the county had incorrectly considered only the 10-acre portion of the parcel, the landowner
18 argued that the petitioner had not made arguments below regarding the need to apply the Goal 4
19 definition of forest lands—which requires the county to analyze whether the parcel is suitable for
20 commercial forestry, whether the parcel is necessary to permit forest operations or practices on

⁴⁸ LUBA No. 97-250 at 7.

⁴⁹ LUBA No. 97-250 at 2.

⁵⁰ LUBA No. 97-250 at 7.

1 adjacent or nearby forest lands, and whether the parcel is necessary to maintain soil, air, water and
2 fish and wildlife resources—to that 10-acre portion.⁵¹

3 LUBA rejected the landowner’s assertion, determining that, because the petitioner had
4 adequately raised below the issue of whether Land Conservation and Development Commission’s
5 Land Use Goal 4 applied to the parcel in question, the petitioner could raise on appeal additional
6 arguments supporting their position that the county had failed to properly apply the requirements
7 of Land Use Goal 4.⁵²

8 Idaho Power does not disagree with the general assertion that, to raise an issue in this
9 contested case, the limited parties had to raise that issue—not their specific arguments related to
10 that issue—in their DPO Comments. However, Ms. Gilbert has not provided any specific evidence
11 to support her suggestion that the Council incorrectly applied its sufficient specificity standard to
12 reject petitions for failing to raise specific arguments. Contrary to Ms. Gilbert’s assertion, the
13 Hearing Officer, and the Council when reviewing appeals of the *Order on Petitions for Party*
14 *Status, Authorized Representatives and Issues for Contested Case* (“Order on Party Status”),
15 properly considered whether the petitioners had raised *issues* in their DPO Comments with
16 sufficient specificity.⁵³ In its review of issues that were appealed from the Order on Party Status,
17 the Council even went so far as to reframe issues that the limited parties had identified in their
18 petitions to more accurately reflect the concerns raised in their DPO Comments.⁵⁴ In other words,

⁵¹ LUBA No. 97-014 at 7-8.

⁵² LUBA No. 97-014 at 7-8.

⁵³ *See, e.g.*, Amended Order on Party Status at 45 (“In public comments on June 19, 2019, Ms. Gilbert raised concerns about weed control for the life of the project, Applicant’s weed management proposal, issues of weeds going to seed, and requirements for compliance with the weed control laws. . . . Ms. Gilbert raised her concerns about noxious weeds and compliance with weed management laws with sufficient specificity to preserve this issue for consideration in the contested case.”).

⁵⁴ *See, e.g.*, Amended Order on Party Status at 4 (“Council finds that Hearing Officer’s framing of Stop B2H Coalition’s issue on visual methodology be modified as presented in Section A.6(b) of this order to, “Whether Applicant’s visual impact assessments are invalid because Applicant did not use updated USFS visual assessment

1 when the argument that a petitioner raised in their petition for party status did not reflect the issue
2 that they had raised in DPO Comments, the Council revised the issue statement in the petition for
3 party status and allowed the limited parties to raise the issue in the contested case.

4 In the contested case that followed, the limited parties were then free to raise additional
5 arguments in support of their issues, so long as those arguments addressed the same issue that they
6 had raised in their DPO Comments.

7 In her exception, Ms. Gilbert also cites *League of Women Voters v City of Corvallis*⁵⁵ for
8 the proposition that “[w]here issues regarding compliance with approval criteria were raised,
9 petitioners may challenge the adequacy of findings that are ultimately adopted” regarding those
10 approval criteria.⁵⁶ It is not clear what point Ms. Gilbert is making, however, to the extent that
11 Ms. Gilbert suggests that the Council denied petitions for party status on the basis that the
12 petitioner challenged the adequacy of findings in the Proposed Order, Ms. Gilbert’s argument is
13 not supported by the evidence in the record.⁵⁷

14 For these reasons, Ms. Gilbert has not identified any error in the Hearing Officer’s or the
15 Council’s application of the “sufficient specificity” standard.

~~criteria (1995 Landscape Aesthetic, Scenic Management System (SMS)) incorporate Oregonians’ subjective evaluation of their resources~~ to evaluate visual impacts, thereby invalidating the visual impact analysis for Morgan Lake Park and other protected areas, scenic resources and important recreational opportunities” and that denial of the issue be overruled. Council finds that Stop B2H Coalition properly raised the issue of whether the applicant’s visual impacts analysis failed to incorporate Oregonians’ subjective evaluation of their resources, which Stop B2H Coalition maintains is a difference between the 1974 and 1995 USFS methodologies. Therefore, Council finds that this issue be granted as a properly raised contested case issue.”) (emphasis and strikethrough in original).

⁵⁵ LUBA No. 2011-002 (June 28, 2011).

⁵⁶ Gilbert Procedural Exceptions at 3 (emphasis in original omitted).

⁵⁷ See, e.g., EFSC Order on Appeals of Hearing Officer’s Order on Party Status, Authorized Representatives and Issues at 10 (determining that Ms. Gilbert properly raised an issue challenging the adequacy of findings relating to mitigation of impacts to farm practices).

1 c. *The Attorney General’s Order Exempting the Council from Applying*
2 *Certain Portions of the Model Rules Was Procedurally Proper.*

3 Ms. Gilbert asserts that the Attorney General’s Exemption Memo was improper because
4 Patrick Rowe, an attorney for the Oregon Department of Justice (“DOJ”), signed the Council’s
5 request for an exemption and also signed the Attorney General’s order granting the exemption.⁵⁸
6 Ms. Gilbert previously raised this concern in an email sent to the service list for this contested case
7 on July 29, 2021, in which Ms. Gilbert asserted that Mr. Rowe was inappropriately representing
8 both ODOE and the Council in this Contested Case.⁵⁹ However, as explained by Mr. Rowe’s
9 supervising attorney from the DOJ, Mr. Paul Garrahan, DOJ represents all state agencies.⁶⁰
10 Moreover, any Assistant Attorney General at the DOJ has “full authority under the direction of the
11 Attorney General to perform any duty required by law to be performed by the Attorney General.”⁶¹
12 Therefore, Mr. Rowe was fully within his authority when he signed the Attorney General’s
13 Exemption Memo on behalf of the Attorney General.

14 For these reasons, Ms. Gilbert has not identified any error in the Hearing Officer’s
15 application of Council rules in this contested case.

16 **3. Gilbert Exception 3 – Summary Determination on Issues FW-4, LU-5, NC-5,**
17 **and M2**

18 Ms. Gilbert asserts that the MSD process was not proper because EFSC has not
19 promulgated a rule providing for MSDs and the Attorney General’s Exemption Memo did not
20 authorize the Hearing Officer to apply the MSD rule contained in the OAH Rules.⁶² As Idaho
21 Power previously explained in its briefing in response to Ms. Gilbert’s earlier motion to dismiss

⁵⁸ Gilbert Procedural Exceptions at 6-7.

⁵⁹ See Paul Garrahan, Letter Re: DOJ role in EFSC contested cases at 1 (Aug. 23, 2021) (summarizing Ms. Gilbert’s email).

⁶⁰ Paul Garrahan, Letter Re: DOJ role in EFSC contested cases at 2.

⁶¹ ORS 180.140(1).

⁶² Gilbert Procedural Exceptions at 9.

1 all MSDs,⁶³ Ms. Gilbert’s assertions are unfounded, and the Council should reject any notion that
2 the Hearing Officer’s decision to allow MSDs in the contested case was procedurally improper,
3 for the following reasons.

4 Ms. Gilbert’s argument that the Hearing Officer erred by allowing parties to file MSDs
5 ignores the fact that the Hearing Officer only allowed MSDs after *Ms. Gilbert* insisted that she do
6 so. On January 5, 2021 (in advance of the January 7, 2021 Pre-Hearing Conference), Idaho Power
7 circulated a letter to the parties recommending that the portion of the schedule allocated for the
8 MSDs should be eliminated because, at that time, no party had indicated that they intended to file
9 any such motions, and Ms. Gilbert—the only limited party that had taken any position—argued
10 that EFSC’s rules did not allow MSDs.⁶⁴ However, at the Pre-Hearing Conference, Ms. Gilbert
11 reversed her position and instead argued that the dates for filing and responding to MSDs must be
12 included as part of the procedural schedule and that she could “guarantee” she would file at least
13 one MSD.⁶⁵ Primarily because of the arguments raised by Ms. Gilbert and the other limited parties
14 asserting that they either would or might file MSDs,⁶⁶ the Hearing Officer—over Idaho Power’s
15 schedule-based objections—included three-and-a-half months in the schedule dedicated to the
16 MSD process.⁶⁷ However, when the time came to file, *neither Irene Gilbert nor any of the other*

⁶³ See Idaho Power’s Response to Irene Gilbert’s Motion to Dismiss All Motions for Summary Determination (June 4, 2021).

⁶⁴ Letter from Lisa Rackner to ALJ Greene Webster at 1-2 (Jan. 5, 2021) (“January 5 Letter”).

⁶⁵ See Idaho Power’s Response to Irene Gilbert’s Motion to Dismiss All Motions for Summary Determination, Attachment 1, *Excerpts from January 7, 2021 Pre-Hearing Conference re Gilbert Statements About Filing MSDs*.

⁶⁶ In addition to Ms. Gilbert, the following limited parties asserted that they may file MSDs: Gail Carbiener (OTCA), Virginia Mammen, Jane Howell, and STOP B2H.

⁶⁷ First Order on Case Management Matters and Contested Case Schedule at 13-14, n.4 (“Applicant indicated at the January 7, 2021 prehearing conference that it did not intend to utilize the summary determination process to request a favorable ruling on any of the identified issues and recommended that the ALJ eliminate the deadlines for filing and responding to such motions from the schedule. The Department also represented that it did not anticipate moving for summary determination on any identified issue in the contested case. However, a number of limited parties, including Stop B2H (with standing on 11 issues) and Ms. Gilbert (with standing on 15 issues) requested to retain the summary determination process on the contested case schedule. Stop B2H indicated that it could not assess whether any of its issues would be appropriate for summary determination until after discovery was complete. Ms. Gilbert expressed her

1 *limited parties in this case actually filed any MSDs*. Given this history, Ms. Gilbert has waived
2 any right to object to the Hearing Officer’s decision to allow for MSDs. Moreover, as discussed
3 in greater detail below, the Council has already agreed that MSDs were appropriate in this
4 contested case.⁶⁸

5 Turning to Ms. Gilbert’s exception, she provides six points in support of her assertion that
6 the MSD process in the contested case was improper. However, none of Ms. Gilbert's arguments
7 identifies any error in the Hearing Officer's decision to allow parties to file MSDs.

8 Ms. Gilbert first argues that “neither the Siting Counsel [n]or the Attorney General
9 authorized the use of Summary Determinations in the B2H Contested Case Process.”⁶⁹
10 Ms. Gilbert then quotes the Attorney General Exemption Memo, in which the Attorney General
11 noted that the Council’s rules do not contain “a specific rule regarding motions for summary
12 determination,” and so the Attorney General left the issue of whether to allow MSDs “to the
13 Council, presiding ALJ, and the parties to resolve.”⁷⁰

14 However, Ms. Gilbert’s statements do not identify any error in the Hearing Officer’s
15 decision for several reasons. *First*, the excerpt of the Attorney General Exemption Memo that
16 Ms. Gilbert quotes specifically delegates to the Hearing Officer discretion to decide if she would
17 include MSDs in this contested case.⁷¹ *Second*, the Council affirmed the use of summary

position that at least one, if not more, of the issues on which she has standing involve questions of law and not disputed facts. Therefore, the ALJ opted to retain the deadlines for filing and responding to motions for summary determination in the contested case schedule.”).

⁶⁸ Council Order on Limited Party Gilbert’s Motion to Remove Hearing Officer at 6

⁶⁹ Gilbert Procedural Exceptions at 11.

⁷⁰ Attorney General Exemption at 1.

⁷¹ “As explained in the *Order on Case Management Matters and Contested Case Schedule (Order on Case Management)* issued January 14, 2021, it is within the ALJ’s discretion whether to allow motions for summary determination in contested cases referred by Council.” Ruling on Limited Party Irene Gilbert’s Request to Dismiss All Motions for Summary Determination at 1 (June 9, 2021).

1 determination in this contested case;⁷² therefore, even if Ms. Gilbert were correct that the Council
2 must determine whether MSDs are appropriate, the Council has done so.

3 Ms. Gilbert next argues that the limited parties did not have an opportunity to formally
4 brief the issue of whether the Hearing Officer should include MSDs.⁷³ Ms. Gilbert is correct that
5 the parties in this contested case did not formally brief whether MSDs were permissible until after
6 Idaho Power filed its MSDs. However, there is no rule requiring that the Hearing Officer allow
7 formal briefing on this matter. Rather, as discussed above, it was within the Hearing Officer's
8 discretion to decide whether to allow MSDs.

9 Moreover, at the January 2021 preconference hearing, the parties discussed at length their
10 positions for and against MSDs in the contested case. Curiously at that time, Ms. Gilbert strongly
11 advocated *for* including MSDs in this Contested Case.⁷⁴ Despite her argument that there was no
12 opportunity to brief this matter, Ms. Gilbert was provided an opportunity to discuss her position
13 and concluded during the January 2021 meeting that she intended to take advantage of the MSD
14 process.

15 Next, Ms. Gilbert asserts that the Hearing Officer erred because she applied
16 OAR 137-003-0580(6), but “the Attorney General had specially excluded ODOE and Council
17 from using” that rule.⁷⁵ Ms. Gilbert is correct in stating that the Hearing Officer looked to
18 OAR 137-003-0580 “for guidance” in her review of MSDs in this contested case.⁷⁶ However, Ms.
19 Gilbert's assertion that the Hearing Officer was not permitted to consider that rule is incorrect.

⁷² Council Order on Limited Party Gilbert's Motion to Remove Hearing Officer at 6 (“Council finds that summary determination is a permissible type of motion in this proceeding, as establish Case Management Order.”).

⁷³ Gilbert Procedural Exceptions at 11.

⁷⁴ Ms. Gilbert went so far as to “guarantee” that she would file an MSD. Idaho Power's Response to Irene Gilbert's Motion to Dismiss All Motions for Summary Determination, Attachment 1, *Excerpts from January 7, 2021 Pre-Hearing Conference re Gilbert Statements About Filing MSDs*.

⁷⁵ Gilbert Procedural Exceptions at 11.

⁷⁶ First Order on Case Management at 13-14 (“In setting the motion schedule and explaining the requirements for summary determination in this matter, the ALJ looks to OAR 137-003-0580 for guidance.”).

1 The Council’s rules broadly allow parties to file “any motions” with the Hearing Officer, so long
2 as “state with particularity the grounds and relief sought.”⁷⁷ Nothing in the Council’s rules
3 prohibits the Hearing Officer from allowing parties to seek summary determination when
4 appropriate. Moreover, although OAR 137-003-0580 is not a Council rule, the Hearing Officer
5 did not err in considering that rule to identify the standards for MSDs. Finally, Ms. Gilbert’s
6 assertion that the Attorney General prohibited the Council from applying OAR 137-003-0580 is
7 false. As discussed above, the Attorney General explicitly left that issue to the Hearing Officer
8 and the Council to decide.⁷⁸

9 Finally, Ms. Gilbert argues that the Hearing Officer should apply only Oregon Rule of Civil
10 Procedure (“ORCP”) 47(C) to assess MSDs, and ORCP 47(C) does not allow the Hearing Officer
11 to grant MSDs when there are disputes of fact.⁷⁹ However, Ms. Gilbert’s assertion is incorrect.
12 ORCP 47(C) does not apply to the contested case process. As stated in ORCP 1(A)—the ORCP
13 “govern procedure and practice in *all circuit courts of this state*,” not administrative proceedings.⁸⁰
14 Therefore, the Hearing Officer is not required to adhere to the rules governing MSDs under
15 ORCP 47(C). That being said, OAR 137-003-0580 similarly allows the Hearing Officer to grant
16 summary determination only if she determines that there is “no genuine issue as to any material
17 fact that is relevant to resolution of the legal issue as to which a decision is sought[.]”⁸¹ For that

⁷⁷ OAR 345-015-0054(1).

⁷⁹ Gilbert Procedural Exceptions at 12. Idaho Power addresses Ms. Gilbert’s assertion No. 5 and No. 6 together because they both raise ORCP 47(C).

⁸⁰ ORCP 1(A). “These rules govern procedure and practice in *all circuit courts of this state*, except in the small claims department of circuit courts, for all civil actions and special proceedings whether cognizable as cases at law, in equity, or of statutory origin except where a different procedure is specified by statute or rule. These rules shall also govern practice and procedure in all civil actions and special proceedings, whether cognizable as cases at law, in equity, or of statutory origin, for the small claims department of circuit courts and for all other courts of this state to the extent they are made applicable to those courts by rule or statute. Reference in these rules to actions shall include all civil actions and special proceedings whether cognizable as cases at law, in equity or of statutory origin.” (emphases added).

⁸¹ OAR 137-003-0580(6)(a).

1 reason, the Hearing Officer considered only undisputed facts when deciding whether to grant
2 summary determination.⁸²

3 For these reasons, Ms. Gilbert’s assertions regarding the MSD phase of the contested case
4 are unsupported, and the Council should reject Ms. Gilbert’s claims that the MSD phase was
5 procedurally improper.

6 **4. Gilbert Exception 4 – Granting Limited Party Status to Petitioners**

7 Ms. Gilbert asserts that the Hearing Officer violated the Administrative Procedures Act
8 (“APA”) when she designated “all petitioners with the exception of the Oregon Department of
9 Energy and Idaho Power as Limited Parties” and limited their participation in this contested case
10 to the issues they raised with sufficient specificity in their DPO Comments.⁸³ Ms. Gilbert argues
11 that this limitation on party status violates ORS 183.413, ORS 183.417, and
12 OAR 135-003-0005(7).⁸⁴ Ms. Gilbert also contends that ODOE lacks the authority to interpret the
13 Model Rules, because the Attorney General promulgated those rules, not ODOE.⁸⁵ Importantly,
14 all parties have had the opportunity to fully brief this issue, and the Council has affirmed the
15 Hearing Officer’s decision to grant limited party status to individuals and organizations who
16 sought to participate in this contested case.⁸⁶ Ms. Gilbert’s improper attempt to relitigate an issue
17 that the Council has already affirmed should be rejected. To the extent the Council is nevertheless
18 inclined to consider Ms. Gilbert’s assertions, Idaho Power responds to each in turn below.

⁸² See, e.g., Ruling and Order on Motion for Summary Determination on Contested Case Issue NC-5 at 2-6 (Aug. 9, 2021) (listing the undisputed facts relevant to resolution of NC-5).

⁸³ Gilbert Procedural Exceptions at 12.

⁸⁴ Gilbert Procedural Exceptions at 15.

⁸⁵ Gilbert Procedural Exceptions at 16.

⁸⁶ EFSC Order on Appeals of Hearing Officer’s Order on Party Status, Authorized Representatives and Issues at 18 (Nov. 25, 2020).

1 a. *APA allows for Agency Adoption of Rules of Procedure*

2 The Hearing Officer acted within the discretion afforded her by the APA, the Oregon
3 Model Rules of Procedure for Contested Cases, and the Council’s rules addressing requests for
4 party status. First, the APA allows each agency to “adopt rules of procedure governing
5 participation in contested case proceedings by persons appearing as limited parties.”⁸⁷ The Council
6 has promulgated its own rules governing participation in contested cases, but also applies the
7 Model Rules to the extent that they do not conflict with the Council’s rules.⁸⁸ Under the Council’s
8 rules and governing statutes, persons seeking to participate in a contested case may raise only the
9 issues they raised in their DPO Comments “with sufficient specificity to afford the council, the
10 department and the applicant an adequate opportunity to respond to each issue.”⁸⁹ Additionally,
11 the Model Rules state that any “petition to participate as a party may be treated as a petition to
12 participate as a limited party”⁹⁰ and, if the Hearing Officer grants a petition, she may “specify
13 areas of participation and procedural limitations as [she] deems appropriate.”⁹¹ Hearing officers
14 in past EFSC contested cases have granted limited party status to petitioners under these same
15 rules. For example, in a 2015 EFSC contested case, the Hearing Officer limited participation to
16 the issues that the petitioners properly raised in their petitions for party status.⁹²

17 b. *Compliance with ORS 183.413, ORS 183.417, and OAR 135-003-0005(7)*

18 Ms. Gilbert argues that granting petitioners limited party status violates ORS 183.413.⁹³

19 That statute reads, in relevant part:

⁸⁷ ORS 183.417(3).

⁸⁸ OAR 345-001-0005(1), (3).

⁸⁹ ORS 469.370(3).

⁹⁰ OAR 137-003-0005(8).

⁹¹ OAR 137-003-0005(9).

⁹² *In the Matter of the Application for Site Certificate for the South Dunes Power Plant*, Order on Petitioners for Party Status; Order Granting Application for Admission *Pro Hac Vice* (Dec. 28, 2015).

⁹³ Gilbert Procedural Exceptions at 15.

1 (2) Prior to the commencement of a contested case hearing before any agency
2 including those agencies identified in ORS 183.315, the agency shall serve
3 personally or by mail a written notice to each party to the hearing that includes the
4 following:

5 * * * * *

6 (e) A statement that the party has the right to respond to all issues properly before
7 the presiding officer and present evidence and witnesses on those issues.

8 Ms. Gilbert interprets this statute to require that “participants have the right to be notified of the
9 procedures to be used in the contested case.”⁹⁴ However, Ms. Gilbert has not provided any
10 argument that granting limited party status failed to give the limited parties notice of any
11 procedures in this contested case. For that reason, Ms. Gilbert’s exception does not identify any
12 failure to comply with ORS 183.413.

13 Ms. Gilbert next asserts that granting petitioners limited party status violated
14 ORS 183.417, which reads, in relevant part:

15 (1) In a contested case proceeding, the parties may elect to be represented by
16 counsel and to respond and present evidence and argument on all issues properly
17 before the presiding officer in the proceeding.

18 (2) Agencies may adopt rules of procedure governing participation in contested
19 case proceedings by persons appearing as limited parties.

20 Ms. Gilbert argues that this statute “states parties have a right to respond to all issuers [sic] before
21 the presiding officer and present evidence and witnesses on those issues.”⁹⁵ However, subsection
22 (2) of that same statute allows agencies, including the Council, to “adopt rules of procedure
23 governing participation in contested case proceedings by persons appearing as limited parties.”⁹⁶
24 Consistent with that statute, the Council has adopted its own rules and incorporated provisions of

⁹⁴ Gilbert Procedural Exceptions at 15.

⁹⁵ Gilbert Procedural Exceptions at 15.

⁹⁶ ORS 183.417(2) (“Agencies may adopt rules of procedure governing participation in contested case proceedings by persons appearing as limited parties.”).

1 the Model Rules⁹⁷ that allow limited parties to testify and cross-examine witnesses only within
2 “the area or areas of participation granted by the agency.”⁹⁸

3 Finally, Ms. Gilbert argues that the contested case failed to “provide the mandatory
4 evaluation of the [OAR] 135-003-0005(7) for those requesting standing as full parties.”⁹⁹
5 However, OAR 135-003-0005(7) lists factors that the Hearing Officer weighs when “ruling on
6 petitions to participate as a party *or a limited party*[.]” Relatedly, OAR 135-003-0005(8)
7 authorizes the Hearing Officer to treat any petition for party status as a petition for limited part
8 status. Read together, these regulations authorized the Hearing Officer to review the petitions for
9 compliance with the factors listed in OAR 135-003-0005(7) and, based on those factors, determine
10 whether the petitioner should be given party *or limited party* status. Therefore, the Hearing Officer
11 acted within her discretion when determining whether to grant petitioners party status or limited
12 party status based.

13 *c. Authority to Interpret Rules*

14 Ms. Gilbert next argues that ODOE and the Hearing Officer “lack the authority to interpret
15 the intent of Department of Justice statutes or rules and no interpretation was requested or provided
16 from the Attorney General regarding the interpretation of OAR 137-003-0005(8).”¹⁰⁰ However,
17 Ms. Gilbert is incorrect. The Hearing Officer is granted broad authority in a contested case,¹⁰¹ and

⁹⁷ OAR 345-001-0005(1) (“Except as described in this rule, the Council adopts and incorporates by reference in this chapter the following rules from the Attorney General's Uniform and Model Rules (July 2014): . . . 137-003-0001 through 137-003-0092[.]”).

⁹⁸ OAR 137-003-0040(4) (“Presiding officers or decision makers, agency representatives, interested agencies, and parties shall have the right to question witnesses. However, limited parties may question only those witnesses whose testimony may relate to the area or areas of participation granted by the agency.”); OAR 137-003-0040(3)(b) (“The hearing shall be conducted, subject to the discretion of the presiding officer, so as to include the following: . . . The statement and evidence of opponents, interested agencies, and other parties; except that limited parties may address only subjects within the area to which they have been limited[.]”).

⁹⁹ Gilbert Procedural Exceptions at 16.

¹⁰⁵ Gilbert Procedural Exceptions at 15.

¹⁰¹ OAR 345-015-0023(5)(m) (authorizing a Hearing Officer to “[t]ake any other action consistent with the Council's governing statutes and the Council's rules”).

1 this includes the interpretation of applicable rules and statutes. The Hearing Officer’s
2 interpretation of the Attorney General’s rules may not be entitled to deference on appeal, but
3 OAR 137-003-0005(8) specifically states that a “petition to participate as a party may be treated
4 as a petition to participate as a limited party.” Idaho Power is confident that interpreting that
5 regulation as authorizing EFSC to treat petitions for party status as petitions for limited party status
6 will be affirmed on appeal.

7 *d. Reliance on Others to Submit DPO Comments*

8 Finally, Ms. Gilbert argues that limited parties “were denied participation in accepted
9 contested case issues they were relying upon others to develop and submit hearing requests on
10 after their opportunity to request contested cases on those issues had expired.”¹⁰² However,
11 Ms. Gilbert has not identified any source of law that would entitle limited parties to participate in
12 arguing an issue in a contested case that they did not raise in DPO Comments in an EFSC contested
13 case. Limiting petitioners to the issues they raised in DPO Comments is entirely consistent with
14 the Council’s “sufficient specificity” standard, which requires limited parties to raise an issue in
15 DPO Comments if they intend to raise the issue in a contested case.

16 For these reasons, Ms. Gilbert’s challenges to the Hearing Officer’s and the Council’s
17 decision to grant limited party status to petitions are without merit. As such, the Council should
18 reject Ms. Gilbert’s unfounded request that “[t]he contested cases should be reheard to allow those
19 denied their rights under ORS 183.417 [and OAR 135-003-0005(7)] an opportunity to present their
20 arguments and evidence.”¹⁰³

¹⁰² Gilbert Procedural Exceptions at 16.

¹⁰³ Gilbert Procedural Exceptions at 18.

1 **5. Gilbert Exception 5 – Cross-Examination of Witnesses and Denial of Motions**
2 **for Discovery Orders**

3 Ms. Gilbert asserts that the Hearing Officer “denied opportunity for petitioners to cross
4 examine witnesses and to issue orders requiring compliance with requests for discovery.”¹⁰⁴ While
5 Ms. Gilbert’s exception is not entirely clear because Ms. Gilbert did not include any factual
6 references to support her conclusion, it appears that Ms. Gilbert is referring to two separate issues:
7 (1) one witness, Tim Butler from the Oregon Department of Agriculture (“ODA”) filed rebuttal
8 testimony but was not available for cross-examination, and instead another ODA employee
9 appeared for cross-examination; and (2) the Hearing Officer denied the limited parties’ requests
10 for discovery orders. For the reasons discussed below, neither of Ms. Gilbert’s assertions identify
11 any procedural error in this contested case.

12 *e. The Hearing Officer Properly Allowed an Alternative Witness Because*
13 *Mr. Butler Was Unavailable*

14 ODOE filed rebuttal testimony from Mr. Butler relating to noxious weed issues—including
15 one issue for which Ms. Gilbert had limited party status.¹⁰⁵ Ms. Gilbert timely requested to cross-
16 examine Mr. Butler, but shortly before the date that Mr. Butler was scheduled to testify, ODOE
17 informed the Hearing Officer that Mr. Butler had experienced a family emergency.¹⁰⁶ ODOE
18 clarified that, if Mr. Butler could not make himself available, another ODA witness would provide
19 testimony in his place.¹⁰⁷

20 Ms. Gilbert objected to allowing a substitute witness to testify, stating that she “d[id] not
21 believe that a replacement will be able to address the questions [she had] regarding [Mr. Butler’s]

¹⁰⁴ Gilbert Procedural Exceptions at 16.

¹⁰⁵ See generally ODOE / Written Rebuttal Testimony of Tim Butler (Nov. 12, 2021) / Issues FW-3 and FW-6.

¹⁰⁶ Email from Patrick Rowe to Hearing Officer Greene Webster, *Re: 2019-ABC-02833: ODOE witness Tim Butler* (Jan. 12, 2022).

¹⁰⁷ Email from Patrick Rowe to Hearing Officer Greene Webster, *Re: 2019-ABC-02833: ODOE witness Tim Butler* (Jan. 12, 2022).

1 testimony given his decades of experience with the statutes.”¹⁰⁸ When it became clear that
2 Mr. Butler would not be available to testify prior to the close of the evidentiary record, ODA
3 identified Mark Porter, another ODA employee who also had decades of experience in weed
4 control, to provide testimony in his place.¹⁰⁹

5 The Hearing Officer determined that Mr. Porter was an adequate witness to testify in
6 Mr. Butler’s place because Mr. Butler had testified on behalf of ODA, rather than in his personal
7 capacity.¹¹⁰ Mr. Porter then appeared at the hearing and adequately answered Ms. Gilbert’s
8 extensive cross-examination.¹¹¹

9 Because ODOE provided an adequate alternative witness to be cross-examined regarding
10 testimony that ODA had filed, Ms. Gilbert has not identified any error in the Hearing Officer’s
11 orders regarding cross-examination of witnesses.

12 *f. The Hearing Officer Properly Denied Limited Parties’ Requests for*
13 *Discovery Orders.*

14 Ms. Gilbert asserts that the Hearing Officer did not “issue orders requiring compliance with
15 requests for discovery.”¹¹² While Ms. Gilbert is correct that the Hearing Officer denied the limited
16 parties’ requests for discovery orders, Ms. Gilbert has not provided any evidence or argument to
17 demonstrate that the Hearing Officer erred by doing so. Moreover, Ms. Gilbert has already raised
18 this issue to the Council, and the Council has issued an order stating that the mere fact that the

¹⁰⁸ Email from Irene Gilbert Hearing Officer Greene Webster, *Re: 2019-ABC-02833: ODOE witness Tim Butler* (Jan. 13, 2022).
¹⁰⁹ Porter Testimony, Cross-Examination Hearing Day 7, January 21, 2022 (Tr. Day 7), page 9, line 1 – page 10, line 2.
¹¹⁰ Statement from Hearing Officer Greene Webster, , Cross-Examination Hearing Day 4, January 14, 2022 (Tr. Day 4), page 14, line 24 – page 15, line 18.
¹¹¹ *See generally* Porter Testimony, Cross-Examination Hearing Day 7, January 21, 2022 (Tr. Day 7), pages 11-78, 89-95.
¹¹² Gilbert Procedural Exceptions at 21.

1 Hearing Officer denied the requests for discovery orders did not provide any evidence of bias.¹¹³
2 For the same reasons as articulated in the Council’s prior order, Ms. Gilbert’s exception has not
3 demonstrated any procedural error in the Hearing Officer’s denial of the limited parties’ requests
4 for discovery orders.

5 **6. Gilbert Exception 6 – Limited Parties Arguments Related to Contested Case**
6 **Issues**

7 Ms. Gilbert asserts that the Hearing Officer’s Order on Case Management did not
8 accurately identify the limited parties’ issues, and instead relied on ODOE’s “restate[ment]” of the
9 limited parties’ issues, which Ms. Gilbert argues failed to incorporate the correct scope of those
10 issues.¹¹⁴ However, Ms. Gilbert’s challenge to the issue statements should be rejected because it
11 is untimely and is inconsistent with the record in this case.

12 Ms. Gilbert’s challenge to the issue statements is untimely—and in fact is late by over 20
13 months. The Hearing Officer issued her order identifying the limited parties’ contested case issues
14 on October 29, 2020.¹¹⁵ Pursuant to OAR 345-015-0016(6), any party or limited party had seven
15 days to appeal the Hearing Officer’s determinations.¹¹⁶ Any determination in the Hearing
16 Officer’s order became final if the limited party failed to appeal within that time.¹¹⁷ If the limited
17 party filed an appeal of the Hearing Officer’s order, then the determinations became final after the

¹¹³ Council Order on Limited Party Gilbert’s Motion to Remove Hearing Officer at 5.
¹¹⁴ Gilbert Procedural Exceptions at 21-22.
¹¹⁵ Order on Party Status at 46 (finding that Ms. Gilbert had properly raised an issue asking “Whether the Draft Noxious Weed Plan (Proposed Order Attachment P1-5) adequately ensures compliance with the weed control laws, ORS 569.390 (owner or occupant to eradicate weeds) ORS 569.400 (enforcement), and ORS 569.445 (duty to clean machinery).”).
¹¹⁶ See Order on Party Status at 85 (explaining parties’ appeal rights).
¹¹⁷ OAR 345-015-0016(6) (“The hearing officer's determination on a request to participate as a party or limited party is final unless the requesting person submits an appeal to the Council within seven days after the date of service of the hearing officer’s determination.”).

1 Council issued its order on those appeals.¹¹⁸ Regardless of whether the limited parties filed
2 appeals, however, the issue statements are final at this time.

3 After the issues were identified in the Hearing Officer’s Order on Party Status, Authorized
4 Representatives and Issues for Contested Case, and affirmed by the Council following appeal of
5 that order, the parties and limited parties engaged in over 20 months of litigation—including
6 discovery, motions for summary determination, multiple rounds of testimony, cross examination
7 hearing, and briefing—addressing the issue statements identified in the ruling. Ms. Gilbert would
8 have the Council ignore the significant amount of effort that has been put into addressing these
9 issues to date, and instead seek to re-start the proceeding from scratch.

10 Additionally, the Council has already addressed a related argument and determined that the
11 Hearing Officer’s issue statements are final at this point and cannot be revised. Specifically, earlier
12 in this contested case, limited party Michael McAllister filed an interlocutory appeal of the Hearing
13 Officer’s ruling that had initially granted summary determination of Issue R-2, arguing that the
14 issue he had raised in his comments on the DPO Comments was broader than the issue stated in
15 the Hearing Officer’s Order on Case Management.¹¹⁹ In its order on Mr. McAllister’s appeal, the
16 Council rejected Mr. McAllister’s argument because the “issue statement has been ruled upon by
17 the ALJ and is therefore final.”¹²⁰ Similarly, the other issue statements that Ms. Gilbert now
18 challenges are also final, and Ms. Gilbert’s exception therefore fails to identify any error in the
19 Hearing Officer’s Proposed Contested Case Order.

¹¹⁸See EFSC Order on Appeals of Hearing Officer Order on Party Status, Authorized Representatives, and Issues (Nov. 25, 2020).

¹¹⁹ Michael McAllister’s Interlocutory Appeal of the Ruling and Order on Motions for Summary Determination of Contested Case Issues FW-13, R-2, and SP-2 at 3 (Aug. 10, 2021).

¹²⁰ EFSC Order on Interlocutory Appeal of Administrative Law Judge’s Ruling on MSD for Limited Party McAllister’s Issues FW-13, SP-2, and R-2 at 12-13 (Sept. 17, 2021).

1 Finally, while ODOE did initially provide summaries of the issues that the petitioners had
2 raised, Ms. Gilbert’s assertion that the Hearing Officer relied solely on these summaries is false.¹²¹
3 On the contrary, at the prehearing conference, the Hearing Officer indicated that she would like to
4 use ODOE’s issue summaries as a starting point for identifying the issues, but asked that any
5 limited party with concerns regarding ODOE’s issue summaries provide comment explaining
6 those concerns. Ms. Gilbert filed a written comment in which she asked that some of the issue
7 statements be revised.¹²² ODOE incorporated Ms. Gilbert’s—and any other petitioner’s—
8 requested revisions into its Second Amended Response to Petitions for Party and Limited Party
9 Status,¹²³ and the Hearing Officer subsequently incorporated those issues into the Order on Case
10 Management.¹²⁴

11 For these reasons, the Council should reject Ms. Gilbert’s challenges to the issue statements
12 and adopt the Hearing Officer’s findings and conclusions of law without modification.

13 **7. Gilbert Exception 7 – Limited Parties’ Use of the ODOE Record**

14 Ms. Gilbert asserts that the “petitioners were not allowed to use commonly accepted
15 references” as exhibits or reference documents.¹²⁵ It appears that Ms. Gilbert is referring to the
16 Hearing Officer’s ruling that required limited parties to refer to documents in ODOE’s
17 Administrative Project Record and provided the convention for identifying and marking exhibits.
18 Ms. Gilbert’s assertions do not identify any error in the Hearing Officer’s factual findings or
19 conclusions of law.

¹²¹ ODOE Response to Petitions for Party and Limited Party Status (Sept. 22, 2020).

¹²² Irene Gilbert Objection to ODOE Recommendations Regarding Contested Case Issues for the B2H Proposed Transmission Line at 2 (Oct. 2, 2020).

¹²³ ODOE’s Second Amended Response to Petitions for Party/Limited Party Status at 64 (Oct. 6, 2020).

¹²⁴ See Second Order on Case Management at 4.

¹²⁵ Gilbert Procedural Exceptions at 22.

1 First, the Hearing Officer has broad authority in managing a contested case, and the
2 Council’s regulations require a hearing officer to “take all necessary action to . . . [f]acilitate
3 presentation of evidence” and “[m]aintain order[.]”¹²⁶ Given the extensive record that already
4 existed at the start of this contested case, the Hearing Officer reasonably required all participants
5 to rely on the existing record when citing documents contained therein rather than filing duplicates
6 and implemented a uniform citation format to prevent the possibility that multiple parties may cite
7 to the same document by a different name. The Hearing Officer’s actions were entirely within her
8 authority.

9 Second, as she stated in her ruling, allowing ODOE to enter the documents of the B2H
10 project record in this manner eliminated the need for “the party/limited party to (1) authenticate
11 the document by way of an affidavit; (2) label the document differently or in addition to the manner
12 in which the Department has identified the document in the B2H Project Record; and (3) attach
13 the document to the motion or submission.”¹²⁷ Contrary to Ms. Gilbert’s contention that these
14 actions created an “overwhelming barrier to support their issues,”¹²⁸ it is evident that it in fact
15 eliminated several procedural steps that resulted in the parties simply including a citation as
16 opposed to formally entering the B2H Project Record document into the Contested Case record.
17 For these reasons, Ms. Gilbert’s assertion is unfounded and should be rejected by the Council.

18 **8. Gilbert Exception 8 – Compliance with ORS 183.470**

19 Ms. Gilbert asserts that the Proposed Contested Case Order fails to comply with
20 ORS 183.470, which requires that:¹²⁹

¹²⁶ OAR 345-015-0023(2)(b), (d).

¹²⁷ Response to ODOE’s Inquiry RE: Marking and Submitting Exhibits at 2 (May 26, 2021).

¹²⁸ Gilbert Procedural Exceptions at 22.

¹²⁹ Gilbert Procedural Exceptions at 22.

1 (1) Every order adverse to a party to the proceeding shall be in writing or stated in
2 the record and may be accompanied by an opinion.

3 (2) A final order shall be accompanied by findings of fact and conclusions of law.
4 The findings of fact shall consist of a concise statement of the underlying facts
5 supporting the findings as to each contested issue of fact and as to each ultimate
6 fact required to support the agency's order.

7 (3) The agency shall notify the parties to a proceeding of a final order by delivering
8 or mailing a copy of the order and any accompanying findings and conclusions to
9 each party or, if applicable, the party's attorney of record.

10 (4) Every final order shall include a citation of the statutes under which the order
11 may be appealed.

12 In support of this assertion, Ms. Gilbert simply quotes sections (1) through (3), excerpted
13 above, with no further explanation. Ms. Gilbert's claims are unfounded and should be rejected by
14 the Council.

15 Ms. Gilbert has not identified any order that the Hearing Officer failed to provide in
16 writing, and therefore has not demonstrated noncompliance with ORS 183.470(1).
17 ORS 183.470(2)(3) apply only to *final orders issued by an agency*, not proposed contested case
18 orders issued by hearing officers. For that reason, Ms. Gilbert's reference to those sections fails
19 to demonstrate any error in the Hearing Officer's Proposed Contested Case Order.

20 **9. Gilbert Exception 9 – Hearing Officer's Use of Contested Case Record**

21 Ms. Gilbert asserts that the Hearing Officer failed to "limit her actions to addressing the
22 material submitted by the parties."¹³⁰ In particular, Ms. Gilbert states that the Hearing Officer
23 appears to have conducted "independent research of the record."¹³¹ In making this claim, it is not
24 clear whether Ms. Gilbert is claiming that that the Hearing Officer researched the record itself—

¹³⁰ Gilbert Procedural Exceptions at 18.

¹³¹ Gilbert Procedural Exceptions at 18.

1 which of course would be perfectly appropriate¹³²—or whether she is insinuating that the Hearing
2 Officer conducted research and based her order on evidence outside of the record. If Ms. Gilbert
3 intends to make the latter argument, she has failed to provide any support for her allegations, which
4 should therefore be entirely disregarded.

5 **10. Gilbert General Exception to Contested Case**

6 In addition to the exceptions discussed above, Ms. Gilbert filed a separate document that
7 she titled her “Exceptions to Administrative Law Judge Webster’s Rulings in the Proposed
8 Contested Case Order.”¹³³ In this filing, Ms. Gilbert challenges the entire Contested Case process
9 asserting that the Proposed Contested Case Order does not reflect a “fair and unbiased evaluation
10 of the issues.”¹³⁴ Ms. Gilbert concludes her exception with a request for a new contested case or
11 an “independent legal review of the complete contested case file and proposed order.”¹³⁵
12 Ms. Gilbert’s assertions are unpersuasive for the following reasons.

13 Ms. Gilbert fails to cite to any controlling Oregon rule or law to support her claims that the
14 contested case failed to follow proper procedure leading to a biased process. Idaho Power cannot
15 directly refute Ms. Gilbert’s claims as they are too vague, and she provides no specific examples
16 of bias and improper conduct by the Hearing Officer.

17 Second, the exception phase of the contested case is not the appropriate time to make such
18 a request for a new contested case proceeding or an independent legal review—which is essentially

¹³² ORS 183.450(4) (“The hearing officer and agency may utilize the hearing officer’s or agency’s experience, technical competence and specialized knowledge in the evaluation of the evidence presented.”).

¹³³ See Irene Gilbert Exceptions to Administrative Law Judge Webster’s Rulings in the Proposed Contested Case Order and Request for Exception to Summary Determination FW-4, LU-5, NC-5, M-2, FW-9, FW-10, FW-11 (June 30, 2022) [hereinafter, Gilbert Exceptions to Contested Case].

¹³⁴ Gilbert Exceptions to Contested Case at 1.

¹³⁵ Gilbert Exceptions to Contested Case at 1.

1 a request for rehearing or reconsideration.¹³⁶ Rather, the exceptions are intended to address specific
2 findings of fact, conclusions of law, or recommended site certificate conditions that the limited
3 parties believe to be erroneous.¹³⁷ Regardless, as discussed in detail above in response to
4 Ms. Gilbert’s Exceptions 1-9, the contested case was conducted fairly and in accordance with
5 Oregon law. The Council should reject Ms. Gilbert’s request on the sole basis that it is
6 procedurally improper to request a rehearing through an exception filing.

7 Finally, Ms. Gilbert previously raised many of these same concerns in her motion to
8 remove the Hearing Officer, and the Council concluded that Ms. Gilbert had failed to provide any
9 basis to conclude that the Hearing Officer was biased.¹³⁸ Ms. Gilbert’s attempt to relitigate her
10 allegations of bias should be rejected.

11 For the reasons discussed above, the Hearing Officer's procedures in this contested case
12 were all reasonable and within the Hearing Officer's authority. Therefore, Ms. Gilbert's assertion
13 that the Hearing Officer failed to provide a fair and impartial process is incorrect and the Council
14 should reject her exception.

15 **B. STOP B2H Procedural Exceptions**

16 In its exceptions, STOP B2H included exceptions relating to the Hearing Officer’s
17 determinations on party status, the Hearing Officer’s determination that several of STOP B2H’s
18 proposed site certificate conditions were untimely, and to the format of the Hearing Officer’s
19 conclusions of law. For the reasons discussed below, none of STOP B2H’s procedural exceptions

¹³⁶ If Ms. Gilbert wishes to request a rehearing or reconsideration of the final order, she has the right to file a petition within 60 days after the *final* order is served by EFSC, in accordance with OAR 137-003-0080.

¹³⁷ OAR 345-015-0085(5).

¹³⁸ Council Order on Limited Party Gilbert’s Motion to Remove Hearing Officer at 6-7.

1 identifies any error in the Proposed Contested Case Order, and Idaho Power requests that the
2 Council adopt without modification the Proposed Contested Case Order.

3 **1. STOP B2H Exception 1 – Party Status**

4 In its exceptions, STOP B2H raises three arguments relating to the Hearing Officer’s
5 determination to grant STOP B2H limited party status.

6 First, STOP B2H claims that the Proposed Contested Case Order fails to “incorporate and
7 address any valid reasoning or legal basis for restricting STOP’s participation to that of merely
8 ‘limited’ party in this matter.”¹³⁹ However, the Hearing Officer’s determinations on party status
9 were fully litigated, and the Council has already affirmed the Hearing Officer’s decision to grant
10 limited party status to the petitioners in this contested case—including STOP B2H.¹⁴⁰

11 Rather than reiterate the parties’ arguments for their request for full party status, the
12 Hearing Officer provides a timeline of events that occurred, and rulings issued—including her
13 Order on Party Status and the Council’s Order on Appeals of Hearing Officer Order on Party
14 Status, Authorized Representatives and Issues.¹⁴¹ All rulings and orders that the Hearing Officer
15 issued, including the Order on Party Status, are part of the decision-making record in this case,¹⁴²
16 and the Hearing Officer’s summary of the procedural history is sufficient for purposes of the
17 Proposed Contested Case Order.

18 Second, STOP B2H asserts that nothing in OAR 137-003-0005(8) “provides for other
19 parties’ input on this matter” and therefore, Idaho Power’s arguments in the Company’s Response
20 to Petitions for Party Status requesting that the Hearing Officer exercise her discretion and grant

¹³⁹ STOP B2H Exceptions at 4, 4 n.1.

¹⁴⁰ Energy Facility Siting Council Order on Appeals of Hearing Officer Order on Party Status, Authorized Representatives and Issues at 18.

¹⁴¹ Proposed Contested Case Order at 2.

¹⁴² OAR 345-015-0240 (“The decision-making record on an application for a site certificate includes the decision record for the Department of Energy’s proposed order and the record of the contested case proceeding.”).

1 limited party status to the petitioners were inappropriate.¹⁴³ However, STOP B2H has not cited
2 any legal authority to support its suggestion that a regulation must specifically authorize
3 participants in a contested case to request that the Hearing Officer exercise her discretion. When
4 the Hearing Officer has discretion to take a certain action, the parties may request that she do so;
5 there is nothing inappropriate in asking a Hearing Officer to lawfully exercise her discretion.

6 Finally, STOP B2H claims that the Hearing Officer failed to “incorporate the Order
7 limiting STOP’s party status,” asserting that the Hearing Officer failed to “fully address and
8 explain” her reasoning in the Proposed Contested Case Order as to why STOP B2H was granted
9 limited party status.¹⁴⁴ It is not clear what STOP B2H’s point is here, but it appears that STOP
10 B2H may be suggesting that the decision to accord STOP B2H limited party status is not effective
11 because it was not fully addressed in the Proposed Contested Case Order; STOP B2H provides no
12 support for this view. As noted above, this decision, made by the Hearing Officer and confirmed
13 by the entire Council, was fully effective and there was no need to provide the rationale in the
14 Proposed Contested Case Order.

15 The Hearing Officer previously provided the facts and law supporting her decision to limit
16 STOP B2H’s party status in the Order on Party Status.¹⁴⁵ In the Proposed Contested Case Order,
17 she refers to the Order and provides a brief synopsis of her ruling.¹⁴⁶ Again, there was no reason
18 for the Hearing Officer to discuss this issue in detail in the Proposed Contested Case Order as it is

¹⁴³ STOP B2H Exceptions at 4 (emphasis in original omitted).

¹⁴⁴ STOP B2H Exceptions at 4.

¹⁴⁵ Amended Order on Party Status at 8-10.

¹⁴⁶ Proposed Contested Case Order at 2.

1 not an issue within the contested case.¹⁴⁷ Moreover, the Council has already affirmed the Hearing
2 Officer’s order when the limited parties appealed.¹⁴⁸

3 For these reasons, Idaho Power requests that the Council reject STOP B2H’s exceptions
4 and adopt the Proposed Contested Case Order without modification.

5 **2. STOP B2H Exception 2 – Site Conditions and Responses**

6 In its pleading, STOP B2H takes exception to the Hearing Officer’s rejection of certain of
7 STOP B2H’s proposed site certificate conditions on the ground that they were filed after the
8 deadline set in the Contested Case Schedule.¹⁴⁹ In rejecting these conditions, the Hearing Officer
9 noted that, because they had been filed in STOP B2H’s Response Brief, ODOE and Idaho Power
10 did not have any opportunity to respond.¹⁵⁰ The Hearing Officer’s decision was proper for the
11 following reasons.

12 The Council’s rules establish the process for submittal of proposed site certificate
13 conditions, and specify that parties must submit proposed site certificate conditions to the hearing
14 officer in writing “*according to a schedule set by the hearing officer.*”¹⁵¹ In this case, the Hearing
15 Officer set the updated schedule for submittal of proposed site conditions in the Second Order on
16 Case Management, which indicated that they were to be filed by September 17, 2021.¹⁵²
17 Accordingly, any conditions that were submitted after that date were untimely, and properly

¹⁴⁷ OAR 345-015-0085(3).

¹⁴⁸ See Energy Facility Siting Council Order on Appeals of Hearing Officer Order on Party Status, Authorized Representatives and Issues at 2-5 (Nov. 25, 2020).

¹⁴⁹ STOP B2H Exceptions at 4-5.

¹⁵⁰ STOP B2H Exceptions at 4-5.

¹⁵¹ OAR 345-015-0085 (Hearing Officer’s Proposed Contested Case Order) (emphasis added).

¹⁵² Second Order on Case Management at 10 (“Submit direct testimony and evidence OAR 345-015-0043 and proposed site certificate conditions pursuant to OAR 345-015-0085(1)” set for September 17, 2021).

1 rejected by the Hearing Officer. Nevertheless, STOP B2H filed a number of new proposed site
2 certificate conditions in its Closing Arguments, which were filed on February 28, 2022.¹⁵³

3 Nevertheless, STOP B2H argues that it was inappropriate for the Hearing Officer to reject
4 its proposed site certificate conditions as untimely because the Hearing Officer considered and
5 adopted site certificate condition language proposed by ODOE and Idaho Power in their Closing
6 and Response Briefs.¹⁵⁴ However, the circumstances were not analogous. The site certificate
7 condition language proposed by ODOE and Idaho Power in their briefings were modifications to
8 conditions that had first been presented in the Proposed Order—and importantly, Idaho Power and
9 ODOE proposed these modifications in response to requests from STOP B2H and other limited
10 parties in prior filings.¹⁵⁵ For example:

- 11 • In response to STOP B2H’s concerns that the mitigation plan process described in
12 Recommended Noise Control Condition 1 is too vague,¹⁵⁶ Idaho proposed an additional
13 subsection (c) to that condition, which requires the Company to offer certain mitigation
14 measures (e.g., sound-attenuating windows proportional to the degree of the predicted
15 exceedance).¹⁵⁷
- 16 • In response to Section 4 of STOP B2H’s Proposed Noise Control Condition 1, which would
17 require a process for resolving complaints filed under Recommended Noise Control
18 Condition 2,¹⁵⁸ Idaho Power proposed an amendment to subsection (d) of Recommended

¹⁵³ See, e.g., STOP B2H Closing Argument at 25 (proposing that the site certificate require Idaho Power to underground the Project segment near the National Historic Oregon Trail Interpretive Center).

¹⁵⁴ STOP B2H Exceptions at 4-5, 21.

¹⁵⁵ Idaho Power’s Response Brief and Motion to Strike for Contested Case Issues NC-1, NC-2, NC-3, NC-4, and NC-6 at 57-66; Idaho Power’s Closing Arguments for Contested Case Issues NC-1, NC-2, NC-3, NC-4, and NC-6 at 104-21.

¹⁵⁶ STOP B2H / STOP B2H Coalition Proposed Site Conditions (Sept. 17, 2021) / Issue NC-4, p. 3 of 4.

¹⁵⁷ Idaho Power Company’s Closing Arguments for Contested Case Issues NC-1, NC-2, NC-3, NC-4, and NC-6 at 110-11.

¹⁵⁸ STOP B2H / STOP B2H Coalition Proposed Site Conditions (Sept. 17, 2021) / Issue NC-4, p. 3 of 4.

1 Noise Control Condition 2 addressing the information parties would need to provide to
2 ODOE regarding mitigation measures.¹⁵⁹ In its Response Brief, Idaho Power proposed
3 additional amendments regarding this same topic in response to revisions proposed by
4 ODOE and general recommendations proposed by STOP B2H.¹⁶⁰

- 5 • In response to STOP B2H’s concern as to how the complaint process would be
6 implemented, in its Response to Site Conditions filed on November 12, 2021, the Company
7 proposed revisions to ODOE’s Recommended Noise Control Condition 2 specifying that
8 if Idaho Power and the landowner cannot come to an agreement, either the Council or
9 ODOE would be responsible for a final determination on the appropriate mitigation, if
10 applicable.¹⁶¹

11 That is, ODOE and Idaho Power were proposing modifications to existing site certificate
12 conditions that had been requested by limited parties, and for that reason, the Hearing Officer
13 would have correctly concluded that these changes would be acceptable to the limited parties.

14 On the other hand, the conditions that STOP B2H proposed in its briefing were wholly
15 novel conditions to which neither ODOE nor Idaho Power had an opportunity to respond. For that
16 reason, the Hearing Officer did not have a full record on these proposals and appropriately rejected
17 these conditions, consistent with EFSC rules.

¹⁵⁹ Idaho Power Company’s Closing Arguments for Contested Case Issues NC-1, NC-2, NC-3, NC-4, and NC-6 at 11.

¹⁶⁰ Idaho Power’s Response Brief and Motion to Strike for Contested Case Issues NC-1, NC-2, NC-3, NC-4, and NC-6 at 62-66.

¹⁶¹ Idaho Power’s Response to Limited Parties’ Proposed Site Certificate Conditions at 20-22 (Nov. 12, 2021); *see also* Proposed Order, Attachment 1: Draft Site Certificate at 42-43 (ODOE - B2HAPDoc2 Proposed Order on ASC and Attachments 2019-07-02. Page 746-747 of 10016); ASC, Exhibit X, Section 3.5, at X-55 (ODOE - B2HAPDoc3-41 ASC 24_ Exhibit X_Noise_ASC 2018-09-28. Page 59 of 371). In response to STOP B2H’s and ODOE’s proposed amendments, Idaho Power proposed that if the Company and the landowner cannot come to an agreement, Idaho Power and the complainant will develop their own proposed mitigation plans and submit those plans to ODOE for consideration in approving a final mitigation plan. *See* Applicant Idaho Power Company’s Response to the Oregon Department of Energy’s Proposed Conditions at 16 (Dec. 3, 2021) [hereinafter, “Idaho Power’s Response to ODOE”].

1 **3. STOP B2H Exception 3 – Format of Proposed Contested Case Order**
2 **Conclusions**

3 STOP B2H takes exception to the form of the Conclusions of Law, arguing that it fails to
4 provide sufficient reasoning.¹⁶² Specifically, while STOP B2H acknowledges that the Opinion
5 section of the Proposed Contested Case Order¹⁶³ does “attempt” to provide reasoning behind some
6 of the conclusions, “not every conclusion of law is clearly tied to specific facts and reasoning.”¹⁶⁴
7 The Council should reject STOP B2H’s exception because the Hearing Officer’s Proposed
8 Contested Case Order provides a thorough discussion of the Hearing Officer’s analysis of the
9 issues resolved in this contested case.

10 STOP B2H appears to argue that the Hearing Officer’s conclusions of law were arbitrary
11 and unsupported. However, as STOP B2H states, the Hearing Officer provides her reasoning
12 behind the conclusions of law in the Opinion section of the Proposed Contested Case Order. The
13 Conclusion of Law section provides just that—conclusions on the issues. However, further in the
14 Proposed Contested Case Order, the Opinion section is organized by Council standard and then
15 Contested Case issue, easily allowing the reader to identify the Hearing Officer’s reasoning behind
16 her aforementioned conclusions of law. In the Opinion section, the Hearing Officer provides a
17 detailed summary of the testimony that all parties and limited parties filed for each issue, the
18 arguments the parties and limited parties raised in their closing arguments, and the specific facts
19 supporting the Hearing Officer’s conclusions.¹⁶⁵ The Hearing Officer further details each site
20 certificate condition that a party or limited party proposed relating to a contested case issue and
21 provides the Hearing Officer’s reasons for adopting or rejecting the proposal. STOP B2H’s

¹⁶² STOP B2H Exceptions at 5-6.

¹⁶³ See Proposed Contested Case Order at 138-143 (Conclusions of Law section).

¹⁶⁴ STOP B2H Exceptions at 6.

¹⁶⁵ See, e.g., Proposed Contested Case Order at 255-58 (detailing the Hearing Officer’s analysis of SR-7).

1 conclusory assertion that the Hearing Officer failed to provide facts and reasoning supporting her
2 conclusions is clearly inconsistent with the thorough analysis included in the Proposed Contested
3 Case Order.

4 For these reasons, the Council should reject STOP B2H’s unsupported exception and adopt
5 the Proposed Contested Case Order without modification.

6 **C. Michael McAllister Exceptions**

7 Limited party Michael McAllister filed an exception in which he argues that the Hearing
8 Officer wrongfully excluded Mr. McAllister’s “primary issue” from the contested case.¹⁶⁶
9 Mr. McAllister asserts that the Council failed to comply with ORS 469.370(13) by accepting Idaho
10 Power’s ASC in which the Company did not include a route segment in Union County that the
11 Bureau of Land Management (“BLM”) had identified as its preferred route (hereinafter referred to
12 as the “NEPA¹⁶⁷ Route”).¹⁶⁸

13 Mr. McAllister raises several arguments in his exception: (1) this exception is the proper
14 time to appeal the Council’s earlier decision in which it affirmed the Hearing Officer’s
15 determination that Mr. McAllister’s issue was outside the Council’s jurisdiction;¹⁶⁹ (2) the Council
16 erred in affirming the Hearing Officer’s determination that this issue is outside the Council’s
17 jurisdiction, because ORS 469.370(13) requires Idaho Power to include the NEPA Route in the

¹⁶⁶ McAllister’s Exception to Administrative Law Judge Webster’s Contested Case Order and Exclusion of Properly Raised Issue from Proceeding at 1 (June 30, 2022).

¹⁶⁷ “NEPA” is an acronym referring to the National Environmental Policy Act.

¹⁶⁸ McAllister’s Exception to Administrative Law Judge Webster’s Contested Case Order and Exclusion of Properly Raised Issue from Proceeding at 1 (June 30, 2022).

¹⁶⁹ McAllister’s Exception to Administrative Law Judge Webster’s Contested Case Order and Exclusion of Properly Raised Issue from Proceeding at 9, n.7.

1 ASC as a proposed route;¹⁷⁰ and (3) Idaho Power’s ASC was not complete because the Company
2 did not include the NEPA Route as a proposed route.¹⁷¹

3 As an initial matter, Mr. McAllister’s arguments are not tied to any specific exceptions to
4 the Proposed Contested Case Order as required by OAR 345-015-0085(5), and his claims should
5 therefore be rejected.¹⁷² Nevertheless, should the Council wish to consider Mr. McAllister’s
6 arguments, Idaho Power addresses each of his claims below.

7 **1. Mr. McAllister’s Attempt to Relitigate the Council’s Order Excluding This**
8 **Issue Regarding the NEPA Route Is Procedurally Improper.**

9 Although Mr. McAllister labels his pleading as an exception to the Proposed Contested
10 Case Order, it is more properly understood as an untimely motion for reconsideration of a Council
11 ruling. Specifically, Mr. McAllister is seeking reconsideration of the Council’s ruling that the
12 BLM agency preferred route were not within the Council’s jurisdiction.

13 In his DPO Comments, Mr. McAllister raised several assertions relating to the NEPA
14 Route.¹⁷³ In his Petition for Party Status, Mr. McAllister summarized his issues as:

15 The focus of the issues I intend to raise in the contested case concern a nine-mile
16 segment of the B2H Transmission Line in Union County. This segment is referred

¹⁷⁰ McAllister’s Exception to Administrative Law Judge Webster’s Contested Case Order and Exclusion of Properly Raised Issue from Proceeding at 10.

¹⁷¹ McAllister’s Exception to Administrative Law Judge Webster’s Contested Case Order and Exclusion of Properly Raised Issue from Proceeding at 12-13. Mr. McAllister also asserts that Idaho Power “falsely claimed in its ASC that it had, in fact, applied for the Agency Preferred NEPA Route.” *Id.* at 3 n.4. As an initial matter, much of the Proposed Route in the ASC is coextensive with the route that the BLM identified as its agency preferred route. However, Idaho Power has acknowledged the table referring to the Proposed Route segment in Union County as the “BLM’s Agency Preferred Alternative in the EIS” for that segment was a typographical error. Idaho Power’s Response to McAllister Discovery Request No. 13, page 1 of 1 (Feb. 5, 2021) (filed as Affidavit of Michael McAllister in Support of Party McAllister’s Opposition to Idaho Power Company’s Motion for Summary Determination of Contested Case Issue R-2 / FW-13 / McAllister’s Response to Idaho Power’s MSD of R-2, Exhibit 1 attached to Exhibit 6) (“[I]f this request is referring to the statement in Table 3.1-1 indicating that the Mill Creek route was part of BLM’s agency preferred alternative in the Final EIS, that statement is incorrect and an error on Idaho Power’s part.”).

¹⁷² OAR 345-015-0085(5) (“In an exception, the party shall specifically identify the finding of fact, conclusion of law or, in contested case proceedings on an application for a site certificate or a proposed site certificate amendment, recommended site certificate condition to which the party excepts and shall state the basis for the exception.”).

¹⁷³ *See, e.g.*, McAllister’s Exception to Administrative Law Judge Webster’s Contested Case Order and Exclusion of Properly Raised Issue from Proceeding, Exhibit 1 at 25 (“I am asking that Idaho Power Amend the EFSEC Application to include [the agency selected route]”).

1 to as the **Morgan Lake Alternative** in IPC’s application. IPC compromised the
2 process when they filed their Application for Site Certificate without following the
3 Oregon Department of Energy process with respect to this route. Consistent with
4 my public comments, I intend to raise that IPC has failed to adequately consider
5 nearly every aspect of the Morgan Lake Alternative Route’s impact on Union
6 County’s local resources and public safety. IPC’s failure to adequately evaluate
7 relevant factors in its corridor selection is laid bare by the fact that the least
8 impactful route, consistent with the National Environmental Policy Act (NEPA),
9 was, in fact, identified and this is not the route for which IPC has applied. In other
10 words, the very existence of the Agency Selected NEPA Route, is evidence that
11 IPC has not complied with OAR 344-021-0010(1)(b); and that the route applied
12 for, as to Union County, is inconsistent with the considerations and goals of OARs
13 345-022-022; 345-022-0100; 345-022-0040; 345-022-0080; 345-022-0060.
14 Further, IPC’s application and deliberate exclusion of the NEPA route is
15 inconsistent with ORS 469.370(13) which provides:

16 For a facility that is subject to and has been or will be reviewed by
17 a federal agency under the National Environmental Policy Act, 42
18 U.S.C. Section 4321, et seq., the council shall conduct *its site*
19 *certificate review, to the maximum extent feasible, in a manner that*
20 *is consistent with and does not duplicate the federal agency review.*
21 [emphases in Mr. McAllister’s Petition]

22 In her Order on Party Status, the Hearing Officer identified Mr. McAllister as having raised
23 two issues relating to the NEPA Route:

24 (i) Whether Applicant was required to include the least impactful route, the Agency
25 Selected NEPA route, in its application to Council.

26 (ii) Whether Council’s failure to consider the Agency Selected NEPA Route
27 constitutes a violation of ORS 469.370(13).¹⁷⁴

28 However, the Hearing Officer determined neither issue regarding Idaho Power’s route selection
29 was within the Council’s jurisdiction because no siting standard “requir[es] [the] Council to
30 consider routes not proposed by Applicant” and no applicable Council rule allows EFSC “to
31 recommend routes that are not proposed in the ASC.”¹⁷⁵ Because Idaho Power’s selection of the
32 Morgan Lake Alternative “falls outside Council’s jurisdiction,” the Hearing Officer determined

¹⁷⁴ Interim Order on Party Status at 63.

¹⁷⁵ *Id.*

1 that Mr. McAllister’s issue regarding whether Idaho Power violated ORS 469.370(13) by
2 proposing the Morgan Lake Alternative but not the NEPA Route was also outside the Council’s
3 jurisdiction.¹⁷⁶

4 Mr. McAllister filed a timely appeal of the Hearing Officer’s order, in which he argued
5 that the Hearing Officer’s interpretation of ORS 469.370(13) “renders the requirement
6 meaningless.”¹⁷⁷ The Council disagreed with Mr. McAllister and affirmed the Hearing Officer’s
7 order, concluding that the Hearing Officer had properly determined that the issue was outside the
8 Council’s jurisdiction.¹⁷⁸

9 Following the Council’s decision on Mr. McAllister’s appeal, STOP B2H asked whether
10 limited parties could seek judicial review of the Council’s order at this time.¹⁷⁹ ODOE’s counsel
11 informed the limited parties of ODOE’s position—that limited parties cannot seek judicial review
12 of the Council’s Order on Appeals of Hearing Officer Order on Party Status, Authorized
13 Representatives, and Issues because that order is not a “final order” for purposes of the Oregon
14 APA.¹⁸⁰ Rather, ODOE informed Mr. Anuta, counsel for STOP B2H, that:

15 After the contested case hearing, the Hearing Officer will serve on all parties a
16 proposed contested case order stating the hearing officer’s findings of fact,
17 conclusions of law and recommended site certificate conditions (OAR 345-
18 0150085(3)). Parties and limited parties may file exceptions to the proposed
19 contested case order (OAR 345-015-0085(5)). After the period for filing responses
20 to exceptions, Council will issue a final order on the application for site certificate,
21 adopting, modifying or rejecting the Hearing Officer’s proposed contested case
22 order and granting or denying issuance of the site certificate (OAR 345-015-

¹⁷⁶ Interim Order on Party Status at 63.

¹⁷⁷ Michael McAllister’s Appeal to the Energy Facility Siting Council at 3-4 (Nov. 6, 2020).

¹⁷⁸ EFSC Order on Appeals of Hearing Officer Order on Party Status, Authorized Representatives, and Issues at 15 (Nov. 25, 2020).

¹⁷⁹ Email from Karl Anuta to Jeffery Seeley, *Re: . . . Order on Appeals of Hearing Officer Order on Party Status, Authorized Representatives, and Issues* (Nov. 25, 2020 at 6:15 p.m.) (available at McAllister’s Exception to Administrative Law Judge Webster’s Contested Case Order and Exclusion of Properly Raised Issue from Proceeding, Ex. 6, p. 2 of 4).

¹⁸⁰ Email from Patrick Rowe to Karl Anuta, *Re: . . . Order on Appeals of Hearing Officer Order on Party Status, Authorized Representatives, and Issues* (Nov. 20, 2020 at 4:16 p.m.).

1 0085(7) and (8)). That final order is appealable to the Supreme Court of Oregon
2 (ORS 469.403(3)).¹⁸¹

3 Mr. McAllister asserts that he relied on Mr. Rowe’s email “and waited until the Hearing
4 Officer issued her final Proposed Contested Case Order on May 31, 2022 to appeal.”¹⁸² However,
5 contrary to Mr. McAllister’s assertion, ODOE never took the position that parties could seek
6 reconsideration of the Council’s Order on Appeals of Hearing Officer Order on Party Status,
7 Authorized Representatives, and Issues at this stage of the contested case. Rather, ODOE properly
8 informed the limited parties that they may appeal *to the Supreme Court* after the Council issues its
9 *final* order.¹⁸³ Mr. Rowe correctly explained that, under the Oregon APA, an “agency’s
10 determination [on a petition for party status] is subject to judicial review in the manner provided
11 by ORS 183.482 *after the agency has issued its final order* in the proceedings.”¹⁸⁴ Contrary to
12 Mr. McAllister’s assertions, no applicable statute or regulation allows a limited party to seek
13 reconsideration of the Council’s order on party status after the Hearing Officer issues the Proposed
14 Contested Case Order.

15 For these reasons, Mr. McAllister’s attempt to relitigate the Council’s order affirming the
16 Hearing Officer’s determination on party status is procedurally improper. Mr. McAllister may
17 raise on appeal the Council’s party status determination to the Supreme Court after the Council
18 issues its final order in this case, but Mr. McAllister may not relitigate this issue before the Council
19 at this point in the contested case.

¹⁸¹ Email from Patrick Rowe to Karl Anuta, *Re: . . . Order on Appeals of Hearing Officer Order on Party Status, Authorized Representatives, and Issues* (Nov. 20, 2020 at 4:16 p.m.).

¹⁸² McAllister’s Exception to Administrative Law Judge Webster’s Contested Case Order and Exclusion of Properly Raised Issue from Proceeding at 9, n.7.

¹⁸³ Email from Patrick Rowe to Karl Anuta, *Re: . . . Order on Appeals of Hearing Officer Order on Party Status, Authorized Representatives, and Issues* (Nov. 20, 2020 at 4:16 p.m.).

¹⁸⁴ ORS 183.310(7)(c).

1 **2. The Council Properly Affirmed the Hearing Officer’s Determination That the**
2 **NEPA Route Is Outside the Council’s Jurisdiction.**

3 Notwithstanding the fact that Mr. McAllister’s appeal is procedurally improper, Idaho
4 Power provides this response to explain that the Council properly determined that this issue is
5 outside the Council’s jurisdiction. In his exception, Mr. McAllister raises three arguments: (1)
6 that the Council erred in determining that his issue relating to the NEPA Route was outside EFSC’s
7 jurisdiction; (2) that ORS 469.370(13) required Idaho Power to include the NEPA Route as a
8 proposed route in its ASC; and (3) that the Second Amended Project Order required Idaho Power
9 to include the NEPA Route in the ASC. For the reasons discussed below, Mr. McAllister’s
10 arguments are without merit and the Council should reject his exception.

11 *a. No EFSC Standard Governs an Applicant’s Route Selection.*

12 In the Council’s order affirming the Hearing Officer’s Order on Party Status, EFSC
13 properly concluded that Mr. McAllister’s issues regarding Idaho Power’s route selection were
14 outside the scope of the Council’s review of an ASC.

15 In a contested case before EFSC relating to the Council’s review of an ASC, a petitioner
16 will be granted limited party status to raise an issue only if the issue is both (1) within the
17 jurisdiction of the Council, and (2) one that the petitioner presented “with sufficient specificity to
18 afford the decision maker an opportunity to respond to the issue.”¹⁸⁵ In its review of
19 Mr. McAllister’s Petition for Party Status, neither the Hearing Officer nor EFSC challenged
20 whether Mr. McAllister had presented the issue regarding his interpretation of ORS 469.370(13)
21 in his DPO Comments. Rather, both the Hearing Officer and the Council determined that the issue
22 Mr. McAllister sought to raise is outside the Council’s jurisdiction.¹⁸⁶

¹⁸⁵ OAR 345-015-0016(3).

¹⁸⁶ EFSC Order on Appeals of Hearing Officer Order on Party Status, Authorized Representatives, and Issues at 15

1 An issue is outside the Council’s jurisdiction if the Council lacks authority to render a final
2 decision on the issue.¹⁸⁷ Generally, an issue relating to a federal law or regulation will not be
3 within the Council’s jurisdiction unless the Council’s rules require it to apply that standard in its
4 siting decisions.¹⁸⁸ However, issues regarding regulations of Oregon agencies can fall within the
5 Council’s jurisdiction because EFSC’s General Standard of Review requires the Council to
6 consider compliance with all state laws and regulations that were identified in the Project Order.¹⁸⁹
7 Moreover, the Council has jurisdiction only over matters included in and governed by the site
8 certificate,¹⁹⁰ and specifically lacks authority to evaluate alternative energy facilities that are not
9 proposed by the applicant.¹⁹¹

10 As mentioned above, the Hearing Officer determined that “[b]ecause Applicant’s selection
11 of the Morgan Lake Alternative route (instead of the Agency Selected NEPA Route, or other
12 possible routes) falls outside Council’s jurisdiction,” Mr. McAllister’s issues regarding Idaho
13 Power’s selected routes were not properly raised for consideration in the contested case.¹⁹²

14 Mr. McAllister argues that the issue is not outside the Council’s jurisdiction, because

¹⁸⁷ See *In the Matter of the Application for Site Certificate for the South Dunes Power Plant*, Order on Petitioners for Party Status; Order Granting Application for Admission *Pro Hac Vice* at 2 (issues within the exclusive jurisdiction of the Federal Energy Regulatory Commission are outside Council’s jurisdiction).

¹⁸⁸ *Id.* at 20 (Commenter “raises the issue of compliance with federal regulations for LNG facilities, which is outside the jurisdiction of EFSC.”).

¹⁸⁹ OAR 345-022-0000(1)(b): (“To issue a site certificate for a proposed facility or to amend a site certificate, the Council shall determine that the preponderance of evidence on the record supports the following conclusions: . . . the facility complies with all other Oregon statutes and administrative rules identified in the project order[.]”).

¹⁹⁰ *In the Matter of the Application for a Site Certificate for the Wheatridge Wind Energy Facility*, Final Order at 2 (Apr. 28, 2017) [hereinafter *Wheatridge Order*] (“The Council does not have jurisdiction over matters that are not included in and governed by the site certificate or amended site certificate[.]”) (interpreting ORS 469.401(4) (“Nothing in ORS chapter 469 shall be construed to preempt the jurisdiction of any state agency or local government over matters that are not included in and governed by the site certificate or amended site certificate. Such matters include but are not limited to employee health and safety, building code compliance, wage and hour or other labor regulations, local government fees and charges or other design or operational issues that do not relate to siting the facility.”)).

¹⁹¹ *Id.* at 31; see also *id.* at 7 n.22 (“[T]he Council does not have authority to propose alternatives such as one underground transmission line versus up to two, overhead parallel transmission lines, as proposed by the applicant.”).

¹⁹² *Id.*

1 ORS 469.370(13) is an EFSC statute.¹⁹³ However, for the reasons discussed below, the Council
2 lacks jurisdiction to require consideration of an energy facility that an applicant has not proposed,
3 and nothing in ORS 469.370(13) requires analysis of any additional facility other than those
4 included in the ASC.

5 EFSC clarified the limits on its jurisdiction in its final order on the Wheatridge Wind
6 Energy Facility. In *Wheatridge*, the applicant requested a site certificate to construct two groups
7 of wind facilities, and either one or two parallel overhead transmission lines connecting the
8 facilities to the grid.¹⁹⁴ In the contested case that followed, certain parties requested the inclusion
9 of a condition limiting the applicant to one transmission line not to exceed 230 kV, and further
10 requested a condition requiring that the line be located underground to avoid impacts to farms and
11 wildlife habitat.¹⁹⁵ The Council, rejecting these parties' requests, found as follows:

12 It is the Council's responsibility to review, evaluate and issue orders either
13 approving or denying ASCs as put forth by an applicant; *the Council does not have*
14 *authority to propose alternatives such as one underground transmission line versus*
15 *up to two, overhead parallel transmission lines*, as proposed by the applicant.¹⁹⁶

16 When reviewing Mr. McAllister's appeal of the Hearing Officer's order, then-Chair Jenkins
17 similarly summarized this limit on the Council's jurisdiction:

18 The Council can only review what the applicant submits to us in relation to our
19 standards. We can't go outside of the application that's been submitted to us and
20 create our own route in this case or take, for example, the BLM route as an
21 alternative. We can only review the route and the alternatives that are submitted to
22 us by the applicant.¹⁹⁷

¹⁹³ McAllister's Exception to Administrative Law Judge Webster's Contested Case Order and Exclusion of Properly Raised Issue from Proceeding at 11-12.
¹⁹⁴ *Wheatridge Final Order* at 12.
¹⁹⁵ *Wheatridge Final Order* at 7, n.22.
¹⁹⁶ *Wheatridge Final Order* at 7, n.22 (emphasis added).
¹⁹⁷ EFSC, November Public Meeting, Audio Recording Day 2 Audio 2 at 2:32:20 (statement of Chair Jenkins).

1 Therefore, the Council properly determined that Mr. McAllister’s issues relating to a separate route
2 that Idaho Power had not proposed are outside the Council’s jurisdiction and cannot be raised in
3 this contested case.

4 *b. ORS 469.370(13) Does Not Contain Any Requirements as to What an*
5 *Applicant Must Include in an ASC.*

6 Mr. McAllister argues that the Council erred in determining that his issue is outside the
7 scope of EFSC’s jurisdiction because the Council “completely ignore[d] the mandate of
8 ORS 469.370(13).”¹⁹⁸ Mr. McAllister asserts that ORS 469.370(13) requires Idaho Power to
9 propose the NEPA Route in the EFSC process.¹⁹⁹ However, Mr. McAllister’s interpretation of
10 that statute is incorrect.

11 ORS 469.370(13) requires:

12 For a facility that is subject to and has been or will be reviewed by a federal agency
13 under the National Environmental Policy Act, 42 U.S.C. Section 4321, et seq., the
14 council shall conduct its site certificate review, to the maximum extent feasible, in
15 a manner that is consistent with and does not duplicate the federal agency review.
16 Such coordination shall include, but need not be limited to:

- 17 (a) Elimination of duplicative application, study and reporting
18 requirements;
- 19 (b) Council use of information generated and documents prepared for the
20 federal agency review;
- 21 (c) Development with the federal agency and reliance on a joint record to
22 address applicable council standards;
- 23 (d) Whenever feasible, joint hearings and issuance of a site certificate
24 decision in a time frame consistent with the federal agency review; and

¹⁹⁸ McAllister’s Exception to Administrative Law Judge Webster’s Contested Case Order and Exclusion of Properly Raised Issue from Proceeding at 14.

¹⁹⁹ McAllister’s Exception to Administrative Law Judge Webster’s Contested Case Order and Exclusion of Properly Raised Issue from Proceeding at 10-11.

1 (e) To the extent consistent with applicable state standards, establishment
2 of conditions in any site certificate that are consistent with the conditions
3 established by the federal agency.

4 Contrary to Mr. McAllister's interpretation, ORS 469.370(13) does not contain any
5 requirements regarding what an applicant must include in its ASC, but instead governs how the
6 Council reviews the facility that is proposed in the ASC. As discussed above, the Council reviews
7 ASCs as put forth by an applicant and must determine whether the applicant has demonstrated that
8 the *proposed facility* complies with all applicable standards. ORS 469.370(13) simply requires
9 that, when a facility is also subject to federal review, the Council must avoid duplicating the federal
10 process, for example by citing to studies from the federal process that may provide relevant
11 information for compliance with an EFSC standard. Jesse Ratcliffe, an attorney with the DOJ who
12 provides legal advice to the Council, described the ORS 469.370(13) requirements when the
13 Council considered Mr. McAllister's appeal:

14 NEPA and the BLM review sit outside of that. Evidence from the NEPA record,
15 from the ROD that the BLM issues, any other materials that have been compiled as
16 part of the BLM review, whether they're part of NEPA. All of those things can be
17 used to argue whether an EFSC application does not meet a particular Council
18 standard or a permit that is within the Project Order. But *there's no requirement*
19 *that the applicant can only apply for or the Council can only allow a NEPA-*
20 *preferred route or an environmentally preferred route at the conclusion of a federal*
21 *agency's process.* So, this is all to say, essentially, that you know the coordination
22 basically, the way that the federal process intersects with the EFSC one is mostly
23 one of the ability to use record evidence that may have been developed in the federal
24 process as evidence to argue one way or another in the council process. The federal
25 determinations do not bind EFSC in any particular way. And so, as a result, even
26 with the broader framing of the issue that Mr. McAllister has provided in his oral
27 argument, this issue still remains outside the Council's jurisdiction in terms of
28 whether or not the application meets the Council's siting standards.²⁰⁰

29 For this reason, Mr. McAllister's assertion that ORS 469.370(13) required Idaho Power to
30 include the NEPA Route as a proposed route in the ASC lacks legal foundation and the Council

²⁰⁰ EFSC, November Public Meeting, Audio Recording Day 2 Audio 2 at 2:30:32 (statement of Jesse Ratcliffe).

1 properly concluded that his issues relating to the NEPA Route—which was not proposed in the
2 ASC—were properly excluded from this contested case.

3 In his exception, Mr. McAllister includes a quote from former Councilmember Winters,
4 who discussed the potential inefficiencies that may occur as a result of the dual review by both
5 federal and state agencies.²⁰¹ Councilmember Winters was particularly concerned with the
6 possibility that the Council may approve a facility that the federal agencies subsequently reject,
7 concluding that that would result in “a mess.”²⁰² However, as Mr. Ratcliffe explained in response,
8 these inefficiencies are a necessary result of the fact that many energy facilities are subject to
9 review by both federal and state agencies, which apply different standards:

10 The Council’s decision is one of compliance with state laws, and, you know, with
11 regard to land use, also local laws. If a federal agency, let’s say the Council
12 approves this site certificate with all the associated conditions. And a federal
13 agency decision were to preclude Idaho Power from being able to construct a route
14 that EFSC has approved in a site certificate. Idaho Power would have to come back
15 to the Council and either amend its application or submit a new one, depending on
16 the circumstances. Clearly, Idaho Power can’t build something in violation of
17 federal law. So that is, practically speaking, the way that this would get resolved
18 is, you know, the site certificate would be sitting out there but it would be
19 unbuildable. Now, you could say, ‘Well, why are we going through this process
20 until we know what the federal government is going to do?’ Well the federal
21 government could say ‘Why are we doing anything if we don’t know that the state
22 is going to allow this either?’ So we’re sort of stuck here in that we’ve got two
23 separate processes, either of which could end in Idaho Power not being able to build
24 its preferred route. And, you know, in some ways it’s unfortunate because it means
25 that the public has to pay more attention to what’s going on in two different
26 processes. It can be difficult for Idaho Power because they’re trying to manage two
27 different processes. But that is just one of the inherent challenges in doing with
28 processes that involve multiple levels of government.²⁰³

²⁰¹ McAllister’s Exception to Administrative Law Judge Webster’s Contested Case Order and Exclusion of Properly Raised Issue from Proceeding at 14.

²⁰²

²⁰³ EFSC, November Public Meeting, Audio Recording Day 2 Audio 2 at 2:34:06 (statement of Jesse Ratcliffe).

1 Mr. McAllister asserts that his interpretation of ORS 469.370(13) “would harmonize the
2 state and federal processes.”²⁰⁴ However, as discussed above, Mr. McAllister’s interpretation is
3 not supported by the plain text of the statute and is inconsistent with Council precedent. Because
4 Mr. McAllister’s interpretation of ORS 469.370(13) is not supported by the plain text of the
5 statute, the Council should reject his interpretation.²⁰⁵

6 For these reasons, Mr. McAllister’s untimely attempt to relitigate the Council’s prior order
7 fails to identify any legal error in the Council’s decision.

8 *c. The Second Amended Project Order Did Not Require Idaho Power to*
9 *Include the NEPA Route in the ASC.*

10 In his exception, Mr. McAllister further asserts that the NEPA Route must be included in
11 Idaho Power’s ASC in order to determine that the ASC is “complete.”²⁰⁶ However,
12 Mr. McAllister’s argument relies on an interpretation of the Second Amended Project Order that
13 takes an excerpt of that order out of context. As discussed below, Mr. McAllister’s assertion that
14 Idaho Power’s ASC was incomplete should be rejected.

15 After an applicant submits an ASC to ODOE, the ASC is consider “preliminary” until
16 ODOE makes a determination of completeness.²⁰⁷ ODOE may only consider an ASC complete
17 after ODOE determines that “the applicant has submitted information adequate for the Council to
18 make findings or impose conditions on all applicable Council standards.”²⁰⁸ Mr. McAllister cites
19 EFSC’s “Energy Facility Site Certificate Project Guide,” which states “[ODOE] will make a

²⁰⁴ McAllister’s Exception to Administrative Law Judge Webster’s Contested Case Order and Exclusion of Properly Raised Issue from Proceeding at 15.

²⁰⁵ See ORS 174.010 (“In the construction of a statute, the office of the judge is simply to ascertain and declare what is, in terms or in substance, contained therein, *not to insert what has been omitted*, or to omit what has been inserted[.]”) (emphasis added).

²⁰⁶ McAllister’s Exception to Administrative Law Judge Webster’s Contested Case Order and Exclusion of Properly Raised Issue from Proceeding at 13.

²⁰⁷ OAR 345-015-0190(1).

²⁰⁸ OAR 345-015-0190(5).

1 determination that an application is complete when the applicant has provided sufficient
2 information for review; i.e., when the applicant has responded to all the requirements in the project
3 order.”²⁰⁹ Mr. McAllister argues that, because the Second Amended Project Order references
4 ORS 469.370(13) and states that the Council will review the ASC “to the [maximum] extent
5 feasible, in a manner that is consistent with and does not duplicate BLM review under NEPA,” a
6 “complete” ASC must include the NEPA Route.²¹⁰

7 However, Mr. McAllister takes the discussion from the Project Order out of context. When
8 viewed in context, ODOE’s direction was clearly to avoid duplication of field work that can be
9 relied upon to address compliance with both federal and state standards. However, nothing in the
10 Project Order supports Mr. McAllister’s assertion that Idaho Power was required to include the
11 NEPA Route segment in question in the ASC. In fact, the section of the Second Amended Project
12 Order primarily listed *differences* between the federal and state review processes to indicate which
13 state standards would need to be analyzed independently of the federal review. The relevant
14 sections of the Second Amended Project Order read (emphasis added):

15 Pursuant to ORS 469.370(13), EFSC will review the application for site certificate,
16 to the extent feasible, in a manner that is consistent with and does not duplicate
17 BLM review under NEPA. *This includes elimination of duplicative study and*
18 *reporting requirements and EFSC use of information prepared for the federal*
19 *review.*

20 Many EFSC standards and rules of other state agencies in Oregon require field work
21 to gather the information needed to demonstrate compliance. The Department has
22 worked with state agencies and county planners to determine to, the extent possible,
23 that the field work required for the site certificate application and for the NEPA
24 review can be done concurrently by the applicant’s teams of field scientists.
25 Technical reports describing the results of site investigations for each resource area
26 under NEPA may be used to provide evidence of the ability to meet the Council’s
27 standards. However, *the NEPA requirements and EFSC standards are different,*

²⁰⁹ OR. DEPT’ OF ENERGY, *Energy Facility Site Certificate Project Guide* at 12 (July 2015).

²¹⁰ McAllister’s Exception to Administrative Law Judge Webster’s Contested Case Order and Exclusion of Properly Raised Issue from Proceeding at 13.

1 *and compliance with NEPA does not ensure compliance with an EFSC standard.*
2 Some apparent differences between NEPA and EFSC requirements include:

3 In addition to characterizing habitat, wetland areas, and other
4 information required for the FEIS, the application for site certificate
5 must address state identified threatened and endangered and state
6 sensitive species, and comply with the EFSC Fish and Wildlife
7 Habitat standard, which references ODFW's Fish and Wildlife
8 Habitat Mitigation Policy (OAR 635-415-0025). This is not [] a
9 NEPA requirement.

10 * * * * *

11 For these reasons, it is recommended that work plans for resource reports that
12 support the NEPA FEIS be written so that one set of ground studies collects all the
13 information needed for both the FEIS and the application for site certificate. Where
14 mitigation is proposed, the applicant may draft a single mitigation plan that meets
15 both BLM and EFSC requirements.

16 To the extent that IPC will rely on the FEIS (or its supporting resource reports) for
17 evidence of compliance with EFSC standards, ODOE suggests that IPC develop a
18 document that cross-references the information from the resource reports and the
19 FEIS with the information that is understood to be needed for the EFSC application.
20 This document may be prepared before the application for site certificate is
21 submitted to assist the applicant and ODOE with identifying areas where the NEPA
22 process alone may not require enough information for a complete EFSC
23 application. IPC can then supply the needed additional information in the
24 application for site certificate.²¹¹

25 Contrary to Mr. McAllister's assertion, ODOE did not identify any ASC requirements from
26 ORS 469.370(13). Rather, ODOE simply discussed how ORS 469.370(13) allows Idaho Power
27 to rely on field studies prepared for the NEPA review when those studies provide information that
28 is relevant to compliance with EFSC's standards.

29 For this reason, Mr. McAllister has not identified any basis to conclude that Idaho Power's
30 ASC was not complete.

²¹¹ Second Amended Project Order at 25-26 (ODOE - B2HAPPDoc15 ApASC Second Amended Project Order 2018-07-26. Pages 27-28 of 29).

1 **D. Peter Barry Exceptions**

2 Peter Barry sent an email to the service list for this contested case which he referred to as
3 his exceptions to the Proposed Contested Case Order.²¹² In his email, Mr. Barry raises various
4 vague allegations of bias and asserts that the procedures were unjust. Mr. Barry’s exceptions are
5 too vague to allow Idaho Power to respond to any specific allegation. Moreover, Mr. Barry’s
6 arguments are not tied to any specific exceptions to the Proposed Contested Case Order as required
7 by OAR 345-015-0085(5),²¹³ and his claims should therefore be rejected. For these reasons, the
8 Council should reject Mr. Barry’s exceptions.

9 **IV. CONCLUSION**

10 For the reasons discussed above, Idaho Power respectfully requests that the Council reject
11 the limited parties’ exceptions to the Proposed Contested Case Order regarding procedural issues.

DATED: July 15, 2022

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²¹² Email from Peter Barry to B2H Service List, *Re: To EFSC and Judge Webster et al Exception to Proposed Contested Case Order* (July 1, 2022 at 9:26 a.m.). It should be noted that Mr. Barry’s exceptions were untimely.
²¹³ OAR 345-015-0085(5) (“In an exception, the party shall specifically identify the finding of fact, conclusion of law or, in contested case proceedings on an application for a site certificate or a proposed site certificate amendment, recommended site certificate condition to which the party excepts and shall state the basis for the exception.”).

CERTIFICATE OF FILING AND SERVICE

I hereby certify that on July 15, 2022, **APPLICANT IDAHO POWER COMPANY'S RESPONSE TO LIMITED PARTIES' EXCEPTIONS FOR PROCEDURAL AND OTHER MISCELLANEOUS ISSUES** was emailed to:

Alison Greene Webster, Senior Administrative Law Judge
Hearings Officer
Office of Administrative Hearings
OED_OAH_Referral@oregon.gov

I further certify that on July 15, 2022, **APPLICANT IDAHO POWER COMPANY'S RESPONSE TO LIMITED PARTIES' EXCEPTIONS FOR PROCEDURAL AND OTHER MISCELLANEOUS ISSUES** was served by First Class Mail or electronic mail as indicated below:

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