To: Oregon Energy Siting Council
From: Sarah Esterson, Senior Policy Advisor
Date: November 6, 2020
Subject: Agenda Item G (Hearing/Action Item): Boardman to Hemingway Transmission Line Project, Council Review of Appeals on Hearing Officer Order on Party Status, Authorized Representatives and Issues for Contested Case for the November 19-20, 2020 EFSC Meeting

Attachments: Attachment A: Hearing Officer Order on Petitions for Party Status, Authorized Representative and Issues for Contested Case (Order on Party Status)
Attachment B: October 30, 2020 EFSC DOJ Letter Procedural Info Re: Hearing Officer Order on Party Status Appeals to EFSC 2020-10-30, Email per Petitioner Request for Clarification Re EFSC Appeals, and Council DOJ Response
Attachment C: Appellant/Party Appeals*
Attachment D: Appellant/Party Responses to Appeals*
[*Attachments C and D to be Provided in Supplemental Council Packet Materials Prior to November 19-20, 2020 Council Meeting]

HEARING OFFICER ORDER ON PARTY STATUS

Hearing Officer Senior Administrative Law Judge from the Oregon Office of Administrative Hearings, Alison Greene Webster issued an Order on Petitions for Party Status, Authorized Representatives and Issues for Contested Case (Order on Party Status) for the contested case proceeding on the Proposed Order on the Application for Site Certificate for the Boardman to Hemingway Transmission Line (Proposed Order) on October 29, 2020.¹ The Hearing Officer’s

¹ On October 29, 2020, in response to Department request for clarification, Hearing Officer issued a Response to Request for Clarification Regarding Contested Case Procedure and Interim Order, under the heading “Conclusion of Conference/Next Steps” Hearing officer states; “5. Following Council’s consideration and determination on timely November 19-20, 2020
Order on Party Status is included as Attachment A to this staff report. Of the 53 Petitions for Party Status received, the Hearing Officer granted limited party status to 35 and denied party status to 18 individuals or organizations. Idaho Power Company (applicant) and the Oregon Department of Energy (Department) are parties to all issues.  

In the Hearing Officer’s Order on Party Status, 134 discrete issues were identified as being raised in Petitions for Party Status. Of the 134 discrete issues, the Hearing Officer identified 87 properly raised contested case issues and 47 issues as not properly raised. Of the 87 properly raised issues, there were 17 issues raised by multiple petitioners (i.e., two or more petitioners properly raised the same issue), resulting in 70 total discrete issues properly raised for evaluation in the contested case proceeding.  

**OPPORTUNITY FOR APPEALS TO EFSC OF ORDER ON PARTY STATUS**

As indicated in the Hearing Officer’s Order on Party Status, Council rules establish two appeal processes applicable to the Hearing Officer’s Order on Party Status. Pursuant to OAR 345-015-0016(6), the determination on requests to participate as a party or limited party, as stated in Hearing Officer’s Order on Party Status, is final unless the petitioner submits an appeal to the Council within seven (7) days after the date of service of the Hearing Officer’s determination. Pursuant to OAR 345-015-0057(1), except as otherwise specifically provided for in the rules of this division, a party or limited party may not take an interlocutory appeal to the Council from a ruling of the Hearing Officer unless such ruling would terminate that party’s right to participate in the contested case proceeding. Thus, the appeal process under OAR 345-015-0057 is specific to appeals of a ruling resulting in termination of a petitioners’ rights to participate in contested case proceeding.

On October 30, 2020, as a courtesy and on behalf of the Council, Department of Justice Senior Assistant Attorney General Jesse Ratcliffe, who is legal counsel to the Council in this contested case, served a letter to petitioners to inform of appeal deadlines, consistent with appeal information provided in Hearing Officer’s Order on Party Status, and Council review of appeals.
anticipated to occur as an agenda item of the November 19-20, 2020 Council meeting. As noted in this letter, the deadline to submit appeals of the Hearing Officer’s Order on Petitions for Party Status to Council is Friday November 6, 2020 at 4:30 p.m. Some petitioners filed responses to Mr. Ratcliffe’s October 30, 2020 letter posing questions regarding interpretation of appeals to EFSC, procedures for filing, and the content of appeals, to which Mr. Ratcliffe responded. The October 30, 2020 letter, party responses and questions, and EFSC DOJ responses are included as Attachment B of this staff report. The deadline for the applicant and Department to file responses to appeals is November 13, 2020 at 4:30 p.m. All appeals of the Hearing Officer Order on Party Status, applicant and Department responses, if any, will be provided to Council as Attachments C and D in supplemental Council materials provided prior to the November 19-20, 2020 Council Meeting.

To date, 7 appeals have been filed. The Department’s evaluation and recommendations regarding the substance of appeals will be included in the Department’s Response to Appeals, which will be filed by Department of Justice Counsel to the Department, Patrick Rowe on the Department’s behalf and provided to Council in supplemental materials prior to the November 19-20, 2020 meeting.

**APPEAL HEARING FORMAT**

Department of Justice Counsel to Council Jesse Ratcliffe in consultation with Council Chair will provisionally determine the format for the Council meeting to review appeals. Council rules do not establish procedural requirements for the format of Council review of appeals. Council may accept oral argument from appellants; and may establish time limits for oral argument. The Council will have the opportunity to adjust this format at the beginning of the meeting to review appeals. The preliminary format for the meeting to review appeals to the Hearing Officer’s Order on Party Status that will be conferred by Counsel to Council and Council Chair of the appeals to Council will be provided in the November Council Meeting Agenda issued at a later date.

**Attachments:**

Attachment A: Hearing Officer Order on Petitions for Party Status, Authorized Representative and Issues for Contested Case (Order on Party Status)

Attachment B: October 30, 2020 EFSC DOJ Letter Procedural Info Re Hearing Officer Order on Party Status Appeals to EFSC 2020-10-30, Email per Petitioner Request for Clarification Re EFSC Appeals, and Council DOJ Response

Attachment C: Appellant/Party Appeals*

Attachment D: Appellant/Party Responses to Appeals*

*Attachments C and D to be Provided in Supplemental Council Packet Materials Prior to November 19-20, 2020 Council Meeting*
Dear Parties,

Please see attached ORDER ON PETITIONS FOR PARTY STATUS, AUTHORIZED REPRESENTATIVES AND ISSUES FOR CONTESTED CASE issued in the above-referenced
matter.

Thank you,

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INTRODUCTION/BACKGROUND

The Oregon Department of Energy (Department) set August 27, 2020 at 5:00 p.m. Pacific Time as the filing deadline for submitting petitions for party or limited party status in the above-captioned matter. Pursuant to an Amended Notice of Petitions to Request Party Status; Order Scheduling Pre-Hearing Conference issued September 8, 2020, the undersigned Administrative Law Judge (ALJ)1 notified the Department and Idaho Power Company (Applicant) of the petitions for party status or limited party status received in this matter. On September 16, 2020, in response to the Department’s Request for Clarification, the ALJ issued a Second Amended Notice of Petitions to Request Party Status; Order Scheduling Pre-Hearing Conference.

On September 25, 2020, the Hearing Officer convened a prehearing conference by telephone to address the petitions for party or limited party status and the responses to the petitions from Applicant and the Department.2 Due to time constraints the ALJ

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1 For purposes of this contested case, the terms “Hearing Officer” and “Administrative Law Judge” have the same meaning and are used interchangeably.

2 The following persons participated in the September 25, 2020 prehearing conference: For the Department, Assistant Attorney General (AAG) Patrick Rowe and Department representatives Kellen Tardaewether, Todd Cornett, Sara Esterson; for Applicant, Attorneys Lisa Rackner, Jocelyn Pease and David Stanisch; for petitioners requesting party status, Stop B2H Coalition (through attorneys Karl Anuta and Mike Saragetakis and authorized representatives Fuji and Jim Kreider); Eastern Oregon University (through Charles Burford and authorized representative Dr. Karen Antell); Colin Andrew; Kathryn Andrew; Miranda Aston; Janet Aston; Susan-Badger-Jones; Lois Barry; Peter Barry; Ryan Browne; Gail Carbiener (individually and on behalf of OCTA); Norm Cimon; Matt Cooper; Whit Deschner; Jim and Kay Foss; Suzanne Fouty; Susan Geer; Irene Gilbert; Charles Gillis; Dianne Gray; Sam Hartley; Joe Horst/Anna Cavinato; Jane and Jim Howell; Greg Larkin; John Luciani; Charles Lyons; Virginia and Dale Mamman; Anne March (through authorized representative, Kevin March); Kevin March; JoAnn Mariette; Michael McAllister/John Milbert; Jennifer Miller (through authorized representative Gail Carbiener); David Moyal; Sam Myers; Timothy Proesch; Louise Squire; Stacia Jo Webster; Daniel White; Jonathan White; John Williams; and John Winters.
continued the prehearing conference to October 1, 2020 to complete the agenda. At the September 25, 2020 prehearing conference, the ALJ provided petitioners for party status an opportunity to address whether they had satisfied the eligibility requirements for party or limited party status. The ALJ provided Applicant and Department the opportunity to respond. At the October 1, 2020 continued prehearing conference, the ALJ provided petitioners for party status the opportunity to clarify their interests in the outcome of the proceeding and the issues identified in their respective petitions. Likewise, the ALJ provided Applicant and Department the opportunity to respond. The ALJ granted Petitioners leave to file supplemental written argument until October 2, 2020. The ALJ granted the Department leave to file a Second Amended Response to Petitions for Party and Limited Party Status until October 6, 2020.

Petitions Received: The Hearing Officer received petitions for party status from the following persons and entities in this matter:

A. Entities

Stop B2H Coalition, through co-chairs Fuji Kreider, Jim Kreider and Irene Gilbert
Eastern Oregon University (EOU), through representative Dr. Karen Antell
Qwest Corp., dba CenturyLink

B. Individuals

Colin Andrew
Kathryn Andrew
Dr. Karen Antell
Miranda Aston
Janet Aston
Susan Badger-Jones
Lois Barry
Peter Barry
Ryan W. Browne
Gail Carbiener
Norm Cimon
Matt Cooper
Whit Deschner

3 Attorneys Karl Anuta and Mike Sargetakis entered appearances on behalf of Stop B2H Coalition on September 24, 2020. The OAH also received written authorization for Fuji Kreider and Jim Kreider to appear and speak on behalf of Stop B2H Coalition.

4 Christopher Burford, General Counsel for Eastern Oregon University entered an appearance on behalf of EOU.

5 Mr. Carbiener has petitioned individually and on behalf of the Oregon-California Trails Association (OCTA).
The legal standards for granting party or limited party status are set out below, followed by an evaluation and determination on each petition for party status and a determination of the issues in this contested case.

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6 Mr. Morton’s written request for party status and request for good cause exception was received via email on September 28, 2020 at 11:09 PM.
APPLICABLE LAW TO ESTABLISH STANDING

As pertinent here, “party” means:

Any person requesting to participate before the agency as a party or in a limited party status which the agency determines either has an interest in the outcome of the agency’s proceeding or represents a public interest in such result.

ORS 183.310(7)(c).

Pursuant to OAR 345-015-0016(5), a petition requesting party or limited party status must include the following:

(a) The information required under OAR 137-003-0005(3);⁷

(b) A short and plain statement of the issue or issues that the person desires to raise in the contested case proceeding; and

(c) A reference to the person’s comments at the public hearing showing

⁷ OAR 137-003-0005(3) sets out the requirements for petitions to participate in a contested case hearing as a party or limited party and provides:

The petition shall include the following:

(a) Names and addresses of the petitioner and of any organization the petitioner represents;

(b) Name and address of the petitioner’s attorney, if any;

(c) A statement of whether the request is for participation as a party or a limited party, and, if as a limited party, the precise area or areas in which participation is sought;

(d) If the petitioner seeks to protect a personal interest in the outcome of the agency’s proceeding, a detailed statement of the petitioner’s interest, economic or otherwise, and how such interest may be affected by the results of the proceeding;

(e) If the petitioner seeks to represent a public interest in the results of the proceeding, a detailed statement of such public interest, the manner in which such public interest will be affected by the results of the proceeding, and the petitioner’s qualifications to represent such public interest;

(f) A statement of the reasons why existing parties to the proceeding cannot adequately represent the interest identified in subsection (3)(d) or (e) of this rule.
that the person raised the issue or issues at the public hearing.

A. Eligibility Requirements

Pursuant to ORS 469.370(5) and OAR 345-015-0016, a petitioner must satisfy the following requirements to be granted party or limited party status in this contested case:

1. Comment either in writing or in person on the record of the draft proposed order (DPO) public hearing, specifically, during the period of May 22, 2019 through August 22, 2019.

2. Submit a written petition for party or limited party status by the specified deadline, in this case, August 27, 2020 at 5:00 p.m.

3. Demonstrate in the written petition for party or limited party status a personal interest in the outcome of the proceeding or demonstrate representation of a public interest in the outcome of the proceeding.

4. Raise, in the written petition for party or limited party status, at least one issue that is within the Council’s jurisdiction with sufficient specificity afford the Council, and Applicant, an adequate opportunity to respond.

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8 ORS 469.370(5) states, in pertinent part: “The council may permit any other person to become a party to the contested case in support of or in opposition to the application only if the person appeared in person or in writing at the public hearing on the site certificate application.” OAR 345-015-0016(3) (“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.”)

9 OAR 345-015-0016(1) provides in pertinent part: “[A] person requesting to participate as a party or limited party in a contested case proceeding must submit a petition to the hearing officer by the date specified in the Department’s notice issued under OAR 345-015-0230.”

10 OAR 345-015-0016(2) provides, in pertinent part: “Persons who have an interest in the outcome of the Council’s contested case proceeding or who represent a public interest in such result may request to participate as parties or limited parties.” As noted above, if the petitioner seeks to protect a personal interest, the petition must include a detailed statement of the petitioner’s interest, economic or otherwise, and how such interest may be affected by the result of the proceeding. If the petitioner seeks to protect a public interest, the petition must include a detailed statement of the public interest, the manner in which to the public interest will be affected by the results of the proceeding, and the petitioner’s qualifications to represent such public interest. The petition must also include a statement “of the reasons why existing parties to the proceeding cannot adequately represent the interest identified.” OAR 137-003-005(d), (e) and (f).

11 ORS 469.370(3) states in pertinent part: “Any issue that may be the basis for a contested case shall be raised not later than the close of the record at or following the final public hearing prior to issuance of the department’s proposed order. Such issues shall be raised with sufficient
B. Public Interest

Pursuant to OAR 137-003-0005(7), when a petitioner alleges a public interest, the ALJ must consider the qualifications of the petitioner to represent that interest and the extent to which the petitioner’s interest will be represented by existing parties. A public interest is one that is “shared by a significant part of the public or considered to be an element in the overall public interest.” Marbet v. Portland General Electric, 277 Or 447, 455 (1977). To avoid redundancy, the agency may require petitioners for party status to join in one presentation or to address separate aspects of the public interest as long as the effect is not to exclude an asserted public interest altogether. Id.

C. Status as a Party

Pursuant to OAR 137-003-0005(8), the ALJ may treat a petition to participate as a party as a petition to participate as a limited party. As set out below, where the ALJ grants a petitioner status to participate as a limited party, this order specifies the issues on which the limited party may participate and the procedural limitations of limited party status.

D. Issues

As provided in ORS 469.370(3) and (5) and OAR 345-015-0016(3) to be considered in the contested case, the issue must meet the following requirements:

1. The issue must be within the jurisdiction of the Council.¹² To be within the Council’s jurisdiction, the issue must be related to a Council standard expressed in a rule or an applicable, relevant statute identified in the Project Order.

2. The issue must have been raised in person or in writing prior to the close of the public record on the DPO, during the period of May 22, 2019 through August 22, 2019. Issues not raised on the record of the DPO will not be considered unless the action recommended in the DPO differs materially from that described in the proposed order.¹³

3. The issue must have been raised with sufficient specificity to afford the decision maker an opportunity to respond to the issue. “To have raised an issue

¹² OAR 345-015-0016(3) provides, in pertinent part, “To raise an issue in a contested case proceeding on an application for a site certificate, the issue must be within the jurisdiction of the Council.”

¹³ ORS 469.370(5)(b); OAR 345-015-0016(3).
with sufficient specificity, the person must have presented facts at the public hearing that support the person’s position on the issue.” OAR 345-015-0016(3).

E. Council Jurisdiction

An issue is within the Council’s jurisdiction if it relates to a standard for the siting, construction, operation and/or retirement of the proposed facility. ORS 469.501. An issue falls outside the Council’s jurisdiction if the Council has no authority to render a decision on the issue. Matters outside the Council’s jurisdiction include design-specific construction standards and practices that do not relate to siting the facility, along with employee health and safety, building code compliance, wage and hour or other labor regulations, or local government fees and charges. ORS 469.401(4). Other matters outside the Council’s jurisdiction include economic damages for loss of business or property value, land acquisition and purchases, land leases, land access agreements, and right-of-way easements.

F. New Issues Not Raised on the Record of the DPO

As discussed above, issues in the contested case shall be limited to those raised on the record of the public hearing unless “[t]he action recommended in the proposed order, including any recommended conditions of the approval, differs materially from that described in the draft proposed order, in which case only new issues related to such differences may be raised.” ORS 469.370(5)(b). This limitation and the exception are restated in OAR 345-015-0016(3).

The Department interprets the phrase “differs materially” in these provisions to mean a substantive difference between the action recommended in the DPO and the action recommended in proposed order. This interpretation includes any substantive change in the recommended findings of compliance with a standard or applicable law, a substantive change in a recommended site certificate condition, or a substantive change in the recommendation to approve or deny the site certificate application. The Department does not consider a change in its analysis of underlying facts, information in the application, or the discussion of facts not referenced in the DPO (e.g., additional facts cited in response to comments on the DPO) in the proposed order to be a material difference from the DPO for purposes of ORS 469.370(5)(b) unless there is a corresponding change to a recommended Council action or condition of approval.

G. Attendance at Prehearing Conference - Waiver of Issues

Pursuant to OAR 345-015-0083(3), the 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. Consequently, petitioners for party status who failed to attend the September 25, 2020 prehearing conference or who failed to timely designate an authorized representative to attend the September 25, 2020 prehearing conference on their behalf, have waived any issue(s) raised in their written request for party or limited party status.
A petition for party status that fails to meet the eligibility requirements set out in paragraph A above will be denied. Similarly, any issue identified in a petition for party status that does not meet the criteria set out in paragraph D above shall not be considered in the contested case. ORS 469.370(3), (5).

LIMITATIONS ON PARTY STATUS

Pursuant to ORS 469.370(5), Applicant shall be a party to the contested case. Council may permit other person to become a party to the contested case in support of or in opposition to the application only if the person commented on the record of the DPO. Id.

As discussed above, pursuant to OAR 137-003-0005(1), persons with an interest in the outcome of a contested case proceeding may request to participate as parties or limited parties. In this matter, most of the petitioners for party status, including Petitioner Stop B2H Coalition, specifically requested “full” as opposed to “limited” party status. Petitioner Stop B2H Coalition filed a supplemental brief arguing that: (1) it has more than 700 members and has demonstrated a broad public interest in the outcome of this proceeding; (2) it has raised multiple broad issues and challenges to the proposed facility that encompass many different siting standards; and (3) principles of fairness and fundamental due process demand that it be granted full party status. Petitioner Irene Gilbert filed a brief similarly contending that hearing participants have a right under the Administrative Procedures Act (APA) to respond to all issues before the ALJ, and that denying full party status denies petitioners due process. Several other petitioners also filed supplemental petitions specifically requesting full party status so that they may address all issues involved in the contested case rather than be limited to the specific issue(s) they raised on the record of the DPO and in their respective petitions for party status.14

The Department and Applicant also filed response briefs on the party versus limited party issue. The Department and Applicant argue that, as contemplated by OAR 135-003-0005(8), it is appropriate to grant limited party status to petitioners who satisfy the eligibility requirements for standing based upon on the discrete issue(s) the petitioners properly raised in their respective petitions for party status. The Department and Applicant recommend this approach due to the nature and complexity of this contested case proceeding, the depth and breadth of the potential permissible issues, the significant number of petitioners for party status, and compliance with OAR 345-015-0016(3).

Stop B2H Coalition argues that pursuant to ORS 183.417(1) and ORS

14 The OAH received supplemental written arguments from the following petitioners before the October 2, 2020 5:00 p.m. deadline: C. Andrew; K. Andrew; J. Aston; M. Aston; L. Barry; P. Barry; Carbiener; Cimon; Cooper; Deschner; Foss; Fouty; Geer; Gilbert; Larkin; Luciani; McAllister; Morton; Moyal; Squire; D. White; and J. Winters.
183.413(2)(e), a party has the right to respond to “all issues” properly before the hearing officer, and that although the APA contemplates limited parties, relegating a petitioner to limited party status should done sparingly and only in such instances where the petitioner failed or refused to provide all information necessary to establish party status. Stop B2H Coalition also argues that the APA does not authorize the Department or Applicant to force a petitioner who otherwise satisfies all of the eligibility requirements for party status into limited party status. Stop B2H Coalition and petitioner Gilbert contend that granting limited party status to petitioners who have established standing to participate in this contested case denies them their statutory right to respond to “all issues” in this contested case, including issues raised in Applicant’s Petition Identifying Contested Case Issues. For the reasons that follow, petitioners’ arguments are not persuasive.

As previously noted, this contested case proceeding is governed by a combination of the Model Rules of Procedure for Contested Cases (OAR 137-003-0000 through 137-003-0092) and the Council’s procedural rules governing site certificate contested case hearings (OAR 345-015-0001 through OAR 345-015-0240). As a general rule, under the APA, parties may “respond and present evidence and argument on all issues properly before the presiding officer in the proceeding.” ORS 183.417(1). However, the APA also references “limited parties” and authorizes agencies to “adopt rules of procedure governing participation in contested case proceedings by persons appearing as limited parties.” ORS 183.417(2).

The Model Rules similarly recognize a distinction between a “party” and a “limited party.” Pursuant to OAR 137-003-0005(8), the agency (or in this case, the ALJ) may treat any petition to participate as a party as a petition to participate as a limited party. And, pursuant to OAR 137-003-0005(9), if the petition is granted, the agency “shall specify areas of participation and procedural limitations as it deems appropriate.” OAR 137-003-0040, addressing the conduct of the contested case hearing itself, also recognizes a distinction between a party and limited party. As set out OAR 137-003-0040(3)(b), parties may proffer evidence except that “limited parties may address only subjects within the area to which they have been limited.” Moreover, under OAR 137-003-0040(4), parties shall have the right to question witnesses, except that “limited parties may question only those witnesses whose testimony may related to the area or areas of participation granted by the agency.”

Contrary to the contentions of Stop B2H Coalition and other petitioners, a petitioner for party status does not have a statutory right to full party status any time the petitioner demonstrates an interest in the outcome of a contested case and satisfies the eligibility requirements for standing. The designation of limited party status is not

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15 ORS 183.413 addresses notice to parties before hearing of the rights and procedures in a contested case. The statute requires that, before commencement of a contested case hearing, the agency must serve notice to each party. Pursuant to ORS 183.413(2), that notice must include certain provisions, including “(c) A statement that the party has the right to respond to all issues properly before the presiding officer and present evidence and witnesses on those issues.”
confined to the narrow situation in which a petitioner specifically requests participation as a limited party under OAR 137-003-0005(1). Indeed, such a reading of the rule would render OAR 137-003-0005(8) superfluous. Limited party status is also not a consolation prize to be given to petitioners with an interest in the outcome who satisfy some, but not all, of the eligibility criteria for party status. Rather, limited party status is appropriate where, as in this case, a petitioner satisfies the eligibility requirements for participation and has established a personal or public interest in the outcome of the proceeding, but is only qualified to respond to some, but not all, issues to be considered in the contested case.

As discussed previously, pursuant to ORS 469.370(5) and OAR 345-015-0016(3), only persons who commented on the record of the DPO may request to participate as a party or limited party. Subject to the narrow exception of ORS 469.370(5)(b), issues in the contested case are limited to those raised on the record of the public hearing. As set out in ORS 469.370(3), to preserve the issue for consideration in the contested case, the petitioner must raise the issue with sufficient specificity (i.e., with facts that support the contention) to afford the Council, Department and Applicant an adequate opportunity to respond to the issue.

Mindful of the following considerations – the strict eligibility requirements for participation set out in ORS 469.370, OAR 345-015-0016(3), and OAR 137-003-0005; the number of petitioners with an interest in the outcome of this contested case requesting to participate as a party; the number and nature of properly raised contested case issues in this matter;¹⁶ and the ALJ’s 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 – I find it appropriate under OAR 137-003-0005(8) and (9), OAR 137-003-0040, and OAR 345-015-0083, to limit successful petitioners’ participation in this contested case to the issues properly raised in their respective petitions for party status.

In other words, despite petitioners’ requests for full party status, this ruling grants petitioners for party status who meet the eligibility requirements for standing in this contested case proceeding limited party status. The limited party’s participation in the contested case will be limited to the specific issue or issues the limited party properly raised in their petition for party status. A limited party will have standing to respond on procedural matters, to participate in discovery related to the identified issue(s) properly raised in their petition, and to present evidence, cross-examine witnesses, and submit

¹⁶ Including challenges to notification standards, mapping, the contents of the application under OAR 345-021-0010, and the Department’s analysis and review under the following standards: OAR 345-022-0000 (General Standard); OAR 345-022-0020 (Structural Standard); OAR 345-022-0022 (Soil Protection); OAR 345-022-0030 (Land Use); OAR 345-022-0050 (Retirement and Financial Assurance); OAR 345-022-0060 (Fish and Wildlife Habitat); OAR 345-022-0070 (Threatened and Endangered Species); OAR 345-022-0080 (Scenic Resource); OAR 345-022-0090 (Historic, Cultural and Archaeological Resources); OAR 345-022-0100 (Recreation); OAR 345-022-0110 (Public Services); and OAR 345-023-0005 (Need for a Facility).
written briefing on the identified issue(s) properly raised in their petition. Limited parties will not have standing to respond and/or be heard on all issues properly before the ALJ. In the situation where more than one limited party has established standing on a particular issue of public concern, the limited parties will be required to consolidate their representation and presentation on the issue. This approach avoids redundancy, maintains order, and facilitates efficiency while allowing the asserted issue/public interest to be represented in the contested case. See Marbet v. Portland General Electric, at 455.

EVALUATION OF PETITIONS FOR PARTY STATUS AND ISSUES RAISED

A. Denied Petitions

1. Untimely Petitions – no good cause for late filing

As set out above, pursuant to OAR 345-015-0016(1), a person requesting participation as a party or limited party in a contested case proceeding is required to submit a petition to the ALJ by the date specified in the Department’s notice. Pursuant to OAR 137-003-0005(2) untimely petitions shall not be considered unless the agency determines that good cause has been shown for the petitioner’s failure to file timely. The following petitioners did not submit a petition to the ALJ by the specified deadline (August 27, 2020 at 5:00 PM Pacific Time) and did not establish good cause for the failure to file timely:

a. Sue McCarthy

Petitioner McCarthy’s request for party status, postmarked August 26, 2020, was received on August 31, 2020, four days past the August 27, 2020 deadline.

As set out in the Second Amended Notice of Petitions to Request Party Status, mindful of potential delays with US Postal Service delivery during August 2020, the ALJ agreed to accept for consideration any properly addressed petition placed in the US mail that was received by the Department before 5:00 p.m. on September 3, 2020, if that petition was postmarked on or before August 24, 2020 (three days prior to the August 27, 2020 deadline). Because Ms. McCarthy’s request was postmarked after August 24, 2020 and received after the August 27, 2020 deadline, it was untimely. In addition, Ms. McCarthy did not participate in the September 25, 2020 prehearing conference (or the October 1, 2020 conference) and did not offer any argument or evidence to establish

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17 In its response to petitions for party status, the Department recommends that where more than one petitioner representing a public interest establishes standing on a particular issue, the ALJ identify one party to represent and present that issue. See, e.g., ODOE Second Amended Response at p. 9. As discussed above, the ALJ agrees that such consolidation is appropriate. However, the ALJ declines the Department’s invitation to specify or identify the most qualified representative for the public interest/particular issue as part of this Order on Petition for Party Status. Rather, the ALJ will address this matter in connection with the Pre-Hearing Case Management Conference and determined as part of the Case Management Order.
good cause for accepting her untimely request. For this reason, Ms. McCarthy’s petition for party status is denied as untimely pursuant to OAR 345-015-0016(1).18

b. Kelly Skovlin

Petitioner Skovlin’s request for party status was received by email at 11:22 PM on August 27, 2020, more than six hours past the 5:00 PM deadline. Ms. Skovlin did not participate in the September 25, 2020 prehearing conference and did not offer any argument or evidence to establish good cause for accepting her tardy electronic submission. Accordingly, Ms. Skovlin’s petition for party status is denied as untimely pursuant to OAR 345-015-0016(1).19

c. Qwest Corp. dba CenturyLink

The ALJ received CenturyLink’s petition by email on September 14, 2020, more than two weeks past the August 27, 2020 deadline.20 CenturyLink did not participate in the September 25, 2020 prehearing conference (or the October 1, 2020 conference) and did not offer any argument or evidence to establish good cause for accepting the untimely request. Accordingly, CenturyLink’s petition for party status is denied as untimely pursuant to OAR 345-015-0016(1).21

d. Carl Morton

Mr. Morton did not submit a petition for party status by the specified deadline of August 27, 2020. He participated in the September 25, 2020 prehearing conference and submitted a written request for party status and request for good cause exception via email on September 28, 2020, more than a month past the deadline. In his request, Mr. Morton asserted that he testified at the DPO hearing in Ontario, Oregon on June 18, 2019, and that he submitted written comments to the Department on August 18, 2019, but due to an incorrect email address, his comments and letter were not received. In his request for a good cause exception, Mr. Morton did not specify the incorrect email address nor did he provide evidence documenting the date and time of his attempt to timely file, via email, his request for party status in the contested case.

18 Furthermore, because Ms. McCarthy did not attend the initial prehearing conferences or designate an authorized representative, she has waived the issues identified in her written request pursuant to OAR 345-015-0083(3).

19 Furthermore, because Ms. Skovlin did not attend the initial prehearing conferences or designate an authorized representative, she has waived the issues identified in her written request pursuant to OAR 345-015-0083(3).

20 As a corporation, CenturyLink must be represented by an attorney licensed in Oregon. OAR 345-015-0018; OAR 137-003-0002(1).

21 Furthermore, there is no evidence CenturyLink commented either in writing or in person on the record of the DPO as required by ORS 469.370(5) or that it raised in its request any issue within the Council’s jurisdiction.
In the absence of persuasive evidence establishing Mr. Morton’s unsuccessful attempt to electronically file a written request for party status by the established deadline of August 27, 2020 at 5:00 PM, he has not established good cause to accept his untimely request for party status. Consequently, Mr. Morton’s request for party status is denied as untimely. Furthermore, Mr. Morton’s challenge to the proposed location for the Double Mountain Alternative route is not an issue within the jurisdiction of the contested case. As discussed elsewhere herein, Council cannot review or recommend routes that are not included in the application proposed by Applicant.

2. Failure to comment on the record of the DPO public hearing

As noted above, ORS 469.370(5) requires that a petitioner for party status comment either in writing or in person on the record of the DPO. The following petitioners did not comment on the record of the DPO during the period of May 22, 2019 through August 22, 2019. Therefore, they are not eligible for party or limited party status in this contested case.

a. Jerry Hampton/Baker County Fire Defense Board

Mr. Hampton timely submitted a written request for party status on behalf of the Baker County Fire Defense Board and the Haines Fire Protection District. Mr. Hampton seeks to represent the public interest in protecting Baker County and public service providers for wildfire risk from the proposed facility. Nonetheless, Mr. Hampton has not satisfied the requirements for party or limited party status because he did not comment either in writing or in person on the record of the DPO, as required by ORS 469.370(5).

Furthermore, Mr. Hampton did not attend the September 25, 2020 prehearing conference or designate an authorized representative for the conference. Pursuant to OAR 345-015-0083(3), any issues stated in the written request have been waived. For these reasons, Mr. Hampton’s request for party status on behalf of the Baker County Fire Defense Board is denied.

b. Sam Hartley

Mr. Hartley timely submitted a written request for party status stating a personal interest as a landowner affected by the construction and/or operation of the proposed facility. Mr. Hartley has not satisfied the requirements for party or limited party status because he did not comment either in writing or in person on the record of the DPO, as required by ORS 469.370(5). Accordingly, Mr. Hartley’s request for party status is denied.

c. Ralph Morter

Mr. Morter timely submitted a written request for party status stating an economic interest in protecting private landowners from the adverse impacts to farmland from the
proposed facility. Mr. Morter has not satisfied the requirements for party or limited party status because he did not comment either in writing or in person on the record of the DPO, as required by ORS 469.370(5). Accordingly, the request for party status is denied.

3. Failure to participate in the prehearing conference – waiver of issues

As stated above, pursuant to OAR 345-015-0083(3), a petitioner’s failure to raise an issue in the prehearing conference “constitutes a waiver of that issue.” The following petitioners failed to attend the September 25, 2020 prehearing conference and did not timely designate an authorized representative to attend the prehearing conference on his or her behalf, thereby waiving the issue(s) stated in their written requests for party or limited party status.

a. Brian Doherty

In his petition, Mr. Doherty asserted a personal interest in landowner compensation for environmental and safety impacts to his property from the proposed facility. Mr. Doherty did not attend the September 25, 2020 prehearing conference or designate an authorized representative for the conference. Mr. Doherty also did not attend the continued prehearing conference on October 1, 2020. He has, therefore, waived the issues set out in his written request. OAR 345-015-0083(3).

b. Corinne Dutto

In her petition, Ms. Dutto asserted a personal interest in this matter based upon impacts to her property from landslide hazards and wildfire risks associated with the construction and operation of the proposed facility. Ms. Dutto did not attend the September 25, 2020 prehearing conference or designate an authorized representative for the conference. Ms. Dutto also did not attend the continued prehearing conference on October 1, 2020. Accordingly, pursuant to OAR 345-015-0083(3), the issues set out in her written request for party status have been waived. Ms. Dutto’s petition for party status is denied for failing to preserve any issues previously raised.

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22 Two additional factors give rise to a denial of this petition: Mr. Morter’s request did not include a statement of the reasons why existing parties to the proceeding cannot adequately represent his interest, as required by OAR 137-003-0005(3)(f); and Mr. Morter did not attend the September 25, 2020 prehearing conference or designate an authorized representative for the conference, thereby waiving any issues set out in the written request. OAR 345-015-0083(3).

23 Additionally, Mr. Doherty did not raise any issue within the Council’s jurisdiction as required by OAR 345-015-0016(3). No siting standard governs compensation for impacted landowners and Council does not have the authority to determine the appropriate compensation for landowners. Because Mr. Doherty did not preserve the issues raised in his written request and did not raise any issue within Council’s jurisdiction, his request for party status is denied.
c. **Ken and Marsha Hildebrandt**

In their petition, the Hildebrandts asserted a personal interest based upon impacts to their property caused by the construction and operation of the proposed facility. However, neither petitioner attended the September 25, 2020 prehearing conference nor did they designate an authorized representative for the conference. Neither petitioner attended the continued prehearing conference on October 1, 2020. Pursuant to OAR 345-015-0083(3), the issues set out in their written request for party status have been waived. The petition for party status is denied for failing to preserve any issues previously raised.

Additionally, the Hildebrandts’ petition failed to state at least one issue that is within the Council’s jurisdiction with sufficient specificity. The petition does not reference any particular siting standard nor does it present facts to support the petitioners’ position on the issues as required under OAR 345-015-0016(3).

d. **Kathryn Morello**

In the petition, Ms. Morello requests to represent a public interest based upon the potential flooding and safety risks from blasting and use of heavy equipment along the Morgan Lake Alternative route during construction of the proposed facility. Ms. Morello did not attend the September 25, 2020 prehearing conference or designate an authorized representative for the conference. Ms. Morello also did not attend the continued prehearing conference on October 1, 2020. Therefore, Ms. Morello has waived the issues set out in her written request. OAR 345-015-0083(3). Ms. Morello’s petition for party status is denied for failing to preserve any issues previously raised.

e. **Jeri Watson**

In her petition, Ms. Watson seeks to represent a public interest in the impacts from construction of the proposed facility to Morgan Lake Park. Ms. Watson also raised concerns regarding wildfire risk and traffic safety. Ms. Watson did not attend the September 25, 2020 prehearing conference or designate an authorized representative for the conference. Ms. Watson also did not attend the continued prehearing conference on October 1, 2020. As above, the issues set out in Ms. Watson’s written request have been waived pursuant to OAR 345-015-0083(3) and her petition for party status is denied for failing to preserve any issues previously raised.

4. **Failure to raise an issue within Council’s jurisdiction with sufficient specificity**

Pursuant to ORS 469.370(5) and OAR 345-015-0016(3), the only issues that may serve as a basis for a contested case are those that are within the jurisdiction of the Council and those that were raised with sufficient specificity to afford the Council, the Department, and Applicant an added opportunity to respond to the issue. The following petitioners did not raise at least one issue within Council’s jurisdiction with sufficient specificity, and therefore do not meet the eligibility requirements for participation as a
party or limited party in the contested case:

a. Janet Aston

Janet Aston seeks full party status asserting a personal interest as the owner of property within the corridor of the proposed transmission line. Ms. Aston asserts that the proposed transmission line is toxic, noisy, and an eyesore, and the proposed siting will result in economic losses to future business opportunities on her property located in Nyssa, Oregon. Specifically, Ms. Aston asserts that she is co-owns the property with Miranda Aston, and Tim Proesch co-own the property. She asserts that they are building a recreational resort on their property, that they anticipate earning significant money from others’ recreational use of their property over the next 20 years, and that the proposed facility will result in loss of business and will adversely impact the health and safety of wildlife on their property. Ms. Aston also contends that the transmission line should be routed either on public lands or through an existing utility corridor.

Ms. Aston commented on the record of the DPO. Although Ms. Aston identifies a personal interest in the outcome of the proceeding, she has not raised an issue within the Council’s jurisdiction with sufficient specificity as required by OAR 345-015-0016(3). Ms. Aston’s concerns about the economic damages to future business opportunities fall outside EFSC’s jurisdiction. Similarly, her contention that the transmission line should be routed on public lands or an existing utility corridor falls outside EFSC’s jurisdiction. As for her stated concerns about safety, potential health impacts, and fish and wildlife habitat, Ms. Aston did not provide facts at the public hearing in support of her concerns as required under OAR 345-015-0016(3). Ms. Aston did not identify the applicable siting standard, nor did she offer evidence or argument in support her position. Consequently, Ms. Aston has not established standing as a party or limited party in this contested case.

b. Miranda Aston

Miranda Aston seeks full party status asserting a personal interest as the co-owner of property within the corridor of the proposed transmission line. Ms. Aston asserts that the proposed transmission line is unsafe, too noisy, and an eyesore. Further, Ms. Aston asserts that the proposed siting will cause economic losses to future business opportunities on her property, and will be harmful to the wildlife that migrate through and graze upon the property. Ms. Aston also asserts that the proposed transmission line should be routed either on public lands or through an existing utility corridor, and not along her property.

Ms. Aston commented on the record of the DPO. Although Ms. Aston states a personal interest as an owner of property within the proposed transmission line corridor, she has not raised an issue within the Council’s jurisdiction with sufficient specificity as required by OAR 345-015-0016(3). Ms. Aston’s concerns about the economic damages to future business opportunities fall outside EFSC’s jurisdiction. Similarly, her contention that the transmission line should be routed on public lands or an existing
utility corridor falls outside the scope of this contested case. As for her stated concerns about noise, safety, potential health impacts, and fish and wildlife habitat, Ms. Aston failed to raise these issues with sufficient specificity to afford a response. Ms. Aston did not identify applicable siting standards related to her concerns, nor did she offer evidence or argument in support of her position as required under OAR 345-015-0016(3). Consequently, Ms. Aston has not established standing as a party or limited party in this contested case.

c. Norm Cimon

Mr. Cimon seeks party status stating a public interest in the outcome of this proceeding in protecting the public from the economic and environmental impacts of the proposed facility. Mr. Cimon commented on the record of the DPO, raising the same issues stated in his petition for party status: whether there is a need for the proposed facility given the advent of micro grids, distributed resources and battery storage systems and whether the cost of an obsolete transmission facility will be passed on to utility ratepayers.

The need issue raised by Mr. Cimon is not a matter within Council’s jurisdiction. Council must assess the need for the facility under the Need Standard, ORS 345-023-0005(1), OAR 345-023-0020 (Least-Cost Plan Rule) and/or ORS 345-023-0030 (System Reliability Rule). There is no provision in the Need Standard for Council to analyze the cost the proposed facility will have on ratepayers, nor is there a requirement to evaluate alternatives to the proposed facility based on emerging technologies or alternatives not included in the application for site certificate. Furthermore, although Mr. Cimon raised the need issue on the record of the DPO, he did not present facts to support the contention that Applicant did not establish a need for the facility under the criteria set out in OAR 345-023-0005(1), OAR 345-023-0020 and OAR 345-023-0030. Because Mr. Cimon did not raise an issue related to a Council standard and did not reference an applicable, relevant statute or rule, he has not established standing to participate as a party or limited party in the contested case. OAR 345-015-0016(3).

d. Greg Larkin

Mr. Larkin seeks party status asserting a personal interest in the outcome of the proceeding as a landowner within 600 feet of the proposed Morgan Lake Alternative Route. Mr. Larkin provided oral testimony on the record of the DPO on June 20, 2019. Mr. Larkin raised general concerns about the health hazards of the proposed transmission line to people who live in close proximity to it, and concerns about how noise from the transmission lines would exacerbate his tinnitus condition and prevent him from residing on his property. But, Mr. Larkin did not tie his concerns to a particular siting standard, did not challenge a specific finding or determination in the DPO or Proposed Order, and did not present facts or argument on the record of the DPO to support his concerns. Because Mr. Larkin did not raise an issue related to a Council standard with sufficient specificity to allow for a response, he has not established standing to participate as a party or limited party in the contested case. OAR 345-015-0016(3).
e. John Luciani

Mr. Luciani, an owner of affected property, asserts a personal interest in the outcome of the proceeding based upon impacts to his health and economic well-being and damage to his private property. Mr. Luciani provided oral testimony at the June 27, 2019 DPO public hearing and submitted written comments on August 22, 2019. In his comments, Mr. Luciani listed what he believed would be the ramifications of transmission lines running through his farm property: land erosion, irreversible land scarring, increased traffic, weed control, land devaluation. He also referenced health and safety issues and loss of viewsed.

Although Mr. Luciani listed numerous concerns about the proposed facility, he did not tie these concerns to applicable siting standards. He did not challenge any specific findings or determinations in the DPO or Proposed Order, and did not present facts or argument on the record of the DPO to support his concerns. Furthermore, diminished property values, private property access, and individual health concerns are not matters within Council’s jurisdiction. Accordingly, Mr. Larkin did not raise an issue at the public hearing related to a siting standard or applicable statute with sufficient specificity to allow for a response. He has not established standing to participate as a party or limited party in the contested case. OAR 345-015-0016(3).

f. Charles Lyons

Mr. Lyons, a longtime resident of the Morgan Lake area of La Grande, asserts an interest in protecting the health and safety of La Grande residents from the adverse impacts of the proposed facility relating to wildfires and landslides. Mr. Lyons submitted written comments on the record of the DPO on August 21, 2019. In his comments, Mr. Lyons identified concerns with regard to slope instability in the La Grande area and wildfire hazard. On the topic of slope instability, Mr. Lyons asserted that the area down slope from the proposed facility includes at least 100 homes, plus schools and a hospital. He noted that the entire hillside is deemed a landslide area. On the topic of wildfire, Mr. Lyons noted that La Grande is ranked in the top 50 communities in Oregon with the greatest cumulative housing unit exposure to wildfire. He raised concern that a fast-moving fire near the transmission lines could quickly spread to residential areas and the hospital.

In his petition for party status, although Mr. Lyons touched on the same two subjects, he raised different issues. He challenged the Draft Fire Prevention and Suppression Plan (Attachment U-3 to the Proposed Order) as insufficient to meet the need for fire response in the La Grande area. He also challenged Applicant’s Landslide Inventory (Attachment H-4), asserting that Applicant should be required to conduct geotechnical exploration of the landslide area before any construction begins. Both the Fire Prevention and Suppression Plan and the Landslide Inventory were attached to the DPO and the provisions Mr. Lyons raises concerns about were not substantially modified.
in the Proposed Order. Because he did not raise the issues raised in his petition with sufficient specificity on the record of the DPO, Mr. Lyons has not established standing to participate as a party or limited party in the contested case. OAR 345-015-0016(3).

B. Granted Petitions and Issues Identified for Hearing

1. Stop B2H Coalition and Greater Hells Canyon Council

   a. Interest: Stop B2H Coalition (Stop B2H) is a non-profit organization with more than 700 members created to oppose the approval and construction of the proposed Boardman to Hemmingway transmission line, to protect environmental, historical and cultural resources, and to prevent degradation of timber and agricultural lands and the Oregon National Historic Trail. Greater Hells Canyon Council (GHCC) is a member of Stop B2H. GHCC is a conservation organization dedicated to the protection and restoration of the wild lands, waters, native species and habitats of the Greater Hells Canyon Region. Stop B2H has demonstrated a public interest in the outcome of this contested case on behalf of its members.

   b. DPO Comment: Members of Stop B2H appeared in person at the DPO hearings and submitted extensive written comments during the period of May 22, 2019 through August 22, 2019. Stop B2H filed extensive written comments on August 22, 2019, addressing the following topics: need; notification; noise; scenic, recreation and protected areas; geology, soils, carbon; fish and wildlife habitats and threatened and endangered species; historic cultural pioneer resources; and wildfire and public safety.

   c. Issues Properly Raised

      (1) Need Standard

      (i) Whether, in evaluating the capacity of the proposed facility, the Department erred in defining capacity for purposes of the Need Standard in terms of kilovolts (operating voltage of the transmission line), instead of megawatts (the capacity of the proposed line to transfer power).

      (ii) Whether, in evaluating the capacity of the proposed facility, the Department applied balancing considerations in contravention of OAR 345-022-0000(3)(d).

      (iii) Whether Applicant demonstrated a need for the proposed facility when it has

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24 In the Proposed Order, the Department added an Agency Review Process to Applicant’s Fire Prevention and Suppression Plan, requiring the certificate holder to implement an agency review process to afford applicable local, state and federal agencies an opportunity to review the draft plan prior to finalization and implementation. The Department did not, however, change the substance of this plan or make any substantive change in its recommended findings to Public Services Condition 6. The additions to the draft plan do not constitute a material change in a recommended action or a change in the condition of approval under ORS 469.370(5)(b) and OAR 345-015-0016(3).
only shown the need for 21 percent of the capacity and has not shown that its project partners need the remaining 79 percent of capacity.

The Department’s evaluation of the proposed facility’s capacity under the Need Standard (OAR 35-023-0005) is a matter within the Council’s jurisdiction. Stop B2H raised the above issues on the record of the DPO in its written comments filed August 22, 2019. Stop B2H also raised these need standard issues with sufficient specificity to satisfy the requirements of the statute and rule. Stop B2H presented facts and legal argument in its comments that support its position that Applicant has not demonstrated the need for the proposed facility under the Least-Cost Plan Rule or the System Reliability Rule for transmission lines. Both the Department and Applicant acknowledge that Stop B2H raised the above Need Standard issues with sufficient specificity.

(2) Noise Notification/Noise Control Regulations

(i) Whether the Department improperly modified/reduced the noise analysis area in Exhibit X from one mile of the proposed site boundary to ½ mile of the proposed site boundary and whether OAR 345-021-0010(1)(x)(E) requires notification to all owners of noise sensitive property within one mile of the site boundary.

(ii) Whether the Department erred in recommending that Council grant a variance/exception from the Oregon DEQ’s Noise Rules, OAR 340-035-0035 and whether the variance/exception is inconsistent with ORS 467.010.

(iii) Whether the Department erred in approving the methodology used to evaluate compliance with OAR 340-035-0035.

(iv) Whether the noise control mitigation/proposed site conditions adequately protect the public health, safety and welfare pursuant to ORS 467.010.

The evaluation of predicted noise levels resulting from the construction and operation of the proposed facility is a matter within Council’s jurisdiction. Stop B2H raised the above noise-related issues on the record of the DPO in its written comments filed August 22, 2019. Stop B2H also raised the above issues with sufficient specificity. In its comments at the DPO hearing and in its petition, Stop B2H presented facts and legal argument in support of its position with regard to notice, the modification of the noise analysis area, the a variance/exception from the DEQ rules, the methodology for determining baseline conditions, and the adequacy of mitigation for potential noise-related impacts. Both the Department and Applicant acknowledge Stop B2H raised the above noise control regulation issues with sufficient specificity to satisfy the requirements of the applicable statute and rule.

(3) Fish and Wildlife Habitat – Sage Grouse

(i) Whether the Department erred in finding that the proposed facility is consistent with the sage grouse specific habitat requirements of the Greater Sage grouse
Conservation Assessment and Strategy. Specifically, whether Applicant adequately analyzed sage grouse habitat connectivity in the Baker and Cow Valley Priority Areas of Conservation (PAC), the potential indirect impacts of the proposed facility on sage grouse leks, and the existing number of sage grouse in the Baker and Cow Valley PACs.

The proposed facility’s impact on sage grouse habitat is a matter within the Council’s jurisdiction. OAR 345-022-0060 and OAR 345-022-0000(3)(g). Stop B2H raised concerns related to the impact evaluation of sage grouse habitat and sage grouse population in its written comments filed August 22, 2019. Stop B2H provided facts in support of its position that the sage grouse analysis does not adequately address the danger that the proposed facility poses to the sage grouse population and habitat. Both the Department and Applicant acknowledge Stop B2H raised this issue with sufficient specificity.

d. Issues Not Properly Raised

(1) Scenic Resources and Recreation Standards – Methodology to Assess Visual Impacts

(i) Whether Applicant’s visual impact assessments are invalid because Applicant used an outdated methodology (based on a 1974 USFS Handbook) to assess visual impacts on Morgan Lake Park and other areas instead of Landscape Aesthetic, Scenic Management System (SMS), published in 1995.

The proposed facility’s impact to scenic resources and recreational activities are matters within the Council’s jurisdiction. OAR 345-022-0080 (Scenic Resources) and OAR 345-022-0100 (Recreation). In comments submitted on the record of the DPO, Stop B2H (through member Lois Barry) expressed concern with Applicant’s visual impact assessment for Morgan Lake Park and Applicant’s conclusion that the proposed facility will not preclude enjoyment of recreational activity at Morgan Lake Park. In the DPO comments, Stop B2H acknowledged that there is not an objective or scientific basis for visual/scenic resource evaluation within the applicable statutes and rules, but argued that Applicant’s evaluation was subjective and self-serving. Stop B2H asserted that Applicant “conjured up many pages of a methodology” to assess scenic resources and that Applicant’s conclusions are “unsupported with relevant credible date and fail to consider Oregonians’ subjective ‘opinion/evaluation’ of their scenic and recreational resource.” Nonetheless, Stop B2H did not specifically contend that Applicant’s methodology was outdated or that Applicant should have used the 1995 SMS methodology instead. Because Stop B2H did not raise the outdated methodology issue with sufficient specificity on the record of the DPO, it is not a proper issue to be considered in the contested case.

(2) Noise Notification/Noise Control Regulations – Notification of Variance/Exceptions

(i) Whether owners of noise sensitive properties are entitled to notice of granting of a variance/exception from Noise Control Regulations.

In its supplemental briefing, Stop B2H asserted that as a sub-issue under Noise Control Regulations heading, it raised notification of the variance as a distinct issue from notification of the modified/reduced noise sensitive analysis area. However, Stop B2H does not specifically state this issue in its Petition for Party Status. As discussed above, in its petition, Stop B2H raised notification with regard to the modified noise analysis area, but it did not identify the failure to provide notice to impacted persons of the variance/exception to the DEQ noise standards as a separate issue. It also does not appear that Stop B2H raised this particular sub-issue in its comments on the record of the DPO. Accordingly, this sub-issue shall not be considered in the contested case proceeding.

(3) Soil Protection Standard and General Standard of Review


The design, construction and operation of the proposed facility and its impact to soils is a matter within the Council’s jurisdiction. OAR 345-022-0022. In commenting on the DPO on the topic of “Soil, Climate, Carbon” Stop B2H asserted, among other things, that the proposed facility was not in alignment with Oregon’s climate goals, that the construction of the transmission line will result in significant carbon dioxide emissions, that Applicant did not address or quantify the amount of existing and potential carbon sequestered above and below ground lost as a result of the proposed project, that

26 In raising this carbon sequestration/climate change issue, Stop B2H incorporates by reference the request for party status of Dr. Suzanne Fouty, a member of Stop B2H. Stop B2H’s comments on the DPO on the topic of “Soil, Climate, Carbon” (Comment pages 44-49) are duplicative Dr. Fouty’s August 20, 2019 written comments.

27 OAR 345-022-0022 states: “To issue a site certificate, the Council must find that the design, construction and operation of the facility, taking into account mitigation, are not likely to result in a significant adverse impact to soils “including, but not limited to, erosion and chemical factors such as salt deposition from cooling towers, land application of liquid effluent, and chemical spills.” (Emphasis added.)

28 In its comments on the DPO, Stop B2H asserted:

The project will release an unknown amount of carbon back into the atmosphere and decrease soil productivity in the disturbed areas. The loss of soil productivity will limit future carbon sequestration potential. Carbon sequestration in plants and in the soil is an important strategy for helping to address climate change (Ontl and Schulte 2012) and so needs to be maximized as a climate change strategy.
reduced soil productivity is a long-term impact with financial and ecological costs, and that Applicant should have been required to analyze carbon sequestration as part of its application.

In its petition for party status, Stop B2H adopts Dr. Fouty’s argument that, in light of the non-exclusive language of the Soil Standard (“impacts to soils including but not limited to”) and the non-exclusive language of the General Standard of Review in OAR 345-022-0000(2)(a) (“Council shall evaluate any adverse effects on a resource * * * by considering factors including but not limited to”), Council is required to consider, as part of the Soil Standard, the proposed facility’s impact on carbon sequestration. But contrary to Stop B2H and Dr. Fouty’s contention, the analysis under the Soil Protection Standard is limited to impacts to soil from energy facility projects. The Soil Protection Standard does not extend to impacts on the earth’s atmosphere from soil. The General Standard of review does not require Council to evaluate any adverse impacts on soils (a resource) apart from or independent of the Soil Protection standard. Simply stated, there is no Council siting standard that requires an applicant to analyze, or Council to consider, carbon sequestration, carbon storage, carbon loss, or the cumulative effect the proposed facility will have on carbon in the atmosphere. Consequently, the carbon sequestration issue is not within the jurisdiction of the Council and shall not be considered in the contested case. OAR 345-015-0016(3).

(4) National Historical Oregon Trail - Scenic Resources, Protected Areas, Recreation Standards and Historic, Cultural and Archaeological Resources

(i) Whether the methods used to determine the extent of the adverse impact of the proposed facility on scenic resources, protected area and recreation along the Oregon Trail were flawed and developed without peer review or public input. Specifically, whether Applicant erred in applying numeric values to the adverse impact and whether Applicant used unsatisfactory measurement locations/observation points in its visual impact assessment.

Whether the design, construction and operation of the proposed facility results in a significant adverse impact to protected areas, scenic resources, and/or recreation activities are matters within the Council’s jurisdiction. OAR 345-022-0040, 345-022-0080, 345-022-0100. Similarly, whether the proposed facility will result in significant adverse impacts to the Oregon Trail is an issue within the Council’s jurisdiction. In its written comments filed on August 22, 2019, Stop B2H asserted that the proposed transmission line would severely compromise the scenic, historical and cultural values of the Oregon Trail. Stop B2H also challenged Applicant’s undergrounding analysis, and argued that Applicant cannot comply with OAR 345-022-0090(1)(a). But, in its comments, Stop B2H did not raise a challenge to Applicant’s methodology for assessing

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visual impacts with sufficient specificity to allow an adequate opportunity to respond. Stop B2H did not, on the record of the DPO, provide argument or facts to support the contention that Applicant employed a flawed methodology to measure the visual impact of the transmission lines along the Oregon Trail and from the National Oregon Trail Interpretive Center. Therefore, Stop B2H has not properly raised this issue for the contested case proceeding.

(5) Attachment 5 to the Petition

In the conclusion section of its Petition for Party Status, Stop B2H referenced Attachment 5, a document in which Stop B2H identified additional “questionable actions” by Applicant that it asserts “merit Council’s attention.” Petition at 16, 43-46. As pertinent here, Stop B2H raised two additional issues in Attachment 5: (1) compliance with ORS 469.370(13); and (2) Applicant’s alleged misrepresentations in a March 24, 2020 letter to Union County residents near the Mill Creek Route regarding route selection. Neither issue has been properly raised for consideration in the contested case proceeding.

Although compliance with ORS 469.370(13) is a matter within Council’s jurisdiction, Stop B2H did not raise this issue in its comments on the record of the DPO. As for Applicant’s March 24, 2020 letter, Applicant’s communications with private landowners is not a matter within Council’s jurisdiction. Therefore, the actions questioned in Attachment 5 will not be considered in the contested case.

e. Party Status: As discussed previously, Stop B2H has requested full party

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ORS 469.370(13) states:

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. § 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. Such coordination shall include, but need not be limited to:

(a) Elimination of duplicative application, study and reporting requirements;
(b) Council use of information generated and documents prepared for the federal agency review;
(c) Development with the federal agency and reliance on a joint record to address applicable council standards;
(d) Whenever feasible, joint hearings and issuance of a site certificate decision in a time frame consistent with the federal agency review; and
(e) To the extent consistent with applicable state standards, establishment of conditions in any site certificate that are consistent with the conditions established by the federal agency.
status, asserting that it has a broad public interest in the outcome of the proceeding and that it has the right to be heard on all issues properly before the ALJ. However, as discussed in Section II above, despite Stop B2H’s broad public interest in this matter, it does not have a statutory or due process right to respond and present evidence and argument on all issues in this contested case proceeding. Accordingly, Stop B2H’s petition for party status is GRANTED in part. Stop B2H is granted limited party status. Stop B2H’s participation is limited to the discrete issues properly raised under the following categories: Need, Noise notification, Noise Control Regulations, and Fish and Wildlife (Sage grouse habitat).

2. Eastern Oregon University/Dr. Antell

a. Interest: Dr. Karen Antell, on behalf of Eastern Oregon University (EOU), states a public interest in the outcome of this proceeding. EOU owns 360 acres of property on Glass Hill in close proximity to the proposed facility route. Since acquiring the property more than 20 years ago, EOU has used it for student education and research and community outreach. EOU states a concern that construction and operation the proposed facility will adversely impact wildlife on the property and the educational and research value of the property.

b. DPO Comment: EOU, through Dr. Antell, submitted written comments on the record of the DPO on August 19, 2019.

c. Issues Properly Raised

(1) Fish and Wildlife Habitat

(i) Whether the adverse impacts from the proposed facility to current and future fish and wildlife populations on Glass Mountain (Hill) can be adequately mitigated, given the unique and irreplaceable biological environments on Glass Mountain (Hill).

Fish and wildlife habitat is a matter within Council’s jurisdiction. OAR 345-022-0060. Dr. Antell raised this issue on EOU’s behalf in written comments dated August 19, 2019. Both the Department and Applicant concede this issue was raised with sufficient specificity to allow for a response.

(2) Land Use

(i) Whether the proposed facility would significantly disrupt public enjoyment of forest lands (within Morgan Lake Park) in contravention of Statewide Planning Goal 4, protecting Forest Land.

Land use is a matter within Council’s jurisdiction. OAR 345-022-0030, OAR 345-022-0060. Dr. Antell raised this issue on EOU’s behalf in written comments dated August 19, 2019. Both the Department and Applicant concede this issue (specifically as it relates to the existing forest conditions within Morgan Lake Park) was raised with
sufficient specificity to allow for a response.

d. Issues Not Properly Raised

(1) Threatened and Endangered Species

(i) The plan for the proposed facility does not include consideration of compounding impacts on threatened and endangered species due to climate change, there is no provision for continued species monitoring, and no surveys were conducted for invertebrates, non-vascular plants, and fungi.

The Threatened and Endangered Species standard is a matter within Council’s jurisdiction, but it only applies to plant species that the Oregon Department of Agriculture (ODA) has listed as threatened or endangered and wildlife species the Oregon Fish and Wildlife Commission (ODFW) has listed as threatened or endangered. OAR 345-022-0070. To the extent Dr. Antell/EOU takes issue with protections for species not identified by ODA and ODFW, and impacts not contemplated by this standard (i.e., impacts due to climate change) these matters fall outside the scope of Council’s jurisdiction. Furthermore, Petitioner did not raise these concerns with sufficient specificity to allow for a response. Petitioner did not provide facts to support the contentions, and did not specify how construction and operation the proposed facility would impact the climate and the species groups of concern. Consequently, this issue is not properly raised under OAR 345-015-0016.

e. Party Status: EOU’s petition for party status is GRANTED in part. Petitioner EOU’s participation as a party is limited to the discrete Fish and Wildlife and Land Use issues discussed above.

3. Colin Andrew

a. Interest: As a long-term resident of La Grande who regularly enjoys recreational activities at Morgan Lake Park and adjacent Twin Lake Park, Mr. Andrew asserts a personal interest in the outcome of this proceeding related to the recreational, scenic, and economic impacts of the proposed facility on Morgan Lake Park. Because Morgan Lake Park is a public resource, and Mr. Andrew has extensive personal experience as a recreational user of Morgan Lake Park, he is qualified to represent the public interest in protecting this resource.

b. DPO Comment: Mr. Andrew commented on the record of the DPO on August 21, 2019, raising concerns over preserving the scenic, recreational, and economic value of Morgan Lake Park.

c. Issue Properly Raised

(1) Recreation Standard – Potential Impacts to Morgan Lake Park
Whether Applicant adequately evaluated the potential adverse impact the proposed facility would have on recreational opportunities at Morgan Lake Park and whether the proposed mitigation is adequate.

Adverse impacts to recreational resources is a matter within Council’s jurisdiction. OAR 345-022-0100. In his comments on the DPO, Mr. Andrew specifically challenged Applicant’s analysis and conclusion that the proposed facility would not significantly impact recreational opportunity and experience at Morgan Lake Park. Both the Department and Applicant acknowledge this issue was raised with sufficient specificity to allow for a response.

d. Issues Not Properly Raised

(1) Recreation Standard – Methodology to Assess Visual Impacts

(i) Whether, as a reference for its assessing visual impacts of the proposed facility on Morgan Lake Park, Applicant was required to use updated assessment criteria, Landscape Aesthetic, Scenic Management System (SMS), published in 1995, instead the 1974 USFS Handbook.

Visual impacts to recreational resources is a matter within Council’s jurisdiction. OAR 345-022-0100. Although Mr. Andrew submitted written comments on the record of the DPO, he did not raise a specific challenge to the methodology and assessment criteria Applicant used to evaluate visual impacts of the proposed facility at Morgan Lake Park, and did not reference the 1995 SMS in those comments. Because the issue was not raised on the record of the DPO, it is not properly raised under OAR 345-015-0016.

(ii) Whether Applicant was required to evaluate impacts to Morgan Lake Park under the Scenic Resources standard because it is recognized as a scenic resource in a local plan (Morgan Lake Recreational Use and Development Plan).

Adverse impacts to scenic resources is a matter within Council’s jurisdiction. OAR 345-022-0100. In his August 21, 2019 comments on the record of the DPO, Mr. Andrew expressed concern over the impact the proposed facility would have to Morgan Lake Park as a unique city park/recreational resource, but he did not raise the specific issue stated in the petition, i.e., that Morgan Lake Park is a scenic resource for purposes of OAR 345-022-0080, requiring Applicant to evaluate visual impacts under that standard. Because Mr. Andrew did not raise the issue on the record of the DPO, he lacks standing on this issue under OAR 345-015-0016.31

e. Party Status: Petitioner Colin Andrew’s petition for party status is GRANTED in part. Mr. Andrew’s participation as a party is limited to the discrete issue (compliance with OAR 345-022-0100 as it pertains to Morgan Lake Park) discussed above.

31 This is, however, essentially the same issue properly raised by Petitioner Lois Barry.
4. Kathryn Andrew

a. Interest: Ms. Andrew identified an interest in the outcome of this proceeding related to protecting the recreational, scenic, and economic value of Morgan Lake Park and nearby forest lands. Ms. Andrew notes her previous work for a land appraiser and her understanding of the factors that influence land value. Ms. Andrew is qualified to represent the public interest in land use impacts to forestlands in Union and Umatilla Counties.

b. DPO Comment: Ms. Andrew submitted written comments on the record of the DPO on August 19, 2019.

c. Issues Properly Raised

(1) Land Use

(i) Whether Applicant erred in calculating the percentage of forestland in Umatilla and Union Counties, thereby underestimating and misrepresenting the amount of potentially impacted forestland.

(ii) Whether Applicant’s analysis of forestland impacts failed to consider all lands defined as Forest Land under state law, thereby misrepresenting forestland acreage.

Land use is a matter within Council’s jurisdiction. OAR 345-022-0030, OAR 345-022-0060. Ms. Andrew raised the above issues in her comments on the DPO and, as set out in the in their respective responses to petitions for party status, both the Department and Applicant acknowledge that Ms. Andrew raised these two issues with sufficient sufficiency to allow for a response.

(2) Recreation

Whether the proposed mitigation plan for facility impacts to recreation activities at Morgan Lake Park (Land Use Condition 17, $100,000 to the City of La Grande for recreational improvements) is insufficient because it does not reduce noise and visual impacts at Morgan Lake Park.32

Impacts to recreation activities are within Council’s jurisdiction. Ms. Andrew raised concerns about the loss of recreational opportunities at Morgan Lake on the record of the DPO and, as the Department acknowledges, this particular issue was raised in response to a material change to a condition of approval (Land Use Condition 17) in the DPO. Therefore, this is a properly raised issue to be considered in the contested case. ORS 469.350(5)(b); OAR 345-015-0016(3).

d. Issues Not Properly Raised

32 This is essentially the same issue raised by petitioners Colin Andrew, Lois Berry, Peter Barry and Irene Gilbert.
(1) **Land Use**

(i) Whether noise and visual impacts of the proposed facility on Morgan Lake Park and Wallowa-Whitman National Forest is inconsistent with Statewide Land Use Planning Goal 4 (forestlands to provide for recreational opportunities).

As above, land use is a matter within Council’s jurisdiction. OAR 345-022-0030. OAR 345-022-0060. Ms. Andrew raised concerns regarding impacts to forestlands and consistency with Goal 4 in her comments on the DPO, but she did not identify concerns with potential impacts to the Wallowa-Whitman National Forest and did not present facts or arguments to support her position with regard to Morgan Lake Park. Therefore, Ms. Andrew did not raise this claim with sufficient specificity to afford the Department, Applicant or Council an opportunity to respond.

(ii) Whether the Proposed Order must include conditions requiring compensation to impacted residents as mitigation for future loss of timber harvest.

Ms. Andrew did not raise this issue on the record of the DPO, and it does not arise out of a material change in a recommended action or change in a condition of approval in the Proposed Order. Furthermore, economic impacts of this nature do not relate to a siting standard and fall outside Council’s jurisdiction. Accordingly, this is not a proper issue for the contested case.

e. **Party Status:** Petitioner Kathryn Andrew’s petition for party status is GRANTED in part. Ms. Andrew’s participation as a party is limited to the properly raised discrete issues discussed above: alleged misrepresentation of impacted forestland, alleged misrepresentation of forestland acreage, and adequacy of mitigation for impacts to Morgan Lake Park.

5. **Susan Badger-Jones**

a. **Interest:** Ms. Badger-Jones is a resident of La Grande who lives within a half mile of Morgan Lake Road and who regularly enjoys the recreational and scenic opportunities of Morgan Lake Park and adjacent natural areas. She asserts a public interest in the outcome of this proceeding related to traffic impacts to residents on Morgan Lake Road and adjacent areas.

b. **DPO Comment:** Ms. Badger-Jones commented on the record of the DPO on June 20, 2019.

c. **Issues Properly Raised**

(1) **Site Boundary**

(i) Whether, due to substantial modifications likely necessary but not proposed,
Applicant should be required to amend the site boundary to include Morgan Lake Road (La Grande, Union County) and, if so, whether the Department should provide notice and the opportunity to comment to potentially affected landowners.

Council has the authority to evaluate whether actions or activities are considered a related or supporting facility under ORS 215.206, ORS 469.300(14) and (24), OAR 345-001-0010(51) and (55). Therefore, this issue is within Council’s jurisdiction and may be considered in the contested case. Ms. Badger-Jones raised this specific issue in her comments on the record of the DPO, providing facts about the current condition and design of the road in support of her position.

(2) Public Services – Traffic Safety

(i) Whether Applicant was required to evaluate traffic safety impacts from construction-related use of Morgan Lake Road.

The impact the construction and operation of the proposed facility will have on public services, including traffic safety, is a matter within Council’s jurisdiction. OAR 345-022-0110. Ms. Badger-Jones raised concern over the impacts to Morgan Lake Road from the construction and maintenance of the proposed facility in her June 20, 2019 comments on the record of the DPO. In support of her position, she described the current road conditions (17-degree slope, narrow, winding, rutted and bumpy), access limitations, and use rates. Accordingly, this issue was raised with sufficient specificity to allow for a response.

d. Issues Not Properly Raised: None.

e. Party Status: Petitioner Susan Badger-Jones’s petition for party status is GRANTED in part. Ms. Badger-Jones’s participation as a party is limited to the discrete issues pertaining to traffic safety concerns and the need for modifications to Morgan Lake Road discussed above.

6. Lois Barry

a. Interest: Ms. Barry is a long-term resident of La Grande who lives within a mile of Morgan Lake Park and regularly visits the park to enjoy its scenic and recreational resources. She states a personal and public interest in protecting the natural setting at Morgan Lake Park. Because the Department considers Morgan Lake Park as a public resource, and Ms. Barry identifies extensive personal experience as a frequent visitor and recreational user of Morgan Lake Park, she is qualified to represent the public interest in protecting this resource.

b. DPO Comment: Ms. Barry provided written and oral testimony on the record of the DPO during the relevant time period.

c. Issues Properly Raised
(1) **Scenic Resources**

(i) Whether Applicant was required to evaluate impacts to Morgan Lake Park under the Scenic Resources standard because it is recognized as a scenic resource in a local plan (Morgan Lake Recreational Use and Development Plan).

Adverse impacts to scenic resources is a matter within Council’s jurisdiction. OAR 345-022-0100. This is essentially the same issue raised by Mr. Andrew in his petition, but unlike Mr. Andrew, Ms. Barry, through Stop B2H, raised this specific issue on the record of the DPO in the Morgan Lake Park Letter, referencing the Morgan Lake Park Recreational Use and Development Plan and asserting that Morgan Lake Park should be considered a scenic resource.33 Ms. Barry raised this issue with sufficient specificity to allow for a response.

(2) **Recreation Standard**

(i) Whether the visual impacts of the proposed facility structures in the viewshed of Morgan Lake Park are inconsistent with the objectives of the Morgan Lake Park Recreational Use and Development Plan and should therefore be reevaluated.

Adverse impacts to recreational resources is a matter within Council’s jurisdiction. OAR 345-022-0100. Ms. Barry raised the issue of visual impacts at Morgan Lake Park, the objectives of the Morgan Lake Park Recreational Use and Development Plan, and concerns with Applicant’s visual impact assessment for Morgan Lake Park in comments on the record of the DPO. Both the Department and Applicant acknowledge that this issue was raised with sufficient specificity to allow for a response.

(ii) Whether Applicant’s visual impact assessment for Morgan Lake Park adequately evaluates visual impacts to the more than 160 acres of undeveloped park land and natural surroundings, as visual simulations were only provided for high-use areas.

As above, recreational resources are within Council’s jurisdiction. Ms. Barry raised this issue in her comments on the record of the DPO dated June 20, 2019, and both the Department and Applicant acknowledge that this issue was raised with sufficient specificity to allow for a response.

(iii) Whether the mitigation proposed to minimize the visual impacts of the proposed facility structures at Morgan Lake Park ($100,000 for recreational facility improvements) is insufficient because the park’s remote areas will not benefit from the proposed mitigation.

This is essentially the same as Issue 20 in Ms. Gilbert’s petition, a new issue raised in response to a material change to a condition of approval, specifically, the  

33 See Attachment 4, Boardman to Hemingway Transmission Line Crosswalk Tables at pdf page 155.
Memorandum of Agreement between Applicant and the City of La Grande and
Recommended Land Use Condition 17. Ms. Barry questioned the ability to mitigate for
visual impacts to Morgan Lake Park in her comments on the DPO. She was not required
to raise the specific issue because it relates to a material change to a condition of approval
in the Proposed Order. ORS 469.350(5)(b); OAR 345-015-0016(3).

d. Issues Not Properly Raised

(1) Protected Areas, Scenic Resources and Recreation

(i) Whether Applicant’s visual impact assessments are invalid because Applicant
did not use updated USFS visual assessment criteria (1995 Landscape Aesthetic, Scenic
Management System (SMS)) to evaluate visual impacts, thereby invalidating the visual
impact analysis for Morgan Lake Park and other protected areas, scenic resources and
important recreational opportunities.

This is the identical issue raised by Stop B2H in its petition. The proposed
facility’s impacts to protected areas, scenic resources and recreation is a matter within
Council’s jurisdiction. As discussed previously, Ms. Barry’s comments on the record of
the DPO expressed concern with Applicant’s visual impact assessment for Morgan Lake
Park and the conclusion that the proposed facility will not preclude enjoyment of
recreational activity at Morgan Lake Park. Ms. Barry asserted that Morgan Lake
Park should be considered a Scenic Resource and Applicant should have provided credible
statistical and visual documentation to support the determination that the proposed
transmission lines would have no significant visual impact. Ms. Barry did not, however,
state a specific concern with the assessment tool utilized by Applicant. Ms. Barry did not
contend that Applicant’s methodology was outdated, or that Applicant should have used
the 1995 SMS methodology instead. Because Ms. Barry did not raise the outdated
methodology issue with sufficient specificity on the record of the DPO, it is not a proper
issue to be considered in the contested case.

e. Party Status: Petitioner Lois Barry’s petition for party status is GRANTED
in part. Ms. Barry’s participation as a party is limited to the discrete issues pertaining to
the proposed facility’s impact on Morgan Lake Park discussed above.

///

7. Peter Barry

a. Interest: Mr. Barry asserts a personal interest in the outcome of this
proceeding because of the impact the proposed facility may have on the use and
enjoyment of his property, and a public interest in protecting the scenic views in La
Grande.

b. DPO Comment: Mr. Barry provided oral comments on the record of the DPO
on June 20, 2019 and written comments on August 22, 2019.
c. Issues Properly Raised

(1) Recreation

(i) Whether the mitigation proposed to minimize the visual impacts of the proposed facility structures at Morgan Lake Park ($100,000 for recreational facility improvements) is insufficient mitigation for visual impacts.

Adverse impacts to recreational resources is a matter within Council’s jurisdiction. OAR 345-022-0100. Mr. Barry did not raise this issue in his comments on the DPO, but as discussed elsewhere, Land Use Condition 17, recreational improvements at Morgan Lake Park via a Memorandum of Agreement between Applicant and the City of La Grande is a new issue, resulting from a material change to a condition of approval in the Proposed Order. Accordingly, as the Department acknowledges, this is an appropriate issue for consideration in the contested case. ORS 469.350(5)(b); OAR 345-015-0016(3).

d. Issues Not Properly Raised

(1) Need Standard

(i) Whether Applicant has established a need for the proposed facility.

In his petition, Mr. Barry asserts that Applicant has not established the need for the facility. Mr. Barry raised this issue in his comments on the record of the DPO, but he did not raise the issue with sufficient specificity to allow for a response. Mr. Barry did not relate his challenge to the Need Standard, OAR 345-023-0005 et seq., nor did he present facts to support his position. Consequently, the issue is not properly raised under OAR 345-015-0016(3).

(2) Protected Area

(i) Whether Morgan Lake Park should be evaluated as a protected area.

In his petition, Mr. Barry asserts that Morgan Lake is a protected area and Applicant should have evaluated it as such. In his comments on the record, Mr. Barry asserted that the Mill Canyon and Morgan Lake routes were not properly studied or publicly reviewed and expressed concern about the social and environmental impacts from the selected routes, but he did not raise the specific issue of Morgan Lake as a protected area. Because this issue was not raised on the record of the DPO, it is not properly raised for consideration in the contested case under OAR 345-015-0016(3).

e. Party Status: Petitioner Peter Barry’s petition for party status is GRANTED in part. Mr. Barry’s participation as a party is limited to the discrete issue of proposed mitigation for visual impacts at Morgan Lake Park.
8. Ryan Browne

a. Interest: Mr. Browne asserts a personal interest in the outcome of this proceeding as an impacted property owner.

b. DPO Comment: Mr. Browne commented on the record of the DPO through oral testimony on June 20, 2019 and written submission on August 20, 2019.

c. Issues Properly Raised

(1) Historic, Cultural and Archeological Resources

(i) Adequacy of the surveys for Oregon Trail resources on the Webster property, an impacted property along the Mill Creek Route.

Impacts to historical resources from the proposed facility is within Council’s jurisdiction. ORS 345-022-0090. Mr. Browne referenced concern with Applicant’s in his comments on the DPO, and both the Department and Applicant acknowledge that the issue was raised with sufficient specificity to allow for a response.

(2) Structural Standard

(i) Whether Design Feature 32 of the Proposed Order Attachment G-5 (Draft Framework Blasting Plan) should be a site certificate condition to ensure repair of landowner springs from damage caused by blasting.

Structural standards for the proposed facility are within the Council’s jurisdiction. OAR 345-022-0020. In his comments, Mr. Brown raised concerns that Applicant was not offering adequate mitigation for the potential damage to the natural springs on his property. The Department concedes this issue was raised with sufficient specificity to allow for a response.

d. Issues Not Properly Raised

(1) Notice of Route Selection

(i) Failure to provide proper notice of the proposed facility to the Webster family in the original comment period.

In general, matters of procedural due process, including notice requirements, are within Council’s jurisdiction. Mr. Browne commented on the record of the DPO on June 20, 2019, alleging that he first became aware of the proposed power line in 2015, after the “comment period for the proposed route and alternative route had passed.”

It is unclear what comment period Mr. Brown asserts he did not receive notice and there is

nothing to suggest that he was prejudiced by not knowing about plans for the proposed facility prior to 2015. Furthermore, it is evident that Mr. Browne received notice of the application for site certificate and the DPO, as he provided comments on the DPO. Mr. Browne did not identify the procedural requirements in Division 15 he believes were not met, and therefore he did not raise this issue with sufficient specificity to allow for a response.

e. Party Status: Petitioner Ryan Browne’s petition for party status is GRANTED in part. Mr. Browne’s participation as a party is limited to the discrete issues discussed above, the Oregon Trail surveys and implementation of Design Feature 32 of the Draft Framework Blasting Plan.

9. Gail Carbiener/Oregon California Trails Association (OCTA)

a. Interest: Mr. Carbiener states a personal interest in the outcome of the proceeding. In addition, as the Preservation Officer of OCTA, Mr. Carbiener qualifies to represent a public interest of the OTCA members to protect and preserve the emigrant trail for future generations.

b. DPO Comment: Mr. Carbiener presented oral testimony at the DPO hearings and submitted extensive written comments during the relevant time period.

c. Issues Properly Raised

(1) Retirement and Financial Assurance

(i) Whether the $1 bond amount adequately protects the public from facility abandonment and provides a basis for the estimated useful life of the facility.

The Retirement and Financial Assurance standard is a matter within Council’s jurisdiction. OAR 345-022-0050. Mr. Carbiener raised the issue of the sufficiency of the retirement bond and Applicant’s proposal on the record of the DPO. In their respective responses, both the Department and Applicant acknowledge that the issue was raised with sufficient specificity to allow for a response.

(ii) Whether, in the event of retirement of the proposed transmission line, removal of concrete footings to a depth of one foot below the surface is sufficient to restore the site to a useful, nonhazardous condition.

As above, retirement of the proposed facility is a matter within Council’s jurisdiction. Mr. Carbiener raised the issue of foundation removal for site restoration in his comments on the DPO dated June 8, 2019. Both the Department and Applicant acknowledge that the issue was raised with sufficient specificity to allow for a response.

(2) Public Services
(i) Whether the site certificate should require that the public have the opportunity to review and comment on the final Wildfire Mitigation Plan, and whether the Wildfire Mitigation Plan should include remote cameras to detect wildfire, safety procedures during red flag conditions, and the requirement that firefighting equipment be present on-site during construction.

The impact the construction and operation of the proposed facility will have on public services, including fire protection, is a matter within Council’s jurisdiction. OAR 345-022-0110. Mr. Carbiener raised the issue of fire prevention measures and the adequacy of Applicant’s draft fire prevention plan in comments on the record of the DPO. Both the Department and Applicant acknowledge that the issue was raised with sufficient specificity to allow for a response.

(ii) Whether Council’s reliance on the Wildfire Mitigation Plan (Public Services Condition 7) prepared by Applicant for the Oregon Public Utility Commission (OPUC) is adequate to address wildfire response consistent with the Public Services standard.

As above, this is an issue within Council’s jurisdiction. OAR 345-022-0110. As the Department acknowledges in its response, it was not necessary for Mr. Carbiener to raise this specific issue on the record of the DPO because it relates to a material change to a recommended action in the Proposed Order. Accordingly, this is a proper issue for the contested case pursuant to ORS 469.350(5)(b) and OAR 345-015-0016(3).

(3) Scenic Resources

(i) Whether Applicant satisfied the Scenic Resources and Protected Area standards at Flagstaff Hill/National Historic Oregon Trail Interpretive Center (NHTIC) and whether Applicant adequately analyzed the feasibility of undergrounding the transmission line as mitigation for potential visual impacts.

Impacts to scenic resources and protected areas are within the Council’s jurisdiction. OAR 345-022-0080 and OAR 345-022-0040. Mr. Carbiener raised the issue of scenic values and challenged Applicant’s conclusions regarding the feasibility of undergrounding the transmission lines in the NHTIC viewshed in oral and written comments on the DPO. Both the Department and Applicant concede that Mr. Carbiener raised the issue of scenic values and conclusions regarding visual impact from NHTIC and the undergrounding of transmission line to avoid impacts to the Oregon Trail with sufficient specificity to allow for a response.

(4) Historic, Cultural and Archeological Resources

(i) Whether the revision of Historic, Cultural and Archeological Resources Condition 1 in the Proposed Order (mitigation for NRHP-Eligible Oregon Trail/NHT segments) fails to consider BLM Programmatic Agreement and adds new requirements for mitigation that are inconsistent with the Department’s definition of “mitigation” in OAR 345-001-0010(33).
Impacts to historical resources from the proposed facility is a matter within Council’s jurisdiction. ORS 345-022-0090. As the Department acknowledges in its response, Mr. Carbiener was not required to raise this specific issue on the record of the DPO because it relates to a material change to a recommended condition of approval in the Proposed Order. Accordingly, this is a proper issue for the contested case pursuant to ORS 469.350(5)(b) and OAR 345-015-0016(3).

d. Issues Not Properly Raised

(1) Protected Areas, Scenic Resources, and Recreation

(i) Whether the methods Applicant used to assess visual impacts for purposes of the Protected Areas, Scenic Resources, and Recreation Standards were independently obtained. Whether the key observation points for visual simulations were adequate and whether Applicant adequately analyzed the visual impact from NHOTIC.

Impacts to protected areas, scenic resources and recreation are within the Council’s jurisdiction. OAR 345-022-0040, -0080, and -0100. In his July 3, 2019 comments on the DPO, Mr. Carbiener challenged Applicant’s conclusions regarding undergrounding of the project and asserted that the DPO does not comply with the scenic values from the Blue Mountains Parkway and NHOTIC because the proposed transmission lines cause a significant decrease in scenic values but he did not specifically challenge Applicant’s methodology for assessing visual impacts. Similarly Mr. Carbiener did not, in commenting on the DPO, contest Applicant’s application of numeric values to assess impacts, nor did he contest the key observation point placement or quality. Accordingly, this issue is not properly raised under OAR 345-015-0016(3).

e. Party Status: Petitioner Gail Carbiener’s petition for party status is GRANTED in part. Mr. Carbiener’s participation as a party is limited to the discrete properly raised issues discussed above pertaining to the Retirement and Financial Assurance, Public Services, Scenic Resources, and Historical, Cultural and Archeological Standards.

10. Matt Cooper

a. Interest: Mr. Cooper has a personal interest in the outcome of this proceeding as an impacted property owner along the Morgan Lake Alternative Route. Mr. Cooper also stated a public interest in the issues raised as a longtime resident of La Grande.

b. DPO Comment: Mr. Cooper submitted written comments on the record of the DPO on August 11, 17 and 19, 2019.

c. Issues Properly Raised

(1) Public Services
Whether Applicant adequately analyzed the risk of wildfire arising out of operation of the proposed facility and the ability of local firefighting service providers to respond to fires.

The impact the construction and operation of the proposed facility will have on public services, including fire protection, is a matter within Council’s jurisdiction. OAR 345-022-0110. Mr. Cooper raised this issue in written comments dated August 11, 2019. In their respective responses, both the Department and Applicant acknowledge that Mr. Cooper raised the estimated response time issue with sufficient specificity.

(2) Structural Standard

Whether Applicant adequately analyzed the risk of flooding in areas adjacent to the proposed transmission line arising out of the construction-related blasting. Whether Applicant should be required to evaluate hydrology, including more detailed and accurate mapping of existing creeks and ditches that drain into streets and private property, and core samples of sufficient variety and depth to determine the flooding risk to neighborhoods of south and west La Grande.

Structural standards for the proposed facility is a matter within the Council’s jurisdiction. OAR 345-022-0020. Mr. Cooper raised this issue in written comments dated August 11, 2019. In their respective responses, both the Department and Applicant acknowledge that Mr. Cooper raised the estimated response time issue with sufficient specificity.

(3) Site Boundary - Mapping

Whether the maps provided in ASC Exhibit F, Maps 50 and 51 fail to comply with OAR 345-021-0010(1)(c)(A) because the maps do not name major roads or use an appropriate scale; whether Council can issue a site certificate when the proposed facility site boundary does not accurately identify access roads in Union County as related or supporting facilities.

The Department concedes that it is within Council’s jurisdiction to evaluate OAR 345-021-0010(1)(c)(A) and the facility site boundary. Mr. Cooper raised this issue in written comments dated August 17, 2019. Mr. Cooper asserted in his comments that the

\[\text{OAR 345-021-0010(1)(c)(A)}\]

requires information about the location of the proposed facility including:

\[(A)\] A map or maps showing the proposed locations of the energy facility site, all related or supporting facility sites and all areas that might be temporarily disturbed during construction of the facility in relation to major roads, water bodies, cities and towns, important landmarks and topographic features, using a scale of 1 inch = 2000 feet or smaller when necessary to show detail.
maps provided in the ASC do not clearly depict existing roads or road segments and lack the detail required to grant a site certificate. Mr. Cooper raised this issue with sufficient specificity to allow for a response.

(4) Noise Notification/Noise Control Regulations

(i) Whether OAR 345-021-0010(1)(x)(E) requires notification to all owners of noise sensitive property within one mile of the site boundary.

The information requirement under OAR 345-021-0010(1)(x)(E) is a matter within Council’s jurisdiction. Mr. Cooper raised this issue in his comments dated August 17, 2019. The ALJ is satisfied that Mr. Cooper raised this issue with sufficient specificity as Applicant responded to the noise notification area issue in its response to DPO comments. This is same argument was properly raised by Stop B2H.

d. Issue Not Properly Raised

(1) Site Boundary

(i) Whether the site boundary should be amended to include Hawthorne Loop and Modelaire Drive, streets that are likely to need substantial modification to accommodate traffic related to construction of the proposed facility.

Council has the authority to evaluate whether actions or activities are considered a related or supporting facility under ORS 215.206, ORS 469.300(14) and (24), OAR 345-001-0010(51) and (55) and therefore this issue is within Council’s jurisdiction. Mr. Cooper did not, however, raise this particular issue on the record of the DPO. As such, it is not a proper issue for Mr. Cooper to address in the contested case.36

e. Party Status: Petitioner Matt Cooper’s petition for party status is GRANTED in part. Mr. Cooper’s participation as a party is limited to the discrete properly raised issues discussed above pertaining to wildfire risk, flooding risk, insufficient mapping, and noise notification.

11. Whit Deschner

a. Interest: Mr. Deschner states a public interest in protecting the viewshed within the area of NHOTIC and cites his long-term residency in Baker County as qualification to represent the interest.

b. DPO Comment: Mr. Deschner provided oral testimony at the DPO hearing on June 19, 2019, and written testimony submitted August 21, 2019.

c. Issue Properly Raised

36 This same issue was properly raised by Petitioner Susan Badger-Jones.
(1) **Protected Areas, Scenic Resources, and Recreation**

(i) Whether Applicant adequately assessed the visual impact of the proposed project near the NHOTIC and properly determined the impact would be “less than significant.”

Impacts to scenic resources and protected areas are within the Council’s jurisdiction. OAR 345-022-0080 and OAR 345-022-0040. Mr. Deschner raised this issue in written comments received August 21, 2019 and both the Department and Applicant acknowledged the issue was raised with sufficient specificity to allow for a response.

**d. Issue Not Properly Raised**

(1) **Siting Standards for Transmission Lines**

(i) Whether Applicant, to mitigate concerns that electromagnetic fields (EMFs) from the transmission lines will cause corrosion of pipelines in the area of the transmission line, should be required to line the pipelines with sacrificial zinc.

Siting standards for transmissions lines is a matter within the Council’s jurisdiction, but Mr. Deschner did not raise this specific issue on the record of the DPO during the pertinent period, May 22, 2019 to August 22, 2019. To the extent Mr. Deschner asked about the proposed project’s EMFs and the effect on pipelines in a 2015 informational meeting about the project, this issue was not raised on the record of the DPO. Thus, it is not a proper issue to be addressed in the contested case.

**e. Party Status:** Petitioner Whit Deschner’s petition for party status is GRANTED in part. Mr. Deschner’s participation as a party is limited to the discrete issue properly raised herein, the assessment of visual impact at NHOTIC.

12. **Jim and Kay Foss**

a. **Interest:** Petitioners Jim and Kay Foss have a personal interest in the outcome of this proceeding as owners of property (on Owyhee Ave/Rock Sprin; Springs Road, in Malheur County) with irrigated agriculture that may be impacted by the construction and operation of the proposed facility.

b. **DPO Comment:** Petitioner commented on the record of the DPO at the June 18, 2019 public hearing and in writing on August 19, 2019.

c. **Issue Properly Raised**

(1) **Land Use**

(i) Adequacy of the analysis of potential impacts of transmission line interference
with GPS units on irrigation system.

This issue relates to the Land Use standard, OAR 345-022-0030, and is therefore within Council’s jurisdiction. Mr. Foss raised the issue of operability of GPS navigated points under or adjacent to transmission lines on the record of the DPO by letter dated August 19, 2019. As set out in the respective responses, both the Department and Applicant agree Mr. Foss raised this issue with sufficient specificity to allow for a response.

d. Issue Not Properly Raised

(1) Land Use

(i) Adequacy of the Draft Farm Assessment and Mitigation Plan (Proposed Order, Attachment K-1, Land Use Condition 14) and whether it is specific enough to allow for adequate public review.

As above, issues related to Land Use are within Council’s jurisdiction. Petitioners did not raise the issue of the adequacy of Applicant’s Agricultural Lands Assessment (Attachment K-1) on the record of the DPO. In the Proposed Order, the Department added an Agency Review Process to Applicant’s Agricultural Lands Assessment, requiring the certificate holder to implement an agency review process to afford applicable local, state and federal agencies the opportunity to review the draft plan prior to finalization and implementation. The Department did not, however, change the substance of the Plan, nor did it make any substantive change in its recommended findings or Land Use Condition 14. This does not, therefore, constitute a material change in a recommended action or a change in the condition of approval under ORS 469.370(5)(b) and OAR 345-015-0016(3).

e. Party Status: Petitioners Jim and Kay Foss petition for party status is GRANTED in part. Petitioners’ participation as a party is consolidated and limited to the discrete Land Use issue properly raised pertaining to the potential interference with GPS irrigation systems.

13. Suzanne Fouty

a. Interest: Dr. Fouty states a personal interest in the outcome of this proceeding as a longtime resident of Baker County with concerns about fire risk and the impact the proposed facility will have on her home and community. Ms. Fouty also seeks to represent a public interest in soil-related impacts from the proposed facility. As a retired Forest Service hydrologist/soils specialist with a Ph.D. in the subject matter, Dr. Fouty is qualified to represent this public interest.

b. DPO Comment: Dr. Fouty submitted written comments on the record of the DPO on August 20, 2019.
c. Issue Properly Raised

(1) Soil Protection

(i) Whether the Soil Protection Standard and General Standard of Review require an evaluation of soil compaction, loss of soil structure and infiltration, and loss of stored carbon in the soil.

Impacts to soil from the construction and operation are within Council’s jurisdiction. OAR 345-022-0022. In her August 20, 2019 comments on the DPO, Dr. Fouty raised concern about soil productivity and the adequacy of mitigation for loss of soil productivity in the proposed disturbance area. She offered an evaluation of ASC Exhibit 1 (addressing erosion factors for potentially impacted soils) and described potential impacts from soil compaction and loss of soil structure. Although carbon sequestration, carbon storage, or carbon loss fall outside Council’s jurisdiction, the impact to soil and the loss of soil productivity do fall under the Soil Protection Standard. Dr. Fouty has raised this soil protection issue with sufficient specificity to allow for a response, and it is therefore appropriate for consideration in the contested case.

d. Issues Not Properly Raised

(1) Soil Protection Standard and General Standard of Review


As discussed previously in the evaluation of Stop B2H’s petition, the issue of carbon sequestration is not within the jurisdiction of the Council and is not properly considered in the contested case. OAR 345-015-0016.

(ii) Whether the Soil Protection Standard and General Standard of Review require an assessment of loss of above ground organic material related to the construction and operation of transmission lines, including an assessment of the impact on soils of wildfires.\(^{37}\)

As noted above, impacts to soil from the construction and operation are within Council’s jurisdiction. OAR 345-022-0022. Dr. Fouty asserts that the Soil Protection Standard, read in conjunction with the General Standard, require Applicant to analyze and the Council to consider, the adverse impact a potential transmission line-related fire would have on plants and soils. In her comments on the DPO, Dr. Fouty raised concern about wildfires in connection with the loss of carbon sequestration, but she did not raise the issue of wildfire risk in connection with the construction and operation of the proposed facility. Dr. Fouty also did not present facts or analysis on the record of the proposed facility.

\(^{37}\) In a supplemental pleading filed October 2, 2020, Dr. Fouty clarified this issue and her intention to include wildfire, and the impacts of wildfire on soils, as an issue related to soil protection.
DPO to support her position on this issue. Accordingly, this issue was not raised with sufficient specificity to allow for a response.

e. **Party Status:** Petitioner Suzanne Fouty’s petition for party status is GRANTED in part. Dr. Fouty’s participation as a party is limited to the discrete soil protection issue identified herein.

14. **Susan Geer**

a. **Interest:** Ms. Geer states a personal interest in the outcome of this proceeding as an affected landowner on Glass Hill Road in La Grande and as manager of the Rice Glass Hill Natural Area. Ms. Geer also seeks to represent a public interest in rare plants, native plant communities, controlling invasive weeds, and the effects of climate change on plants. As a professional botanist/ecologist with an interest in rare plants, Ms. Geer is qualified to represent this public interest.

b. **DPO Comment:** Ms. Geer submitted written comments on the record of the DPO on August 22, 2019 and August 27, 2019.

c. **Issues Properly Raised**

   (1) *Threatened and Endangered Species*

   (i) Whether Applicant was required to have an Oregon Department of Agriculture botanist review the ASC.

   The proposed facility’s impact on threatened and endangered species is a matter within Council’s jurisdiction. Ms. Geer raised this issue on the record of the DPO. As both the Department and Applicant acknowledge, Ms. Geer raised this issue with sufficient specificity.

   (2) *Fish and Wildlife Habitat*

   (i) Whether Applicant’s Noxious Weed Plan complies with ORS Chapter 569 because it does not identify responsibility for control of most weed species and only requires annual control.

   Noxious weed control efforts are matters within Council’s jurisdiction. OAR 345-022-0060; OAR 345-022-0030. Ms. Geer raised this issue on the record of the DPO, and both the Department and Applicant acknowledge that she raised the issue with sufficient specificity.

   (ii) Whether the Noxious Weed Plan provides adequate mitigation for potential loss of habitat due to noxious weeds when it appears to relieve Applicant of weed monitoring and control responsibilities after five years and allows for compensatory mitigation if weed control is unsuccessful.
As above, control of noxious weeds is a matter within Council’s jurisdiction. Ms.
Geer raised concerns about the adequacy of Applicant’s Noxious Weed Plan in her
comments on the DPO. Both the Department and Applicant acknowledge that Ms. Geer
raised this issue with sufficient specificity to allow for response.

d. Issues Not Properly Raised

(1) Protected Areas

(i) Whether the Rice Glass Hill Natural Area should be evaluated as a Protected
Area.

The proposed facility’s impact on listed Protected Areas is a matter within the
Council’s jurisdiction. OAR 345-022-0040. In commenting on the DPO, Ms. Geer
expressed concern that because the State Natural Areas were not evaluated many
unprotected plant associations within the analysis area were not considered. Ms. Geer
referenced the Glass Hill area, and noted some unprotected plant species in that area, but
she did not, in her comments on the DPO assert that State Natural Areas should be
evaluated under the Protected Areas standard. Consequently, this issue is not properly
raised under OAR 345-015-0016(3).

(2) Threatened and Endangered Species

(i) Whether Applicant was required to consider potential impacts to *Trifolium
douglasii* as part of its threatened and endangered plant species analysis.

The proposed facility’s impact on threatened and endangered species is a matter
within Council’s jurisdiction, but Council’s jurisdiction over endangered plants is limited
to species that the Oregon Department of Agriculture has listed as threatened or
endangered under ORS 564.105(2). OAR 345-022-0070(1). Although *Trifolium
douglasii* is identified as a federal Species of Concern, it is not listed as a threatened or
endangered species under state law. Moreover, because this federally-listed plant species
is not listed in ORS 564.105(2), Applicant was not required to evaluate it and Council has
no jurisdiction over it.

e. Party Status: Petitioner Susan Geer’s petition for party status is GRANTED
in part. Ms. Geer’s participation as a party is limited to the discrete threatened and
endangered species and noxious weed control issues properly raised herein.

15. Irene Gilbert

a. Interest: Ms. Gilbert asserts a personal interest in the outcome of this
proceeding as a resident of La Grande and active user of the resources in eastern Oregon.
Ms. Gilbert seeks to protect the impacted lands and outdoor recreation areas of eastern
Oregon (such as Ladd Marsh, Sucker Creek, Owyhee River, and Oregon Trail sites) on
her own behalf, as well as on behalf of her children and grandchildren. In addition, Ms. Gilbert asserts a public interest in this matter as a Co-Chair of Stop B2H. As a Co-Chair of Stop B2H, Ms. Gilbert notes that members of the coalition have raised concerns of the Department’s review under virtually every standard. Ms. Gilbert has demonstrated a personal interest and qualifications to represent a public interest on behalf of Stop B2H.

b. DPO Comment: Ms. Gilbert appeared in person at the DPO hearings. She submitted written comments dated June 18, 2019 in her individual capacity identifying issues with the noise control section of the DPO. As a co-chair of Stop B2H, she submitted other, extensive written comments during the period of May 22, 2019 through August 22, 2019.

c. Issues Properly Raised

(1) Noise Control Regulations

(i) Whether the revisions in the Proposed Order, Section IV.Q.1, Noise Control Regulation, Methods and Assumptions for Corona Noise Analysis are inaccurate, specifically the use of the 12:00 a.m. to 5:00 a.m. timeframe to establish ambient noise levels.

Petitioner Gilbert raised this as a sub-part of Issue Three in her petition.\(^{38}\) Noise Control Regulations for proposed facilities are a matter within the Council’s jurisdiction. OAR 340-035-0035. In her June 19, 2019 comments, Ms. Gilbert stated: “12. Inferred noise consultant approved method of limiting evaluation of increased noise to period from 12:00 midnight [until] 5:00 AM when did not approve this limit for predicting future noise impacts.”\(^{39}\) Both the Department and Applicant acknowledge that Ms. Gilbert raised this particular challenge to the methodology (using this timeframe to measure potential noise impacts) with sufficient specificity on the record of the DPO.

(ii) Whether the Department erred in recommending that Council grant a variance/exception from the Oregon DEQ’s Noise Rules, OAR 340-035-0035 for all noise sensitive properties along the transmission line and whether the variance/exception is inconsistent with ORS 467.010.\(^{40}\)

Petitioner Gilbert raised this as Issue Four in her petition. Noise Control Regulations for proposed facilities are a matter within the Council’s jurisdiction. OAR 340-035-0035. Petitioner Gilbert asserts that there was no need to comment on this issue on the record of the DPO because the recommendation to allow this variance/exception is

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\(^{38}\) In the petition at page 2, Ms. Gilbert asserted, that “using only the time period from midnight until 5:00 a.m. to establish the number of exceedances of the noise standard is not consistent with the noise rules.”


\(^{40}\) Stop B2H properly raised this same issue.
a material change in the Proposed Order. In its response, the Department agrees that this issue is properly raised in response to a material change and may be considered in the contested case proceeding.

(2) *Fish and Wildlife Standard*

(i) 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).

Petitioner Gilbert raised this as part one of Issue Six in her petition. Fish and Wildlife Habitat and noxious weed control efforts are matters within Council’s jurisdiction. 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. As the Department and Applicant acknowledge, 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.

(ii) Whether Applicant is required to evaluate habitat impacts of species listed as threatened or endangered under the Federal Endangered Species Act.

Petitioner Gilbert raised this as Issue Eight in her petition. Fish and Wildlife Habitat is within Council’s jurisdiction. ORS 345-022-0060. Ms. Gilbert raised this issue in comments on the record of the DPO dated August 22, 2019, and as the Department and Applicant concede in their respective responses, raised the issue with sufficient specificity.

(iii) Whether Applicant should be required to mitigate impacts to riparian areas from the setback location to the outer edges of the riparian area because the riparian habitat should be rated as Category 2 at a minimum.

Petitioner raised this as Issue 18 in her petition. As above, Fish and Wildlife Habitat is within Council’s jurisdiction. ORS 345-022-0060. Ms. Gilbert, through Stop B2H, raised the issue on the record of the DPO. In their respective responses, both the Department and Applicant concede that Petitioner raised this issue with sufficient specificity.

(3) *Historic, Cultural and Archeological Resources – Mitigation for Impacts to the Oregon Trail*

(i) Whether the Proposed Order’s revisions to Historic, Cultural and Archeological Resources Condition 1 (HPMP) related to mitigation for crossings of Oregon Trail resources provides adequate mitigation for visual impacts and sufficient detail to allow for public participation.
Petitioner raised this as Issue Seven in her petition. The proposed facility’s adverse impact on historical, cultural and archeological resources is a matter within Council’s jurisdiction. OAR 345-022-0090. As the Department acknowledges, the revisions to Historic, Cultural and Archeological Resources Condition 1 constitute a material change to a condition of approval, so it was not necessary for Ms. Gilbert to have raised this specific issue on the record of the DPO. ORS 469.350(5)(b); OAR 345-015-0016(3).

(4) Land Use

(i) Whether calculation of forest lands must be based on soil class or whether it is sufficient to consider acreage where forest is the predominant use.

Petitioner Gilbert raised this as Issue Nine in her petition. Land Use is a matter within Council’s jurisdiction. OAR 345-022-0030. Ms. Gilbert commented on the calculation of Goal 4 forest lands on the record of the DPO. As the Department and Applicant concede in their respective responses, Ms. Gilbert raised the stated issue with sufficient specificity.

(ii) Whether the alternatives analysis under ORS 215.275 included all relevant farmland.

Petitioner Gilbert raised this as Issue 15 in her petition. Land Use is a matter within Council’s jurisdiction. Ms. Gilbert commented on this issue on the record of the DPO and, as conceded in the Department’s and Applicant’s responses, she raised the alternatives analysis and relevant farmland issue with sufficient specificity.

(iii) Whether the evaluation of proposed facility impacts to the cost of forest practices accurately determined the total acres of lost production or indirect costs.

Petitioner raised this as Issue 16 in her petition. Land use is a matter within Council’s jurisdiction. Ms. Gilbert raised this issue on the record of the DPO and, as conceded in the Department’s and Applicant’s responses, she raised the issue of calculation of potential impacts to forestlands with sufficient specificity.

(iv) The adequacy of Applicant’s evaluation of proposed facility impacts to the cost of forest management practices and whether mitigation must be provided for the entire length of the transmission line for the operational lifetime.

Petitioner raised this as Issue 17 in her petition. Land use is a matter within Council’s jurisdiction. Ms. Gilbert raised this issue on the record of the DPO in comments dated August 22, 2019. As conceded in the Department’s and Applicant’s responses, Ms. Gilbert raised the issue of the adequacy of Applicant’s evaluation of potential impacts to forest lands with sufficient specificity.
(5) Retirement and Financial Assurance

(i) Whether the proposed $1 bond provides sufficient protection to the State to assure that the proposed facility site can be restored to a useful, nonhazardous condition.

Petitioner Gilbert raised this as Issue 10 in her petition. Retirement of the facility and financial assurance is a matter within Council’s jurisdiction. Ms. Gilbert raised the sufficiency of the $1 bond amount on the record of the DPO in written comments and as the Department and Applicant note in their respective responses, raised the issue with sufficient specificity.

(6) Recreation Standard – Adequacy of Mitigation for Impacts to Recreation at Morgan Lake Park

(i) Whether the proposed mitigation plan for facility impacts to recreation activities at Morgan Lake Park ($100,000 to the City of La Grande for recreational improvements) is sufficient and reasonably related to the adverse impact to recreational activities at Morgan Lake Park.

Petitioner raised this as Issue 20 in her petition. Impact to recreational activity is a matter within Council’s jurisdiction. OAR 345-022-0100. As Petitioner asserts and the Department concedes, this is a new issue raised in response to a material change to a condition of approval, specifically, the Memorandum of Agreement between Applicant and the City of La Grande and Recommended Land Use Condition 17. Therefore, Petitioner was not required to raise this specific issue on the record of the DPO. ORS 469.350(5)(b); OAR 345-015-0016(3).

(7) Public Services Standard - Fire Prevention

(1) Whether the Wildfire Mitigation Plan is adequately developed and includes sufficient detail to allow for public participation.

Petitioner Gilbert raised this as Issue 14 in her petition. Land use and public safety, fire protection, are matters within Council’s jurisdiction. In her petition, Ms. Gilbert identified the Wildfire Mitigation Plan and asserted that it fails to provide adequate detail to allow for a public process for review. Ms. Gilbert did not specify how or if she individually raised this issue on the record of the DPO, but argued instead that it was unnecessary to identify a prior comment because the Proposed Order identified an entirely new procedure for operational fire protection management. Ms. Gilbert did not specify this entirely new procedure, but the Department presumed Ms. Gilbert was referring to Recommended Public Services Condition 7, and conceded that this represents a material change in the action recommended or a change in a condition of approval.41

41 Public Services Condition 7 requires Applicant to develop and implement a Wildfire Mitigation Plan, to distribute the plan to the Department and affected counties and fire protection service providers, and to update the plan on an annual basis or frequency determined acceptable by the Department and OPUC. The Department acknowledges in its Second Amended Response that
The ALJ also notes that to the extent Ms. Gilbert did not raise the specific issue of public review of the Wildfire Mitigation Plan in her individual comments on the DPO, Stop B2H (of which Ms. Gilbert is a co-Chair) specifically raised the issue on the record of the DPO. Consequently, this issue may be considered in the contested case.

(8) Site Boundary Issue

(i) Whether Applicant failed to include roads and other areas of use and potential modification from the site boundary thereby prohibiting affected landowners in the proximity of these areas from the opportunity to request a contested case during the ASC process.

Petitioner Gilbert raised this as Issue 13 in her petition. The evaluation of the site boundary and information about the location of the proposed facility and areas that might be temporarily disturbed during the construction of the facility (OAR 345-021-0010(1)(c)(A)) are matters within Council’s jurisdiction. In her petition, Ms. Gilbert asserted that Applicant excluded roads from the proposed site boundary that it intends to use to access the project site that may need substantial modification to handle movement of equipment and construction materials. Ms. Gilbert raised the issue of construction or modification of roads outside the site boundary on the record of the DPO. The Department acknowledges that Ms. Gilbert raised this issue with sufficient specificity, as illustrated by Applicant’s detailed response to comments on this issue.

d. Issues Not Properly Raised

(1) Noise Notification/Noise Control Regulations

(i) Whether ORS 183.415 required the Department to notify impacted individuals of the recommendation to approve an exception and variance to the DEQ noise standard (OAR 340-035-0035) for all residences within ½ mile of the proposed transmission line.

Petitioner Gilbert raised this as Issue One in her petition. Whether the Department provided proper notice to impacted individuals of their right to be heard is a

the revision and addition of Public Services Condition 7 represents a material change in a condition for approval for purposes of OAR 345-015-0016(3).

42 Stop B2H asserted that “Council MUST insist that Idaho Power and partners develop a detailed Wildfire Mitigation Plan as present it to EFSC before a site certificate is issued. * * * It seems the ESFC is too comfortable to issue a site certificate then let Applicant submit detailed plans that only the utility, ODOW, and connected state agencies review. This needs to be done in an open, transparent and public process.”

43 Applicant contends that this issue falls outside the Council’s jurisdiction because Council does not have the authority to evaluate structures outside the site boundary. Applicant’s Response at 48. The Department, on the other hand, acknowledges jurisdiction over this issue. For purposes of determining issues to be addressed in this contested case, the ALJ defers to the Department’s interpretation of matters within Council’s jurisdiction pursuant to OAR 345-015-0016(3).
matter within Council’s jurisdiction. In her petition, Ms. Gilbert asserts that she raised this issue on the record of the DPO in her comments dated June 18, 2019. In her June 18, 2019 comments, Ms. Gilbert asserted, in pertinent part, as follows:

> The Oregon standards allow for more noise than is recommended by the World Health Organization and are used in most other countries. In Malheur County alone, there are 26 residences that are “noise sensitive residences” within ½ mile of the transmission line. That means that they will be subjected to noise increases. * * * it seems to me that these other people should be told that they will be impacted and they might want to participate in this process.”

Although Ms. Gilbert expressed a general concern about notice to impacted landowners regarding noise increases, she did not tie this concern to any standard or to the potential approval of an exception or variance under the DEQ noise control regulations. She did not present the noise notification issue in the petition with sufficient specificity on the DPO record to allow for a response. Therefore, this issue is not properly raised under OAR 345-015-0016.

(ii) Whether the Department erred in recommending approval of Applicant’s noise consultant’s methodology for assessing noise impacts because the recommendation is based on incorrect information, such as Council’s authority to review and approve sound measurement procedures and the methods for establishing ambient noise levels specific to a linear facility.

Petitioner raised this as Issue Two in her petition. As discussed previously, Noise Control Regulations and the evaluation of noise levels resulting from the operation of the proposed facility are matters within Council’s jurisdiction. Ms. Gilbert asserts that she did not need to comment on this issue on the record of the DPO because it arises out of new information about the methods and assumptions for Corona Noise Analysis set out at pages 627-628 in the Proposed Order. On this point, I agree with the Department that the methodologies and assumptions for analyzing corona noise from the proposed transmission lines discussed in the Proposed Order do not represent a material change in the recommended action or a change in the condition of approval, as required to trigger the “new issue” the exception stated in ORS 469.370(5)(b) and OAR 345-015-0016(3).

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45 In a supplemental response filed October 2, 2020, Ms. Gilbert asserted that she did not need to comment on this issue on the record of the DPO because the recommendation in the Proposed Order to allow for a variance/exception represented a substantial change from the DPO. But, as stated in the petition, this issue focuses on the Department’s obligation under ORS 183.415 to provide notice to impacted persons of their right to a hearing, rather than the particular recommendation in the Proposed Order to allow for a variance/exception to the noise control regulations. Also, as the Department notes, it is not appropriate for a petitioner to modify or amend a claimed issue in supplemental pleadings file in response to the Department’s or Applicant’s response to petitions for party status.
(iii) Whether Applicant’s methodology for assessing noise impacts is flawed because there is no written approval of the procedures used; the methods used to establish ambient noise measurement levels significantly understated the number of noise exceedances; and the methods and testing points used fail to establish accurate baseline noise levels.

Petitioner Gilbert raised these contentions as part of Issue Three in her petition. As discussed previously, Noise Control Regulations and the evaluation of noise levels resulting from the operation of the proposed facility are matters within Council’s jurisdiction. Ms. Gilbert asserts that she raised this issue in her written submission dated June 18, 2019. Ms. Gilbert expressed disagreement and general concerns regarding Applicant’s modeling and methodology for evaluating noise impacts in these comments, but (aside from the specific challenge to the midnight to 5:00 a.m. timeframe used to measure impacts) she did not provide any facts, analysis or argument to support her challenges to Applicant’s methodology for assessing noise impacts. Therefore, this issue is not properly raised under OAR 345-015-0016.

(iv) Whether proposed Condition OPR-NC-01(c) should require Applicant to conduct baseline noise measurements pursuant to testing and monitoring requirements under ORS 469.507 because the methods used by Applicant fail to establish a legitimate baseline noise level as a reference point prior to construction.

Petitioner Gilbert raised this as Issue Five in her petition. The monitoring of environmental and ecological effects of the construction and operation of facilities subject to site certificates is a matter within Council’s jurisdiction. ORS 469.507. In her written comments dated June 18, 2019, Ms. Gilbert noted: “Not requiring developer to pay for actual sound testing if there is a future question regarding the accuracy of modeling. Statutes require developer to pay for actual monitoring, not place burden on landowner to prove that developer’s predictions are accurate.” 46 Although Ms. Gilbert’s June 2019 comment touched on Applicant’s obligation to conduct sound testing and modeling for future noise issues, this comment does not specifically address or challenge the methods and measuring points used to establish baseline noise levels. In the absence of a specific reference in the DPO comment regarding the allegedly flawed methodology for determining the ambient noise of noise sensitive properties and the absence of any facts in the record of the DPO supporting the contention, this issue is not properly raised under ORS 345-015-0016(3).

(2) Fish and Wildlife

(i) Whether finalization of the Noxious Weed Plan (Attachment P1-5) requires further public involvement and the opportunity for public comment.

Petitioner raises this as a sub-issue under Issue Six in her petition. Ms. Gilbert contends that the Proposed Order “includes a complete change in how the [Noxious Weed Plan] will be completed” making it impossible and unnecessary for her to comment

on this issue previously. Citing Gould v. Deschutes County, 216 Or App 150 (2007), Ms. Gilbert challenges the fact that Proposed Order relies on a draft plan that is to be finalized after Council issues a site certificate. Ms. Gilbert contends that the plan must be finalized and subject to further public review before the Council issues a site certificate. The procedures governing Council and Department proceedings are set out in OAR Chapter 345, Division 15, and procedural matters are within Council’s jurisdiction.

In the Proposed Order, the Department added an Agency Review Process to Applicant’s Noxious Weed Plan (Attachment P1-5), requiring the certificate holder to implement a five step agency review process to afford applicable local, state and federal agencies to review the draft plan prior to finalization and implementation. The Department did not, however, change the substance of the Noxious Weed Plan, nor did it make any substantive change in its recommended findings of compliance with the Fish and Wildlife Habitat Standard. Therefore, the Agency Review Process added to the Noxious Weed Plan does not constitute a material change in a recommended action or a change in the condition of approval, as required to trigger the “new issue” exception stated in ORS 469.370(5)(b) and OAR 345-015-0016(3). Ms. Gilbert did not raise the issue of further public participation in the finalization and implementation of Applicant’s Noxious Weed Plan on the record of the DPO, and therefore this issue is not properly raise for consideration at a contested case hearing.

(ii) Whether the Proposed Order fails to evaluate wildlife within Ladd Marsh Wildlife Area and federal mitigation sites to determine and mitigate for direct and indirect damages to wildlife.

Petitioner Gilbert raised this as Issue 11 in her petition. The Fish and Wildlife Habitat Standard is a matter within Council’s jurisdiction. In her petition, Ms. Gilbert did not state where she raised this issue on the record of the DPO. She acknowledged that she did not speak specifically to this topic, but asserted that the Proposed Order added “a new declaration” on this issue. In a supplemental response, Ms. Gilbert asserted that she raised the issue in her verbal comments on June 27, 2019 by referencing ODFW’s existing mitigation sites, surveys done for Antelope Ridge, and surveys done out at the wildlife refuge. Ms. Gilbert did not raise the “failure to evaluate wildlife” issue with sufficient specificity to afford an adequate opportunity to respond. And, she did not establish a basis for the new issue exception recognized in ORS 469.370(5)(b) and OAR 345-015-0016(3). Therefore, this issue shall not be considered in the contested case.

(3) Land Use/No Applicable Standard for Impacts to Farm Values

(i) Whether the impacts from the proposed facility on accepted farm practices and the cost of accepted farm practices have been adequately evaluated or mitigated.

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47 Pursuant to OAR 345-024-0016, Applicant must develop proposed monitoring and mitigation plans in consultation with the Department and, as appropriate, other state agencies, local governments and tribes. Monitoring and mitigation plans are subject to Council approval.

48 Gilbert Petition at page 8.
Petitioner Gilbert raises this as Issue 12 in her petition, referencing “the significant increase in the costs of farming operations and significant changes in farming practices which are likely to force some farm families to cease operation.” Although the use of farm land is a matter within Council’s jurisdiction, there is no siting standard that governs compensation for impacted landowners. As discussed previously, economic damages for loss of business or property value, land acquisitions and purchases, and easements are matters that fall outside Council’s jurisdiction. In her petition, Ms. Gilbert did not state where she raised this issue on the record of the DPO. The ALJ’s review of the DPO comments indicates that in comments dated August 22, 2019, Ms. Gilbert asserted that landowners will receive less income with the same expenses and farmers face financial risks from having to pay for fire protection. But, as noted, these concerns about economic losses to farmers along the transmission line fall outside Council’s jurisdiction. Therefore, this issue as raised by Ms. Gilbert in her petition shall not be considered in the contested case.

e. Party Status

Ms. Gilbert’s petition for party status is GRANTED in part. As discussed previously, Ms. Gilbert has requested full party status, asserting that under the APA she has a right to be heard on all issues properly before the ALJ. However, as discussed in Section II above, Ms. Gilbert does not have a statutory or due process right to be heard on all issues. Pursuant to ORS 469.370, OAR 345-015-0016(3), and OAR 137-003-0005(8) and (9), Ms. Gilbert is granted limited party status. Her participation is limited to the properly raised issues identified and discussed above.

15. Charles Gillis

a. Interest: Mr. Gillis asserts a public interest in the outcome of the proceeding in protecting Union County from economic and social impacts of Applicant’s potential inability to satisfy the Retirement and Financial Assurance Standard.

b. DPO Comment: Mr. Gillis submitted comments on the record of the DPO on June 20, 2019.

c. Issues Properly Raised

(1) Retirement and Financial Assurance

(i) Whether Applicant has satisfied the Retirement and Financial Assurance standard, whether the financial assurances in the Proposed Order adequately address the risk of stranded assets, and whether Council must evaluate the ability of other project partners to meet financial assurance and retirement cost requirements.

Retirement of the proposed facility and financial assurance are matters within

49 Gilbert Petition at page 8.
Council’s jurisdiction. Mr. Gillis raised these concerns in his comments on the DPO and, as both the Department and Applicant acknowledge, Mr. Gillis raised the issue with sufficient specificity to allow for a response.

d. **Issues Not Properly Raised:** None.

e. **Party Status:** Petitioner Charles Gillis’s petition for party status is GRANTED in part. Mr. Gillis’s participation as a party is limited to the discrete issues related to the Retirement and Financial Assurance standard discussed above.

17. **Diane Gray**

a. **Interest:** Ms. Gray, a longtime resident of the Morgan Lake area, states an interest in the outcome of this proceeding based upon noise impacts related to the construction of the proposed facility.

b. **DPO Comment:** Ms. Gray submitted written comments on the DPO raising concerns over the noise impacts of the proposed facility on August 21, 2019.

c. **Issues Properly Raised**

(1) **Noise Control Regulations**

(i) Whether the Department erred in recommending that Council grant a variance/exception from the Oregon DEQ’s Noise Rules for the entire length of the transmission line given the extent of exceedances predicted to occur.50

Noise Control Regulations for proposed facilities are a matter within the Council’s jurisdiction. OAR 340-035-0035. As the Department acknowledges in its response, Ms. Gray was not required to raise this specific issue on the record of the DPO because it relates to a material change to a recommended action in the Proposed Order. Accordingly, this issue was properly raised for consideration in the contested case pursuant to ORS 469.350(5)(b) and OAR 345-015-0016(3).

(ii) Whether Applicant’s methodology to assess baseline noise levels (described in the Proposed Order at pp. 635-638) reflect reasonable baseline noise estimates for residents of the Morgan Lake area.

In commenting on the DPO, Ms. Gray raised several concerns regarding Applicant’s noise impact analysis. She cited OAR 340-035-0035 and OAR 345-021-0010(1)(x), questioned Applicant’s methodology and lack of noise modeling for all noise sensitive property. She also asserted that Applicant did not provide information necessary to determine compliance with the noise standard. Although Ms. Gray did not specifically reference Applicant’s modeling of baseline noise levels in the area of Morgan

50 This is essentially the same issue raised by Petitioners Stop B2H, Horst/Cavinato, and Irene Gilbert.
Lake in her comments, the Department concedes that Ms. Gray raised this issue in response to a material change to a condition of approval, the new Sound Measurement Procedure discussed at pages 635-638 in the Proposed Order. Accordingly, this issue may be considered in the contested case under ORS 469.370(5) and OAR 345-015-0016(3).

d. Issues Not Properly Raised: None.

e. Party Status: Petitioner Diane Gray’s petition for party status is GRANTED in part. Ms. Gray’s participation as a party is limited to the discrete noise control regulation issues discussed above.

18. Joe Horst and Anna Cavinato

a. Interest: Petitioners Joe Horst and Anna Cavinato have personal interest in the outcome of this proceeding as property owners affected by the proposed facility.

b. DPO Comment: Petitioners Horst and Cavinato presented oral testimony at the June 20, 2019 DPO hearing and submitted written comments on August 5, 2019.

c. Issues Properly Raised

(1) Public Services – Traffic Safety

(i) Whether Applicant adequately evaluated the potential traffic impacts and modifications needed on Hawthorne Drive and Modelaire Drive.

The impact the construction and operation of the proposed facility will have on public services, including traffic safety, is a matter within Council’s jurisdiction. OAR 345-022-0110. Petitioners raised this issue in their August 5, 2019 comments on the record of the DPO and both the Department and Applicant acknowledge that the issue was raised with sufficient specificity to allow for a response.

(2) Structural Standard

(i) Whether Applicant should be required to test water quality of private water wells to ensure that construction-related activities are not impacting water quality and quantity.

Structural standards for the proposed facility is a matter within the Council’s jurisdiction. OAR 345-022-0020. Petitioners raised this issue on the record of the DPO and, in their respective responses, both the Department and Applicant acknowledge that the issue was raised with sufficient specificity to allow for a response.

(3) Historic, Cultural and Archaeological Resources
(i) Whether National Historical Oregon Trail segments with ruts located on Petitioner’s property (Hawthorne Drive, La Grande) can be adequately protected from adverse impacts from proposed facility.

Impacts to historical resources from the proposed facility is a matter within Council’s jurisdiction. ORS 345-022-0090. Petitioners raised this issue in comments on the DPO dated August 5, 2019. Both the Department and Applicant acknowledge that the issue was raised with sufficient specificity to allow for a response.

(4) Noise Control Regulations

(i) Whether the Department erred in recommending that Council grant a variance/exception from the Oregon DEQ’s Noise Rules for the entire length of the transmission line.

Noise Control Regulations for proposed facilities are a matter within the Council’s jurisdiction. OAR 340-035-0035. As the Department acknowledges in its response, Petitioners were not required to raise this specific issue on the record of the DPO because it relates to a material change to a recommended action in the Proposed Order. Accordingly, this is a proper issue for the contested case pursuant to ORS 469.350(5)(b) and OAR 345-015-0016(3).

d. Issues Not Properly Raised

(1) Notification

(i) Whether Applicant’s communications to petitioners regarding the Mill Creek Route were misleading.

In general, matters of procedural due process, including notice requirements for public hearings and contested case proceedings, are matters within Council’s jurisdiction. OAR Chapter 345, division 15. But, Applicant’s communication with private landowners is not a matter within Council’s jurisdiction. There is no applicable siting standard in which to address Petitioners’ claim that Applicant mislead them regarding the use of the Mill Creek Route. Therefore, this issue is not proper for consideration in the contested case.

(2) Noise Control Regulations

(i) Whether the noise conditions at Monitoring Position 11 adequately represent noise conditions at Petitioner’s private residence for purposes of determining baseline ambient noise levels.

Noise Control Regulations for proposed facilities are a matter within the Council’s jurisdiction. OAR 340-035-0035. Petitioners did not raise the issue of ambient baseline noise levels or monitoring positions in their comments on the DPO. And,
although the recommendation to grant a variance/exception to the DEQ noise rules was a material change in the Proposed Order, the methodologies and monitoring points represented in ASC Exhibit X is not new information. The additional explanation regarding Applicant’s sound monitoring protocol in the Proposed Order does not represent a substantive change or material different from the DPO. Because Petitioners did not raise the adequacy of Applicant’s noise analysis on the record of the DPO, it is not a proper issue for the contested case.

e. Party Status: The petition for party status of Petitioners Horst and Cavinato is GRANTED in part. Petitioners’ participation as a party is consolidated and limited to the discrete properly raised issues discussed above.

19. Jane and Jim Howell

a. Interest: Petitioners state a personal interest in the outcome of this proceeding as affected property owners who live within one half mile of the site boundary. Petitioners express concern over noise impacts and construction-related traffic issues.

b. DPO Comment: Petitioners submitted written comments on the record of the DPO identifying multiple concerns.

c. Issues Properly Raised

(1) Site Boundary – Mapping and Notice

(i) Whether the maps provided in ASC Exhibit B, Road Classification Guide and Access Control, fail to comply with OAR 345-021-0010(1)(c)(A) because the maps do not include road names or use an appropriate scale.

(ii) Whether Council can issue a site certificate when the maps provided in the ASC are incomplete and do not accurately identify access roads in Union County as related or supporting facilities.

(iii) Whether the maps provided in the ASC were sufficient to give notice of potential impacts from the proposed facility.

It is within Council’s jurisdiction to evaluate OAR 345-021-0010(1)(c)(A) (applicant requirement to include maps of the facility and all related or supporting facility sites) and notice issues. In their comments on the DPO, Petitioners challenged the sufficiency of detail of the maps in ASC Attachment C2 and argued that these faulty maps failed to provide adequate notice to property owners of impacts from construction of the proposed facility. Both the Department and Applicant acknowledge that Petitioners raised these issues with sufficient specificity to allow for a response.

(2) Public Services – Traffic Safety
(i) Whether Applicant adequately evaluated construction-related traffic impacts of the proposed facility on public service providers and emergency vehicle access routes.

The impact the construction and operation of the proposed facility will have on public services, including traffic safety, is a matter within Council’s jurisdiction. OAR 345-022-0110. Petitioner’s August 18, 2019 comments on the DPO raised concern regarding construction-related traffic impacts in La Grande and the ability of emergency responders to respond and access the hospital and other locations. Both the Department and Applicant acknowledge that Petitioners raised this traffic safety issue with sufficient specificity to allow for a response.

d. Issue Not Properly Raised

(1) Noise Notification

(i) Whether Applicant violated OAR 345-021-0010(1)(x)(E) by not listing Petitioners as owners of noise sensitive property and not providing Petitioners notice of potential noise impacts from the proposed facility.

The information requirement under OAR 345-021-0010(1)(x)(E) (requiring applicant to include with the ASC a list of names and addresses of all owners of noise sensitive property within one mile of the proposed site boundary) is a matter within Council’s jurisdiction. Petitioners raised general concerns about notice and concerns about the adequacy of noise modeling for noise sensitive properties in their comments on the DPO, but did not raise this particular issue with sufficient specificity to allow for a response. Therefore, it is not a proper issue for consideration in the contested case.

e. Party Status: Petitioners Jane and Jim Howell’s petition for party status is GRANTED in part. Petitioners’ participation as a party is consolidated and limited to the discrete mapping and traffic safety issues discussed above.

20. Virginia and Dale Mammen

a. Interest: Petitioners, longtime residents of the southwest hills of La Grande, assert a public interest in the outcome of this proceeding in protecting their community from traffic impacts related to the construction of the proposed facility and the risk of landslides.

b. DPO Comment: Petitioners provided oral testimony at public hearings on the DPO and submitted extensive written comments during the pertinent period.

c. Issues Properly Raised

(1) Public Services

(i) Whether Applicant adequately analyzed construction-related traffic safety
concerns with the proposed use of Hawthorne Drive and Modelaire Drive in La Grande (the Hawthorne Loop) as access roads to the proposed facility.

The proposed facility’s impact on public services, including traffic safety, is a matter within Council’s jurisdiction. OAR 345-022-0110. Petitioners raised this issue on the record of the DPO in written comments dated August 10, 2019. Both the Department and Applicant acknowledge that Petitioners raised this issue with sufficient specificity.

(2) Structural Standard

(i) Whether Applicant should remove the Hawthorne Loop as a construction access route due to the steep grade and the potential landslide risks if modifications are needed to support construction-related traffic.

Structural standards for the proposed facility are within the Council’s jurisdiction. OAR 345-022-0020. Petitioners raised this issue on the record of the DPO in written comments dated August 10, 2019. Both the Department and Applicant acknowledge that Petitioners raised this issue with sufficient specificity.

d. Issues Not Properly Raised

(1) Site Boundary

(i) Whether Applicant should be required to amend the site boundary to include the Hawthorne Loop due to the likelihood these roads will need substantial modifications to allow Applicant to access the proposed facility site.

Council has the authority to evaluate whether actions or activities are considered a related or supporting facility under ORS 215.206, ORS 469.300(14) and (24), OAR 345-001-0010(51). Petitioners did not raise this particular issue on the record of the DPO. The Department added additional information in the Traffic Safety section of the Proposed Order (Section IV.M.6, pp. 549-551), but these revisions do not represent a material change to a recommended action or condition, and therefore do not give rise to the new issue exception in OAR 469.370(5) and OAR 345-015-0016(3).

e. Party Status: Petitioners Virginia and Dale Mammen’s petition for party status is GRANTED in part. Petitioners’ participation as a party is consolidated and limited to the traffic safety and structural standard issues discussed above.

21. Ann March

a. Interest: Ms. March states a public interest in the outcome of this proceeding raising concerns about the adverse impacts of the proposed facility on fish habitat in the Ladd Canyon watershed.

b. DPO Comment: Ms. March submitted written comments on the record of the
DPO on August 18, 2019.

**c. Issue Properly Raised**

(1) *Fish Passage and Fish and Wildlife Habitat*

(i) Whether Applicant’s Fish Passage Plans, including 3A and 3B designs, comply with the Fish and Wildlife Habitat standard’s Category 2 mitigation requirements and whether Applicant must revisit its plans because threatened Steelhead redds have been identified in the watershed.

Fish passages and the proposed facility’s impact on fish habitat are matters within Council’s jurisdiction. OAR 345-022-0060 and OAR 635-412-0035 (fish passage criteria). In her written comments on the DPO, Ms. March raised concerns about the impacts to anadromous steelhead and salmon and the sufficiency of Applicant’s evaluation of the fish habitat in the Ladd Creek drainage. Both the Department and Applicant acknowledge that Ms. March raised the above issue with sufficient specificity.

**d. Issue Not Properly Raised**

(1) *Fish Passage and Fish and Wildlife Habitat*

(i) Whether Applicant should include in its Fish Passage Plan and be required to replace a culvert on an unnamed stream (referenced as Crossing ID R-37969 in Exhibit BB-2, Table 1) to an appropriate size for fish passage.

As noted above, fish passages and the proposed facility’s impact on fish habitat are matters within Council’s jurisdiction. Nonetheless, Ms. March did not raise concerns about this specific stream crossing in her comments on the DPO and therefore it is not a proper issue for consideration in the contested case.

**e. Party Status:** Petitioner Anne March’s petition for party status is GRANTED in part. Ms. March’s participation in the contested case shall be consolidated with petitioner Kevin March given the commonality of properly raised issues and limited to the discrete fish passage and fish habitat issues discussed above.

22. *Kevin March*

**a. Interest:** Mr. March states an interest in the outcome of this proceeding raising concerns about the adverse impacts of the proposed facility on fish habitat in the Ladd Canyon watershed, specifically threatened species of salmon and steelhead.

**b. DPO Comment:** Mr. March submitted written comments on the record of the DPO on August 19, 2019.

**c. Issue Properly Raised**
Fish Passage and Fish and Wildlife Habitat

(i) Whether Applicant’s Fish Passage Plan (Proposed Order Attachment BB-2) is based on outdated and incorrect data and fails to comply with the Fish and Wildlife Habitat standard’s Category 2 mitigation requirements; whether Applicant must revisit its plans because threatened Steelhead redds have been identified in the Ladd Creek watershed.\(^{51}\)

As noted above, fish passages and the proposed facility’s impact on fish habitat are matters within Council’s jurisdiction. OAR 345-022-0060 and OAR 635-412-0035 (fish passage criteria). In his written comments on the DPO, Mr. March raised concerns about outdated data in Applicant’s Fish Passage Plans and the fact that threatened steelhead species have been documented in the Ladd Creek drainage. Both the Department and Applicant acknowledge that Ms. March raised the above issue with sufficient specificity.

\textbf{d. Issues Not Properly Raised: } None.

\textbf{e. Party Status: } Mr. March’s petition for party status is GRANTED in part. Mr. March’s participation is consolidated with Petitioner Anne March and limited to the specific fish passage and fish habitat issue discussed above.

23. \textit{JoAnn Marlette}

\textbf{a. Interest: } Petitioner Marlette asserts a public interest in protecting wildlife and farm and forest lands in Baker County from adverse impacts of the proposed facility.

\textbf{b. DPO Comment: } Ms. Marlette provided oral testimony on the record of the DPO on June 18, 2019 and submitted written comments on August 19, 2019.

\textbf{c. Issues Properly Raised}

(1) \textit{Historic, Cultural and Archeological Resources – Historic Oregon Trail}

(i) Whether the Proposed Order’s revisions to Historic, Cultural and Archeological Resources Condition 1 (HPMP) provides adequate mitigation for visual impacts and sufficient detail to allow for public participation.\(^{52}\)

The proposed facility’s adverse impact on historical, cultural and archeological resources is a matter within Council’s jurisdiction. OAR 345-022-0090. As the Department acknowledges, the revisions to Historic, Cultural and Archeological Resources Condition 1 constitute a material change to a condition of approval, so it was not necessary for Ms. Marlette to have raised this specific issue on the record of the DPO.

\(^{51}\) This is essentially the same issue raised by Petitioner Anne March.

\(^{52}\) This is essentially the same historical resource issue raised by Petitioner Gilbert.
ORS 469.350(5)(b); OAR 345-015-0016(3).

(2) Site Restoration – Hazardous Material Spills

(i) Whether the Proposed Order fails to provide for a public review of final monitoring plans, fails to provide long-term hazardous materials monitoring, and improperly allows exceptions that substantially increase the likelihood of a hazardous material spill in violation of the requirements of OAR 345-021-0010(w).

It is within Council’s jurisdiction to evaluate the ASC for compliance with OAR 345-021-0010(w). Ms. Marlette raised this issue in comments on the record of the DPO and both the Department and Applicant acknowledge this issue was raised with sufficient specificity to allow for a response.

d. Issue Not Properly Raised

(1) Eligibility Requirements for Participating in Contested Case

Whether the Department’s contested case procedures and eligibility criteria for participation in the contested case, ORS 469.370(5) and OAR 345-015-0016, violate due process and whether the revisions to Section II.H., Council Review Process, in the Proposed Order at page 10 represent a material change in the Proposed Order.

In her petition for party status, Ms. Marlette challenges the Department’s explanation of the Council Review Process in the Proposed Order and the requirement that a petitioner must raise an issue with sufficient specificity on the record of the DPO (OAR 345-015-0016(3)) or identify an issue representing a material difference from that described in the DPO (ORS 469.370(5). Ms. Marlette did not challenge the eligibility requirements for participation in the contested case on the record of the DPO, and the Department’s expanded explanation of the Council review process in the Proposed Order does not represent a material change in a recommended site certificate condition or a substantive change in the recommendation to approve or deny the application. Therefore, Ms. Marlette’s challenges to the contested case procedures and the Council review process are not proper issues to be considered in the contested case.

e. Party Status: Ms. Marlette’s petition for party status is GRANTED in part. Ms. Marlette’s participation is limited to the specific Historical and Cultural Resource and monitoring plan issues discussed above.

24. Michael McAllister

a. Interest: Mr. McAllister, a property owner who lives on Morgan Lake Road, within a quarter mile of the proposed Morgan Lake Alternative Route states a personal interest in the outcome of this proceeding concerned with the proposed facility’s impact to wetlands, wildlands, and wildfire risk. Mr. McAllister established qualification to represent a public interest in fisheries, forest, range, recreation, wildlife, and visual
resources of Union County.

b. DPO Comment: Mr. McAllister provided oral testimony on the record of the DPO on June 20, 2019, and written comments on June 26, 2019.

c. Issue Properly Raised

(1) Recreation Standard

(i) Whether the proposed Morgan Lake Alternative Route fails to comply with the Recreation Standard because the visual impacts of the proposed facility structures in the view shed of Morgan Lake Park are inconsistent with the objectives of the Morgan Lake Park Recreational Use and Development Plan.53

Adverse impact to scenic resources is a matter within Council’s jurisdiction. OAR 345-022-0100. Mr. McAllister raised this issue on the record of the DPO, citing the stated goals in the Morgan Lake Park Recreational Use and Development Plan. Mr. McAllister raised this issue with sufficient specificity to allow for a response.

d. Issues Not Properly Raised

(1) Route Selection – Alternatives Analysis

(i) Whether Applicant was required to include the least impactful route, the Agency Selected NEPA route, in its application to Council.

(ii) Whether Council’s failure to consider the Agency Selected NEPA Route constitutes a violation of ORS 469.370(13).54

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 impacteful 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).

53 This is essentially the same issue identified by Petitioner Lois Barry.

54 As noted previously, ORS 469.370(13) requires Council to conduct its review in a manner consistent with federal agency review to the maximum extent feasible.
(2) Soil Protection

(i) Whether the proposed Morgan Lake Alternative Route complies with the Soil Protection standard.

Soil protection is a matter within Council’s jurisdiction. Mr. McAllister referenced the Soil Protection standard in his June 23, 2019 letter to Council and discussed the characteristics of the soil along the Morgan Lake Alternative Route (with a comparison to the soil along the Agency Selected NEPA Route), but he did not provide facts or analysis to support the contention that the proposed facility will result in a significant adverse impact to soils. Accordingly, Mr. McAllister did not raise this issue with sufficient specificity to allow for a response.

(3) Protected Areas

(i) Whether the proposed Morgan Lake Alternative Route complies with the Protected Area standard.

Protected areas are within Council’s jurisdiction, but Morgan Lake Park is not identified as a Protected Area under ORS 345-022-0040. Furthermore, although Mr. McAllister referenced this standard in his comments he did not raise this issue with sufficient specificity to allow for a response.

(4) Scenic Resources

(i) Whether the proposed Morgan Lake Alternative Route complies with the Scenic Resources standard.

Scenic resources are a matter within Council’s jurisdiction. Mr. McAllister referenced visual impacts to Morgan Lake Park in his comments on the DPO, but as it relates to the Scenic Resources standard, he did not raise this concern with sufficient specificity. He did not offer facts or argument in support of the contention that the proposed facility fails to comply with the Scenic Resources standard.

(5) Fish and Wildlife Habitat

(i) Whether the proposed Morgan Lake Alternative Route complies with the Fish and Wildlife Habitat standard.

Fish and wildlife habitat are within Council’s jurisdiction. Mr. McAllister referenced this standard in his comments on the DPO in his comparison of the NEPA Route and the Morgan Lake Alternative Route. He discussed fish and wildlife species that exist along the Morgan Lake Alternative Route (e.g., Steelhead and Chinook Salmon, Great Gray Owl, White-headed Woodpecker, Bald Eagles and Ospreys), but he did not provide facts or analysis to support the contention that the proposed facility is inconsistent the Fish and Wildlife Habitat standard. Therefore, he did not raise this issue
with sufficient specificity to allow for a response.

(6) Corridor Selection Assessment

(i) Whether Applicant complied with the application information requirement for a “corridor selection assessment” under OAR 345-021-0010(b)(D).\(^5^5\)

Evaluation of the application contents specified in OAR 345-021-0010 is within Council’s jurisdiction. Mr. McAllister cited to OAR 345-021-0010(b)(D) in his petition, but did not raise this contention in his comments on the DPO. The focus of Mr. McAllister’s comment letter was to have Applicant amend its ASC to include the NEPA Route for consideration and he did not reference the ASC’s corridor selection assessment. Because this issue does not arise out of any material change in a recommendation in the Proposed Order, it is not a proper issue for the contested case. ORS 469.350(5)(b); OAR 345-015-0016(3).

e. Party Status: Petitioner Michael McAllister’s petition for party status is GRANTED in part. Mr. McAllister’s participation is limited to the properly raised issue related to the Recreation standard discussed above.

25. John Milbert

a. Interest: Mr. Milbert, a recreational fisherman, states a public interest in the outcome of this proceeding in protecting adverse impacts from the proposed facility to bull trout within the Grand Ronde watershed.

b. DPO Comment: Mr. Milbert submitted written comments on the record of the DPO on August 12, 2019.

c. Issue Properly Raised

(1) Fish and Wildlife Habitat

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\(^{55}\) OAR 345-021-0010(b)(D) discusses the requirement to include, in the application, information about the proposed facility, construction schedule and temporary disturbances of the site, including:

(D) If the proposed energy facility is a pipeline or a transmission line or has, as a related or supporting facility, a transmission line or pipeline that, by itself, is an energy facility under the definition in ORS 469.300, a corridor selection assessment explaining how Applicant selected the corridors for analysis in the application. In the assessment, Applicant must evaluate the corridor adjustments the Department has described in the project order, if any. Applicant may select any corridor for analysis in the application and may select more than one corridor. However, if Applicant selects a new corridor, then Applicant must explain why Applicant did not present the new corridor for comment at an informational meeting under OAR 345-015-0130. * * *
(i) Whether compliance with the Fish and Wildlife Habitat standard requires Applicant to analyze the proposed facility’s impact on Bull Trout, a state and federally listed threatened species, in the Grande Ronde River watershed.

Impacts to fish and wildlife habitat are within Council’s jurisdiction. Mr. Milbert raised this concern in his comments on the DPO and both the Department and Applicant acknowledge that Mr. Milbert raised this issue with sufficient specificity.

d. Issues Not Properly Raised: None.

e. Party Status: Petitioner John Milbert’s petition for party status is GRANTED in part. Mr. Milbert’s participation is limited to the discrete fish and wildlife habitat/Bull Trout issue discussed above.

26. Jennifer Miller

a. Interest: Ms. Miller states a public interest in protecting the National Historic Oregon Trail and related sites from adverse impacts of the proposed facility. She cites her membership in OCTA and her experience as a teacher and scout leader as qualifications to represent this interest.

b. DPO Comment: Ms. Miller provided oral testimony on the record of the DPO on June 26, 2019 and submitted written comments on August 21, 2019.

c. Issues Properly Raised

(1) Scenic Resources, Historic and Cultural Resources

(i) Whether Applicant adequately analyzed the feasibility of undergrounding the transmission line as mitigation for potential visual impacts at Flagstaff Hill/NHOTIC.56

Impacts to scenic resources and protected areas are within the Council’s jurisdiction. OAR 345-022-0080 and OAR 345-022-0040. Ms. Miller raised the issue of scenic values and challenged Applicant’s conclusions regarding the feasibility of undergrounding the transmission lines in the NHOTIC viewshed in her comments on the DPO. Both the Department and Applicant concede that Ms. Miller raised this issue with sufficient specificity to allow for a response.

(2) Public Services – Fire Protection

(i) Whether Council’s reliance on the Wild Fire Mitigation Plan that Applicant prepares for OPUC is adequate to address wildfire response in compliance with the Public Services standard; whether the public is entitled review and comment on the Final Wildfire Mitigation Plan.

56 This is essentially the same issue raised by Petitioner Carbiener.
Whether Applicant failed to meet the Public Services standard because the Wildfire Mitigation Plan does not include specific prevention measures such as remote cameras to detect wildfire and safety procedures during red flag conditions. 57

The impact the construction and operation of the proposed facility will have on public services, including fire protection, is a matter within Council’s jurisdiction. OAR 345-022-0110. Ms. Miller raised the issue of wildfire risk and the ability of public and private providers within the analysis area to provide fire protection on the record of the DPO. Both the Department and Applicant acknowledge that she raised the issue with sufficient specificity to allow for a response. Ms. Miller did not specifically address the public’s ability to comment on the Wildfire Mitigation Plan in her comments on the DPO but, as the Department acknowledged in its response, this issue was raised in response to a material change to a recommended action in the Proposed Order. Accordingly, this is a proper issue for the contested case pursuant to ORS 469.350(5)(b) and OAR 345-015-0016(3).

d. Issues Not Properly Raised

(1) Protected Areas, Scenic Resources, Recreation and Historic Resources

(i) Whether the methods used to determine the extent of the adverse impact of the proposed facility on scenic resources, protected area and recreation along the Oregon Trail were flawed and developed without public input. Specifically, whether Applicant erred in applying numeric values to the adverse impact and whether Applicant used unsatisfactory measurement locations/observation points in its visual impact assessment.

Whether the design, construction and operation of the proposed facility results in a significant adverse impact to protected areas, scenic resources, and/or recreation activities are matters within the Council’s jurisdiction. Similarly, whether the proposed facility will result in significant adverse impacts to the Historic Oregon Trail is an issue within the Council’s jurisdiction. In commenting on the record of the DPO, Ms. Miller objected to the conclusions of Applicant’s visual impact assessment (that the proposed transmission lines would have no significant impact). She asserted that the transmission lines should be undergrounded to protect the scenic values from the Blue Mountains Parkway and NHOTIC. But, Ms. Miller did not, in commenting on the DPO, contest Applicant’s application of numeric values to assess impacts, nor did she contest the key observation point placement or quality. Accordingly, Ms. Miller did not raise this issue with sufficient specificity and the issue will not be considered in the contested case.

e. Party Status: Ms. Miller’s petition for party status is GRANTED in part. Ms. Miller’s participation is limited to the undergrounding and wildfire prevention issues discussed above.

27. David Moyal

57 These are also essentially the same issues raised by Petitioner Carbiener in his petition.
a. **Interest:** Mr. Moyal, a 10 year resident of La Grande, states a public interest in protecting and preserving the natural beauty of the Union County as a scenic resource impacted by the proposed facility.

b. **DPO Comment:** Mr. Moyal commented on the record of the DPO on June 20, 2019.

c. **Issue Properly Raised**

   (1) *Scenic Resources*

   (i) Whether Applicant should have evaluated Union County as an important scenic resource under the Scenic Resources standard and, if so, the Department erred in concluding that the proposed facility is not likely to result in significant adverse impact to this scenic resource.

   Adverse impacts to scenic resources is a matter within Council’s jurisdiction. Mr. Moyal raised this issue in his June 20, 2019 comments on the DPO. Both the Department and Applicant acknowledge that Mr. Moyal raised this scenic resources standard issue with sufficient specificity to allow for a response.

d. **Issues Not Properly Raised:** None.

e. **Party Status:** Mr. Moyal’s petition for party status is GRANTED in part. Mr. Moyal’s participation is limited to the scenic resources standard issue discussed above.

28. **Sam Myers**

a. **Interest:** Mr. Myers, an affected landowner, states a personal interest in protecting his cropped fields (on Little Butter Creek Road, Heppner, Oregon) from the risk of fire caused by operation of the proposed facility and protecting his airstrip (within a quarter mile of the proposed transmission line) from loss of use.

b. **DPO Comment:** Mr. Myers commented orally and in writing on the record of the DPO on June 23, June 27 and August 21, 2019.

c. **Issues Properly Raised**

   (1) *Land Use*

   (i) Whether Applicant adequately analyzed the risk of wildfires from operation of the proposed transmission lines, especially during “red flag” warning weather conditions and the adverse impact the proposed transmission lines will have on Mr. Myers’s ability to use an aerial applicator on his farmland.
Land use is a matter within Council’s jurisdiction. Mr. Myers raised concerns regarding the proposed facility’s impacts to his farmland, including the increased risk of fire, frequent red flag weather warnings, and the potential loss of use of his airstrip for aerial applications. Both the Department and Applicant acknowledge that Mr. Myers raised these concerns with sufficient specificity.

(2) Noise Control Regulations

(i) Whether the Department erred in recommending that Council grant a variance/exception from the Oregon DEQ’s Noise Rules for the entire length of the transmission line.58

Noise Control Regulations for proposed facilities are a matter within the Council’s jurisdiction. OAR 340-035-0035. As discussed previously, it was not necessary for Mr. Meyers to raise this issue on the record of the DPO because it relates to a material change to a recommended action in the Proposed Order. ORS 469.350(5)(b) and OAR 345-015-0016(3).

d. Issues Not Properly Raised: None.

e. Party Status: Mr. Myers petition for party status is GRANTED in part. Mr. Myers’ participation is limited to the proposed facility impacts to his farm property and airstrip and discussed above, and the noise control regulation, variance/exception issue.

29. Tim Proesch

a. Interest: Mr. Proesch, an affected property owner, identifies a personal interest in the outcome of this proceeding related to the impacts the proposed facility will have on the use and enjoyment of his property located on Owyhee Lake Road, Nyssa, Oregon.

b. DPO Comment: Mr. Proesch provided oral testimony on the record of the DPO on June 18, 2019 and submitted written comments on August 22, 2019.

c. Issue Properly Raised

(1) Notice Requirements

(i) Whether Petitioner received adequate notice regarding the proposed transmission line.

Notice requirements for public hearings and contested case proceedings are matters within Council’s jurisdiction. OAR Chapter 345, division 15. Mr. Proesch, who purchased his property in 2018, raised concerns with the lack of notice of the proposed

58 As noted previously, several other petitioners raised this same issue in response to the Proposed Order.
facility project in his comments on the record of the DPO. Both the Department and Applicant acknowledge that he raised this issue with sufficient specificity.

d. Issues Not Properly Raised

In addition to lack of notice issue, Mr. Proesch identified other concerns about the proposed facility and its impact on his property, including loss of recreational opportunities, impacts on wildlife habitats, impacts on agriculture, the impact of EMFs on GPS guided farm equipment, the diminution of property value and the loss of future business income. Mr. Proesch’s concerns about loss of business or property value are outside Council’s jurisdiction. Mr. Proesch touched on issues within Council’s jurisdiction (land use, fish and wildlife habitat, recreation), but he did not tie his concerns to applicable siting standards nor did he offer, on the record of the DPO, facts or argument to support his position. Therefore, he did not raise these concerns with sufficient specificity to allow for a response, and the issues are not properly considered in the contested case.

e. Party Status: Mr. Proesch’s petition for party status is GRANTED in part. Mr. Proesch’s participation is limited to the lack of notice issue discussed above.

30. Louise Squire

a. Interest: Ms. Squire states a public interest in protecting the sage grouse species and habitat in the Baker and Cow Creek PACs in Baker and Malheur Counties.

b. DPO Comment: Ms. Squire submitted extensive written comments on the record of the DPO in August 2019.

c. Issues Properly Raised

(1) Fish and Wildlife Habitat – Sage Grouse

(i) Whether the Department erred in finding that the proposed facility is consistent with the sage grouse specific habitat requirements of the Greater Sage grouse Conservation Assessment and Strategy. Specifically, whether Applicant adequately analyzed sage grouse habitat connectivity in the Baker and Cow Valley Priority Areas of Conservation (PAC), the potential indirect impacts of the proposed facility on sage grouse leks, and the existing number of sage grouse in the Baker and Cow Valley PACs.59

The proposed facility’s impact on sage grouse habitat is a matter within the Council’s jurisdiction. OAR 345-022-0060 and OAR 345-022-0000(3)(g). In comments dated August 21, 2019, Ms. Squire raised concerns related to potential threats to the threatened sage grouse from the construction and operation of the proposed facility. Ms.

59 Ms. Squire is a member of Stop B2H and this is the same issue discussed previously and properly raised in Stop B2H’s petition.
Squire provided facts in support of her position that the sage grouse analysis does not adequately address the danger that the proposed facility poses to the sage grouse population and habitat. Both the Department and Applicant agree that Ms. Squire raised her concerns about the indirect impact the proposed facility would have on sage grouse populations with sufficient specificity to allow for a response.

d. **Issues Not Properly Raised**: None.

e. **Party Status**: Petitioner Louise Squire’s petition for party status is GRANTED in part. Ms. Squire’s participation as a party is limited to the discrete fish and wildlife habitat/threatened sage grouse issue raised herein.

31. **Stacia Jo Webster**

a. **Interest**: As an affected landowner, Ms. Webster states a personal interest in the outcome of this proceeding based upon the proposed facility’s potential impact on historic Oregon Trail segments and natural springs on her private property (Webster property, Union County, Oregon).

b. **DPO Comment**: Ms. Webster provided written comments on the DPO by letter received August 20, 2019.

c. **Issues Properly Raised**

   (1) **Historic, Cultural and Archeological Standard**

   (i) Whether, as part of the Historic Properties Management Plan (Historic, Cultural and Archeological Resources Condition 1), Applicant should be required to have an Oregon Trail expert, recommended by OCTA and agreed to by the Field Director, added to the Cultural Resource Team and present during preconstruction surveys to adequately identify emigrant trail locations.

   Impacts to historic and cultural resources are within Council’s jurisdiction. OAR 345-022-0090. Ms. Webster raised this issue on the record of the DPO, and both the Department and Applicant acknowledge that the issue was raised with sufficient specificity to allow a response.

   (2) **Structural Standard**

   (i) Whether Design Feature 32 of the Proposed Order Attachment G-5 (Draft Framework Blasting Plan) should require that Applicant consult with landowners beforehand and monitor and repair damage to springs for the life of the facility, rather than just during the construction phase.\(^60\)

\(^60\) This issue is substantially similar to the Structural Standard issue raised by Petitioner Ryan Browne.
Structural standards for the proposed facility are within the Council’s jurisdiction. OAR 345-022-0020. Ms. Webster raised this issue in her comments on the DPO. Both the Department and Applicant acknowledge this issue was raised with sufficient specificity to allow a response.

**d. Issues Not Properly Raised**

1. **Public Services – Fire Protection**

   (i) Whether the Fire Prevention and Suppression Plan (Attachment U-3) is adequate and whether local service providers would be able to respond to a facility-related fire.

   Fire protection is a matter within Council’s jurisdiction. OAR 345-022-0110. In her comments on the DPO, Ms. Webster asserted that local fire fighters would not be adequate to provide fire protection and additional support would be slow to reach remote locations. Ms. Webster did not, however, reference Applicant’s Fire Prevention and Suppression Plan and did not offer facts or argument to support her position that existing local resources would be unable to adequately provide fire response services. Therefore, Ms. Webster did not raise this issue with sufficient specificity in her comments on the DPO, and this issue is not properly considered in the contested case.

2. **Notification**

   (i) Whether Applicant’s communications to landowners regarding the Mill Creek Route were misleading.

   In general, matters of procedural due process, including notice requirements for public hearings and contested case proceedings, are matters within Council’s jurisdiction. OAR Chapter 345, division 15. But, Applicant’s communication with private landowners is not a matter within Council’s jurisdiction. There is no applicable siting standard in which to address this issue.

**e. Party Status:** Petitioner Stacia Webster’s petition for party status is GRANTED in part. Ms. Webster’s participation as a party is limited to the discrete Oregon Trail and Structural Standard/blasting plan issues discussed above.

**32. Daniel White**

a. **Interest:** Petitioner Daniel White, a private property owner in La Grande, states a personal interest in protecting the view of the Grand Ronde Valley from his private property.

b. **DPO Comment:** Mr. White submitted written comments on the record of the DPO on August 20, 2019.
c. Issue Properly Raised

(1) Scenic Resources

(i) Whether Applicant should have evaluated Union County as an important scenic resource under the Scenic Resources standard based on Union County Land Use Plan Goals and, if so, whether the Department erred in concluding that the proposed facility is not likely to result in significant adverse impact to this scenic resource.\(^{61}\)

Adverse impacts to scenic resources is a matter within Council’s jurisdiction. Mr. White raised concern about the proposed facility’s impact on the viewshed of Grand Ronde Valley and its inconsistency with the Union County Land Use Plan in his August 20, 2019 comments on the DPO. Both the Department and Applicant acknowledge that Mr. White raised this scenic resources standard issue with sufficient specificity to allow for a response.

d. Issues Not Properly Raised: None.

e. Party Status: Petitioner Daniel White’s petition for party status is GRANTED in part. Mr. White’s participation as a party is limited to the discrete scenic resource issue addressed above.

33. Jonathan White

a. Interest: Petitioner Jonathan White, the owner of a home on Modelaire Drive, about 500 feet from the site boundary, states a personal interest in protecting his private property from adverse impacts to his home and access roads from construction of the proposed facility.

b. DPO Comment: Mr. White provided oral and written testimony on the record of the DPO on June 20, 2019.

c. Issues Properly Raised

(1) Structural Standard

(i) Whether Applicant has adequately evaluated construction-related blasting in Union County, City of La Grande, under the Structural Standard. Specifically, whether Applicant should be required to conduct site-specific geotechnical surveys to characterize risks from slope instability and radon emissions.

Structural standards are within the Council’s jurisdiction. OAR 345-022-0020. In his comments, Mr. White raised concerns about the impacts of blasting on unstable slopes in La Grande. He asserted that Applicant had not adequately considered these

\(^{61}\) Although Mr. White’s interest is personal and not public, this is essentially the same scenic resource issue raised by Petitioner Moyal.
impacts in ASC Exhibit H. Both the Department and Applicant that Mr. White raised this issue with sufficient specificity to allow for a response. The Department also notes that Mr. White also raised the issue in response to a material change in the Proposed Order.

d. Issues Not Properly Raised: None.

e. Party Status: Petitioner Jonathan White’s petition for party status is GRANTED in part. Mr. White’s participation as a party is limited to the discrete structural standard issue addressed above.

35. John Williams

a. Interest: Mr. Williams asserts a personal interest in the outcome of this proceeding as an affected landowner with impacts to an archaeological resource on his private property.

b. DPO Comment: Mr. Williams provided oral and written testimony on the record of the DPO.

c. Issues Properly Raised

(1) Historical, Cultural and Archeological Resources

(i) Whether Applicant adequately evaluated archeological resource “Site 6B2H-MC-10” on Mr. Williams’ property, Parcel 03S37E01300.

The proposed facility’s impact on archeological resources is a matter within Council’s jurisdiction. ORS 345-022-0090. Mr. Williams raised this issue on the record of the DPO in a letter received August 22, 2019, and both the Department and Applicant acknowledge that Mr. Williams raised this issue with sufficient specificity.

d. Issue Not Properly Raised

(1) Structural Standard

(i) Whether Applicant adequately evaluated Morgan Lake area lands for potential flooding of overland access routes on Morgan Lake route west of Twin Lake and further downstream on Rock Creek.

Structural standards are within the Council’s jurisdiction. OAR 345-022-0020. In his comments, Mr. Williams described inaccuracies in the descriptions of Morgan Lake Park in ASC Exhibit T and asserted that Applicant’s evaluation may have missed fault zones, slide areas and other seismic risks. Mr. Williams’s assertions in this regard were speculative and not supported by facts. Therefore he did not raise this issue with sufficient specificity to afford an opportunity to respond.
e. **Party Status:** Petitioner John Williams’s petition for party status is GRANTED in part. Mr. Williams’s participation as a party is limited to the discrete archeological resource issue addressed above.

35. **John Winters**

a. **Interest:** Mr. Winters, an affected landowner, states an interest in the outcome of this proceeding in protecting his private property on Morgan Lake Road, La Grande, and other properties in the area from the risk of wildfire and environmental degradation related to the proposed facility.

b. **DPO Comment:** Mr. Winters provided oral testimony on the record of the DPO on June 20, 2019 and submitted written comments on August 21, 2019.

c. **Issues Properly Raised**

   (1) *Public Services – Fire Protection*

   (i) Whether Applicant adequately analyzed the risk of wildfire near La Grande in Union County and the ability of local service providers to respond to facility-related wildfires.62

   Fire protection is a matter within Council’s jurisdiction. OAR 345-022-0110. Mr. Winters commented on this issue on the record of the DPO and both the Department and Applicant acknowledge that he raised this issue with sufficient specificity to allow a response.

d. **Issues Not Properly Raised:** None.

e. **Party Status:** Petitioner John Winters’s petition for party status is GRANTED in part. Mr. Winters’s participation as a party is limited to the discrete Public Services standard, fire protection issue addressed above.

C. **Summary of Party Status Determinations**

1. **Petitioners denied standing/reason:**

<table>
<thead>
<tr>
<th>Name</th>
<th>Reason</th>
</tr>
</thead>
<tbody>
<tr>
<td>Miranda Aston</td>
<td>OAR 345-015-0016(3), lack of specificity</td>
</tr>
<tr>
<td>Janet Aston</td>
<td>OAR 345-015-0016(3), lack of specificity</td>
</tr>
<tr>
<td>Norm Cimon</td>
<td>OAR 345-015-0016(3), outside Council jurisdiction</td>
</tr>
<tr>
<td>Brian Doherty</td>
<td>OAR 345-015-0083(3), waiver of issues</td>
</tr>
<tr>
<td>Corrine Dutto</td>
<td>OAR 345-015-0083(3), waiver of issues</td>
</tr>
<tr>
<td>Jerry Hampton</td>
<td>ORS 469.370; OAR 345-015-0016(3), no DPO comment</td>
</tr>
</tbody>
</table>

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62 This is essentially the same issue raised by Petitioner Cooper.
2. Petitioners granted Limited Party Status:

Stop B2H Coalition
Eastern Oregon University/Antell
Colin Andrew
Kathryn Andrew
Susan Badger-Jones
Lois Barry
Peter Barry
Ryan Browne
Gail Carbiener/OCTA
Matt Cooper
Whit Deschner
Jim & Kay Foss
Suzanne Fouty
Susan Geer
Irene Gilbert
Charles Gillis
Diane Gray
Joe Horst & Anna Cavinato
Jane & Jim Howell
Virginia & Dale Mammen
Ann March
Kevin March
JoAnn Marlette
Michael McAllister
John Milbert
Jennifer Miller
David Moyal
Sam Myers
Tim Proesch
Louise Squire
Stacia Jo Webster
Daniel White
Jonathan White
John Williams
John Winters

IDENTIFICATION OF ISSUES

The following table identifies the issues for the contested case and the party and/or limited parties with standing to participate in the contested case on that issue. As noted previously, Applicant and ODOE are parties as to all issues.
<table>
<thead>
<tr>
<th>Subject Matter/Issue</th>
<th>Standing</th>
</tr>
</thead>
<tbody>
<tr>
<td>M-1 Site Boundary: Whether, due to substantial modifications likely necessary but not proposed, Applicant should be required to amend the site boundary to include Morgan Lake Road (La Grande, Union County) and, if so, whether the Department should provide notice and the opportunity to comment to potentially affected landowners.</td>
<td>Badger-Jones</td>
</tr>
<tr>
<td>M-2 Site Boundary: Whether Applicant failed to include roads and other areas of use and potential modification from the site boundary thereby prohibiting affected landowners in the proximity of these areas from the opportunity to request a contested case during the ASC process.</td>
<td>Gilbert</td>
</tr>
<tr>
<td>M-3 Whether the maps provided in ASC Exhibit F, Maps 50 and 51, fail to comply with OAR 345-021-0010(1)(c)(A) because they do not name major roads or use an appropriate scale; whether Council can issue a site certificate when the proposed facility site boundary does not accurately identify access roads in Union County as related or supporting facilities.</td>
<td>Cooper</td>
</tr>
<tr>
<td>M-4 Whether the maps provided in ASC Exhibit B, Road Classification Guide and Access Control, fail to comply with OAR 345-021-0010(1)(c)(A) because they do not include road names or use an appropriate scale; Whether Council can issue a site certificate when the when the maps provided in the ASC are incomplete and do not accurately identify access roads in Union County as related or supporting facilities.</td>
<td>Howell</td>
</tr>
<tr>
<td>M-5 Whether the maps provided in the ASC were sufficient to give notice of potential impacts from the proposed facility.</td>
<td>Howell</td>
</tr>
<tr>
<td>M-6 Whether the Proposed Order fails to provide for a public review of final monitoring plans, fails to provide long-term hazardous materials monitoring, and improperly allows exceptions that substantially increase the likelihood of a hazardous material spill in violation of OAR 345-021-0010(w).</td>
<td>Marlette</td>
</tr>
<tr>
<td>M-7 Notice: Whether Mr. Proesch received adequate notice regarding the proposed transmission line.</td>
<td>Proesch (personal interest)</td>
</tr>
<tr>
<td>FW Fish and Wildlife Habitat – OAR 345-022-0060</td>
<td></td>
</tr>
<tr>
<td>FW-1 Whether Applicant adequately analyzed sage grouse habitat connectivity in the Baker and Cow Valley Priority Areas of Conservation (PAC), the potential indirect impacts of the proposed facility on sage grouse leks, and the existing number of sage grouse</td>
<td>Stop B2H; Squire</td>
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<tr>
<td>FW-2</td>
<td>Whether the adverse impacts from the proposed facility to current and future fish and wildlife populations on Glass Mountain (Hill) can be adequately mitigated, given the unique and irreplaceable biological environments on Glass Mountain (Hill)</td>
</tr>
<tr>
<td>FW-3</td>
<td>Whether the Draft Noxious Weed Plan (Proposed Order Attachment P1-5) adequately ensures compliance with the weed control laws, ORS 569.390, ORS 569.400, and ORS 569.445.</td>
</tr>
<tr>
<td>FW-4</td>
<td>Whether Applicant is required to evaluate habitat impacts of species listed as threatened or endangered under the Federal Endangered Species Act.</td>
</tr>
<tr>
<td>FW-5</td>
<td>Whether Applicant should be required to mitigate impacts to riparian areas from the setback location to the outer edges of the riparian area because the riparian habitat should be rated as Category 2 at a minimum.</td>
</tr>
<tr>
<td>FW-6</td>
<td>Whether the Noxious Weed Plan provides adequate mitigation for potential loss of habitat due to noxious weeds when it appears to relieve Applicant of weed monitoring and control responsibilities after five years and allows for compensatory mitigation if weed control is unsuccessful.</td>
</tr>
<tr>
<td>FW-7</td>
<td>Whether Applicant’s Fish Passage Plans, including 3A and 3B designs, complies with the Fish and Wildlife Habitat standard’s Category 2 mitigation requirements; whether Applicant must revisit its plans because threatened Steelhead redds have been identified in the watershed.</td>
</tr>
<tr>
<td>FW-8</td>
<td>Whether compliance with the Fish and Wildlife Habitat standard requires Applicant to analyze the proposed facility’s impact on Bull Trout, a state and federally listed threatened species, in the Grande Ronde River watershed.</td>
</tr>
<tr>
<td>FW-9</td>
<td>Whether State Sensitive Bat species should be removed from the list of preconstruction surveys required by F&amp;W Condition 16</td>
</tr>
<tr>
<td>FW-10</td>
<td>Whether Department-proposed revisions to F&amp;W Condition 12 should be removed to allow specific protocol surveys to meet survey needs of other species</td>
</tr>
<tr>
<td>FW-11</td>
<td>Whether Department-proposed revisions to F&amp;W Condition 17 incorrectly assign traffic assumptions to new roads</td>
</tr>
<tr>
<td>HCA</td>
<td>Historic, Cultural, Archeological Resources – OAR 345-022-0090</td>
</tr>
<tr>
<td>HCA-1</td>
<td>Adequacy of the surveys for Oregon Trail resources on the Webster property, an impacted property along the Mill Creek Route.</td>
</tr>
<tr>
<td>HCA-2</td>
<td>Whether the revision of Historic, Cultural and Archeological Resources Condition 1 (mitigation for NRHP-Eligible Oregon Trail/NHT segments) fails to consider BLM Programmatic Agreement and adds new requirements for mitigation that are</td>
</tr>
<tr>
<td>HCA-3</td>
<td>Whether Historic, Cultural and Archeological Resources Condition 1 (HPMP) related to mitigation for crossings of Oregon Trail resources provides adequate mitigation for visual impacts and sufficient detail to allow for public participation.</td>
</tr>
<tr>
<td>HCA-4</td>
<td>Whether National Historical Oregon Trail segments with ruts located on Petitioner’s property (Hawthorne Drive, La Grande) can be adequately protected from adverse impacts from proposed facility.</td>
</tr>
<tr>
<td>HCA-5</td>
<td>Whether Applicant adequately analyzed the feasibility of undergrounding the transmission line as mitigation for potential visual impacts at Flagstaff Hill/NHOTIC.</td>
</tr>
<tr>
<td>HCA-6</td>
<td>Whether, as part of the HPMP (Historic, Cultural and Archeological Resources Condition 1), Applicant should be required to have an Oregon Trail expert, recommended by OCTA and agreed to by the Field Director, added to the Cultural Resource Team and present during preconstruction surveys to adequately identify emigrant trail locations.</td>
</tr>
<tr>
<td>HCA-7</td>
<td>Whether Applicant adequately evaluated archeological resource “Site 6B2H-MC-10” on Mr. Williams’ property, Parcel 03S37E01300.</td>
</tr>
</tbody>
</table>
| LU | Land Use – OAR 345-022-0030 | |}

| LU-1 | Whether the proposed facility would significantly disrupt public enjoyment of forest lands within Morgan Lake Park in contravention of Statewide Planning Goal 4, protecting Forest Land. | EOU/Antell |
| LU-2 | Whether Applicant erred in calculating the percentage of forest land in Umatilla and Union Counties, thereby underestimating and misrepresenting the amount of potentially impacted forestland. | K. Andrew |
| LU-3 | Whether Applicant’s analysis of forestland impacts failed to consider all lands defined as Forest Land under state law, thereby misrepresenting forest land acreage. | K. Andrew |
| LU-4 | Adequacy of the analysis of potential impacts of transmission line interference with GPS units on irrigation system. | Foss |
| LU-5 | Whether calculation of forest lands must be based on soil class or whether it is sufficient to consider acreage where forest is predominant use. | Gilbert |
| LU-6 | Whether the alternatives analysis under ORS 215.275 included all relevant farmland. | Gilbert |
| LU-7 | Whether the evaluation of proposed facility impacts to the cost of forest practices accurately determined the total acres of lost production or indirect costs. | Gilbert |
| LU-8 | The adequacy of Applicant’s evaluation of proposed facility | Gilbert |
impacts to the cost of forest management practices and whether mitigation must be provided for the entire length of the transmission line for the operational lifetime.

**LU-9**
Whether Applicant adequately analyzed the risk of wildfires from operation of the proposed transmission lines, especially during “red flag” warning weather conditions, and the impact the proposed transmission lines will have on Mr. Myers’s ability to use an aerial applicator on his farmland.

Myers (personal interest)

**LU-10**
Whether the Department-proposed revisions to the Proposed Order requiring landowner consultation pursuant to ORS 215.276 are unnecessarily specific as to high-value farmland owners.

Applicant

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**N**

**N-1**
Whether the Department erred in defining capacity in terms of kilovolts instead of megawatts.

Stop B2H

**N-2**
Whether in evaluating capacity, the Department applied balancing considerations in contravention of OAR 345-022-0000(3)(d).

Stop B2H

**N-3**
Whether Applicant demonstrated need for the proposed facility when Applicant has only shown that its needs represent 21 percent of the total capacity.

Stop B2H

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**NC**

**NC-1**
Whether the Department improperly modified/reduced the noise analysis area in Exhibit X from one mile of the proposed site boundary to ½ mile of the proposed site boundary and whether OAR 345-021-0010(1)(x)(E) requires notification to all owners of noise sensitive property within one mile of the site boundary.

Stop B2H; Cooper

**NC-2**
Whether the Department erred in recommending that Council grant a variance/exception from the Oregon DEQ’s Noise Rules, OAR 340-035-0035, and whether the variance/exception is inconsistent with ORS 467.010.

Stop B2H; Gilbert; Gray; Horst/Cavinato; Myers

**NC-3**
Whether the ODOE erred in approving the methodology used to evaluate compliance with OAR 340-035-0035.

Stop B2H

**NC-4**
Whether the mitigation/proposed site conditions adequately protect the public health, safety and welfare.

Stop B2H

**NC-5**
Whether the revisions in the Proposed Order, Section IV.Q.1, Noise Control Regulation (Methods and Assumptions for Corona Noise Analysis) are inaccurate, specifically the use of the 12:00 a.m. to 5:00 a.m. timeframe to establish ambient noise levels.

Gilbert

**NC-6**
Whether Applicant’s methodology to assess baseline noise levels (described in the Proposed Order at pp. 635-638) reflect reasonable baseline noise estimates for residents of the Morgan Lake area.

Gray

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**PS**

**PS-1**
Traffic Safety: Whether Applicant was required to evaluate traffic

Badger-Jones
<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Author(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>PS-2</td>
<td><strong>Fire Protection:</strong> Whether the site certificate should require that the public have the opportunity to review and comment on the final Wildfire Mitigation Plan; whether the Wildfire Mitigation Plan should include remote cameras to detect wildfire, safety procedures during red flag conditions, and the requirement that firefighting equipment be present on-site during construction.</td>
<td>Carbiener/OCTA; Miller</td>
</tr>
<tr>
<td>PS-3</td>
<td><strong>Fire Protection:</strong> Whether Council’s reliance on the Wildfire Mitigation Plan (Public Services Condition 7) prepared by Applicant for the Oregon Public Utility Commission (OPUC) is adequate to address wildfire response consistent with the Public Services standard.</td>
<td>Carbiener/OCTA; Miller</td>
</tr>
<tr>
<td>PS-4</td>
<td><strong>Fire Protection:</strong> Whether Applicant adequately analyzed the risk of wildfire arising out of operation of the proposed facility and the ability of local firefighting service providers to respond to fires.</td>
<td>Cooper; Winters</td>
</tr>
<tr>
<td>PS-5</td>
<td><strong>Fire Protection:</strong> Whether the Wildfire Mitigation Plan is adequately developed and includes sufficient detail to allow for public participation.</td>
<td>Gilbert</td>
</tr>
<tr>
<td>PS-6</td>
<td><strong>Traffic Safety:</strong> Whether Applicant adequately evaluated the potential traffic impacts and modifications needed on Hawthorne Drive and Modelaire Drive (Hawthorne Loop).</td>
<td>Horst/Cavinato; Mammen</td>
</tr>
<tr>
<td>PS-7</td>
<td><strong>Traffic Safety:</strong> Whether Applicant adequately evaluated construction-related traffic impacts of the proposed facility on public service providers and emergency vehicle access routes in La Grande.</td>
<td>Howell</td>
</tr>
<tr>
<td>PS-8</td>
<td><strong>Whether Department-proposed revisions to Public Services Condition 7 are redundant with Attachment U-3 and existing condition requirements.</strong></td>
<td>Applicant</td>
</tr>
</tbody>
</table>

### Recreation - OAR 345-022-0100

<table>
<thead>
<tr>
<th>R</th>
<th>Description</th>
<th>Author(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>R-1</td>
<td>Whether Applicant adequately evaluated the potential adverse impact of the proposed facility on recreational opportunities at Morgan Lake Park</td>
<td>C. Andrew</td>
</tr>
<tr>
<td>R-2</td>
<td>Whether the visual impacts of the proposed facility structures in the viewshed of Morgan Lake Park are inconsistent with the objectives of the Morgan Lake Park Recreational Use and Development Plan and should therefore be reevaluated.</td>
<td>L. Barry; McAllister</td>
</tr>
<tr>
<td>R-3</td>
<td>Whether the mitigation proposed to minimize the visual impacts of the proposed facility structures at Morgan Lake Park ($100,000 for recreational facility improvements) is insufficient because the park’s remote areas will not benefit from the proposed mitigation.</td>
<td>L. Barry; P. Barry; C. Andrew; K. Andrew; Gilbert</td>
</tr>
<tr>
<td>R-4</td>
<td>Whether Applicant’s visual impact assessment for Morgan Lake Park adequately evaluates visual impacts to the more than 160 acres of undeveloped park land and natural surroundings, as visual simulations were only provided for high-use areas.</td>
<td>L. Barry</td>
</tr>
<tr>
<td>RFA</td>
<td>Retirement and Financial Assurance - OAR 345-022-0050</td>
<td></td>
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<tr>
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</tr>
<tr>
<td>RFA-1</td>
<td>Whether the $1 bond amount adequately protects the public from facility abandonment and provides a basis for the estimated useful life of the facility.</td>
<td>Carbiener/OCTA; Gilbert</td>
</tr>
<tr>
<td>RFA-2</td>
<td>Whether, in the event of retirement of the proposed transmission line, removal of concrete footings to a depth of one foot below the surface is sufficient to restore the site to a useful, nonhazardous condition.</td>
<td>Carbiener/OCTA</td>
</tr>
<tr>
<td>RFA-3</td>
<td>Whether Applicant has satisfied the Retirement and Financial Assurance standard, whether the financial assurances in the Proposed Order adequately address the risk of stranded assets, and whether Council must evaluate the ability of other project partners to meet financial assurance and retirement cost requirements.</td>
<td>Gillis</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>SR</th>
<th>Scenic Resources and Protected Areas – OAR 345-022-0080; - 0040</th>
</tr>
</thead>
<tbody>
<tr>
<td>SR-1</td>
<td>Whether Applicant was required to evaluate impacts to Morgan Lake Park under the Scenic Resources standard because it is recognized as a scenic resource in a local plan (Morgan Lake Recreational Use and Development Plan).</td>
</tr>
<tr>
<td>SR-2</td>
<td>Whether Applicant satisfied the Scenic Resources and Protected Area standards at Flagstaff Hill/ NHOTIC and whether Applicant adequately analyzed the feasibility of undergrounding the transmission line as mitigation for potential visual impacts.</td>
</tr>
<tr>
<td>SR-3</td>
<td>Whether Applicant adequately assessed the visual impact of the proposed project in the vicinity of the NHOTIC and properly determined the impact would be “less than significant.”</td>
</tr>
<tr>
<td>SR-4</td>
<td>Whether Applicant should have evaluated Union County as an important scenic resource under the Scenic Resources standard and, if so, whether the Department erred in concluding that the proposed facility is not likely to result in significant adverse impact to this scenic resource.</td>
</tr>
</tbody>
</table>

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<thead>
<tr>
<th>SP</th>
<th>Soil Protection – OAR 345-022-0022</th>
</tr>
</thead>
<tbody>
<tr>
<td>SP-1</td>
<td>Whether the Soil Protection Standard and General Standard of Review require an evaluation of soil compaction, loss of soil structure and infiltration, and loss of stored carbon in the soil.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>SS</th>
<th>Structural Standard – OAR 345-022-0020</th>
</tr>
</thead>
<tbody>
<tr>
<td>SS-1</td>
<td>Whether Design Feature 32 of the Proposed Order Attachment G-5 (Draft Framework Blasting Plan) should be a site certificate condition to ensure repair of landowner springs from damage caused by blasting.</td>
</tr>
<tr>
<td>SS-2</td>
<td>Whether Applicant adequately analyzed the risk of flooding in</td>
</tr>
</tbody>
</table>
areas adjacent to the proposed transmission line arising out of the construction-related blasting. Whether Applicant should be required to evaluate hydrology, including more detailed and accurate mapping of existing creeks and ditches that drain into streets and private property, and core samples of sufficient variety and depth to determine the flooding risk to neighborhoods of south and west La Grande.

| SS-3 | Whether Applicant should be required to test water quality of private water wells to ensure that construction-related activities are not impacting water quality and quantity. | Horst/Cavinato |
| SS-4 | Whether Applicant should remove the Hawthorne Loop as a construction access route due to the steep grade and the potential landslide risks if modifications are needed to support construction-related traffic. | Mammen |
| SS-5 | Whether Applicant has adequately evaluated construction-related blasting in Union County, City of La Grande, under the Structural Standard. Specifically, whether Applicant should be required to conduct site-specific geotechnical surveys to characterize risks from slope instability and radon emissions. | J. White |

| TE | Threatened and Endangered Species – OAR 345-022-0072 |
| TE-1 | Whether Applicant was required to have an Oregon Department of Agriculture botanist review the ASC. | Geer |

Each issue set out in the table above is within Council’s jurisdiction as related to a standard for the siting, construction, operation and retirement of the proposed facility. All other issues raised in any petition for party status are excluded from the contested case for the reasons set forth herein.

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///
REVISED SERVICE LIST

The attached Service List is divided into two groups based on the determinations in this Order. The first group (Group 1) includes Applicant, the Department and all petitioners granted party or limited party status. Group 1 represents the Revised Service List going forward in this contested case proceeding. The second group (Group 2) consists of the petitioners denied party or limited party status. Those petitioners listed in Group 2 are hereby notified of this Order, but are otherwise removed from the Revised Service List.

The Revised Service List is subject to further revision subject to Council’s determinations on any timely appeals of this Order pursuant to OAR 345-015-0016(6), and any party or limited party’s written request to withdraw from the contested case and be removed from the service list.

IT IS SO ORDERED.

Alison Greene Webster
Presiding Administrative Law Judge
Office of Administrative Hearings

APPEAL RIGHTS

Pursuant to OAR 345-015-0016(6), the determination on requests to participate as a party or limited party, as stated in this order, is final unless the petitioner submits an appeal to the Council within seven (7) days after the date of service of the Hearing Officer’s determination.

INTERLOCUTORY APPEAL RIGHTS

Pursuant to OAR 345-015-0057(1), except as otherwise specifically provided for in the rules of this division, a party or limited party may not take an interlocutory appeal to the Council from a ruling of the Hearing Officer unless such ruling would terminate that party’s right to participate in the contested case proceeding.
On October 29, 2020, I mailed the foregoing ORDER ON PETITIONS FOR PARTY STATUS, AUTHORIZED REPRESENTATIVES AND ISSUES FOR CONTESTED CASE issued on this date in OAH Case No. 2019-ABC-02833.

Group 1 (Revised Service List going forward)

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La Grande, OR 97850

By: Electronic Mail:

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<thead>
<tr>
<th>Name</th>
<th>Email</th>
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<tbody>
<tr>
<td>Timothy C. Proesch</td>
<td><a href="mailto:tranquilhorizonscooperative@gmail.com">tranquilhorizonscooperative@gmail.com</a></td>
<td>Daniel L. White</td>
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<td><a href="mailto:jondwhite418@gmail.com">jondwhite418@gmail.com</a></td>
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<td>John Winters</td>
<td><a href="mailto:wintersnd@gmail.com">wintersnd@gmail.com</a></td>
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<tr>
<td>Daniel L. White</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Miranda Aston</td>
<td><a href="mailto:tranquilhorizonscooperative@gmail.com">tranquilhorizonscooperative@gmail.com</a></td>
<td>John H. Luciani</td>
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<td>Ralph Morter</td>
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<td>Carl Morton</td>
<td><a href="mailto:carlmorton2000@gmail.com">carlmorton2000@gmail.com</a></td>
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<tr>
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<td>Kelly Skovlin</td>
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</tr>
<tr>
<td>Greg Larkin</td>
<td><a href="mailto:larkingreg34@gmail.com">larkingreg34@gmail.com</a></td>
<td>Jeri Watson</td>
<td><a href="mailto:lotusbsilly@eoni.com">lotusbsilly@eoni.com</a></td>
</tr>
</tbody>
</table>

Group 2 (served with this Order but otherwise removed from the Service List)

Anesia N. Valihov
Hearing Coordinator
Procedural Information Concerning Hearing Officer’s Order on Petitions for Party Status, Authorized Representatives and Issues for Contested Case in the matter of the Application for Site Certificate for the Boardman to Hemingway Transmission Line

Subject: 20.10.30 - Letter_to_ALJ_Webster re Procedural Information Concerning Hearing Officer’s Order on Party Status.pdf

The attached document was electronically mailed to Senior Administrative Law Judge Alison Greene Webster today.

Jeffery R. Seeley
Legal Secretary
General Counsel Division | Natural Resources Section
Oregon Department of Justice
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)

*****CONFIDENTIALITY NOTICE*****

This e-mail may contain information that is privileged, confidential, or otherwise exempt from disclosure under applicable law. If you are not the addressee or it appears from the context or otherwise that you have received this e-mail in error, please advise me immediately by reply e-mail, keep the contents confidential, and immediately delete the message and any attachments from your system.

*******************************
DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

October 30, 2020

VIA ELECTRONIC MAIL ONLY

Alison Greene Webster
Senior Administrative Law Judge
Office of the Administrative Hearings
OED_OAH_Referral@oregon.gov

RE: Procedural Information Concerning Hearing Officer’s Order on Party Status
In the Matter of Boardman to Hemingway
OAH Case No. 2019-ABC-02833
DOJ File No. 330050-GN0260-20

Dear ALJ Webster and interested persons:

On October 29, 2020, the Hearing Officer issued Hearing Officer’s Order on Petitions for Party Status, Authorized Representatives and Issues for Contested Case in the matter of the Application for Site Certificate for the Boardman to Hemingway Transmission Line. The appeal statement provided states:

“Pursuant to OAR 345-015-0016(6), the determination on requests to participate as a party or limited party, as stated in this order, is final unless the petitioner submits an appeal to the Council within seven (7) days after the date of service of the Hearing Officer’s determination.”

The deadline to submit appeals of the Hearing Offer’s Order on Petitions for Party Status, Authorized Representatives and Issues for Contested Case to Council is Friday November 6, 2020 at 4:30 p.m. Please submit appeals to the Hearing Officer and B2H service list and after the close of the deadline, the Hearing Officer will submit appeals directly to Council.

Under OAR 345-015-0054(2), the applicant and Department have seven days to file a response to the appeals. Any responses filed should be served in the same manner as the appeals to Council, to the B2H service list and then the Hearing Officer will provide the responses to Council. The deadline for the applicant and Department to file responses to appeals is November 13, 2020 at 4:30 p.m.

Council will review appeals to the Hearing Offer’s Order on Petitions for Party Status, Authorized Representatives and Issues for Contested Case and responses to appeals at its
regularly scheduled Council meeting on November 20, 2020. For the purposes of any appeals to Council and throughout the contested case process DOJ Senior Assistant Attorney General Jesse Ratcliffe will be legal counsel to the Council.

The Department will provide additional details regarding the schedule and format for the November 20 meeting after November 9, 2020 and will serve the schedule/agenda to the B2H service list. Note that the schedule and format of this agenda item at the November 20, 2020 Council meeting will be determined by Counsel to Council and the Council, and is subject to change by vote of Council members at the meeting.

Sincerely,

/s/ Jesse D. Ratcliffe
Jesse D. Ratcliffe
Senior Assistant Attorney General
Natural Resources Section

JDR:jrs/#10510533
c:  Service list
CERTIFICATE OF SERVICE

I hereby certify that on October 30, 2020, the foregoing document was served by mailing or emailing a true copy as set forth below:

By: First Class Mail:

John C. Williams
PO Box 1384
La Grande, OR 97850

By: Electronic Mail:

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DATED this 30th day of October 2020.

/s/ Jesse D. Ratcliffe

Jesse D. Ratcliffe, OSB #043944
Senior Assistant Attorney General
Attorney for the Oregon Department of Energy

In the Matter of Boardman To Hemingway Transmission Line, OAH Case No. 2019-ABC-02833
Page 4 of 4 – CERTIFICATE OF SERVICE
DM#10510421
Mr. Anuta,

The scope of the Council’s authority on the appeal of party status and issues is ultimately for the Council to decide. The best I can do is to point you to ODOE staff’s interpretation of OAR 345-015-0016(6), as provided in staff’s Request for Clarification Regarding Contested Case Procedure, filed with the Hearing Officer on October 6, 2020: “[T]he Department interprets the appeal under OAR 345-015-0016(6) to include appeal of the hearing officer determinations on party status and issues.” (Emphasis added). This interpretation is consistent with ORS 345-015-0016(6), which authorizes appeals to the Council of the “hearing officer’s determination on a request to participate as a party or limited party,” because the requests to participate identify the issues the
person is seeking to have addressed in the contested case and the hearing officer’s ruling addresses those issue requests. Further, this interpretation, if adopted by the Council, provides an opportunity for the Council to hear appeals of the Hearing Officer’s issue determinations now, rather than waiting until the Council’s final decision on the site certificate.

Sincerely,

Jesse Ratcliffe
Sr. Assistant Attorney General | Natural Resources Section | General Counsel Division
Oregon Department of Justice
1162 Court St. NE, Salem, OR 97301-4096
503.400.2944

From: Karl Anuta <kga@integra.net>
Sent: Tuesday, November 3, 2020 12:46 PM
To: Ratcliffe Jesse D <jesse.d.ratcliffe@doj.state.or.us>; 'Irene Gilbert' <ott.irene@frontier.com>; 'Anesia N. Valihov' <oed_oah_referral@oregon.gov>; 'CORNETT Todd * ODOE' <todd.cornett@oregon.gov>; 'BENNER Janine * ODOE' <janine.benner@oregon.gov>
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Subject: RE: Procedural Information Concerning Hearing Officer’s Order on Petitions for Party Status, Authorized Representatives and Issues for Contested Case in the matter of the Application for Site Certificate for the Boardman to Hemingway Transmission Line

*CAUTION EXTERNAL EMAIL* This email originated from outside of DOJ. Treat attachments and links with caution. *CAUTION EXTERNAL EMAIL*
Ms. Ratcliffe – As you may recall, this office represents the STOP B2H Coalition. I read your email. Please clarify something for me.

The OAR that you cite - OAR 345-015-0016(6) - does indeed provide for appeals to the Council of a Hearings Officer ruling on whether a person is given party status, or limited party status, or denied party status. However, the Rule says nothing about appeals of a Hearings Officer ruling on what issues a party can, or cannot, address. It would appear then, that such a ruling cannot be appealed to the Council at this time as other forms of interlocutory appeal – other than an appeal on party vs limited party status – are forbidden by the rules.

Nonetheless, your email below suggests that parties must appeal not only the ruling on their party status, but also the separate rulings on what issues are “in” or “out” for each party or each limited party. That imposes an enormous additional burden, on mostly Pro Se appellants, in a very short time frame. It would also seem to directly contravene the “no interlocutory appeals” rule.

Please promptly advise on this issue.

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From: Ratcliffe Jesse D <jesse.d.ratcliffe@doj.state.or.us>
Subject: RE: Procedural Information Concerning Hearing Officer’s Order on Petitions for Party Status, Authorized Representatives and Issues for Contested Case in the matter of the Application for Site Certificate for the Boardman to Hemingway Transmission Line

Irene,

It has been awhile since I worked on an EFSC application that you are involved with. I hope you are well.

I apologize for the confusion. I hope this will help clear things up. (Please note that, even though you know this already, I’m required to point out that I represent only the Council in this proceeding. My response therefore reflects my role as a representative of the Council, and does not constitute legal advice to you or anyone else on the service list. If you believe you need legal advice on this matter, I suggest you consult an attorney. Also, Jeff Seeley is my assistant. Documents sent by him are sent at my direction).

The appeals are to be sent to the Hearing Officer for two reasons. First, the Hearing Officer is responsible for managing the contested case. Ordinarily, information that is to be provided to the Council gets sent to the Council Secretary, Todd Cornett, and then he is responsible for providing it to the Council. In a contested case, however, this is part of the Hearing Officer’s responsibilities. Second, it is important for the Hearing Officer to have a complete record of the contested case proceeding, including the appeal documents. However, the method of getting the appeals to the Council does not change the fact that the Council will consider and decide on the appeals.

You also note that there are differences between the process for appeal of a party status decision in a contested case, and the process for requesting reconsideration of the denial of a contested case request in an amendment proceeding. It is true that the processes are different. The deadline for submitting an appeal of a party status decision for an application for site certificate is governed by OAR 345-015-0016(6). In this case, the decision was issued on October 29th, so the deadline for submitting an appeal is, as described in my letter, Friday, November 6, at 4:30 p.m. An opportunity for ODOE staff and the applicant to respond to the appeals is provided because the party status decision is made by the independent Hearing Officer, and not ODOE staff. This opportunity is not unusual. It is typical of appeals in contested case processes and in court proceedings. This is also the way that appeals of party status decisions were handled in the South Dunes Power Plant contested case, for example.

Finally, the appeal should contain your argument as to why you believe the Hearing Officer’s decision on your party status or issue request is incorrect. For example, if the Hearing Officer decided that an issue was being denied because it was not raised with sufficient specificity, the appeal should explain why you believe that it was raised with sufficient specificity. This is both consistent with OAR 345-015-0016(6) and with the way that prior appeals of Hearing Officers’ party status decisions have been handled.

Sincerely,

Jesse Ratcliffe
Sr. Assistant Attorney General | Natural Resources Section | General Counsel Division
Oregon Department of Justice
1162 Court St. NE, Salem, OR 97301-4096
503.400.2944
Janine and Todd:

Please see that council is provided a copy of this email. I hope they will provide some direction regarding what is being required since the rules and statutes place this process under their authority.

Jeffery Seeley:

I am very confused. In the past, requests for appeal to the council were submitted directly to the council, not to the ALJ. The OAR referenced does not apply to appeals to the council. OAR 345-0150016(6) applies to appeals to council. Those requests are to be submitted directly to the council. In addition, there was no opportunity for argument from the department or applicant. It was purely an argument made to the council directly and in person. Can you tell me why this...
procedure is being used which is not consistent with past practices? I have filed appeals for reconsideration previously and it has never been done this way. Appears strange to me to have these go through the ALJ since it is entirely a Council decision according to any statutes or rules I am able to find and the hearings officer has never been involved with appeals to the council, receiving the requests, nor was it handled in a formal process such as you are describing. The only requirement was a line or two stating that the person wanted to have an appeal to the council regarding the decision which was sent to the council. Please explain. This procedure appears to start requiring individuals to include their arguments with their requests and since all requests are to be heard by council it does not seem appropriate to make such a requirement given the 7 day appeal period which is being used. Why is this change being made? The rules regarding motions on the contested case were never before applied to appeals to council. What exactly is being expected other than a person saying they want council review of the determination which is what I have been told was necessary in past appeals?

On Friday, October 30, 2020, 05:25:55 PM PDT, Seeley Jeffery <jeff.seeley@doj.state.or.us> wrote:

The attached document was electronically mailed to Senior Administrative Law Judge Alison Greene Webster today.

Jeffery R. Seeley
Legal Secretary
General Counsel Division | Natural Resources Section
Oregon Department of Justice
1162 Court Street NE, Salem, OR 97301-4096
Phone: (503) 947-4590 Fax: (503) 378-3784

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)

*****CONFIDENTIALITY NOTICE*****

This e-mail may contain information that is privileged, confidential, or otherwise exempt from disclosure under applicable law. If you are not the addressee or it appears from the context or otherwise that you have received this e-mail in error, please advise me immediately by reply e-mail, keep the contents confidential, and immediately delete the message and any attachments from your system.
To: Oregon Energy Siting Council

From: Sarah Esterson, Senior Policy Advisor

Date: November 16, 2020

Subject: Agenda Item G (Hearing/Action Item): Boardman to Hemingway Transmission Line Project, Council Review of Appeals on Hearing Officer Order on Party Status, Authorized Representatives and Issues for Contested Case for the November 19-20, 2020 EFSC Meeting

Attachments: Attachments A and B: (See staff report dated November 6, 2020) Attachment C: Appellant/Party Appeals Attachment D: Appellant/Party Responses to Appeals

SUMMARY
The Oregon Department of Energy (Department) provides a supplement to the November 6, 2020 staff report including Attachment C Appellant/Party Appeals, as provided by the Hearing Officer on November 9, 2020 and responses to appeals, as filed by Idaho Power Company (Applicant) and the Department.

BACKGROUND
The Hearing Officer issued her Order on Petitions for Party Status, Authorized Representatives and Issues for Contested Case (Order on Party Status) on October 29, 2020, granting limited party status to 35 petitioners and denying limited or full party status to the other 18 petitioners; the order identifies 70 properly raised contested case issues, and denies 47 issues. The Order on Party Status notified petitioners of their right to appeal the Hearing Officer’s determination, pursuant to OAR 345-015-0016(6) and OAR 345-015-0057(1), within seven days, or by November 6, 2020. On November 9, 2020, Hearing Officer issued a Notice to Council of Appeals Pursuant to OAR 345-015-0016(6) and Corrected Table of Identified Issues (Notice to Council) identifying and including appeals filed by 27 petitioners (provided as Attachment C).

The Department and Applicant filed responses, consistent with OAR 345-015-0054(2), on November 13, 2020 (provided as Attachment D).
BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF OREGON
for the
OREGON DEPARTMENT OF ENERGY

IN THE MATTER OF:

THE APPLICATION FOR SITE CERTIFICATE FOR THE BOARDMAN TO HEMINGWAY TRANSMISSION LINE

) NOTICE TO COUNCIL OF APPEALS ) NOTICE TO COUNCIL OF APPEALS ) PURSUANT TO OAR 345-015-0016(6)
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Michael McAllister  
Sam Myers  
Tim Proesch  
Stacia Jo Webster  
John Williams

A copy of each appeal from the Order on Party Status received by the November 6, 2020 deadline is attached to this Notice.

Also attached to this Notice is a Corrected Table of Identified Issues and Parties with Standing on Issue (Corrected Table of Identified Issues), issued in response to Applicant’s Request for Clarification of the Interim Order or In The Alternative, Appeal.²

Alison Greene Webster  
Senior Administrative Law Judge  
Office of Administrative Hearings

² In the Order on Party Status, the ALJ inadvertently omitted from the Table of Identified Issues and Parties With Standing on Issue a properly raised issue of Applicant’s under the Public Services Standard. The Corrected Table of Identified Issues sets out the omitted issue as Issue PS-9. The ALJ issues the attached Corrected Table of Identified Issues as an errata to the Table of Identified Issues in the Order on Party Status. The issuance of the Corrected Table of Identified Issues does not renew or restart the appeal rights to the Order on Party Status pursuant to OAR 345-015-0016(6).
I. SUMMARY

On October 29, 2020 THE Administrative Law Judge (ALJ) issued an Order on Petitions for Party Status, Authorized Representatives, and Issues for Contested Case. STOP B2H Coalition (STOP) appeals certain findings and conclusions in that Order to the Energy Facility Siting Council (Council), as directed in the Order.

STOP disputes the Order’s designation of STOP as a “limited” rather than full party, and the finding that STOP did not sufficiently raise certain issues and is limited in what it can present evidence and argument on. In addition, STOP questions the ALJ’s direction to appeal (and the Council’s ability to hear) the issue limitations decisions – as it does not appear that there is a legal basis for an interlocutory appeal to the Council on anything other than the issue of Party Status.

II. FACTUAL BACKGROUND

On August 22, 2019, STOP B2H Coalition (STOP), along with several other public-interest non-profit organizations and many individuals, submitted extensive comments in response to ODOE’s Draft Proposed Order on the proposed Boardman to
Hemingway Transmission Project (B2H). As noted on the first page of those comments, STOP (and its co-signatories) “are nonprofit public interest organizations, with a strong interest in responsible energy generation and distribution, protection of public and private lands, ... preservation of cultural resources, our lands and heritage, and alignment with carbon reduction goals to enable sustainable adaptation to the affects of climate change.” STOP DPO Comment at p.1. STOP has over 700 members, and it seeks to represent the broad interests of those members through advocating on their behalf in the Contested Case process on this matter.

STOP’s comments include 90 pages of analysis of the proposed B2H project. Some broad categories discussed in those comments include the “need” standard, sufficiency of notice, noise, scenic resources, recreation resources, protected areas, geology, soils, carbo, fish habitat, wildlife habitat, endangered species, cultural resources, and fire safety. Many of these issues are inextricably intertwined. Additionally, STOP incorporated by reference comments from several of its members into its own, including comments made by Lois Barry and Susanne Fouty. See, e.g., STOP Petition for Party Status at pp.374-382, 383-391.

STOP has demonstrated a broad public interest in the outcome of this proceeding. See ODOE’s Response to Petitions for Party Status at p.69. STOP has participated fully throughout the public process to date, and seeks to continue its full participation through the Contested Case hearing. For those reasons, STOP should have been granted “full” party status in this Contested Case proceeding.

However, that was not what was done by the ALJ in the October 29, 2020 Order. Instead STOP was granted only limited party status. In fact, that is also true for every
other Petitioner. The only entities granted full party status were ODOE and the applicant Idaho Power Company (IPC).

In addition, the ALJ limited the issues on which STOP could participate. That was also inappropriate. STOP should have been allowed to participate in the Contested Case on each and all of the issues that STOP had raised, and on all other issues raised by any other party or any limited party.

III. ARGUMENT

A. STOP B2H Coalition Should be Granted Full Party Status

The ALJ chose to provide only limited party status to STOP. The Model Rules of Procedure for Contested Cases make reference to the concept of “limited” party status. However, the reference in the rules is to the ability of a party to limit their own status should they choose to do so. Those rules do not provide for such a limitation to be imposed on a party based on the request of another party (here IPC).

The Oregon Administrative Procedure Act (APA) provides that a “party has the right to respond to all issues properly before the presiding officer and present evidence and witnesses on those issues.” ORS 183.413(2)(e)(emphasis added). See also, ORS 183.417(1) (same). Those statutes control this proceeding. Those statutes do not provide a basis for limiting a party’s status, when that party meets the test for full party status. Those statutes create and confirm a due process right on the part of STOP (and others) to participate on “all issue” – not just on certain issues.

The ALJ called the eligibility requirements under ORS 469.370, OAR 345-015-0016(3), and OAR 137-003-005 “strict.” Order at p.10. These requirements are jurisdictional, but once met – which STOP clearly did – these requirements do not
provide a basis for forcing a petitioner to only be a limited rather than a full party. Both the letter and the spirit of the APA is intended to foster broad public participation in these fundamentally public processes. Once a party has satisfied the jurisdictional requirements, they must be allowed to participate on all issues. See, e.g., ORS 183.413(2)(e); ORS 183.417(1).

The requirements under ORS 469.370, OAR 345-015-0016(3), and OAR 137-003-005 merely amount to what is ordinarily required to satisfy the basic notion of "exhaustion" under general principles of administrative law. In other words, a party must show that they timely raised at least one legitimate issue - in order to participate in the Contested Case. There is no dispute that STOP has done that. The ALJ’s conclusion that these requirements somehow authorize forcibly limiting a parties participation to only certain issues contravenes both the express language of the APA and also the spirit or intent of the APA.

Moreover, while the ALJ made passing reference to OAR 137-003-0005(7) – which are the criteria for participation as a party - it does not appear as though the factors in that regulation were applied explicitly to STOP. See Order at p.6. The OAR 137-003-0005(7) factors are:

(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; [and,]
(d) The extent to which the petitioner’s interest will be represented by existing parties
In determining STOP’s interest, the ALJ specifically noted that STOP “demonstrated a public interest in the outcome of this contested case on behalf of its members.” Order at p.18. However, the ALJ provides no further analysis on the qualifications of STOP, or the extent to which STOP’s interest will be represented by existing parties. *Id.*

These factors, if properly considered, point to a conclusion that STOP is clearly (and perhaps among the petitioners almost uniquely) qualified to participate in this proceeding as a “full” party. STOP’s members and leadership are subject-matter experts, as demonstrated in its DPO comments and Petition for Party Status. STOP’s interest in the outcome is broad and far-reaching, as it represents over 700 members. Further, STOP stands in to represent the interest of hundreds of others, including other public interest organizations such as the Greater Hells Canyon Council, so to the extent that an analysis under OAR 137-003-0005(7)(d) serves to limit (rather than outright deny) party status, this factor must weigh heavily in favor of finding STOP qualified to participate as a “full” party in this proceeding.

As a full party, STOP would be able to participate on all issues. *See,* ORS 183.413(2)(e) and ORS 183.417(1). As a limited party, STOP will be limited in what matters it can present on. That contravenes the whole point of having Coalitions like STOP who represent broad spectrums of the public. For example, being a limited party would potentially mean that STOP could not challenge or oppose on the issues that the applicant IPC has appealed on. One of those IPC appeal points seeks to remove a critical condition that the agency placed in the draft Proposed Order, that would require the applicant to survey and deal with bats. There are multiple bat species in Oregon, and there are over half a dozen that are listed as "threatened." Removal of this
proposed condition would be a major error. Yet as a limited party, STOP would potentially not be able to present evidence, or cross examine, or submit briefs on this issue. That is both unfair, and unlawful.

The fundamental problem with the ALJ’s ruling on Party Status is that it “bought into” the applicant’s theory that the applicant (or the agency defending its Proposed Order) can force a petitioner into limited party status. In reality, OAR 137-003-0005(3)(c) provides that a petition for party status shall include a “statement of whether the request is for participation as a party or a limited party, and, if as a limited party, the precise area or areas in which participation is sought.” (emphasis added). So even the Rule itself does not provide more than the prospect that a person can seek to limit their own status, by applying only for limited party status. Notably, there is nothing in that Rule that provides for other parties input on this point.

Nor is there anything in the Rule or the APA that provides authority for an ALJ or Hearings Officer to forcibly limit a party’s participation when they meet the criteria for full party status. To the contrary, the APA expressly says in several places that a party has full rights on “all issues” once admitted, and the ALJ has an obligation to try to ensure a full and fair Hearing. Limiting a party’s ability to participate on all issues produces the opposite result.

Moreover, it is telling that in this case the applicant (IPC) opposed any petitioner getting full party status (other than itself or ODOE). So here we have an applicant trying to shut down public participation in a public process. The ALJ mistakenly agreed with IPC, and limiting each and every party (other than the agency and the applicant) to limited party status.
The applicant’s argument was a transparent attempt to limit members of the public and public-interest organizations from having an ability to fully confront the issues presented in this proceeding. That is contrary to the law, and it is the opposite of the “transparency” that this Council allegedly seeks to foster.

The current situation will lead to a completely fractured process, where no party in opposition has the ability to fully confront the arguments raised by the applicant (or the defending agency). That is not how the APA Contested Case process was intended to work. Instead, under the APA a “party has the right to respond to all issues properly before the presiding officer and present evidence and witnesses on those issues.” ORS 183.413(2)(e)(emphasis added). See also, ORS 183.417(1) (same).

Given STOP’s clearly stated and undisputed public interest goals, STOP should be granted full party status so that it may properly stand up for the broad interests of the public. As a practical matter, STOP has raised at least 14 discrete issues for consideration in this Contested Case proceeding. These issues, as noted, are broad and far-reaching. Additionally, many of these issues correlate with and/or are inextricably intertwined other issues. In order to make this a fair process, and to foster rather than discourage public participation, it makes the most sense to designate Stop as a full party.

The artificial limitation on STOP’s participation by making it a limited party (only able to address certain issues) will unfairly weaken STOP’s ability to full participate and to address “all issues all properly before the presiding officer” as guaranteed by ORS 183.413(2)(e) and ORS 183.417(1). The Council should rule that STOP is a full party, and allow it to participate accordingly.
B. STOP B2H Coalition Properly Raised All It’s Listed Issues

The ALJ’s Order inappropriately limited the issues that STOP can raise.

i. Standard of Review

The Oregon APA’s requirements for issue preservation require little more than providing sufficient notice to avoid surprise on a general issue. The Oregon APA does not require commenters to use specific “magic words” to identify a specific issue. See e.g., State v. Montwheeler, 277 Or. App. 426, 433, 371 P.3d 1232 (2016) (in preserving evidentiary error, the courts “...have never held that a valid objection requires the use of magic words.”); Sunnyside Neighborhood v. Clackamas Co. Comm., 280 Or 3, 21, 569 P.2d 1063 (1977) (In making findings in a land use decision "No particular form [of findings] is required, and no magic words need be employed."); and Boldt v. Clackamas County, 107 Or. App. 619, 623, 813 P.2d 1078 (1991) (raising and preserving an issue to a land use proceeding before a local decision-maker “requires no more than fair notice to adjudicators and opponents."). See also, State v. Bennett, 265 Or. App. 448, 455, 338 P.3d 143, (2014) (In a criminal proceeding, the subjective belief needed for an officer to have probable cause to search “...need not be substantiated by ‘magic words’ in the record but can be supported by reasonable inferences.”); Spiess v. White, 172 Or. App. 36, 41, 17 P.3d 568 (2001) (“...the invocation of ‘magic words’ is not necessary to reinstate a time-essence provision” in a trust deed); and Chopp v. Miller, 264 Or 138, 141, 504 P.2d 106 (1972) (In providing causation related medical testimony, “[t]he manner in which testimony is given does not have to follow any exact form. It is not a ritual where the magic words have to be uttered.”) (emphasis added).
ii. Issues on which STOP Should be Granted Status

Each issue that STOP was denied participation on is briefly summarized in this next section. STOP has also attached a Chart that lists how and where STOP raised various issues that were in dispute. This Chart was also previously provided to the ALJ, though for purposes of Council review the key parts of the Chart have now been highlighted. The chart identifies the precise documents and page numbers where each issue was raised. STOP again incorporates that Chart here, for the Council's convenience when reviewing the sufficiency with which STOP raised each particular issue.

IPC and ODOE argued to the ALJ that STOP failed to raise several issues in its comments with sufficient specificity to allow either IPC or ODOE to identify that there was some sort of issue to be addressed. The ALJ effectively adopted the IPC arguments, despite the contrary facts shown in the record.

1. Scenic Resources

STOP is appealing the ALJ’s denial of STOP’s request for a contested case on the overarching issue of IPC basing their analysis of scenic, recreational and protected areas and IPC’s findings of “no significant adverse impact,” on an inappropriate (outdated and superseded) visual impact assessment methodology. In fact, the issue of inappropriate methodology was properly raised in STOP’s (and its incorporated) DPO comments. See, Chart at p.3 and discussion below. In other words, IPC and ODOE were properly apprised that there was a scenic impact methodology problem.

The issue was framed as follows before the ALJ:

Whether Applicant’s visual impact assessments are invalid because Applicant
used an outdated methodology (based on a 1974 USFS Handbook) to assess visual impacts on Morgan Lake Park and other areas instead of Landscape Aesthetic, Scenic Management System (SMS), published in 1995.

STOP was denied standing on this issue because the ALJ mistakenly held that STOP “did not raise the outdated methodology issue with sufficient specificity on the record of the DPO.” This is not accurate. STOP (and others, including STOP member Lois Barry) did raised concerns about visual and recreation impacts, in particular in the Morgan Lake area and about the “conjured up methodology” being applied by IPC. In those comments the issue of using an inappropriate methodology for assessing such impacts were clearly raised. Even the ALJ acknowledged that:

Stop B2H asserted that Applicant ‘conjured up many pages of a methodology’ to assess scenic resources and that Applicant’s conclusions are ‘unsupported with relevant credible date and fail to consider Oregonians’ subjective ‘opinion/evaluation’ of their scenic and recreational resource.’

ALJ Order at p.21. In short, STOP (and others) specifically called out IPC’s use of an approach or methodology that was inappropriate. See, STOP DPO Comments pp. 33-34; L. Barry DPO comments (adopted by STOP) at p. 204; and STOP Petition for Party Status at p. 360-361.

It is technically true that STOP did not use the word “outdated” in its comments. But no such “magic words” were required. See, Montwheeler, Bennett, Spiess, Boldt, et al, supra.

IPC contended that STOP “did not specifically contend that the Applicant’s methodology was outdated or that Applicant should have used the 1995 SMS methodology instead,” and therefore the comments were not sufficiently specific. In other words, IPC was arguing that because STOP did not use certain terminology or
words that referenced specific documents, the issue of improper methodology was not raised. As outlined at the start of this section, there is no legal requirement that STOP use certain “magic words” to raise an issue. Yet that is what the IPC argument – which the ALJ has effectively adopted - basically does.

STOP (and others) objected in DPO comments to IPC’s claims that surrounding a city park with eight towers supporting popping crackling transmission lines would have no significant impact on users’ recreational experience. STOP (and others) noted that IPC’s conclusions that there would be no significant impacts were not supported by credible data; they were in fact inconsistent with the relevant standards. Evaluating the experience of hikers, boaters or campers based on whether they were viewing transmission towers “head on” or “peripherally” in no way addresses the relevant impacts. IPC was, in other words, not using an appropriate methodology and its conclusions made no sense. See e.g., Barry DPO Cmts p.204 and Barry oral comments 6-20-19 (both incorporated by STOP) noting that the applicant’s conclusions were “self-serving, unsupported with relevant credible data and fail to consider Oregonians’ subjective ‘opinion/evaluation’ of their scenic and recreational resource.”

We now know that what the applicant had done was to use the outdated 1974 methodology, and claim that it was “similar” to the 1995 methodology (which it was not). IPC was aware of both the outdated (and now irrelevant) 1974 standards, and the proper 1995 standards. Commenters, however were only referenced to one set of standards. However, regardless of the details – which STOP (and others) did not know at the time of the DPO comments, but IPC did – the issue is not whether or not STOP (or others) specifically identified the methodology used as being “outdated” or not. The
question that should have been addressed was did the comments by STOP/Ms. Barry fairly raise the issue of the applicant using an inappropriate methodology for assessing the visual or scenic impacts. As outlined, STOP and Ms. Barry did raise the issue of improper choice of scenic/visual methodology – by pointing out the applicant’s conclusions were not supported by credible data, and were inconsistent with the standards that STOP knew of, and that those conclusions appeared to be based on a “conjured up methodology."

That was clearly notice to IPC that there was a methodology issue. That is all that was required under Montwheeler, Bennett, Spiess, Boldt, and the rest of the case law on issue preservation in administrative proceedings. In short, STOP should be allowed to proceed on this visual impact methodology issue in the Contested Case.

IPC’s use of obsolete methodology is now clear and obvious, and it should be a valid issue in this Contested Case proceeding. It is essential that there be a Contested Case on this issue, to determine if applicant’s findings of “no significant adverse impact” would be valid using the proper methodology - the 1995 SMS methodology. This proposed $1.2 billion-dollar project involving 300 miles of construction with potential damage from blasting and heavy equipment must be based on credible information. If Council knowingly allows the applicant to proceed with actions based on obsolete methodology, the effects of that will cascade, and there will be serious questions about the validity of many other aspects of the B2H application as well, each of which will be vulnerable to appeal.

2. Noise Notification/Noise Control Regulations – Notification of Variance/Exceptions

The ALJ Order specifies the following as issues that were properly raised by
STOP, under the heading of Noise:

(i) [a] Whether the Department improperly modified/reduced the noise analysis area in Exhibit X from one mile of the proposed site boundary to ½ mile of the proposed site boundary and [b] whether OAR 345-021-0010(1)(x)(E) requires notification to all owners of noise sensitive property within one mile of the site boundary.

STOP is pleased to see that there are four Noise issues listed as “properly raised” by STOP in the ALJ Order. **However, the way that the ALJ framed the first component of the noise issue is inaccurate.**

STOP was not challenging the “noise analysis area” change. STOP was and is challenging the ODOE attempt to improperly modify and reduce the notification area, from 1 mile to ½ mile. STOP should have also been listed as having standing on this issue under the ALJ’s first grouping of “Subject Matters/Misc Issues Under OAR 345-001-0010-345-021-0019(1).”

While they are related, STOP clearly separated the issue of changing the notification requirement for noise sensitive properties from 1 mile to ½ mile, from the rest of the “noise control” challenges. The reason STOP is adamant about the need for this separation is that STOP is contesting the improper rule modification—not just the scope of the “analysis area” as the ALJ apparently believed. When STOP commented on the DPO (pp.15-17, including Attach. 9.1), and when it Petitioned for party status (Petition PDF pp.358-39) - and also when if filed its Issue brief on 10/1/2020 (PDF pp.5-6) - STOP argued that the notification rule change in and of itself was inappropriate.

STOP’s contends that the ODOE in the DPO improperly modified and reduced the distance for noise notification from 1 mile to ½ mile. ODOE (and EFSC) cannot use a Project Order to modify an existing OAR Notice requirement. The 1-mile notice
requirement is mandated by OAR 345-021-0010(1)(x)(E). To amend or modify an adopted Rule, ODOE/EFSC (like any other agency) must follow the procedures set out in ORS 183.335 and OAR 345-001-0000(1). That was not done here. Instead, the Project Order purports to amend or modify the Notice rule, as an administrative act by the agency. That type of amendment is not lawful.

IPC agreed that STOP had properly raised this issue. See, IPC Resp. to Party Status Petitions, 9-23-20 (PDF p.91 in Attachment 1, 2019-ABC-02833).

However, the ALJ’s reframing of the first component of the issue confuses the matter. It is not a “noise analysis” area that is at issue. It is a notification area.

An additional, related “Issue Properly Raised” that STOP believes is confusingly framed by the ALJ Order is:

(iii) Whether the Department erred in approving the methodology used to evaluate compliance with OAR 340-035-0035.

It is not clear, based on the ALJ’s framing, whether the broad statement regarding methodology will cover all of STOP’s challenges to noise methodologies that we raised in STOP’s DPO comments.

The way the ALJ framed the issue could be interpreted as allowing STOP to challenge only the methodology changes which were inappropriately approved by staff. However, as stated in STOP’s DPO comments (pp.18-32, including Attachments 4.1 and 4.2) and STOP’s Petition for contested case (PDF pp.358-59 & Attachment 2, pp.367-73), even if the methodology was approved correctly, STOP still contests a number of specifics within the applied methods (e.g.: not monitoring all NSRs, monitoring point’s non-representative of NSRs, etc.) Since STOP properly raised issues surrounding noise notification/noise control regulations for the purposes of preserving
them for participation in the Contested Case process STOP should be allowed to pursue all those challenges.

3. Soil Protection Standard and General Standard of Review

The ALJ also incorrectly denied STOP standing to address the following issue:


The ALJ acknowledged that the design, construction and operation of the proposed facility and its impact to soils is a matter within the Council’s jurisdiction. OAR 345-022-0022. Order at p.22. The ALJ also acknowledged that in its DPO comments STOP fairly raised the issue of “carbon sequestration in plants and in soil…” Id. at note #28.

In other words, there is no dispute that STOP fairly raised issues surrounding “soil productivity” – both on its own, and by incorporation of STOP member, Dr. Fouty. See, STOP DPO comments (pp. 44-49) and STOP Petition (PDF p.361 & Attachment 4 pp.383-91). As a result, STOP should have been granted standing on the issue of Soil Protection under OAR 345-022-0022.

However, the ALJ mistakenly denied STOP standing on this issue. The ALJ erred by focusing on one of the reasons why STOP had said that soil impacts were important to consider: that is, because of the carbon released back into the atmosphere as a result of damaged or disturbed soils. The ALJ did not believe that the Council was required to consider climate issues resulting from soil impact, because those impact

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1 OAR 345-022-0022 states: “To issue a site certificate, the Council must find that the design, construction and operation of the facility, taking into account mitigation, are is not likely to result in a significant adverse impact to soils “including, but not limited to, erosion and chemical factors such as salt deposition from cooling towers, land application of liquid effluent, and chemical spills.” (Emphasis added.)
would ultimately be felt in the earth’s atmosphere. Order at p.23.

That misses the point, and is contrary to the Soils Standard itself. Simply because there will ultimately be atmospheric impacts does not mean that the Council can ignore impacts to soils and soil chemistry (including carbon) that the project will produce on the ground. There is no dispute that this project will have soil impacts. There will be vegetative and ground disturbing activity, soil compaction, etc. As Dr. Fouty’s comments discussed, soil productivity will be greatly affected by the project. Those impacts all fall within the soil standard.

There is no dispute that STOP timely raised concerns about these issues. Given that, STOP is entitled to address the soils issues in the Contested Case.2

4. National Historic Oregon Trail – Scenic Resources, Protected Areas, Recreation Standards and Historic, Cultural and Archaeological Resources

STOP was also denied standing to address the following issue:

(i) Whether the methods used to determine the extent of the adverse impact of the proposed facility on scenic resources, protected area and recreation along the Oregon Trail were flawed and developed without peer review or public input. Specifically, whether Applicant erred in applying numeric values to the adverse impact and whether Applicant used unsatisfactory measurement locations/observation points in its visual impact assessment.

The ALJ acknowledged that STOP did raise in its comments, concerns about how:

“…the proposed transmission line would severely compromise the scenic, historical and cultural values of the Oregon Trail. Stop B2H also challenged Applicant’s undergrounding analysis, and argued that Applicant cannot comply with OAR 345-022-

2 STOP also reminds the Council, of the Governor’s Executive Order 20-04 which directs agencies to take action related to Climate Change. Soil impacts that ultimately affect the climate need to be considered in this case.
0090(1)(a).” Order at p.23. However, the ALJ nonetheless concluded that STOP failed to state a “challenge to Applicant’s methodology” for assessing Oregon Trail impacts.

That is (again) an inappropriate – you lose, because you didn’t use the “magic words” – position. That position was mistakenly adopted by the ALJ in the Order on Issues.

It is true that the STOP comments did not include the specific phrase: “we challenge the methodology.” However, as outlined, the law does not require such magic words. In fact, as the attached Chart notes on p.5, STOP did in its DPO comments basically raise concerns about the applicants:

a. Methods to evaluate “significance” were arbitrary, not peer-reviewed or reviewed by public
b. Analysis of possibility of undergrounding of lines was inadequate
c. Scenic analysis of view from window was flawed. Inadequate analysis of views from Panorama Point, trail ruts, picture window.

See, STOP 8-22-19 DPO comments pp.78-81. STOP challenged both the applicant’s conclusions, and effectively the “methods” used to reach those erroneous conclusions, that impacts on the Oregon Trail would not be significant and/or that undergrounding of the lines would not be a better approach. STOP spent four full pages outlining how there were issues with the applicant’s conclusions, and how they were inaccurate and the analysis was inadequate.

IPC was clearly on notice that it’s methods for assessing such impacts were going to be challenged, and so was ODOE. We know that because ODOE specifically admitted in its 9-28-20 Amended Response to Petitions that when it submitted the Proposed Order, that Order “…contains additional explanation of the methodology used…” in evaluating this issue. Obviously, the agency clearly understood that STOP (and others) were raising concerns about the applicant’s methodology. Otherwise there
would be no reason to include an “additional explanation” of that methodology when moving from the Draft Proposed Order to the Proposed Order.

Simply because STOP failed to use the phrase “we challenge the methodology” used on the Oregon Trail impacts analysis does not mean the issue was not legitimately raised. STOP (and others) called into question the conclusions and the inadequacy of the underground analysis and the Oregon Trail impacts analysis. Clearly the applicant and agency understood that STOP had made a challenge to methodology used to reach those conclusions, or they would not have added “additional explanation” of that methodology in the subsequent documents. Since STOP raised these issues, STOP should be allowed to participate on the Oregon Trail issue.

IV. CONCLUSION

For the foregoing reasons, the Council should reverse the ruling by the ALJ that STOP B2H Coalition is merely a “limited party.” STOP should instead be designated as a full “party.” To do otherwise will violate the APA, and STOP’s due process right protected by the APA.

In addition, the Council should find that STOP B2H Coalition adequately raised each of four described issues sufficiently to preserve them for resolution in this Contested Case proceeding.

Respectfully Submitted,

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Attorneys for STOP B2H Coalition
## Stop B2H Coalition Issues

As referenced in the ODOE Amended Issue List 9-28-2020

and ALJ Webster’s original Issue list 9-8-20

<table>
<thead>
<tr>
<th>ODOE reference Number</th>
<th>Issue Title or sub issue title</th>
<th>ODOE determination on Issue ID</th>
<th>Hearing Officer’s ID of Issue; with HO summary</th>
<th>Issues raised by STOP, in either DPO comments 8-22-2019 or Party Petition 8-27-2020</th>
<th>Summary/Explanation of how raised</th>
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<tbody>
<tr>
<td><strong>Issue 1</strong></td>
<td><strong>Need:</strong></td>
<td><strong>YES</strong></td>
<td></td>
<td>8/22/19 DPO pp. 4-14 Petition PDF p. 354</td>
<td>Not needed</td>
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<tr>
<td></td>
<td>a. Use of KV instead of MW to measure capacity</td>
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<td>b. Use of “balancing standard” when applied to “need standard”</td>
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<td><strong>Issue 2</strong></td>
<td>c. IPC only represents 21% of partnership</td>
<td><strong>YES</strong></td>
<td></td>
<td>8/22/19 DPO pp. 4-14 Petition PDF p. 354</td>
<td>Not needed</td>
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<tr>
<td><strong>Issue 3</strong></td>
<td>Noise Notification</td>
<td><strong>NO</strong></td>
<td></td>
<td>DPO pp. 15-17, including Attach. 9.1 Petition PDF pp. 358-39</td>
<td>STOP stated very specifically in its DPO comments, as well as in the Petition (pp. 8-9) that the ODOE in the DPO improperly modified/reduced the distance for noise evaluation of the noise sensitive properties, from 1 mile to ½ mile. In comments STOP said, there is no valid basis that we can find, for EFSC to use a Project Order to modify an existing Notice requirement in an adopted Rule. EFSC has not cited any authority</td>
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<td>Issue 4</td>
<td>Noise Control Regulations:</td>
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<td>for its assertion in the Project Order that a reduction of the notice area is allowed. Instead the Order just states that a reduction is authorized. That is neither legal, nor appropriate.</td>
<td><strong>IPC agreed that this issue was properly raised.</strong></td>
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<td>1-notification of variance</td>
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<td>The 1-mile notice list is required by a Rule. To amend or modify an adopted Rule, EFSC (like any other agency) must follow the procedures set out in ORS 183.335 and OAR 345-001-0000(1). That was not done. Instead, the Project Order purports to amend or modify the Notice rule, as an administrative act by the agency. That type of amendment is not lawful.</td>
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<td>notification rule)</td>
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<td>of authority)</td>
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<td>3-Baseline methodology</td>
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<td>YES - but parts <strong>may</strong></td>
<td>#45: failure to provide notice to impacted</td>
<td>DPO pp. 18 – 32, including Attachments 4.1 and 4.2. Petition PDF pp. 358-359 &amp; Attachment 2, pp.367-73.</td>
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<td>persons re: variance/exception to DEQ noise</td>
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<td>STOP wants to confirm that</td>
<td>standard</td>
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<td>our “sub-issues” are</td>
<td>#46: challenge to EFSC’s granting of DEQ</td>
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<td>variance and exception</td>
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<td>#47: challenges to methodol-</td>
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**Note:**
- ODOE *may* have the issue identified correctly if they are broadly defined under Issue #4.
- However, given the ODOE description in their summary and given that ODOE lists only one Noise Control Regulation Issue (Issue #4), STOP is concerned that ODOE is trying to gloss over what are actually four sub-issues under Noise Control Regulations.

More specifically:
- 1-The noise noticing for the variance is different from our issue #3 above. Issue 3 above is about the rule change form 1 mi to ½ mi. The variance notification is independent of this rule change. The ALJ states this correctly.
- 2-ODOE's explanation is correct: Council cannot grant a variance or exception because it would result in unreasonable noise pollution and therefore would be inconsistent with ORS 467.010. This is a new issue and therefore was not commented on in the DPO.
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<td></td>
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<td>NO</td>
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<td>3-The Methodology has a number of components or sub-issues that will be raised in the case. ODOE correctly points to a) changes to methodology were not authorized by EFSC. However, b) if it was authorized (or were to be authorized) there are other noncompliance issues with the methodology that STOP commented on sufficiently. In DPO comments and again in the Petition’s attachment #2.</td>
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<tr>
<td>Issue 5</td>
<td>Recreation: Morgan Lake Visual Management System (VMS) or visual assessment tool used was inappropriate</td>
<td># 11: Protected Areas: potential visual impacts from facility structures</td>
<td>DPO pp. 33-34, L. Barry cmts orally 6-20-19 &amp; L. Barry DPO cmts 8-22-19 pp.204</td>
<td>STOP incorporated Barry comments. The Barry comments raised concerns about the methodology used for assessing visual impacts (particularly what perspective the analysis was from, which varies between methodologies). Barry comments raised the lack of proper data to support conclusions multiple times, and even expressly referenced at one point the “conjured up… methodology” by IPC. Barry DPO Cmts p.204.</td>
<td>ODOE recognized “Crosstalk” Response (pp.153-54) that STOP/Ms. Barry had raised a visual methodology issue. IPC also recognized in its response that there was a “Scenic Resources Methodology” issue. They and ODOE disagree with which VMS methodology should apply, but they both clearly understood that a VMS methodology issue was indeed raised.</td>
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<td># 25: Scenic Resources: methodology/system used to determine visual impact generally</td>
<td>Petition PDF pp. 360-61</td>
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<td>The STOP Petition similarly expressly stated (PDF p.360) that “In the ASC, DPO and Proposed Order, visual assessments have been based on an outdated 1974 USFS Handbook. STOP is requesting a contested case based on applicant’s use of an outdated USFS...”</td>
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<td># 26: Scenic Resources: compliance with standard/ methodology used to assess impacts from facility</td>
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<td>structures in Morgan Lake Park</td>
<td>Reference as a basis for B2H visual analysis methodology. This error invalidates Applicant's conclusions on visual impacts on Morgan Lake Park and other Protected Areas, Scenic Resources and Important Recreational Opportunities.”</td>
<td></td>
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<tr>
<td><strong>Issue 6</strong></td>
<td>Soil Protection: soil structure, organic material including carbon</td>
<td>NO</td>
<td># 33: Recreation: compliance with standard; methodology to assess impacts</td>
<td>ODOE allows standing for Dr. Fouty on this issue. STOP incorporated Dr. Fouty’s work by reference. General Standard of Review and Soil Protection standards are non-exclusive (“including but not limited to”) and therefore require an evaluation of carbon sequestration, carbon storage and carbon loss. STOP also commented in the DPO on Soil Protection, including an evaluation of ASC Exhibit I erosion factors for potentially impacted soils and describe potential impacts from soil compaction and loss of soil structure. DPO comments identify that loss of carbon sequestration potential from permanent and temporary disturbance was not evaluated in Exhibit K (Land Use) or Exhibit I (Soil Protection), but omits the analysis provided in petition.</td>
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<td></td>
<td>Climate Change</td>
<td>NO</td>
<td>Not identified.</td>
<td>ODOE states that EO-20-04 is a directive to the Department; it is not a directive that applies through the Department to an applicant. However: 1. IPC ignored EFSC regulations requiring soil protection; phrase “including, but not limited to” means that standards are expected to evolve with current research 2. IPC ignored Governor’s Executive Order 20-04 regarding greenhouse gas emissions 3. Removal of vegetation, soil compaction are long-term impacts on carbon sequestration</td>
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<tr>
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<td><strong>Issue 8</strong></td>
<td>F&amp;W Habitat: Sage Grouse</td>
<td>YES</td>
<td>#18: Compliance with sage-grouse habitat mitigation requirements</td>
<td>DPO pp. 50-77. Petition PDF pp. 361-64.</td>
<td>4. Drying of soils encourages wildfire</td>
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</table>
|                          | Scenic Resources, Protected Areas and Recreation (OAR 345-022-0080, -0040 and -0100): NHOTIC – visual | NO | # 11: Protected Areas: potential visual impacts from facility structures | 8/22/19 DPO p 78 - 81 Petition PDF pp. 364-65 | STOP raised the following issues that have significant impact to scenic, recreation, and protected areas at the NHOTIC.  
  a. Methods to evaluate “significance” were arbitrary, not peer-reviewed or reviewed by public  
  b. Analysis of possibility of undergrounding of lines was inadequate (Exhibit BB)  
  c. Scenic analysis of view from window was flawed  
  Inadequate analysis of views from Panorama Point, trail ruts, picture window.  
  STOP disagrees with the ODOE statement that: “Staff notes that the Proposed Order contains additional explanation of the methodology used as provided in the ASC, and a recommendation that the Council concur with its use that did not appear in the Draft Proposed Order, but that these changes do not constitute a material difference that would allow consideration of the issue under OAR 345-015-0016(3).” STOP does not understand, and ODOE did not explain why this “additional explanation of the methodology used as provided in the ASC” does not constitute a “material difference that would allow consideration of the issue under OAR 345-015-0016(3)” |
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<tbody>
<tr>
<td>Missing from ODOE Table</td>
<td>Alignment with Federal regulations, i.e. compliance with ORS 469.370</td>
<td>No mention</td>
<td>#52: Compliance with ORS 469.370(13); due to lack of coordination and consistency with federal requirements or NEPA process.</td>
<td>Petition PDF pp. 393 (under #10) - 395.</td>
<td>While there may be no EFSC standards that expressly address ORS 469.370 EFSC and ODOE still have to comply with that statute in evaluating (and if appropriate approving) Site Certificates. The statute expressly requires EFSC 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.”</td>
</tr>
<tr>
<td>Missing from ODOE Table</td>
<td>Rule Changes during the Contested Case process</td>
<td>No mention.</td>
<td>Objections Filed on: 9/17/2020 and 9/18/2020 (1st amended)</td>
<td>Procedural issues: EFSC made Rule changes that it represented would not apply to this proceeding, that it now claims apply to this proceeding. See motions and comments submitted on 9/17 and 9/18/2020, with transcripts of EFSC meeting and other references to procedural errors on the part of ODOE/DOJ.</td>
<td></td>
</tr>
<tr>
<td>Missing from ODOE Table</td>
<td>Process Interference/misrepresentation on part of developer</td>
<td>No mention</td>
<td>#48: Alleged misrepresentations by Applicant re: route selection (Mill Creek Route)</td>
<td>Petition PDF p. 392 &amp; Attachment 6, PDF p. 396.</td>
<td>There were misrepresentations by IPC about route selection (Mill Creek Route) that appear to be and were effective at discouraging people from participation in the process.</td>
</tr>
</tbody>
</table>
November 6, 2020

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

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

Re: Petitioner Colin Andrew Appeals Denial of Full Party Status and Issue Limitation in the Matter of ASC for B2H Transmission Line

Dear Chairman Jenkins and the Council:

Please accept my appeal of Judge Greene-Webster’s denial of my full party status in the Contested Case Request Regarding the Proposed Site Certificate for the Boardman to Hemingway Transmission Line. As stated in my August 27, October 2, 2020 letter to Judge Greene-Webster, I requested full party status. I do not wish to be limited to a narrowly defined subset, since many of the issues in this contested case are interconnected and therefore relevant to mine.

By devoting countless hours to the contested case process, we as petitioners have become qualified and educated to respond to many of the issues in this case – issues that affect us all. Does the grating of full party status to all petitioners lead to a more complex case and a longer timeframe? Quite possibly! But denying the lawful right of Oregon citizen petitioners to full party status in order to streamline the process for Idaho Power Corporation (an out-of-state for-profit monopoly) is simply wrong. As concerned citizens, we demand to be allowed full and impartial consideration of ALL our concerns about this disastrous proposed B2H project that impacts us negatively in so many ways. The fact that there are 50 citizen petitioners in this case illustrates the depth and breadth of citizen opposition to the B2H project. Idaho Power and ODOE have full party status – so why not the citizens who would be impacted? If granting full party status to us all makes the process unwieldy for Idaho Power Corporation and ODOE, then maybe this should be taken as an indication that this project is NOT in the interest of Oregon and Oregonians.

I also appeal the denial of one of the specific issues that I raised about the inadequate approach Idaho Power used to assess the visual damage of the B2H transmission towers to human experience of the natural beauty of Morgan Lake Park. This issue (Issue 1 in my letter of August 27, 2020): “As the reference for its visual assessments, the applicant fails to use the updated USFS document, “Landscape Aesthetic, Scenic Management System” by Jack Ward Thomas...[rather than the updated 1995].” “Landscape Aesthetic, Scenic Management System (SMS).” ODOE and Idaho Power Corporation have asserted that my standing on this issue be denied because I did not raise concerns with the use of the outdated VMS (1974) system in my previous August 21, 2019 comments. However, it does not matter whether I specifically referred to the 1995 SMS or
not. Idaho Power referred to it, but they did not in fact use it. This is a serious issue that I demand be given full attention.

Sincerely,

Dr. Colin Andrew
95, Oak Street
La Grande, OR 97850

CERTIFICATE OF SERVICE
On November 6, 2020, I emailed the foregoing letter to the Hearings Coordinator in the OAH Case No. 2019-ABC-02833, with copies sent as follows.

By: Mail
John C. Williams
PO Box 1384
La Grande, OR 97850

By: Electronic Mail:
David Stanish
Attorney at Law
Idaho Power Company
dstanish@idahopower.com

Lisa Rackner
Attorney at Law
Idaho Power Company
lisa@mrg-law.com

Jocelyn Pease
Idaho Power Company Attorney at Law
jocelyn@mrg-law.com

Joseph Stippel
Agency Representative
Idaho Power Company
jstippel@idahopower.com

Christopher Burford
Attorney at Law
Office of the President
November 6, 2020

Re: Petitioner Kathryn Andrew Appeals Denial of Full Party Status and Issue Limitation in the Matter of ASC for B2H Transmission Line

Copy: hearing Officer, Judge Greene-Webster

Email: energy.siting@oregon.gov; OED_OAH_REFERRAL@oregon.gov

Dear Chairman Jenkins, Judge Green-Webster and members of the Council,

In framing my appeal for full party status I refer to the Oregon state government website to identify the purpose of the EFSC process, i.e. “The Oregon Energy Facility Siting Council....helps ensure that Oregon has an adequate energy supply while protecting Oregon’s environment and public safety.” Because the B2H transmission line is not being proposed to supply energy for Oregon, it must be assumed that in this case the EFSC’s primary purpose is to “protect Oregon’s environment and public safety.” IPC created a nearly 20,000 page application to address potential impacts to Oregon’s environment and public safety. Because IPC is an investor owned for profit monopoly with no incentive to work for the public good, it must be assumed that their main motivation in this document is to achieve completion of the B2H transmission line for their shareholder’s benefit.

Citizen participants and the organization they created, STOP B2H, perform a vital function in aid of EFSC’s purpose to “protect Oregon’s environment and public safety” by combing through 1,000s of pages of documents, cross referencing proposed assessments and remediations to determine compliance with regulations and laws, best science and standard practice. Citizen parties reviewing the applicant’s profit driven document with a critical eye for addressing Oregon’s environmental and safety issues receive no compensation for their time or efforts. This fact creates severe time limits on their capacity to function in the technical contested case process, in addition to the impact of not having individual legal representation in a legal process. Proposals by the lawyers of ODOE and the applicant as well as rulings by Judge Green-Webster to restrict our participation further by limiting our standing bring this process into the realm of the ridiculous for citizens who are attempting to bring valid issues forward. A full hearing of the issues brought forward by citizen petitioners is key to an informed decision as to whether environmental and public safety issues have been or can be adequately addressed by the applicant.

The findings from citizen participant’s endeavors have been extensive, as described by you, Judge Green-Webster, in your statement regarding the “breadth and depth of the potential permissible issues”. Describing the potential issues as having “depth and breadth” speaks to the interrelated nature of identified issues. It alludes to the fact that by spending the time and effort to prepare and respond for these proceedings in the manner defined by the process, we have indeed become qualified to respond to all of the issues in this case. In studying to respond to our particular issues, we have become educated on facets of other issues. By living close to the affected area, we are qualified to respond to all of the issues – because they all affect us.
It is my hope that the EFSC identifies that the passion and degree of public involvement in this contested case is evidence of the level of impact this project has on the environment and public safety of Oregonians. Scenic, natural and historic resources in eastern Oregon are an asset to all Oregonians. Once these resources are impacted by 180’ high transmission lines, recovery would not be in our lifetime if at all. Potential fires from this line affect us all. Citizen petitioners and STOP B2H’s standing should not be limited for the convenience of the applicant, or to quicken the contested case process. If IPC is struggling unduly with the inconvenience of receiving necessary feedback regarding the impacts of the B2H project, perhaps they should consider obtaining the dubious projected energy shortfall from a project less impactful to Oregonians, perhaps from rooftop solar in their own state of Idaho? In order to maintain integrity to EFSC’s purpose of “protecting Oregon’s environment and public safety” and because of the vital nature of concerned citizen’s input and their qualifications for standing, citizen petitioners and STOP B2H should receive full party status.

As framing for appeal on Judge Webster’s ruling on the issue of “Whether noise and visual impacts of the proposed facility on Morgan Lake Park and Wallowa-Whitman National Forest is inconsistent with Statewide Land Use Planning Goal 4 (forestlands to provide for recreational opportunities)” I reference ODOE’s brochure about the EFSC. This brochure provides the following description, “The EFSC application review process has the “contested case” phase built into the timeline to ensure Oregonians have a clearly defined opportunity to raise issues about a proposed energy facility.” I have highlighted “ensure” and “raise issues” to utilize these words as a criteria for the fairness of this proceeding. In the Request for a Contested Case, we were asked to make “a plain and simple statement” about our issues. When plain and simple statements were made, we were told we were not specific enough.

As in the case of the previously described issue, Judge Webster stated that I “did not present facts or arguments to support her position with regard to Morgan Lake Park.” It was and still is my understanding that the criteria at this point in the process is to raise the issue, and that arguments regarding my issue are to be made later in the proceeding. Facts about my issue can be seen in the following DPO quote, “Morgan Lake is within two miles of La Grande and hosts a popular campground that has happy memories for generations of La Grande citizens. The loss of forest land recreational opportunities at Morgan Lake to the buzzing high voltage towers planned to transverse the park would be in direct violation of the intention of Goal #4.”. At the time of my initial letter, I did not realize that the towers would surround rather than transverse the park. This makes no difference to the issue of impact to our small precious park as they are within three blocks of paths and the lake. The applicant made many, many mistakes of fact in their original document, including misstated boundaries for Morgan Lake Park. I as a citizen participant should not be held to a higher standard than the applicant who has many resources at their disposal to create an accurate document. The fact that Judge Webster and ODOE were able to respond and rephrase my issue in their procedural documents is evidence that issue facts were clearly presented and that I fulfilled criteria for standing on this issue.

I thank you for consideration of my standing in the contested case and for consideration of the ruling on the issue of noise and visual impacts to Morgan Lake’s compliance with Goal #4.

Respectfully,

Kathryn Andrew
From: Owyhee Oasis
To: Irene Gilbert
Cc: OED_OAH_REFERRAL * OED; Seeley Jeffery; CORNETT Todd * ODOE; BENNER Janine * ODOE; dstanish@idahopower.com; lisa@mrg-law.com; jocelynm@mrq-law.com; l딩gell@idahopower.com; churford@eou.edu; TARRAEWETHER Kellen * ODOE; sam.myers84@gmail.com; susanmueller@gmail.com; deschnerwhit@yahoo.com; mcgccarb@bendbroadband.com; charlie@qillis-law.com; moyald@gmail.com; dutto@eoni.com; lmfisher99@gmail.com; ikathrynandrew@gmail.com; jerryhampton61@gmail.com; kevin_marsha@comcast.net; larkingreg34@gmail.com; cndyrela@eoni.com; stacielwebster@gmail.com; dannoe@leighdesign.biz; garymarlette@yahoo.com; dirtfarmerjohn@gmail.com; kantelli@eou.edu; ncmone@oregontrail.net; joehontl@eoni.com; mcoppenpiano@gmail.com; dmmamn1@eoni.com; onthehook1@gmail.com; marvinroadman@gmail.com; dianebray@gmail.com; owyheeoasis@gmail.com; Suzannefouy2004@gmail.com; sbadgerjones@eoni.com; wildlandmm@netscape.net; loisbarry31@gmail.com; amarch@eoni.com; candrew@eou.edu; peteberry99@yahoo.com; squirel@eoni.com; rutnut@eoni.com; amarter79@gmail.com; fujii@stop2h.org; kskovlin@gmail.com; browner@eou.edu; jondwhite418@gmail.com; d.janehowell@gmail.com; wintersnd@gmail.com; lotusbosily@eoni.com; samhartley57@gmail.com; carlmorton2000@gmail.com; bpdoherty@hughes.net; suemc@eoni.com; alicia@mrq-law.com; ikreieder@campblackdog.com; nichole.milbrath@centurylink.com; Rowe Patrick C; mike@oxbowlaw.com; kga@integra.net; ESTERSON Sarah * ODOE; Ratcliffe Jesse D; Full Kreider; Jim Kreider
Subject: Re: MANIPULATIONS INTENDED TO FRUSTRATE AND DENY PUBLIC ACCESS TO CONTESTED CASE PROCEDURES
Date: Monday, November 2, 2020 6:14:26 PM

Judge Webster and the Energy Facility Siting Council:

how is allowing the Oregon Department of Energy and Idaho Power to dictate schedules, party status, issues appropriate for contested cases, issuing conflicting information and deadlines supports the fair and equitable Contested Case Process?
I do not agree with the timeframe given or any of this for that matter.

Janet Aston

On Nov 2, 2020, at 5:58 PM, Irene Gilbert <ott.irene@frontier.com> wrote:

Judge Webster and the Energy Facility Siting Council:
Can someone explain to me how allowing the Oregon Department of Energy and Idaho Power to dictate schedules, party status, issues appropriate for contested cases, issuing conflicting information and deadlines supports the fair and equitable Contested Case Process?
So far in this process the process documents ongoing actions and efforts to deny the public the opportunity to present information regarding multiple significant damaging impacts that individuals and groups have identified which fail to meet the requirements of the statutes and rules regarding the issuance of site certificates.
Judge Webster and the Energy Facility Siting Council:

how is allowing the Oregon Department of Energy and Idaho Power to dictate schedules, party status, issues appropriate for contested cases, issuing conflicting information and deadlines supports the fair and equitable Contested Case Process?
I do not agree with the timeframe given or any of this for that matter.

Miranda Aston-Proesch
November 6, 2020

Re: Lois Barry Appeal for Full Party Status

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

Copy: OAH Hearing Officer, Judge Greene-Webster

Email: energy.siting@oregon.gov; OED_OAH_REFERRAL@oregon.gov

Dear Chairman Jenkins and the Council,

I am appealing Judge Greene-Webster’s decision to limit my participation in OAH Case No. 2019-ABC-02833 to limited party status. I have been granted limited party status on issues R-2, R-3, R-4 and SR-1.

**OAR 137-003-0005(7) in making a determination regarding status as a party or a limited party, it is required that the following be considered:**

a. Whether the person has demonstrated a personal or public interest that could reasonably be affected by the outcome of the contested case hearing

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.

I am appealing to EFSC for full party status. In addition to the four issues on which I have been granted limited party status, and my issue #1 on which I am appealing for standing, I have provided written and oral comments on several issues, “noise,” “need,” and the multiple errors in the ASC among others.

As I said in my petition for full party status, I live near Morgan Lake City Park and have visited it at least a hundred times a year for the past 45 years. My personal interest extends to preserving the natural beauty of the park for the public, all those who value it. I have participated in commenting on the B2H since the first draft EIS five years ago. As a member of the Stop B2H Coalition, I have researched Idaho Power’s ASC for the past three years. My years of teaching critical thinking qualify me to analyze documents professionally. I also depend on other coalition members’ expertise to augment my efforts.

Idaho Power is a corporation; ODOE is a government agency. STOP B2H is a coalition of committed volunteers working to present the best possible case against an army of professional lawyers and staff. We depend on each other, frequently exchanging
information. Some of us are better at researching, some at oral presentation, some at writing and editing. Because many of us are retired, age is a factor. Medical or other issues frequently require our attention elsewhere, but we depend on colleagues to fill in for us.

I have fulfilled each of the stipulations listed in OAR 137-003-0005(7). STOP B2H is, as I said, a coalition. Idaho Power and ODOE have full party status. It seems logical, then, to award STOP B2H Coalition full party status at the least. All others requesting full party status are supporters of STOP B2H. Why not award them the same privilege? Judge Greene-Webster failed to address the specific conditions of OAR 137-003-0005-(7) which each of our petitions for full party status failed to address.

If this limitation was designed to make the process more convenient, I would ask for whom? Nothing about this process has been convenient for those opposing the project. It started with Idaho Power delivering 240 lbs of applications (17,000 pages without an index) to the offices of five overworked and understaffed rural county land use planners in the summer of 2017. Comment period: 30 days. County commissioners were told “It’s a done deal.”

Close to 800 concerned individuals have followed the trajectory of this application. Unpaid volunteers have sacrificed thousands of hours endeavoring to assure that their counties’ valued lands would not be handed over to an out of state corporation without due diligence. Our interest is not in mere efficiency but in complete transparency based on equitable public participation.

Sincerely,

Lois Barry
November 5, 2020


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

Copy: Hearing Officer, Judge Greene-Webster

Email: energy.siting@oregon.gov; OED_OAH_REFERRAL@oregon.gov

Dear Chairman Jenkins and the Council,

I am appealing to the Energy Facility Siting Council to reverse Judge Greene-Webster’s denial of my petition for a contested case on the overarching issue of Idaho Power using outdated and superceded methodology as a basis for analyzing scenic, recreational and protected areas to support their conclusions of “no significant adverse impact.”

I was denied standing on this issue because I “did not raise the outdated methodology issue with sufficient specificity on the record of the DPO, it is not a proper issue to be considered in the contested case.” I did indeed comment several times on the specifics of the methodology issues which had no logical relationship to the conclusions upon which they depended. The methodology was indeed inappropriate because it was seriously outdated.

Initially I intended to list here every comment I made on Idaho Power’s application and explain how it was expressed with “sufficient specificity”: however, I am 89 years old and I have been actively fighting this battle for the past three years. I’m tired. I’ve described the methodology problem in detail: I’ve said there’s smoke and there are flames. It should be obvious there is fire.

Instead I will briefly remind you that for 25 years my profession focused on teaching critical thinking, examining the use of language to inform and to mislead. In my Comments on the ASC and the DPO I repeatedly stated that applicant’s conclusions lacked credible data. This was not a general observation. It was a specific reference to applicant’s many conclusions of “no significant impact” which were not supported by one instance of relevant evidence that any thinking person would expect to see, like interviews with local residents or surveys of users of the Morgan Lake Park. Applicant said they used the 1995 SMS which requires constituent input; they knew exactly what I was referring to.

If Applicant had actually used the 1995 SMS methodology, they would have responded to my comment with “See surveys 1, 2 and 3 containing interviews with local residents and visitors to Morgan Lake City Park.” In fact, the ODOE Crosswalk of comments and
Idaho Power responses includes a 25 page response to many of the issues raised by me and by STOP B2H. It is telling that in 25 pages, applicant was unable to respond with any specificity to my charges of “lack of credible data.” Idaho Power’s “lacks sufficient specificity” restated equals “we don’t know what you mean.” Since applicant said they used the 1995 methodology but never did, applicant knows exactly what “lacks relevant credible data” means.

It doesn’t matter whether I specifically referred to the 1995 SMS or not. Idaho Power referred to it, said they used it, but they did not. I used the specific word “charade” meaning “pretense, sham and fake.” This was applicant’s smoke and mirrors. They hoped to fool ODOE and the public. How else could one propose to surround a popular natural city park with 150’ transmission towers carrying buzzing, popping 550 kV power lines and insist that no one would notice or even care?

I referred to “obfuscating methodology” meaning “confusing, perplexing, muddling.” Idaho Power did its best to confuse the reader by citing 1974 methodology based on viewers standing in overlooks or at visitor centers to support their conclusions. The 1995 methodology assumes visitors are actually on the ground, in the park, experiencing the natural surroundings. That is why applicant did not and could not provide “credible data” to support their conclusions which, to an educated reader, literally made no sense.

I read the baseline conditions outlined in the Application, and assumed they were based on the 1995 SMS because applicant said they were. Recreation Exhibit Attachment R-1 “Visual Resources Impact Assessment Methodology .8 References” lists 96 documents. Surely one is not expected to read them to check on applicant’s veracity? Nevertheless, I commented that applicant’s conclusions were not supported by credible data; they were in fact inappropriate and absurd. Evaluating the experience of hikers, boaters or campers based on whether they were viewing transmission towers from above or below or for how long was ridiculously inappropriate.

Viewer Groups and Characteristics. Viewer groups associated with each resource were evaluated to understand certain characteristics that inform the extent to which potential changes in landscape character and quality would be perceived (perception of change). This assessment focuses on understanding characteristics that describe the relationship of the observer to the potential impact and the landscape context of that relationship. Viewer characteristics assessed included viewer location (distance), viewer geometry (superior, inferior, or at grade), and viewer duration or exposure (BLM 1986). The landscape context included consideration of landscape type—i.e., focal or panoramic. (ASC R-6 10 of 570)

That is like evaluating the taste of a potato salad based on whether you’re sitting at the picnic table or standing up looking down on it. Since Idaho Power pretended to be using the 1995 SMS baseline conditions for its analysis, I had no reason to assume they were using outdated criteria. But I did know that conclusions based on methodology using such baseline conditions were inappropriate because they made no sense.
As I was researching the terms other agencies used for “scenic,” the first document I found outlined baseline criteria for exactly the information my comments said had been missing in applicant’s methodology:

... some of the most useful information for scenery management concerns 1) how constituents use an area and 2) what visitors and other constituents feel, value, desire, prefer, and expect to encounter in terms of landscape character and scenic integrity. (SMS p. 66 of 104)

This was the 1995 SMS described by Idaho Power as being “similar” to and “essentially the same” as the 1974 (VMS). That was a calculated deception which Idaho Power had perpetrated on ODOE and me, and the public. I had commented that applicant’s conclusions were “self-serving, unsupported with relevant credible date and fail to consider Oregonians’ subjective ‘opinion/evaluation’ of their scenic and recreational resource.” That was precisely the case. The methodology was wrong because it was outdated and entirely inappropriate.

The record shows that I mentioned applicant’s failure to mention the effect of the project on the people who would use the inappropriately analyzed areas several times. For example:

Admittedly “viewer perception” and “enjoyment” are subjective. Although the view of 130’ or higher support towers for a 550kV transmission line dominating the skyline may be enjoyable to select Idaho Power staff and share holders, it will be devastating to La Grande and Union County residents who, for generations, have enjoyed recreation at this exceptional lake at the top of a mountain road -- a wildlife and nature preserve far from the sound of the interstate -- with a serene camping, fishing and picnicking experience in a natural setting unparalleled by any other recreation area in the county.

Applicant acknowledged in Exhibits R3 and T4 that the USFS 1974 Visual Management System (VMS) had been superceded by USFS 1995 Landscape Aesthetics, a Handbook for Scenery Management, Agriculture Handbook Number 701 (SMS). Nevertheless, they chose to use the obsolete 1974 (VMS) methodology as a basis for findings of “no significant impact” in their analysis of scenic, recreation and protected areas including Morgan Lake City Park.

Viewer groups associated with each resource were evaluated to understand certain characteristics that inform the extent to which potential changes in landscape character and quality would be perceived (perception of change). This assessment assumes a high sensitivity exists among all viewer groups based on the identification of the resource as important in a planning document. Therefore, this assessment instead focuses on understanding characteristics that describe the relationship of the observer to the potential impact, and the landscape context of that relationship. Viewer characteristics assessed included viewer location (distance), viewer geometry (superior, inferior, or at grade), and viewer duration or exposure (BLM 1986). The landscape context included consideration of landscape type – i.e., focal or panoramic. Observer characteristic are
summarized below: •Viewer Location: The degree of perceived visual contrast and scale dominance of an object is influenced by its distance from the observer. (ASC R-1-11)

Note the use of “therefore” and “instead” where the word “however” is appropriate. That is analogous to saying “The 1970 building code (2x4’s for residential framing) has been superceded by the ‘similar’ 2007 building code (2x6 residential framing required for energy efficiency). “Therefore 2x4’s will be used in current construction.” This is not a therefore situation; it is a however situation which then requires a valid reason for the reverse decision.

Idaho Power characterized the 1974 VMS and the 1995 SMS methodologies as “similar” and “essentially the same.” However, the SMS contains a new 14 page chapter on Constituent Analysis which is the primary focus of the new constituent based methodology. Obviously, the two documents differ markedly. The 1974 VMS methodology assumes that people, standing at designated overlooks, are viewing areas from a distance; it thus measures distance and angle from the site and duration of viewing. The 1995 SMS methodology assumes people are experiencing the areas by camping and hiking; it thus focuses on gathering constituent input about their experiences:

... some of the most useful information for scenery management concerns 1) how constituents use an area and 2) what visitors and other constituents feel, value, desire, prefer, and expect to encounter in terms of landscape character and scenic integrity. (SMS p. 66 of 104)

Visitors would be the prime source of such information — both verbal and behavioral -- although some information might also be obtained from studies focusing primarily on the significance of the Forest's scenic and aesthetic resources to the lives of people such as members of their local communities, or elements defining the nature of "sense of place" in which they live. (SMS p. 67 of 104)

A constituent assessment should involve a cooperative effort among social scientists, planners, landscape architects, and forest land managers in determining the kinds of scenery management information to be obtained from or about constituents. Such a partnership also serves to insure that issues perceived important to each cooperating group will be incorporated within the overall effort. (SMS 68 of 104)

ODOE and EFSC have been informed of applicant’s duplicity. I provided oral and written comments on the DPO, and explicit references to the 1995 SMS document in my written comments requesting standing on this issue. The information in the proposed order presides and should be referenced appropriately in any petitions for contested case party status. In the Proposed Order, the outdated 1974 VMS is cited 5 times; there are no references to the 1995 SMS and no evidence of efforts to obtain constituent input.

Idaho Power’s ASC and the DPO (also its IRPs currently before the OPUC) contain multiple errors and omissions. This slipshod application appears to be based on the assumption that regulatory agencies will provide only cursory oversight.
Applicant’s use of obsolete methodology is now public record. It is essential to accept a contested case on this issue to determine if applicant’s findings of “no significant adverse impact” would be valid using the requisite 1995 SMS methodology. Otherwise, ODOE and EFSC will be on record as complicit with applicant’s calculated deception.

A $1.2 billion dollar project involving 300 miles of construction with potential damage from blasting and heavy equipment must be based on credible information. If applicant is allowed to proceed with actions based on inappropriate methodology, there will be serious questions about the validity of many other aspects of the B2H application as well.


2 Pages R-126 –132 (130-136 of 570)

3 The USFS manages scenic resources through the Visual Management System established in The National Forest Management, Volume 2 Agricultural Handbook 462 (1974) to inventory, classify, and manage lands for visual resource values. In 1995, the USFS visual resource management guidelines and monitoring techniques evolved into the Scenery Management System (SMS) as described in Landscape Aesthetics: A Handbook for Scenic Management, Agricultural Handbook (USFS 1995). The USFS describes baseline condition in a similar manner; however baseline components include measures of scenic attractiveness and integrity, landscape visibility (i.e., distance zones), and concern level (i.e., sensitivity). (ASC R-1-8 147 of 570)

4 The USFS manages scenic resources through the Visual Management System established in The National Forest Management, Volume 2, Agricultural Handbook 462 (1974) to inventory, classify, and manage lands for visual resource values. In 1995, the USFS visual resource management guidelines and monitoring techniques evolved into the Scenery Management System (SMS) as described in Landscape Aesthetics: A Handbook for Scenic Management, Agricultural Handbook (USFS 1995). The USFS describes baseline condition in a similar manner; however, baseline components include measures of scenic attractiveness and integrity, landscape visibility (i.e., distance zones), and concern level (i.e., sensitivity). (ASC T-4-7 106 of 291)

5 While the overall visual resource framework is essentially the same between the two systems, the terminology within the SMS has been modified slightly, and it also provides best science when combined with VMS because it provides for assessment of biological, physical, and social/cultural resources within a geographic area. (ASC R-43 47 of 570)

6 See p. 12 of 104 for flowchart for 1995 “Scenic Management System.” The flowchart heading is “Constituent information.”

None of this 1995 document has transferred to the ASC:

For comparison see ASC R-1-7 (146 of 570)
2.5 “Visual Impact Assessment Procedures” in 3 Parts: “Viewer Perception” is at the bottom of Part 2.
The phrase Viewer sensitivity used in the ASC is from the 1974 VMS.

Visual Management System 1974  49 pages: Viewers from “Vista points, visitor centers, road tangents” (p. 5 of 49) Of 96 photos in the manual, only 8 show people “on the ground,” and 4 of those are in the introduction

³This crosswalk table is provided as a courtesy to help navigate select DPO comments, applicant responses, and Department recommended revisions from the DPO to the proposed order. See the proposed order for complete revisions, if any. The information in the proposed order presides and should be referenced appropriately in any petitions for contested case party status.

Attachment 4: Boardman to Hemingway Transmission Line DPO Comment, Applicant Responses, Department Response in Proposed Order Crosswalk Tables. (4 of 323)

Sincerely,

Lois Barry
PO Box 566
La Grande, OR  97850

CERTIFICATE OF SERVICE

I hereby certify that on November 5, 2020, the foregoing document was served by mailing or emailing a true copy as set forth below:

By: First Class Mail:

John C. Williams
PO Box 1384
La Grande, OR 97850

By: Electronic Mail:

David Stanish
Attorney at Law
Idaho Power Company
dstanish@idahopower.com

Jocelyn Pease
Idaho Power Company Attorney at Law
jocelyn@mrg-law.com

Christopher Burford
Attorney at Law
Office of the President Eastern Oregon University
EFSC Council Members,

Simple question. Would you be willing to take a quiz on any number of questions and issues concerning the B2H application?

My point is that numerous concerned Citizens and land owners have become 'Citizen experts' on a vast array of technically germane subjects intertwined with the questions involved here. I would wager they know much more about this application than any of you, more than many of the staff of the State agencies and the staff of the Corporation that they work with—who clearly have a vested interest in suppressing the truth.

Would you feel competent to referee a contest between the corporate applicant and involved Oregonian Citizens concerning relevant and fundamental issues of concern within this flawed application -- and feel like you have the knowledge base to make a decision on these many highly technical issues? Well, that is your position now --- and so I urge you to Grant Full Party Status to ALL those who have applied for such status. There exist no OAR's nor common sense rationales to diminish the rights and standing of these Citizens.

These Citizens can be legitimately seen as the representatives of all Oregonians concerning this massive proposed project. They are indispensable as researchers and protectors of the interests of Oregon in this matter.

Will you allow these Citizen experts and advocates, for a thorough and honest assessment of this Corporate scheme, be denied full standing and complete access to this process? The reverse should be the case. Right? They should be welcomed, compensated, and listened to.

Who do you stand for? Who do you serve? The People, or the corporation?

It is time to decide just how much you really believe in democracy, fairness.... serving and protecting the the People and the future of Oregon. Easy to say...but actions are
what count.

You clearly have an out-sized voice in this process. The rest of us 4 million Oregonians are counting on you to step up and choose to help the People over the corporation. Will you choose the fair, and inclusive interpretation of the laws and rules? What is the intent of the law? To limit public input? To facilitate Corporate profit at all costs? If it is, then maybe you would like to point that out and fight against it -- and not allow it.

I am disturbed and angered over this process. This may sound like a 'lecture' or pedantic ---but it is in fact a widely and sadly accurate view of this Council, and of ODOE, held by those that observe these proceedings. How many 'contested cases' and appeals have been accepted and won over the past decades ---and to what effect? Why is that?

The process clearly favors the for profit, out-of-state corporate applicant. They write the application, dictate the route--however inappropriate it may be-- pay the salaries of staff and agencies, and 'answer' their questions. This simply is 'regulatory capture' --obvious to us all. We will soon know, if you, the Council is also captured --or remain independent representatives of the People.

Is this process meant to be a 'fair and inclusive' democratic process that seeks to site energy facilities that have proven their need and safety? Facilities that will cost the rate payers, the environment, and effect the State for decades to come.

Must the applicant/corporations follow all the rules and address the many false-hoods and lack of evidence and research in their inadequate applications?

Or is this process just a sham? Check the boxes, rubber-stamp the application. That is the history.

WHY does Idaho Power Corporation have more influence, more of a voice than the Human Citizens of Oregon? Why does ODOE, (which is supposedly an agency that is supposed to serve the Citizens of Oregon) attempt to restrict the rights of the Citizens? It is a true travesty that Idaho Power Corporation and ODOE have been in any way involved in declaring that Citizens' rights should be diminished and that issues that they rightly raised be somehow excluded on some fabricated vague interpretation of "lack of specificity." Is that the kind of ruling you would be willing to accept in a case in which you were the defendant or had any interest? Me neither.

That somehow the complexity of this case, and that the corporate applicant claims some kind of time constraint (which is a bad joke in a decade long application) is any kind of reason to limit full Citizen involvement, and taking all time necessary to complete due diligence, is simply abhorrent.

No wonder I am pessimistic and angry.

I am am requesting FULL PARTY STATUS based on the laws, common sense
and the goal for which we all are involved here --- a full hearing of facts and issues concerning the siting of an energy facility.

I am also requesting that all of the issues I have raised be accepted ---based on full compliance with the process and OAR's stated by Irene Gilbert, STOPB2H, et al.

I not only request it -- I demand it. As a full Citizen of this country and state, and as proven 'interested party' with personal and a public interest, I will not be denied it. Exactly the same as you would expect for yourself.

Peter Barry  
60688 Morgan Lake Rd.  
La Grande, Oregon 97850

On Friday, November 6, 2020, 11:42:31 AM PST, Fuji Kreider <fkreider@campblackdog.org> wrote:

Hello (again) Anesia, Judge Webster, EFSC, and the Service List,

Here is another submission from Ms. Lois Barry, who is nervous about sending to the list again in the fear that she does not have the correct list. This is a new submission regarding an appeal for Full Party status. Thank you.

Sincerely,

Fuji Kreider, Secretary

Stop B2H Coalition

On behalf of Lois Barry, petitioner
November 5, 2020

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

Copy: Hearing Officer, Judge Green Webster  
B2H Service list

Dear Chairman Jenkins and the Council,

I am appealing Judge Webster’s denial of my position that Protected Areas, Scenic Resources, and Recreation have not been analyzed properly. I was denied because I did not Challenge methods of the BLM. EFSC does not have methods similar to BLM, so has used their method, which in every case found “no significant impact.” EFSC uses the definition of “significant.”

The Key Observation Point (KOP) photos were taken on January 25, 2012 and March 24, 2011  
With analysis done on June 24, 2014. The analysis was completed by Mr. Kevin McCoy a Recreation Planner at the BLM. At that time the proposed route at NHOTIC came southwest, cutting across the cultivated fields of Mr. Johnson and Mr. Solise. The closest points were;  
Panorama Point 3.29 miles; Inside Interpretive Center 1.94 miles; Amphitheater 1.06 miles.

Garth and Tonia Johnson’s public comment letter on the Draft EIS, received by the BLM on March 18, 2015, included a map recommending a B2H route south through Flagstaff Gulch, then west near the BLM property line and up the hill past the Kiwanis monument. The BLM in the Final EIS accepted this route.

This moved the power line significantly closer to the Interpretive Center and the Oregon Trail.  
At Panorama Point 594 yards closer; at inside the Interpretive Center 924 yards closer and at the Amphitheater 213 yards closer. **This will make the Protected Areas and Scenic Resources have significant impact by the EFSC definition.**

I would like to recommend a new site condition. That a new visual and scenic resource analysis be conducted prior to construction.

Please acknowledge that the movement of the B2H closer to the Oregon Trail creates a significant impact. I will use this significant impact as part of my argument for undergrounding, which was one of my “Issues Properly Raised” by the Hearing Officer.

Respectfully  
Gail Carbiener
November 6, 2020

Re: Petitioner Matt Cooper Appeals Denial of Full Party Status in the Matter of the ASC for B2H Transmission Line

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

Copy: Hearing Officer, Judge Greene-Webster

Email: energy.siting@oregon.gov ; OED_OAH_REFERRAL@oregon.gov

Dear Chairman Jenkins, Judge Webster and members of the Council,

I am appealing to the Energy Facility Siting Council to reverse their denial of Full Party Status in several issues, specifically the issues of wildfire risk and flooding in the Southwest hills of La Grande. While I was granted status as a Limited Party (Interim Order on Party Status, #10) on the issues of Public Services (1), Structural Standard (2), Site Boundary-Mapping (3) and Noise Notification-Noise Control Regulations (4), I would like to appeal to receive Full Party status. The reason is that these issues both overlap with similar issues brought up by other individuals during both the DPO and the PO as well as the Contested Case phases of this process.

1. Public Services: My concerns overlap with those of other petitioners and DPO commenters on two issues: wildfire and hydrology/flooding risk.
   a. My comments overlap with several other petitioners (ex., Susan Badger Jones, John Winters, and Stop B2H) and thus our comments should not be artificially narrowed to only that specific subset of concerns which we wrote on as individuals. It is only fair that as new evidence emerges, especially in the wake of the recent catastrophic fires in Oregon and California (13 of the Oregon fires were reported to have been caused by power lines), I be allowed to introduce new evidence or share details with other petitioners.
   b. As an additional example, two officials associated with Rural Fire Districts in the nearby Baker Valley—Baker and Haines Rural Fire Districts—Kevin Hampton and Dan Weitz, raised similar issues in letters on wildfire risk in the vicinity of the NHOTIC. These letters were dated Sept. 24 2010 and July 30 2020.1 They pointed out the lack of available water in the region, the small size of the Baker Rural Fire District, and the outdated nature of the fire equipment (trucks dating from 1968 that have no off-road capability and would have trouble making it up the hill to NHOTIC in the event of a fire there). They state that if a fire were to start

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at NHOTIC they would have “no hope of suppressing it with old fire apparatus and unmanned station [sic].” This is precisely the type of situation that I have described in my own contested case in regard to the realities of fighting a fire caused by a transmission line in the vicinity of Morgan Lake or Morgan Lake Road.

There is no reason that I should be denied full party status with regard to wildfire risk and mitigation when others have raised similar issues in similar locations. The denial of full party status in this issue can only be interpreted as an attempt to suppress public comment and deny me due process on this issue, which could very conceivably lead to loss of life and property (including, in the case of NHOTIC, federal property).

2. Structural Standard: my concern with disturbances to hydrology, including the lack of mapping of streams and ditches, lack of concern for layers of water-saturated clay (demonstrated by letters from the retired La Grande director of Public Works, Norm Paullus), and other such concern, overlap with issues raised by Jon White (slope instability, blasting upslope of La Grande neighborhoods, radon gas emissions); Dale and Ginny Mammen (landslide risks in the nearby Hawthorne neighborhood); and Horst/Cavinato (evaluation of wells and impact on water quality on property on Hawthorne drive, immediately upslope of our property on C Avenue).

There is no conceivable reason to limit my arguments to only those specific points raised in my petition when these issues are interrelated with other issues concerning hydrology, topography and geology of the region of the hills southwest of La Grande, as detailed in other contested case issues properly raised by White, Mammen, and Horst/Cavinato.

In summary, attempts to stifle arguments brought forward by petitioners by limiting them only to the “sufficiently specific” issues of their cases are contradictory to the spirit of public participation and due process. EFSC is trying to put forward a double standard wherein petitions can be rejected for lacking “sufficient specificity,” then those petitions which are accepted as “sufficiently specific” can be denied Full Party status since the issues were necessarily limited in order to meet the standard of “sufficient specificity.”

For the reasons stated above, I respectfully request Full Party status on all the issues I properly raised, but most especially issues 1 and 2 (Public Services and Structural Standard).

Sincerely,

Dr. Matthew J. Cooper
302 C Ave.
La Grande, OR 97850-1137
541.786.2052
Chairman Hanley Jenkins, II  
Energy Facilities Siting Council  
Oregon Department of Energy  
550 Capitol St. NE, 1st Floor  
Salem, OR 97301  

Copy: Hearing Officer, Judge Greene-Webster  
B2H Service list (at end)  
Email: energy.siting@oregon.gov; OED_OAH_REFERRAL@oregon.gov and B2H Service List  

Dear Chairman Jenkins and the Council,

I haven’t played “Simon Says” in decades but I’m pretty sure the manner the rules being administered has gone off track. I feel the purpose of this procedure is being tampered by Idaho Power Corporation to ferret out any contentions that don’t have their i’s dotted, t’s crossed, etc. and present unrealistic squeezed time limits, that we are required to meet until there are no contenders left standing.

I am appealing Judge Greene-Webster’s denial to grant me full party status. I have filled all the requirements to qualify for full party status and yet here I’m challenged with another “Idaho Power Says” created barrier?

Thank you for considering this appeal.

Sincerely,

Whit Deschner
Please reconsider us for full party status; We raised the general issue of agriculture lands assessment and now we see in the Proposed Order that there is an opportunity for governments to review the draft, we feel strongly that we (the landowners of said properties) should also have the right to review the assessments and provide input and feedback. If this is a "site certificate" condition, then i would respectfully request that this be added to the condition.

kaye foss
November 6, 2020

Chairman Hanley Jenkins, II  
Energy Facility Siting Council  
Oregon Department of Energy  
550 Capitol St. NE, 1st Floor  
Salem, Oregon 97850

Email: energy.siting@oregon.gov; OED_OAH_REFERRAL@oregon.gov and B2H Service List


Dear Chairman Jenkins and the Council,

Please accept the following appeal of Judge Greene-Webster’s denial of full party status for me and my appeal of her issue limitations which constrain my ability to discuss key points related the Soil Protection Standard and soil productivity.

A. **I am appealing the denial of full party status**

I can find no logic that explains why I have been denied full party status in this contested case when

1. I have been found qualified to represent the public interest on the matter of Soil Protection,

2. soil meets the criteria found in 345-022-0000 (2)(a)(A) of being a unique and significant resource,

3. the success of any soil protection efforts is directly related to impacts to vegetation and the complex interactions between soil, plants, the atmosphere, and land use (i.e. projects), and

4. the project (construction and operation) will result in the loss of above ground vegetation leading to below ground disturbance and decomposition of organic matter which will, in turn lead to decreased soil productivity that follow as a result soil erosion, compaction, loss of soil structure, loss of water holding capability, and major below ground disturbance that occurs as a result of tower construction.

In addition, the loss of above ground vegetation eliminates inputs of organic matter from the live vegetation that contributes to soil productivity and soil development and leaves the soils exposed to erosion by wind and water. The loss of above ground vegetation and subsequent impacts are related to not only the construction but to the operation of the project. Both
construction and operation will require 1) removal of vegetation along the transmission line, 2) involve considerable ground disturbance, and 3) have the potential to initiate and/or exacerbate a wildfire. This is a valid concern given that the transmission lines will carry high voltage electricity across areas prone to drought in forested areas where ladder fuels have increased due to forest infilling.

5. Finally, I have been identified by Judge Webster as being qualified to represent the public interest in soil-related impacts from the proposed facility. No one else has been identified to talk about this issue as STOP B2H only brings up the soil-related issues by reference to my documents.

Representing the public interest on soil-related impacts can only be done, as allowed by the Judge, if I am given full party status because only then can I correctly discuss the issue of the project’s impacts on soil productivity and the Soil Protection Standard. A complete discussion, appropriate for representing the public interest, means that I must be allowed to address, incorporate and provide context to other comments, and respond to and question statements from Idaho Power.

B. I am appealing the following Issue Limitations

1. Carbon Sequestration, Carbon Storage and Carbon Loss

Judge Webster states on page 42

“As discussed previously in the evaluation of Stop B2H’s petition, the issue of carbon sequestration is not within the jurisdiction of the Council and is not properly considered in the contested case. OAR 345-015-0016.”

FOUTY RESPONSE: I APPEAL THIS DENIAL. This denial makes no sense when in the section above titled “Issue Properly Raised”, Judge Webster states that the loss of stored carbon is within the Council’s jurisdiction under Soil Protection Standard.

Carbon sequestration is simply “a natural or artificial process by which carbon dioxide is removed from the atmosphere and held in solid or liquid form. (Oxford Dictionary).” In the case of soils, that CO2 is held in a solid form via plants which have extracted the CO2 from the atmosphere via photosynthesis and store or sequester that carbon in plant matter above ground and below ground in the soil.

The removal of vegetation during construction and site maintenance and/or as a result of a wildfire initiated and/or exacerbated by the project, decreases current and future soil productivity by removing existing stored carbon and preventing inputs of new stored carbon in the form of organic matter for some unknown length of time can become part of the soil. As any gardener knows, organic matter is key to a quality harvest and a garden requires regular inputs of diverse organic matter in order to maintain its productivity.
Existing and emerging science is making ever clearer the links between soils, plants and the atmosphere and thus climate. Therefore, while this results in analyzing a much more complex system, trying to decouple them is incorrect and inappropriate. The key source of carbon, important for soil productivity, is largely the atmosphere, and the mechanism by which CO2 gets into the soil and is stored is via plant roots and dead organic matter. Roots and dead organic matter are visibly connected to the soil. A key means for preventing soil erosion, soil compaction, a decrease in infiltration rates, a decrease in the water holding capability of the soils, a loss of organic matter and thus soil productivity is protecting vegetation above and below ground. Therefore, any part of the project (construction and operation) that impacts vegetation will impact soil productivity and anything that degrades the soil and the vegetation will impact the atmosphere because the carbon that has been extracted by plants and put into the soil or held in plant matter is released back into the atmosphere. There is no way to decouple these relationships. Again, to try and do so is to ignore existing and emerging science that relates to soils, plants, and the atmosphere.

For these reasons, I appeal the Judge’s decision regarding carbon sequestration, carbon storage, and carbon loss. They are covered by the Soil Protection Standard and the General Standard of Review. Both statutes use the phrase “including, but not limited to…” which makes very clear that the two statutes are intended to be flexible to the evolving understanding of, in my case, soil productivity and protection which includes the interconnection between soils and other natural resources.

2. **Assessment of the Impact on Soils of Wildfires**

On page 42 in the Judge’s order she states:

(ii) Whether the Soil Protection Standard and General Standard of Review require an assessment of loss of above ground organic material related to the construction and operation of transmission lines, including an assessment of the impact on soils of wildfires.¹

As noted above, impacts to soil from the construction and operation are within Council’s jurisdiction. OAR 345-022-0022. Dr. Fouty asserts that the Soil Protection Standard, read in conjunction with the General Standard, require Applicant to analyze and the Council to consider, the adverse impact a potential transmission line-related fire would have on plants and soils. In her comments on the DPO, Dr. Fouty raised concern about wildfires in connection with the loss of carbon sequestration, but she did not raise the issue of wildfire risk in connection with the construction and operation of the proposed facility. Dr. Fouty also did not present facts or analysis on the record of the DPO to support her position on this issue. Accordingly, this issue was not raised with sufficient specificity to allow for a response.

¹ In a supplemental pleading filed October 2, 2020, Dr. Fouty clarified this issue and her intention to include wildfire, and the impacts of wildfire on soils, as an issue related to soil protection.
FOUTY RESPONSE: I APPEAL THIS DENIAL. The statement that I did not bring “did not raise the issue of wildfire risk in connection with the construction and operation of the proposed facility” is incorrect for the following reasons:

1. The fact that I brought up wildfire in my response to the DPO on the Idaho Power project indicates that it is a concern related to the construction and operation of the project. Otherwise I would not have brought it up.

2. More specifically, on page 2 of my August 20, 2019 letter, under my comment that the project is not in alignment with Oregon’s climate goals is the following information:

   “The Oregon Global Warming Commission’s 2018 Forest Carbon Accounting Report (OGWC 2018a) directly addresses forest harvest and fire as carbon sources and has identified the importance of intact forests as carbon sinks. Under ORS 468A.250(i), an accurate forest carbon accounting is required to meet the directive to the Oregon Global Warming Commission (OGWC) to “track and evaluate the carbon sequestration potential of Oregon’s forests, alternative methods of forest management that can increase carbon sequestration and reduce the loss of carbon sequestration to wildfire, changes in the mortality and distribution of tree and other plant species and the extent to which carbon is stored in tree-based building materials.”

My concerns about wildfire and soil productivity and erosion as it relates to this project are made more explicit on page 5 of my August 20, 2019 letter:

   “These die offs [of trees] will release additional carbon into the atmosphere, exacerbate the tendency towards larger, more frequent and higher intensity wildfires, and increase the potential for soil erosion and loss of soil productivity.”

My decision to include the Oregon Global Warming Commission’s 2018 Forest Carbon Accounting Report statements that address vegetation as carbon sinks and harvest and wildfire as carbon sources (i.e. lost carbon stored) should make it clear that there is a link between the project construction and operation and the potential for wildfire and loss of plant material. My statements on page 5 also states concerns related to more frequent wildfires and the impact on soil erosion and soil productivity. Anything that removes vegetation impacts soil productivity with wildfire being one means of removing vegetation. My August 27, 2020 letter on the contested case (p. 5, 7) only added details to this concern. It did not raise the concerns and connections between the project, wildfire, and soils for the first time. Again, I would not have mentioned wildfire and soils in my response to the DPO unless there were concerns related to Idaho Power’s project and I have clearly stated that wildfire will impact soil productivity.

3. While is it possible that during construction of the project a wildfire could be initiated by activities on the construction site (which is why there are fire restrictions on use of certain equipment during the fire season), should a fire start the response time will be shorter and thus the fire more likely contained. However, once the transmission lines are in operation, this level of rapid response or even an immediate recognition of a problem become difficult making containment extremely difficult resulting in large areas of impacted soils.
Therefore, it is during the project’s operation that the wildfire concerns are the greatest.

Also, even if I do not state both construction and operation in portion of my letter, the connection is clear. The towers and transmission lines are not intended to do nothing – their entire point is to transmit high voltage electricity across the landscape. Thus, when talking about the loss of sequestered carbon as a result of a wildfire it is assumed to be understood I am talking about a wildfire that is initiated and/or exacerbated by the project. Again, the topic would not be brought up if there was no direct connection and we have, unfortunately, plenty of recent examples of transmission lines initiating or exacerbating a wildfire. This is not a hypothetical link and thus the point was expected to be obvious.

4. The statement that I did not raise concerns related to wildfire and soil productivity is incorrect. I talk about carbon sequestration, changes in the mortality and distribution of trees and other plant species and the extent to which carbon is stored in vegetation. These are directly linked to soils and play a role in soil productivity and in the protection of soils from erosion. The additional details in my August 27, 2020 letter were added when it became clear that some of the concepts and connections I presented were not as clear as I thought.

For the reasons stated above, I appeal the Judge’s decision that excludes my ability to discuss the impacts of wildfire on soil productivity, erosion, stored carbon etc. as it applies to Idaho Power’s project both during the construction and operation.

C. The following statements by the Judge about comments made by Stop B2H are addressed since I am individual being referenced.

On page 23 of Judge’s order she states:

“But contrary to Stop B2H and Dr. Fouty’s contention, the analysis under the Soil Protection Standard is limited to impacts to soil from energy facility projects”

FOUTY RESPONSE: This statement is incorrect. The dominant source of the carbon for the organic matter that is an essential component for productive soils and for protecting soils against erosion is the atmosphere which is transmitted to the soil via plants. Can the Judge identify another widely distributed source for this key element? If not, then it is not possible to disconnect the soil and the atmosphere as shown by the photosynthesis figure provided in my August 27, 2020 letter and it is something that Idaho Power will need to analyze.

On page 23 of the Judge’s order she states:

“Simply stated, there is no Council siting standard that requires an applicant to analyze, or Council to consider, carbon sequestration, carbon storage, carbon loss, or the cumulative effect the proposed facility will have on carbon in the atmosphere. Consequently, the carbon sequestration issue is not within the jurisdiction of the Council and shall not be considered in the contested case.”
FOUTY RESPONSE: These statements are incorrect. There is nothing in OAR 345-022-0000 that excludes the project’s need to consider carbon sequestration, carbon storage, and carbon loss on the atmosphere and climate given that soils and the atmosphere are intimately linked. In fact, the General Standards state: “Shall evaluate any adverse effects on a resource .... By considering factors including, but not limited to,......”. Carbon sequestration and carbon storage occur in plants and in soils via living and dead plant matter. As has been repeatedly stated this stored carbon is key to soil productivity and soil protection. And as living plants are intimately linked to the atmosphere via photosynthesis, and plants and soils are intimately linked, whatever happens to the soils and the plants impacts the atmosphere and vice versa. The atmosphere and the soils cannot be decoupled any more than soils and plants can be decoupled. The OAR states “any adverse effect”.

Unless someone can provide peer-reviewed science that says that plants do not extract CO2 from the air and through a variety of means put it into the soil where it is sequestered and helps determine soil productivity and resistance to soil erosion, there is no way to justify excluding carbon sequestration from the Soil Protection Standard. As a result, there is no way to exclude wildfires that are initiated or exacerbated by the project from being considered when discussing soils.

OAR 345-022-0000
General Standards for Siting Facilities

(a) The Council shall evaluate any adverse effects on a resource or interest by considering factors including, but not limited to, the following:

(A) The uniqueness and significance of the resource or interest that would be affected;

(C) Proposed measures to reduce any adverse effects on a resource or interest by avoidance of impacts;

(D) The magnitude of any anticipated adverse effects on a resource or interest, taking into account any proposed mitigation.

b) The Council shall evaluate overall public benefits by considering factors including, but not limited to, the following:

(A) The overall environmental effects of the facility, considering both beneficial and adverse environmental effects;

One final comment on the short turnaround time to file an adequate appeal to the Judge’s Orders. The short timeframe feels like an attempt to circumvent an effective public process. Like the long lines in many states where people waited hours to simply vote, just because people were willing to wait hours does not make it right that they had to so. What it said only was that voting was really important. So, it is with all of us who found ourselves in the position of having to stop what we were doing and work on this. That we try to do so, indicates how important contesting the B2H transmission line is. No one is researching and writing on issues because they lack things to do, but because they have real, legitimate and well thought out
concerns. For this reason alone, everyone should have full party status because each of us has developed an in-depth understanding of some aspect of this very complex and impactful project and many of these aspects are connected.

Thank you for your consideration of my appeal of the Order on Party Status and on several points.

Sincerely,

Suzanne Fouty, Ph.D.
Baker City, OR
November 5, 2020

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

Copy:   Hearing Officer, Judge Greene-Webster
B2H Service list
Email:   energy.siting@oregon.gov ; OED_OAH_REFERRAL@oregon.gov and B2H Service List

Dear Chairman Jenkins and the Council,

I am appealing Judge Webster’s denials of: 1) my position that the Applicant did not consider Oregon Natural Areas Plan and that Rice Glass Hill State Natural Area is a Protected Area, 2) Full Party status on 3 issues deemed “properly raised”, and 3) extension of the very short time frame we have for appeals.

With regards to my issue on Natural Areas, I was denied because in my comments on the DPO, re: Rice Glass Hill State Natural Area and my concern for the special species and plant communities found there, I did not “specifically assert that State Natural Areas should be evaluated under the Protected Areas standard”.

I contend that there was no requirement listed prior to the public hearing, or the requests for contested cases, which requires a private party to identify and list the specific statute or rule that the site certificate fails to follow. My deep concern for the special species and plant communities found on Glass Hill, which warrants the area’s status as a State Natural Area listed in the register ORS 273.581, plus my statement that it is a State Natural Area and should be protected, should suffice.

Furthermore, my comments clearly state my concern with the Draft Proposed Order failure to address the Natural Areas Plan. Oregon Natural Areas Plan 2015 (https://inr.oregonstate.edu/sites/inr.oregonstate.edu/files/2015_or_natural_areas_plan.pdf) states the Oregon Natural Areas Program was established by the 1979 Legislature in the Natural Heritage Act (ORS 273.561-.591 [SB 448]), as a way to protect high quality native ecosystems and rare plant and animal species. The program is managed by the Oregon Parks and Recreation Department and is guided by the Natural Heritage Advisory Council.

Oregon Natural Areas Plan allows private property owners with sufficient special status species and specific native plant communities listed as “unfilled high priority needs” in the Plan to apply for status as Natural Areas. The Rice Glass Hill Natural Area meets all criteria and is registered by OPRD as a Natural Area under ORS 273.586(1). There is no question that following OAR 345-022-0040 (i), areas in the State Natural Areas register qualify as Protected Areas.

In my written comments on the DPO, I maintained: “Even more disturbing was the exclusion of the State Natural Areas Plan”. The Applicant Idaho Power Company has not taken into consideration this crucial siting on what should be a recognized Protected Area. The Oregon Department of Energy is required to evaluate compliance with siting rules. It is their responsibility to address this failure. Rules or statutes do not justify denial of my case for failure to designate a specific rule number violated. My comments
and contested case request clearly outline the fact that the area is a registered Natural Area and OAR 345-022-0040 states that these fall under the Protected Areas standard. I strongly object to Department’s relieving the developer Applicant of responsibility to adhere to requirements regarding Oregon’s Natural Areas.

I appeal my demotion to Limited Party status on 3 issues recognized as “properly raised” in the Interim Order on Party Status. That document states, “Participation as a party is limited to the discrete threatened and endangered species and noxious weed control issues properly raised herein.” These issues are complex and cannot be properly described or defended as “discrete”. The full impact of the Applicant’s proposed action on these issues can only be recognized through cumulative effects. By oversimplifying issues, ODOE and EFSC destroy the intent of the contested case process. Going forward, I intend to provide comment and documentation on the issues I was not provided time to develop either in the hearing or the request for a contested case. Time limitations imposed failed to allow for participants to submit detailed requests for the multiple issues which they believed they would be able to address by making comment on issues brought forward by others.

As pointed out by Irene Gilbert, it is apparent to all that Oregon Department of Energy and Idaho Power directed decisions regarding party status, resulting in the decision for all parties to be designated as “limited”. No one was informed of criteria which they must meet in order to be given full party status and they cannot be found in any rules or statutes.

The public was not informed of the need to establish whether or not their experience, knowledge, education and training would preclude anyone else from representing their interests or whether their experience, knowledge, education and training allowed them to represent the interests of another specific individual requesting party status due to the impacts that they personally objected to.

Finally, I object to the time limits imposed for submission of appeals. Like many others, I work full time and find it very stressful to be forced to spend every spare moment scrambling to meet frenetic appeal deadlines. Allowing another full week for this appeal would be a more realistic time frame. Future deadlines more considerate of working people.

Respectfully,

Susan Geer
susanmgeer@gmail.com
November 5, 2020

Chairman Hanley Jenkins, II
Energy Facility Siting Council
Oregon Department of Energy
550 Capitol St. NE, 1st Floor
Salem, Oregon 97850
Email: energy,siting@oregon.gov; OED_OAH_REFERRAL@oregon.gov and B2H

Please accept the following appeal of Judge Greene-Webster’s Order on Party Status and issues for contested case hearings:

When the legislature allowed the Oregon Department of Energy and the Energy Facility Siting Council absolute power over the siting of energy developments, they provided the agency and council opportunity to literally destroy the lives of citizens of this state. That power needs to be exercised in a manner that does not deny the citizens a right to a fair and impartial hearing of issues related to the siting of energy facilities. The Boardman to Hemingway Transmission line is a development that will devastate hundreds of directly impacted property owners and thousands of citizens across six counties of the state. The siting process has already demonstrated the demoralization, depression, anger, health consequences that it has inflicted on the people who call Oregon home, and many who have called it home for generations. While I have an untold number of objections to this transmission line, this document will focus on this one and two others due to the devastation that they will cause to the people of Oregon.

1. I am appealing the process which was used to bring the issues before the council due to the fact that it is filled with improprieties which were clearly intended to get the results that have occurred. There are many people who are so depressed or angry or confused or who’s existing health conditions have increased to the extent that they are unable to effectively defend themselves before this council. Many of these people have never experienced any legal or quasi-legal procedures, lack the education and experience needed to navigate the procedures which they are being required to follow, and lack the funds to purchase legal expertise or representation. The council is supposed to have a process which supports a fair opportunity for the public to be heard when actions they take impact the people, and given an opportunity to present
their objections to actions or the lack of actions which result in irreparable damages to them, their land and public resources.

Many of the denials of contested case party status or issues do little more than document the ongoing manipulations of requirements and procedures are being done to deny citizens the right to object to decisions which avoid allowing citizens access to a procedure that is intended to protect the citizens and resources of the State.

Those participating in the process which has led to this point have had to deal with many questionable actions on the part of the Department and the developer which are being allowed by the Proposed Order. Some of those include:

1. The Order allowed only 7 days for the public to appeal issues in the Order on Party/Limited Party status and Issues. This 7 days included: a) Issuing an order after 3:30 pm.; b) closing the appeals at 4:30 p.m. today prior to the time that most people end their work day; c) Including both a holiday and a Sunday; d) Including a day when voting and the decision regarding the political leaders of this state and nation would be determined.

2. Expecting the public to not only respond to the decisions regarding whether they would be granted party status, limited party status or denied party status as well as identifying the issues denied and reasons for denial in an appeal.

3. This was further complicated due to the nit picky, and inconsistent reasons for denials and the need to identify when the ALJ misinterpreted the contested case request, or failed to include it due to allowing the Oregon Department of Energy to develop the list of issues and the fact that they did not include issues they did not agree with.

4. The Oregon Department of Energy and Idaho Power recommendations were followed almost exclusively throughout the Order leaving some participants believing they would not be allowed a fair contested case no matter how much energy they put into their effort.

5. No parties were informed prior to requesting contested cases that they would be held to such a high standard or the criteria which they would be required to meet.

6. The Administrative Hearings Officer used criteria recommended by the Oregon Department of Energy and Idaho Power in order to limit the “nature and complexity of this contested case proceeding, the depth and breadth of the potential permissible issues, the significant number of petitioners for party status”.
7. The Oregon Department of Energy was allowed to add additional reasons in support of denying petitioners the opportunity to fully present in issues they requested standing on after everyone had submitted contested case requests and given an opportunity to argue against the requests. No one was allowed to argue against these new additions.

8. People were instructed that the public hearing only required them to identify the issue and provide a reason why they made the comment. They are now being denied a contested case due to such reasons as failing to state all the “sub sections” of the rule they were asking for a contested case on or failing to identify the specific statute that was not being followed and why the Proposed Order did not adequately address their issue.

Whether or not the council allows a contested case in this matter, given all the irregularities in the process to date, I encourage the council to be generous in evaluating whether or not any individual requesting an appeal is justified in obtaining one and give consideration to the need to provide a fair and impartial process that allows petitioners to submit their evidence and arguments.

I am also requesting a contested case on the denial of my contested case Number 2 regarding the disclosure in the Proposed Order which was not disclosed in the DPO that the decision regarding allowing the Oregon Department of Energy to apply and interpret the DEQ Noise Standard is not prefabricated. The following applies to this request as listed in my request for contested case:

a. The PO claims that written authorization was obtained from the Oregon Department of Energy approving the methods used. A copy of the letter being referenced states that the letter does not constitute approval of their methods.

b. Stating that the DEQ Noise Administrative Rules do not address lineal facilities. A review of the current DEQ noise rules document that the measurement methods for measuring sound levels along lineal facilities is included in the Noise Rules currently in use.

c. Stating that the Sound Measurement Manual is not current and not applicable. The Administrative Rules were amended in 2017 to include the sound measurement manual that the applicant claims is not current or applicable.

d. Stating that DEQ does not fund or administer the noise rules and should not be included in interpretation and application of the rules. There were several different minor and major amendments to this rule that will be provided including the addition of the Noise Measurement manual in 2017 showing that DEQ has on an ongoing basis continued
to be responsible for the updates and changes to the rules and the Statute which cannot be waived was never changed to remove responsibility for the rules from DEQ. The new information in the Proposed Order documenting that the decision process could not legally be taken over by the Oregon Department of Energy will result in changes to the proposed order when the developer is required to follow the Administrative Rules relating to noise.

It is not justified to deny this issue due to a failure to comment in the DPO. Not only was it not disclosed that the methodology was completely inaccurate in it’s assumptions, but the individuals being impacted due to a significant change in the number of citizens impacted by the inaccurate evaluation of noise has gone from 34 or 35 to hundreds of citizens.

The last request for appeal is my request for a contested case regarding the failure of the Proposed Order to evaluate and mitigate for impacts from the proposed development on accepted farm practices and the cost of accepted farm practices. The order states, “Although the use of farm land is a matter within Council’s jurisdiction, there is no siting standard that governs compensation for impacted landowners. As discussed previously, economic damages for loss of business or property value land acquisitions and purchases, and easements are matters that fall outside Council’s jurisdiction. In her petition, Ms. Gilbert did not state where she raised this issue on the record of the DPO. The ALJ’s review of the DPO comments indicates that in comments dated August 22, 2019, Ms. Gilbert asserted that landowners will receive less income with the same expenses and farmers face financial risks from having to pay for fire protection. But as noted, these concerns about economic losses to farmers along the transmission line fall outside Council’s jurisdiction.”

Contrary to the statement of the order, ORS 215.275(5) requires that the reviewing body impose clear and objective conditions of approval on the application to mitigate the impacts of the proposed facility, if any, on surrounding lands devoted to farm use in order to prevent a significant change in accepted farm practices or a significant increase in the cost of farm practices on the surrounding farmlands. The concern regarding the impacts this development will have on Oregon farm lands was mentioned 362 times in the Comments on the Draft Proposed Order. I identified by name 11 commenters stating concerns regarding the impacts this development will have on Oregon’s agricultural lands and producers and I did not finish a complete count. Nearly 7 miles of the transmission line will be going across irrigated farm land and most of the remainder will be running across farm
land with the exception of Union and Umatilla County where it will run across forest land. My request for contested case included over 5 pages of impacts that will be occurring which will result in a significant change in farm practices and a significant increase in the costs of farming on property adjacent to the transmission line. In addition, while it was not included in the compiled comments listing for the Boardman to Hemingway Transmission line, I have in my hands a copy with a date stamp of Aug. 22, 2019 which is the date I handed a large package of comments to Todd Cornett at the Energy Facility Siting Council Meeting. It lists two pages of specific items that should have been considered when determining the impacts to farm operations along the transmission line route. I will provide a copy of that document at the formal appeal hearing before the Energy Facility Siting Council. There were several other documents in which I referred to the problem of inadequately addressing farm impacts, however, I do not have the time to extrapolate the information, so will provide it in hard copy at the appeal.

I am appealing the decisions regarding the above three items as a matter of public concern. Thank you very much for your consideration of this request.

Irene Gilbert
November 5, 2020

Chairman Hanley Jenkins, II
Energy Facility Siting Council
Oregon Department of Energy
550 Capitol St. NE, 1st Floor
Salem, Oregon 97850
Email: energy,siting@oregon.gov; OED_OAH_REFERRAL@oregon.gov and B2H Service List

Please accept the following appeal of Judge Greene-Webster’s denial of full party status for me. The appeal also applies to the decisions to deny full party status to the STOP B2H and all other petitioners as it relates to an issue of public concern due to justifying allowing only limited party status for reasons not supported by the statutes and rules and a failure to apply the required statues and rules to the decisions. Specifically, this appeal applies to all decisions to limit petitioners who meet the requirements of OAR 137-003-0005(7) to “Limited Party” status.

The order provides documentation of the ongoing manipulation of requirements and successful efforts to circumvent due process by the Division and the Developer. It denies the public the opportunity to challenge areas of the Draft Order which fail to comply with State Law and Statutes which are intended to protect the citizens and resources of the State.

I am basing this REQUEST FOR APPEAL of the denial of all requests for full party status, including mine by limiting participation to limited party status based upon the following reasons and arguments:

The order documents the following issues which I am appealing as a personal and a public issue:

1. It Fails to comply with ORS 183.413(2)(c) as I was not informed of the procedure and criteria which would be applied to requests for party status.
2. The order failed to establish party status based upon the requirements contained in OAR 137-003-0005(7) OAR 137-003-0005(7) in making a determination regarding status as a party or a limited party, it is required that the following be considered:
   a. Whether the person has demonstrated a personal or public interest that could reasonably be affected by the outcome of the contested case hearing
   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.

3. The Oregon Department of Energy and Idaho Power were allowed to direct decisions regarding party status.
4. The designation for all parties to be designated as “limited parties” was based upon recommendations from the Oregon Department of Energy and Idaho Power.
5. The public was not informed of the need to establish whether or not their experience, knowledge, education and training would preclude anyone else from representing their interests or whether their experience, knowledge, education and training allowed them to represent the interests of another specific individual requesting party status due to the impacts that they personally objected to.
6. Denying full party status to all petitioners denies all parties the opportunity to object to the changes Idaho Power has requested through contested case requests. This will allow the developer to avoid fully complying with the rules required for construction and operation of the energy facility.
7. No parties were informed prior to requesting contested cases criteria which they must meet in order to be given full party status.
8. The order bases the limitation to party status on reasons recommended by the Department and Idaho Power which are not included in the rules or statutes.
9. The time limits placed on the development and submission of requests for party status failed to allow for participants to submit detailed requests for the multiple issues which they believed they would be able to address by making comment on issues brought forward by others.

Status as a Party

It is clear that STOP B2H myself and others meet the requirements which must be considered in making the determination regarding party status.

The Order’s multiple references to OAR 137-003-0005(8), which allows the Administrative Law Judge to treat a petition for full party status to be accepted as a petition for limited party status reasonable relates to individuals who requested full party status, but do not meet the requirements in order to allow them to participate
as limited parties rather than deny their requests altogether.

LIMITATIONS ON PARTY STATUS

The decision to deny me and others full party status was based upon recommendations from the Department and Idaho Power’s request. It is not appropriate to limit the issues that a member of the public can comment on or provide evidence on in order to accommodate the request of those who’s actions are being challenged. In fact, this decision could be argued as falling under the ruling in Berwick v AFSD, 74 Or App 460, 703 P2d 994 (1985) which found that a failure of a hearings officer to assist petitioner in presenting evidence constitutes abuse of hearings officer’s broad discretion in controlling hearings under ORS 183.415 and ORS 183.450. Unjustified limitations of petitioners to limited party status effectively denies them the opportunity to present evidence in a contested case proceeding.

The order states that the decision to allow only limited party status for all petitioners was based upon recommendations from the Department and Applicant due to the “nature and complexity of this contested case proceeding, the depth and breadth of the potential permissible issues, the significant number of petitioners for party status,”. The admission that the limitations were imposed due to a recommendation from the Department and the Developer is not appropriate in and of itself. The stated reasons document the fact that the decision was based upon the desire to limit the public access to argue contested case issues, the desire to only allow a very limited part of the issues to be argued, and to deny petitioners the opportunity to argue issues due to the number of people requesting contested cases. It is a clear admission that the order being appealed has the goal of denying the public access to their right to argue contested case issues to accommodate the Department and the developer’s desires to avoid the work of justifying their Proposed Order. There is no indication in any statute or rule where the reasons stated are considered just cause to limit party status.

ORS 183.413(2)(e) States the party has the right to respond to all issues properly before the presiding officer and present evidence and witnesses on those issues.

The use of allowing only “limited party status” clearly provides for preferential treatment of the applicant due to the lack of any petitioners being able to argue that their contested case changes are not justified.

The order takes rules out of context and reinterprets them. For example, the order
states that “AS A GENERAL RULE” APA rules allow all parties to the contested case may present evidence and arguments on all issues properly before the presiding officer in the proceeding. THERE IS NO “AS A GENERAL RULE” IN ORS 183.417(1) The rule states “ALL PARTIES TO THE CONTESTED CASE MAY PRESENT EVIDENCE AND ARGUMENTS ON ALL ISSUES PROPERLY BEFORE THE PRESIDING OFFICER IN THE PROCEEDING”. The order before you not only shows the hearings officer is making no effort to assist petitioners in presenting evidence. It shows that there is an intent to deny them that opportunity.

All the arguments regarding the limiting of issues for those who are determined eligible only for limited party status are not relevant to the decision regarding who is eligible for full party status. They are a smoke screen intended to distract from the fact that no legitimate decision was ever made, nor were the parties allowed to provide documentation that they should be given full party status.

The order states that “limited party status is appropriate where, as in this case, a petitioner satisfies the eligibility requirements for participation and has established a personal or public interest in the outcome of the proceeding, but is only qualified to respond to some, but not all, issues to be considered in the contested case.” I find that statement to be demeaning to every party requesting full party status. It begs the question: How was it determined that there were no petitioners were qualified to respond to any issues other than the ones they specifically requested a contested case on? It is outrageous that any individual would make such a determination regarding the 50+ individuals and groups who requested contested cases.

The basis for denying full party status to those requesting contested cases was stated thusly:
“due to the number of petitioners with an interest in the outcome of this contested case requesting to participate as a party; the number and nature of properly raised contested case issues in this matter;¹ and the ALJ’s 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 – I find it appropriate under OAR 137-003-0005(8) and (9), OAR 137-003-0040, and OAR 345-015-0083, to limit successful petitioners’ participation in this
contested case to the issues properly raised in their respective petitions for party status.”

A related intended action as indicated in the Order is the statement that based upon the Department’s recommendation the ALJ is intending to identify one individual to present arguments when an issue was identified by more than one citizen. I question how that determination is supposed to be made. I also suggest that the Council advise the ALJ that taking such an action following the disclosures that have been made in this order will be challenged based on the fact that it clearly would be taken to avoid having to deal with the objections of more than one individual who identified the issue and limit the arguments to only those identified by a single individual rather than multiple citizens. It will constitute placing a barrier before petitioners who are requesting the opportunity to present evidence regarding the issues before the council.

I hope that the Energy Facility Siting Council Members recognize the legal and public relations challenges that the Council will be subject to in the event they allow the decisions regarding party status to stand as indicated in the order. Every party to this contested case process needs to be given full party status absent documentation that they are not qualified to comment on a particular issue in addition to the one they requested a contested case on. Council is encouraged to rule that all parties requesting full party status be granted such and that any plans to further limit access to the contested case process by petitioners not be implemented.

Thank you for your consideration of this appeal of the Order on Party Status. I apologize if my sentence structure, spelling, or issues are not clearly presented. Given the very short timeframe allowed to develop this appeal and the multiple other issues that I need to appeal, I simply ran out of time.

Irene Gilbert
October 7, 2020

To: 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: Reply to ODOE Response to Petition in the Matter of the Proposed Site Certificate for the B2H Transmission Line

Dear Judge Greene-Webster:

My name is Jane Howell; I spoke to the issue of not being included in numbers 44 and 45 of the B2H Contested Issues List. I specifically brought up the violation of noise notification OAR 345-21-0010(x)E during the phone call on September 25th. I requested that this issue needed to be reviewed because I did clearly bring up these issues in our contested letter sent on August 17th and Idaho Power accepted these issues in their assessment of properly raised issues. During the conversation on September 25th we were told that if we had brought up our concerns on that day that we would not need to call back in on Thursday October 8th.

On October 8th, I checked in and listened for about an hour until I had to leave at 10:00 to take my father to an appointment. I am worried that I missed something vital in the conversation on October 8th. In both of the meetings, I thought I heard that we were only going to talk about issues that we thought were left out of our letters and not about limited or full party status or public and personal interests. I am wondering if there was something that was said at the October 8th meeting that I missed and needed to know. Can you tell me where we are and if I am supposed to be doing anything?

Just to make sure that we are not missing the boat, I feel the need to state that if other issues are relevant to support our arguments we wish to request full party status for all of our issues. We described our family and neighborhood concerns in detail in our contested case request. As stated in our letter of contention; we have both a public and personal interest in stopping Idaho Powers application. The B2H Project is very detrimental to us and our family and our neighborhood.

Thank you for your attention to my concerns.

Sincerely,
Jane and Jim Howell

482 Modelaire Drive
La Grande, OR 97850
November 6, 2020

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

Dear Chairman Jenkins and the Council,

I am asking for an appeal to the denial of my request for a Contested Case on the Draft Order for the Boardman to Hemingway transmission line. I did not have to comment on this case in my request for a contested as the noise impacts of the transmission line because the Draft Order completely changed the way noise was handled by allowing an exception and a variance for the whole line. I objected to the approved an Exception and a Variance for the entire transmission line without complying with the rules for allowing an Exception or a Variance.

I referred to all the arguments of other property owners in my request for a contested case as I was not able to find someone who was able to draft a more complete request. I was unable to speak for myself at the Pre-hearing conference due to my blood pressure being so high. I had to ask another person to speak for me, so I was represented, and I relied upon the comments made by others to show that I should be given a contested case. Now I am relying upon someone else to request a hearing for me. I should be given a chance to show that the developer and the Oregon Department of Energy should not allow a variance or an exception to the noise standards because they did not consider the health consequences that the noise would cause.

ORS 467.060 and OAR 340-035-0100(1) say “The Commission may grant specific variances from the particular requirements of any rule, regulation, or order to such specific persons or class of persons or such specific noise source upon such conditions as it may deem necessary to protect the public health and welfare” ORS 467.060(2) says “The commission by rule may delegate to the Department of Environmental Quality, on such conditions as the commission may find appropriate, the power to grant variances and to make findings required by subsection (1) of this section.....” The commission did not choose to do so.

There are multiple other concerns I have with this development which I would have liked to comment on, but was unable to for the following reason:

I have severe tinnitus which I can verify with my medical records, and the stress that I have been under worrying about being forced to leave my home of 46 years and abandon
my life time goals, has resulted in my blood pressure staying so high that it puts me at risk of a heart attack. Every time I even think about the health impacts this transmission line will cause me I have a stress attack and my blood pressure goes up, which is constantly. I have been seeing a cardiologist, having tests done on my heart, and am currently wearing a Holter heart monitor to track the risk of a stress induced heart attack.

Due to overwhelming stress, I have had to rely upon other people to write and submit my contested case and this request for a hearing. These are all issues that I will document during the contested case.

Idaho Power is claiming that my home is already in a noisy location. There are no public roads where I live. I have had to prune trees to cultivate tranquility upon the property to seek out the masking relief of different wind directions and velocities to tolerate the tinnitus at it’s current level. I have no neighbors within site of my home. I do not enjoy living like a recluse, but it is what I must do to have any quality of life.

Requesting that the developer pay for actual noise monitoring to occur to confirm the noise level at my home property and Morgan Lake recreational area, as required, in order to document impacts.

Finally, I object to the time limits imposed for submission of appeals. Like many others, I find it very stressful to be forced to spend every spare moment scrambling to meet frenetic appeal deadlines. Allowing another full week for this appeal would be a more realistic time frame. Future deadlines more considerate for all people involved.

Respectfully submitted,

Greg D. Larkin
Greg Larkin
November 6, 2020

Chair Hanley Jenkins, II
Energy Facility Siting Council
Oregon Department of Energy
550 Capitol St. NE, 1st Floor
Salem, Oregon

Dear Mr Jenkins:

I want to appeal to the council the fact that the Proposed Order on Party Status erred in denying me party status regarding the impacts this development will have on farm practices and land. The Administrative Law Judge claimed that there is no rule that requires the developer to address and mitigate for impacts to my farm property which would be crossed by this transmission line. She is wrong. ORS 215.275 requires the developer to identify and address issues that will limit the procedures I currently use in my farming operation or increase the costs in order for me to continue farming. In addition to that, it is required that site certificates address the impacts they will have on the health and safety of the citizens. I was only required to state why the development would not meet the standards. I did not have to list the exact standard. The public comments stated the reason that I know that the impacts that I listed are real. It is because I spend all day, nearly every day farming my land. That is documentation from an “expert” that the order does not protect my land and my continued ability to farm that land. The proposed order does not even include the “Agricultural Plan”, just a draft that will not protect my land from significant damages and me from significant economic damages. It is
not possible to argue a plan that doesn’t exist other than to say there is no plan to address my concerns.

As I said, I work all day almost every day keeping my farm going. Expecting me to make the time or understand what I should have to do to get through the complicated government process is not reasonable. To do so in the short time you have allowed for literally everything you have required is unbelievable. In spite of my confusion and the fact that the stress has left me practically paralized with fear that you will destroy my farm and way of life, I have made every effort to do what you asked. I have gone to your public comment periods, I have sent in comments, I have shown up at meetings and lost valuable time I should have been spending farming. I am appealing your denying me a contested case since I have done everything I can to do what you asked in order to defend my farm and be able to make a living for my family.

I am asking for an appeal due to being denied a contested case.

John Luciani
November 6, 2020

Chairman Hanley Jenkins II
Energy Facilities Siting Council
Oregon Department of Energy
550 Capitol St. NE, 1st Floor
Copy: Hearing Officer, Judge Greene-Webster
B2H Service list (at end)

Email: energy.siting@oregon.gov ; OED_OAH_REFERRAL@oregon.gov and B2H Service List

Dear Chairman Jenkins and the Council,

Please accept my appeal of Judge Greene-Webster’s denial of my party status in the Contested Case Request Regarding the Proposed Site Certificate for the Boardman to Hemingway Transmission Line. In this appeal, I am limiting my comments to my issue concerning wildfire hazard. On that point, the Interim Order of Party status based its denial of my status in this way: "Because he did not raise the issues raised in his petition with sufficient specificity on the record of the DPO, Mr. Lyons has not established standing to participate as a party or limited party in the contested case. OAR 345-015-0016(3)."

In my original letter dated August 21, 2019, I expressed concern about the wildfire risks associated with construction and operation of the B2H line, stating, "A fast-moving fire starting at the B2H lines could move to residential areas of La Grande and the Hospital in 10 minutes. This is frightening and an unacceptable risk for our citizens." I believe this specifically refers to both the public and personal interest in the issue. In addition, I noted that "The proposal offers no analysis of wildfire risk, which is an unacceptable omission. All of the routes proposed are unsafe and create an unacceptable risk to the citizens of La Grande." Although I didn’t specifically mention the actual “Fire Prevention and Suppression Plan” at that time, it is clear that I had had challenged the Draft Fire Prevention and Suppression Plan as insufficient to meet the need for fire response in the La Grande area.

My request for case standing did not raise new issues about wildfire. In that DPO, I stated in greater detail that the Proposed Order does not adequately address my concerns about wildfire risk. I added that "The Draft Fire Prevention and Suppression Plan prepared by Idaho Power in July 2020 (Attachment U-3 to the Proposed Order) appears to rely almost entirely on potential negotiated agreements with nearby fire response organizations or the federal agencies to provide fire response. Unfortunately, local resources are already insufficient to meet the needs created by climate change-related fire risks, and those risks will only increase as line construction, operation, and maintenance come into play. A much more substantial fire protection proposal from Idaho Power is necessary."

Therefore, I contend that I did not raise different issues: my argument remained the same, that Idaho Power's draft plan for wildfires was insufficient to meet the need for fire response in the
La Grande/Morgan Lake area. That issue is described with sufficient specificity as to allow a response.

An earlier case is relevant to my situation: in *Bold v. Clackamas Co.* 107 Or. App. 619, 813 P2d 1078 (1991), the court found that the purpose of “raise it or waive it” is to provide “fair notice” of the issue—and does not require citation to the relevant code standard. I contest the conclusion that I should be denied party status because I “did not raise the issues raised in his petition with sufficient specificity on the record of the DPO.” This is simply not true.

Relatedly, the appeals court decision in *Gould v. Deschutes County, 216 Or Ap 150 (2007)* required that the public be provided an opportunity to review the final plans. The Idaho Power plan is a draft and does not meet the requirements to provide for the Safety and Health of the citizens and residents in our area. The public is being denied any opportunity to determine if the final plans will provide that protection.

Therefore, I am appealing to the EFSC to reinstate my standing in this contested case, as I believe that I have met all the requirements per all instructions given to the public:

**Eligibility Requirements for Party Status (from p. 5 in the ALJ’s Order)**

Pursuant to ORS 469.370(5) and OAR 345-015-0016, a petitioner must satisfy the following requirements to be granted party or limited party status in this contested case:

1. Comment either in writing or in person on the record of the draft proposed order (DPO) public hearing, specifically, during the period of May 22, 2019 through August 22, 2019.

2. Submit a written petition for party or limited party status by the specified deadline, in this case, August 27, 2020 at 5:00 p.m.

3. Demonstrate in the written petition for party or limited party status a personal interest in the outcome of the proceeding or demonstrate representation of a public interest in the outcome of the proceeding.

4. Raise, in the written petition for party or limited party status, at least one issue that is within the Council’s jurisdiction with sufficient specificity afford the Council, and Applicant, an adequate opportunity to respond.

Please reinstate my status as a contested party. Thank you for your consideration.

Respectfully,

Charles A. Lyons
60332 Marvin Rd.
La Grande, OR  97850
November 5, 2020

Chairman Hanley Jenkins, II
Energy Facility Siting Council
Oregon Department of Energy
550 Capitol St. NE, 1st Floor
Salem, Oregon 97380
Email: energy.siting@oregon.gov; OED_OAH_REFERRAL@oregon.gov
and B2H Service List

Please accept the following appeal of Judge Green-Webster's denial of full party status from my husband Dale and me. Our original request asking for full party status was based on the supposition that we were requesting status on all of the concerns that had been expressed in my many testimonies and letters and not just the ones which we were granted as limited. I was not aware that I was to again plead every issue that was of concern feeling that all were basically included in the one word “safety” used in my request. Traffic safety was only one of the many that need to be addressed. Other concerns previously addressed were noise, health, fire danger, total hill stability, landslide due to both construction (blasting) and construction traffic that would be involved for us and our neighbors including Grande Ronde Hospital. Also earlier mentioned was the construction helicopter traffic interfering with the hospital emergency helicopter traffic.

To say or imply that because we did not repeat all of these along with documents when full party status was requested is both unreasonable due to the time limit for getting a reply back to you and excessive. As we understand this was neither a hearing nor a trial but a request for full party status for our concerns. Granted traffic safety and landslide risks were some of my concerns, but “safety” in general for the citizens is the utmost concern. Since Idaho Power has not provided full information regarding their intentions in these matters, or any others that may occur, it is difficult to address adequately our full concerns. Therefore full party status is our request.

Is it possible that it is being implied that because I mentioned that I was eighty years old (have now turned eighty-one) that I don't have the capability to provide relevant information regarding any other issues? If that is the case, I find that insulting.

Sincerely,

Virginia L. Mammen

D. Dale Mammen
November 6, 2020

Re: Rejection of Anne March’s Issue in Interim Order claiming issue D was not properly raised.

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

Copy: Hearing Officer, Judge Greene-Webster

Email: energy.siting@oregon.gov; OED_OAH_REFERRAL@oregon.gov

Dear Chairman Jenkins, Judge Webster and members of the Council,

The rejection of my Issue D is wrong and this issue should be accepted going forward. In my original letter of 8/18/19, I stated that:

“Idaho power has also stated that because there are only resident fish in Ladd Creek, that “no new fish passage plan anticipated.” (page 9-11 of draft Fish Passage Plan in ASC Exhibit BB, Attachment BB-2).

Because the alternative route through Ladd Canyon would necessitate a 3a/3b design change for a bridge crossing on Ladd Creek and there are threatened anadromous fish in Ladd Creek, and ODFW fish passage plan will need to be implemented (OAR 17 412-0035) based on (OAR) 635-412-0020 for this route for Ladd Creek and its tributaries.

In conclusion, the B2H DPOI contains improper evaluation of the potential long term negative impacts on fish habitat in the Ladd Creek drainage, including tributaries. The Endangered Species Act requires identification and evaluation of effects of the proposed action through ESA section 7(a)(2) consultation with NMFS (anadromous fish species). Federally protected anadromous species are currently present in Ladd Creek, and its tributaries.”

My letter of 8/27/20 stated that:

My original letter contained a concern about a bridge crossing on an unnamed stream (Crossing ID R-37969 in Exhibit BB-2) in Ladd Canyon. Idaho power proposed “no new construction or major replacement” of a 1.7 foot and 2 foot diameter pipe currently in place and has stated “ODFW Fish Passage Plan not anticipated.” This is not an appropriate size pipe for fish passage
and needs to be addressed. I need assurance that the millions of dollars already spent on this watershed will not be adversely affected by the proposed B2H project.

In addition, Idaho Power proposes of the crossing the “3A) installation of temporary bridge over existing structure; 3B) installation of temporary bridge adjacent to existing structure.” Because of the discovery of native Steelhead redds in the creek since Idaho Power originally proposed this plan, this entire plan needs to be re-worked and re-approved by ODFW with a new Fish Passage Plan and new EIS in order to guaranty that there is “no net loss of habitat quantity or quality.”

The rejection in the ABC Interim Order of my “point not properly raised” states that:

(1) *Fish Passage and Fish and Wildlife Habitat*

   (i) Whether Applicant should include in its Fish Passage Plan and be required to replace a culvert on an unnamed stream (referenced as Crossing ID R-37969 in Exhibit BB-2, Table 1) to an appropriate size for fish passage.

   As noted above, fish passages and the proposed facility’s impact on fish habitat are matters within Council’s jurisdiction. Nonetheless, Ms. March did not raise concerns about this specific stream crossing in her comments on the DPO and therefore it is not a proper issue for consideration in the contested case.

I can only assume from this response that my original letter was not read closely (this is clear, since they misspelled my name at one point as well).

Since my original letter stated that my issues are with the potential degradation of Ladd Creek and its tributaries by this construction, and that Idaho Power is potentially violating the Endangered Species Act by not creating a new ODFW fish passage plan, by re-doing their 3a/3b bridge design, and by making sure that all aspects of the creek and tributaries are taken care of in regards to the ESA, including all culverts and crossings, this issue should be accepted as my letter of 8/18/19 is inclusive of all of these issues.

Rejection simply because there is an added layer of specific specificity is wrong and disingenuous.

Thank you.

Anne March
La Grande
November 6, 2020

Chairman Hanley Jenkins, II  
Energy Facility Siting Council  
Oregon Department of Energy  
550 Capitol St. NE, 1st Floor  
Salem, Oregon 97850

Email: energy.siting@oregon.gov ; OED_OAH_REFERRAL@oregon.gov and B2H Service List

Dear Chairman Jenkins and the Council:

Please accept the following appeal of Judge Greene-Webster’s denial of full party status for me. It was and still is my understanding that, if I met all the four requirements for full party status (which I did), I could expect “full party status.” The designation for all parties to be designated as “limited parties” was based upon recommendations from the Oregon Department of Energy and Idaho Power Corporation. The fact that they were even allowed to dictate their decisions regarding party status to Judge Greene-Webster, seems to be kind of a slap-in-the-face to Judge Webster, as if she didn’t have the expertise and intelligence to make this decision on her own.

Also, Judge Greene-Webster’s denial frequently says that she (ALJ) and the agency have this rule to justify limiting parties. I could find no basis articulated in the Rule for the agency to force someone who has provided all the information necessary to accept “limited party status.” Idaho Power Corporation 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. Accordingly, it makes no sense that Idaho Power Corporation and the Order Department of Energy would be allowed to do that, because, limiting the ability of other persons to participate would bias the proceeding in favor of the developer. As an adverse party, it is only reasonable that a utility or agency would want to weaken its opponent’s ability to participate in the process.

Furthermore, denying full party status denies all parties the opportunity to object to the changes Idaho Power Corporation has requested through contested case requests. This will allow the developer to avoid fully complying with the rules required for construction and operation of the energy facility. It seems apparent to me that Idaho Power Corporation is attempting to limit members of the public and public-interest organizations from having an ability to fully confront the issues faced in this proceeding.

For the above reasons and more, I am again requesting full party status.

Thank you in advance for your courtesy and cooperation in this matter.

Respectfully Submitted ~ JoAnn Marlette
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  

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. 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). In adopting the positions of IPC and ODOE, the Order ignores the arguments I raised in my responses entirely (See Exhibit 1 and attachment).

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. 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.

McAllister Appeal-3
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
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


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. 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:

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. It is entirely unclear—and the public has been denied an answer—why

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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 rending 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, 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 by 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 extend 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.

Sincerely,

Michael McAllister
60069 Morgan Lake Road
La Grande, OR 97850

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4 The landowner who successfully influenced the current route, promoting the Morgan Lake Alternative, route 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.
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


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

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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 habitat, 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
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…”

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).” 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

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4 https://www.boardmantohemingway.com/maps (screenshot attached hereo 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; 344-021-0010(b)(D); or ORS § 469.370(13).  

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

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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
Name (mandatory)  MICHAEL MCALLISTER

Mailing Address (mandatory)  6069 MORGAN RING 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 Taradewether, 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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<tr>
<td>1. litigation that had proven that. So I have to trust</td>
<td>1. For everybody here, if you are to looking at</td>
<td>1. And I can honestly say that it's a travesty that, for</td>
<td>1.</td>
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<td>them on that, I guess.</td>
<td>the computer screen that's up on the back wall, there is</td>
<td>whatever reason, Idaho Power has chosen to completely</td>
<td></td>
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<td>2. I think you'll have to understand, I'm a</td>
<td>3. a third power line, which is the green route. There is</td>
<td>disregard that route. I have seen no evidence in</td>
<td></td>
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<td>little bit skeptical about this. Idaho Power hasn't</td>
<td>4. red, green, and yellow. And I'm pleased to see that the</td>
<td>4. 10 years that Idaho Power has shown any consideration of</td>
<td></td>
</tr>
<tr>
<td>5. been -- I haven't been contacted -- I mean, I have now.</td>
<td>green line was turned on this evening. It wasn't on</td>
<td>that route. I think it's appalling.</td>
<td></td>
</tr>
<tr>
<td>6. But through this planning process, I really wasn't</td>
<td>7. when I originally looked at it.</td>
<td>6. I do credit Idaho Power for having in the</td>
<td></td>
</tr>
<tr>
<td>7. contacted. Nobody came to my place and looked at the</td>
<td>8. I also came in late and I was told that I'm</td>
<td>7. 10 years considered routes through John Day, extensively</td>
<td></td>
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<td>site. I don't know if they know there is a pond right</td>
<td>9. not supposed to advocate for the western route</td>
<td>routes through the Blue Mountains, and having recognized</td>
<td></td>
</tr>
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<td>9. next to where they want to put this tower. I don't know</td>
<td>10. recognized by the BLM and environmental analysis because</td>
<td>the importance of not further fragmenting large-scale</td>
<td></td>
</tr>
<tr>
<td>10. if they understand I had to put a well in 700 feet deep,</td>
<td>11. it has not been applied for. That route is what I've</td>
<td>forest tracks, and that the I-84 corridor is probably</td>
<td></td>
</tr>
<tr>
<td>11. the water is amazing. I don't know if that will change.</td>
<td>12. been involved with advocating for for 10 years now,</td>
<td>the best route. But specifically through this neck of</td>
<td></td>
</tr>
<tr>
<td>12. The road coming up Hawthorne has to have a lot</td>
<td>13. since day one, really.</td>
<td>the woods, through Union County, Ladd Canyon, I think</td>
<td></td>
</tr>
<tr>
<td>13. of annual maintenance on it for just three houses. The</td>
<td>14. I think I probably wrote Adam Bless, with the</td>
<td>every concern I've heard here this evening can be</td>
<td></td>
</tr>
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<td>idea of them hauling that heavy equipment, and I don't</td>
<td>15. Oregon Energy Council, probably the first letter he</td>
<td>mitigated by placing this transmission line on the</td>
<td></td>
</tr>
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<td>14. know what they are going to do to improve or better that</td>
<td>16. received with my concerns about siting this line through</td>
<td>environmentally-preferred route.</td>
<td></td>
</tr>
<tr>
<td>16. road, my concern is they will make it worse. Only</td>
<td>17. Union County here. And with an empirical background for</td>
<td>16. And I am providing comment, written comment</td>
<td></td>
</tr>
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<td>17. because of the limited history that I've had with them</td>
<td>18. virtually every acre of the stretch from Hilgard to Ladd</td>
<td>that will specify as well as I can with the time that I</td>
<td></td>
</tr>
<tr>
<td>18. hasn't really been very supportive. Tonight was the</td>
<td>19. Canyon that probably nobody else has, I feel like it's</td>
<td>have. I don't believe it's up to me to demonstrate a</td>
<td></td>
</tr>
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<td>19. first night that I got a chance to listen to this many</td>
<td>20. my community contribution to represent it as completely</td>
<td>burden of proof to this end, but I'm doing my best to do</td>
<td></td>
</tr>
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<td>20. people talk about their concerns.</td>
<td>21. and as well as I can.</td>
<td>that.</td>
<td></td>
</tr>
<tr>
<td>21. Honestly, I'm more concerned now than before I</td>
<td>22. The green route is by far the superior route</td>
<td>21. And I thank you all for your listening here</td>
<td></td>
</tr>
<tr>
<td>22. came in. I have heard a lot of information tonight that</td>
<td>23. when you consider just about any aspect; fish, forest,</td>
<td>22. this evening.</td>
<td></td>
</tr>
<tr>
<td>23. kind of would make, I think, anybody in my shoes afraid</td>
<td>24. wildlife, range, fire, feasibility, all the above. In</td>
<td>23. HEARING OFFICER WEBSTER: Thank you.</td>
<td></td>
</tr>
<tr>
<td>24. of the future of what's going to happen up there. I</td>
<td>25. my analysis collecting facts relative to all these</td>
<td>24. Following Mr. Gillis, we will hear from,</td>
<td></td>
</tr>
<tr>
<td>25. love this place. I think it's going to change</td>
<td>25. resources, the green route is by far the best route.</td>
<td>25. believe it's John Winters, if I'm reading that</td>
<td></td>
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**Input on Draft Proposed Order for the Boardman to Hemingway Transmission Line**

**HEARING OFFICER WEBSTER:** Thank you.

**MR. MICHAEL McALLISTER:** I'm Michael McAllister. I live at 60069 Morgan Lake Road right at the top where you confront the wind as you break the summit.

I am of the Move B2H camp, an advocate of moving and have been for at least 10 years, when the initial proposed route was presented. I am a natural resource inventory expert, and made a career of empirical background for virtually every acre of the stretch from Hilgard to Ladd Canyon that probably nobody else has, I feel like it's my community contribution to represent it as completely and as well as I can.

The eagles built two nests right above my wall tent where I lived as I went to school here at Eastern Oregon University. And it's really a pleasure to be here tonight with the community and hearing all of their different concerns and considerations. It's always been above my mental capacity to explore the rightness or wrongness of the power line; so I have focused on moving B2H.
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

[Signature]

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. Too 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 here 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 vegetation 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 3.

**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 - Kalena 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.**
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 submerged 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 buildsups 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 ridgtop, 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 Heath 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 too 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 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, elevators, 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 Stocks – Applicant/Certificate holder - mstokes@idahopower.com, Scott Hartell – Planning Director for Union County - shartell@union-county.org , Don Gonzalez – 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 is 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
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.
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.
-----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<netscape.net>
To: 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<netscape.net>
To: 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
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 it’s 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 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 here 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 vegetation 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. Too 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 here 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 vegetation 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.**
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,
The fact again it 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.

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 Heath 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 too 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 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.

c. EFSC Facility Sititing team – energy.siting@oregon.gov, Mark Stocks – 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@cityoflagrange.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 submerged 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
Interactive Map - Including landowner parcels

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

Search

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

https://www.boardmantohemingway.com/maps
I am extremely frustrated at the approach this contested case seems to be taking! I am confused, ill informed about specific meanings and time frames of the process!! Idaho has made a motion about adopting a schedule for the contested case, what does that mean and are you giving them special treatment I order to streamline the process in there favor?? The problem here is that I asked for Full a party status and frankly not sure what I have been granted!! I will ask again, please grant me full party status for the issues that I have with Idaho power’s proposed project! This is extremely important that all the issues are vetted in a thorough manor and with full disclosure!! Every issue is important to the lives in Oregon!! All of the persons with contested case status deserve to be thoroughly heard and Idaho power must prove that the issues have been resolved!! I’m starting to become suspect that the process is tainted by you Judge Webster, prove me wrong and make this process seem transparent, logical and mostly unbiased!! Please help me understand the process and especially why we do not seem to be able to contest being given only limited party status!!

Sincerely
Sam myers

Sent from my iPad

On Nov 2, 2020, at 4:02 PM, OED_OAH_REFERRAL * OED <REFERRAL.OED_OAH_REFERRAL@oregon.gov> wrote:

The Office of Administrative Hearings is in receipt which has been forwarded to Judge Webster.
Thank you,
Anesia Valihov | Hearings Coordinator
Office of Administrative Hearings
4600 25th Ave. NE, Suite 140
Salem, OR 97303-4924
Phone: (503) 947-1510
From: Seeley Jeffery <jeff.seeley@doj.state.or.us>
Sent: Friday, October 30, 2020 5:26 PM
To: OED_OAH_REFERRAL * OED <REFERRAL.OED_OAH_REFERRAL@oregon.gov>
Cc: dstanish@idahopower.com; lisa@mrg-law.com; jocelyn@mrg-law.com; jstippel@idahopower.com; cburford@eou.edu; TARDAEWETHER Kellen * ODOE <Kellen.Tardaewether@oregon.gov>; sam.myers84@gmail.com; susanmgeer@gmail.com; deschnerwhit@yahoo.com; mcgccarb@bendbroadband.com; charlie@gillis-law.com; moyald@gmail.com; dutto@eoni.com; jmfisherma99@gmail.com; lkatherinandrew@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; candrew@eou.edu; petebarry99@yahoo.com; squirel@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.janewhite@gmail.com; wintersnd@gmail.com; lotusbsilly@eoni.com; samhartley57@gmail.com; carlmorton2000@gmail.com; bpdoherty@hughes.net; suemc@eoni.com; alisha@mrg-law.com; jkreider@camblackdog.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; ESTERSON Sarah * ODOE <Sarah.Esteron@oregon.gov>; Ratcliffe Jesse D <jesse.d.ratcliffe@doj.state.or.us>

Subject: Procedural Information Concerning Hearing Officer’s Order on Petitions for Party Status, Authorized Representatives and Issues for Contested Case in the matter of the Application for Site Certificate for the Boardman to Hemingway Transmission Line

The attached document was electronically mailed to Senior Administrative Law Judge Alison Greene Webster today.

Jeffery R. Seeley
Legal Secretary
General Counsel Division | Natural Resources Section
Oregon Department of Justice
1162 Court Street NE, Salem, OR 97301-4096
Phone: (503) 947-4590 Fax: (503) 378-3784

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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This e-mail may contain information that is privileged, confidential, or otherwise exempt from disclosure under applicable law. If you are not the addressee or it appears from the context or otherwise that you have received this e-mail in error, please advise me immediately by reply e-mail, keep the contents confidential, and immediately delete the message and any attachments from your system.

************************************
Judge Webster and the Energy Facility Siting Council:

how is allowing the Oregon Department of Energy and Idaho Power to dictate schedules, party status, issues appropriate for contested cases, issuing conflicting information and deadlines supports the fair and equitable Contested Case Process?
I do not agree with the timeframe given or any of this for that matter.

Tim Proesch

On Nov 2, 2020, at 5:58 PM, Irene Gilbert <ott.irene@frontier.com> wrote:

Judge Webster and the Energy Facility Siting Council:
Can someone explain to me how allowing the Oregon Department of Energy and Idaho Power to dictate schedules, party status, issues appropriate for contested cases, issuing conflicting information and deadlines supports the fair and equitable Contested Case Process? So far in this process the process documents ongoing actions and efforts to deny the public the opportunity to present information regarding multiple significant damaging impacts that individuals and groups have identified which fail to meet the requirements of the statutes and rules regarding the issuance of site certificates.
Dear Chairman Jenkins and Council,

Please accept my appeal of Judge Greene-Webster’s denial of my Contested Case request regarding (1) Public Services - Fire Protection, specifically the Fire Prevention and Suppression Plan.

In her ruling, Judge Greene-Webster states that I did not reference the Applicant’s Fire Prevention and Suppression Plan, and did not offer facts or argument to support my position, that existing local resources would be unable to adequately provide fire response services. She used Attachment U-3 as the basis for this assertion. I did refer to Attachment U-3 in my Request for a Contested Case, and again in my remarks during the Contested Case Hearing on October 1, 2020. However, the majority of my statement at that time was based specifically on Table PS-9: Fire Departments, Rural Fire Protection Districts, and Rangeland Fire Protection Associations within the Analysis Area. My comments were in regards to Fire Protection from wildfire during the construction, maintenance, and operation of the Transmission Line.

Table PS-9 states LaGrande Rural Fire Department has 2 paid firefighters on duty and 23 volunteers, and that this Fire Department is 1.9 miles away from the site (it is significantly farther). It further states their response time would be 4 – 8 minutes. In my letter dated 8/24/2020 I referenced Table PS-9, along with Attachment U-3, and spoke specifically about the inability of a Fire Department with only 2 paid staff being able to “muster the additional 23 firefighters” in 4-8 minutes. I also responded to the North Powder Fire Department’s response time given in Table PS-9 as well. The North Powder Fire Department is not only an all volunteer force, but they are located 27 miles from La Grande proper. The PS-9 document shows them responding in 10 minutes. Finally, I spoke to the reponse time of the Oregon Department of Forestry Firefighters, with only 8 permanent staff who are listed as 30 minutes away. I further expressed that it would be impossible, in the event of a wildfire, for any of these Fire Departments to traverse up Morgan Lake Road from their workplace within the time frame stated in Table PS-9.
The ALJ in denying my request seems to have based her decision solely on Attachment U-3. However, the information in Table PS-9 on page 572 of the DPO should also be included in your judgement as to whether the matter was sufficiently addressed. Further, in my Request for a Contested Case, I was specifically asked to make “a plain and simple statement” identifying the issues, which I did. I was not asked to fully develop my case, nor was I given the time to prepare the kind of detailed information on which the ALJ is basing her decisions. It appears that in order to satisfy the judge’s narrow language, I needed to present a fully developed brief. I can find no rule that states I must do more than identify the issue and how it impacts me and others.

Unfortunately, I am not a lawyer for a large corporation. I am not paid, nor do I have time, to spend hours and hours parsing every word or to view every attachment, table, or figure in a document that is 692 pages in length. And I am sure I don’t understand the exact words that must be used to adequately address/express my concerns to the council. However, I believe I have been quite clear as to why I should have standing on the issues surrounding the Fire Protection Plan in the DPO. I have first hand experience about how this development will impact the use of my family’s property to make a living. I am an “expert witness” when it comes to the issue of how the transmission line will effect my family’s pasture land as the wildfire of 1973 devastated this property. Additionally, we have all seen in the last two years what happens when transmission lines, erected in the middle of forested land, cause a wildfires destroying peoples homes, take lives, and threaten or destroy surrounding cities.

In addition, I request Full Party Status on this issue. A rapidly spreading wildfire would not only destroy my family’s property, it would destroy the property of other landowners, those residing in the Mill Creek area, and would endanger the City of La Grande and it's residents which would most certainly be of public interest.

Finally, for those of us new to this process, I would appeal to you to help clarify the rules and what the next steps will be. I also ask that you let the ALJ work independently of the Agency and Applicant, as I feel they are exercising too much control and are confusing the process rather than advancing it.

Thank you for your consideration of my appeal.
Respectfully,

Stacia Jo Webster
65212 Webster Rd.
La Grande, OR 97850
November 6, 2020

Chair Hanley Jenkins, II  
Energy Facility Siting Council  
Oregon Department of Energy  
550 Capitol St. NE, 1st Floor  
Salem, Oregon

Dear Mr Jenkins:

I am appealing the fact that the appeal requests were required to be received by 4:30 today which did not allow even the 7 days you claim you allow people. I had to ask my neighbor to submit this as I have no internet. The letter was mailed on Thursday or Friday. I did not receive it until Monday. I had to figure out what you were planning and get someone to get my appeal back to you because I did not have time to mail it. You are asking the public to figure out what they have to do, read the material that they already sent in to figure out what you didn’t like, write an appeal and allow an unreasonable time for people to get this done. This does not allow the public a chance to figure out what they need to appeal and get you a request that is complete enough to let you know what all the problems with the order are.

The second thing I would like to appeal is the fact that you are only allowing me to represent a personal interest. The requirements to protect Historical and Cultural sites is not just about me or any landowner who is lucky enough to own land with these sites. It is a resource that needs to be protected because it is a resource that is important to current and future generations. I share the locations of historical sites on my property. It is not something I just keep for myself to appreciate.

I am appealing these two items.

Sincerely,

John C. Williams  
PO Box 1384  
La Grande, OR 97850
## CORRECTED TABLE OF IDENTIFIED ISSUES AND PARTIES WITH STANDING ON ISSUE

<table>
<thead>
<tr>
<th>Subject Matter/Issue</th>
<th>Standing</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>M</strong> Misc. Issues Under OAR 345-001-0010 – 345-021-0010(1)</td>
<td></td>
</tr>
<tr>
<td><strong>M-1</strong> Site Boundary: Whether, due to substantial modifications likely necessary but not proposed, Applicant should be required to amend the site boundary to include Morgan Lake Road (La Grande, Union County) and, if so, whether the Department should provide notice and the opportunity to comment to potentially affected landowners.</td>
<td>Badger-Jones</td>
</tr>
<tr>
<td><strong>M-2</strong> Site Boundary: Whether Applicant failed to include roads and other areas of use and potential modification from the site boundary thereby prohibiting affected landowners in the proximity of these areas from the opportunity to request a contested case during the ASC process.</td>
<td>Gilbert</td>
</tr>
<tr>
<td><strong>M-3</strong> Whether the maps provided in ASC Exhibit F, Maps 50 and 51, fail to comply with OAR 345-021-0010(1)(c)(A) because they do not name major roads or use an appropriate scale; whether Council can issue a site certificate when the proposed facility site boundary does not accurately identify access roads in Union County as related or supporting facilities.</td>
<td>Cooper</td>
</tr>
<tr>
<td><strong>M-4</strong> Whether the maps provided in ASC Exhibit B, Road Classification Guide and Access Control, fail to comply with OAR 345-021-0010(1)(c)(A) because they do not include road names or use an appropriate scale; Whether Council can issue a site certificate when the when the maps provided in the ASC are incomplete and do not accurately identify access roads in Union County as related or supporting facilities.</td>
<td>Howell</td>
</tr>
<tr>
<td><strong>M-5</strong> Whether the maps provided in the ASC were sufficient to give notice of potential impacts from the proposed facility.</td>
<td>Howell</td>
</tr>
<tr>
<td><strong>M-6</strong> Whether the Proposed Order fails to provide for a public review of final monitoring plans, fails to provide long-term hazardous materials monitoring, and improperly allows exceptions that substantially increase the likelihood of a hazardous material spill in violation of OAR 345-021-0010(w).</td>
<td>Marlette</td>
</tr>
<tr>
<td><strong>M-7</strong> Notice: Whether Mr. Proesch received adequate notice regarding the proposed transmission line.</td>
<td>Proesch (personal interest)</td>
</tr>
<tr>
<td><strong>FW</strong> Fish and Wildlife Habitat – OAR 345-022-0060</td>
<td></td>
</tr>
<tr>
<td><strong>FW-1</strong> Whether Applicant adequately analyzed sage grouse habitat connectivity in the Baker and Cow Valley Priority Areas of</td>
<td>Stop B2H; Squire</td>
</tr>
</tbody>
</table>

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1 For clarity, corrections are underlined.
<p>| FW-2 | Whether the adverse impacts from the proposed facility to current and future fish and wildlife populations on Glass Mountain (Hill) can be adequately mitigated, given the unique and irreplaceable biological environments on Glass Mountain (Hill) | EOU/Antell |
| FW-3 | Whether the Draft Noxious Weed Plan (Proposed Order Attachment P1-5) adequately ensures compliance with the weed control laws, ORS 569.390, ORS 569.400, and ORS 569.445. | Gilbert, Geer |
| FW-4 | Whether Applicant is required to evaluate habitat impacts of species listed as threatened or endangered under the Federal Endangered Species Act. | Gilbert |
| FW-5 | Whether Applicant should be required to mitigate impacts to riparian areas from the setback location to the outer edges of the riparian area because the riparian habitat should be rated as Category 2 at a minimum. | Gilbert |
| FW-6 | Whether the Noxious Weed Plan provides adequate mitigation for potential loss of habitat due to noxious weeds when it appears to relieve Applicant of weed monitoring and control responsibilities after five years and allows for compensatory mitigation if weed control is unsuccessful. | Geer |
| FW-7 | Whether Applicant’s Fish Passage Plans, including 3A and 3B designs, complies with the Fish and Wildlife Habitat standard’s Category 2 mitigation requirements; whether Applicant must revisit its plans because threatened Steelhead redds have been identified in the watershed. | A. March; K/March |
| FW-8 | Whether compliance with the Fish and Wildlife Habitat standard requires Applicant to analyze the proposed facility’s impact on Bull Trout, a state and federally listed threatened species, in the Grande Ronde River watershed. | Milbert |
| FW-9 | Whether State Sensitive Bat species should be removed from the list of preconstruction surveys required by F&amp;W Condition 16 | Applicant |
| FW-10 | Whether Department-proposed revisions to F&amp;W Condition 12 should be removed to allow specific protocol surveys to meet survey needs of other species | Applicant |
| FW-11 | Whether Department-proposed revisions to F&amp;W Condition 17 incorrectly assign traffic assumptions to new roads | Applicant |
| HCA | Historic, Cultural, Archeological Resources – OAR 345-022-0090 |  |
| HCA-1 | Adequacy of the surveys for Oregon Trail resources on the Webster property, an impacted property along the Mill Creek Route. | Browne |
| HCA-2 | Whether the revision of Historic, Cultural and Archeological Resources Condition 1 (mitigation for NRHP-Eligible Oregon | Carbiener/OCTA |</p>
<table>
<thead>
<tr>
<th>Issue</th>
<th>Description</th>
<th>Party</th>
</tr>
</thead>
<tbody>
<tr>
<td>HCA-3</td>
<td>Whether Historic, Cultural and Archeological Resources Condition 1 (HPMP) related to mitigation for crossings of Oregon Trail resources provides adequate mitigation for visual impacts and sufficient detail to allow for public participation.</td>
<td>Gilbert; Marlette</td>
</tr>
<tr>
<td>HCA-4</td>
<td>Whether National Historical Oregon Trail segments with ruts located on Petitioner’s property (Hawthorne Drive, La Grande) can be adequately protected from adverse impacts from proposed facility.</td>
<td>Horst/Cavinato (private interest)</td>
</tr>
<tr>
<td>HCA-5</td>
<td>Whether Applicant adequately analyzed the feasibility of undergrounding the transmission line as mitigation for potential visual impacts at Flagstaff Hill/NHOTIC.</td>
<td>Miller</td>
</tr>
<tr>
<td>HCA-6</td>
<td>Whether, as part of the HPMP (Historic, Cultural and Archeological Resources Condition 1), Applicant should be required to have an Oregon Trail expert, recommended by OCTA and agreed to by the Field Director, added to the Cultural Resource Team and present during preconstruction surveys to adequately identify emigrant trail locations.</td>
<td>S. Webster</td>
</tr>
<tr>
<td>HCA-7</td>
<td>Whether Applicant adequately evaluated archeological resource “Site 6B2H-MC-10” on Mr. Williams’ property, Parcel 03S37E01300.</td>
<td>Williams (personal interest)</td>
</tr>
<tr>
<td>LU-1</td>
<td>Whether the proposed facility would significantly disrupt public enjoyment of forest lands within Morgan Lake Park in contravention of Statewide Planning Goal 4, protecting Forest Land.</td>
<td>EOU/Antell</td>
</tr>
<tr>
<td>LU-2</td>
<td>Whether Applicant erred in calculating the percentage of forest land in Umatilla and Union Counties, thereby underestimating and misrepresenting the amount of potentially impacted forestland.</td>
<td>K. Andrew</td>
</tr>
<tr>
<td>LU-3</td>
<td>Whether Applicant’s analysis of forestland impacts failed to consider all lands defined as Forest Land under state law, thereby misrepresenting forest land acreage.</td>
<td>K. Andrew</td>
</tr>
<tr>
<td>LU-4</td>
<td>Adequacy of the analysis of potential impacts of transmission line interference with GPS units on irrigation system.</td>
<td>Foss</td>
</tr>
<tr>
<td>LU-5</td>
<td>Whether calculation of forest lands must be based on soil class or whether it is sufficient to consider acreage where forest is predominant use.</td>
<td>Gilbert</td>
</tr>
<tr>
<td>LU-6</td>
<td>Whether the alternatives analysis under ORS 215.275 included all relevant farmland.</td>
<td>Gilbert</td>
</tr>
</tbody>
</table>
**LU-7**  Whether the evaluation of proposed facility impacts to the cost of forest practices accurately determined the total acres of lost production or indirect costs.  
Gilbert

**LU-8**  The adequacy of Applicant’s evaluation of proposed facility impacts to the cost of forest management practices and whether mitigation must be provided for the entire length of the transmission line for the operational lifetime.  
Gilbert

**LU-9**  Whether Applicant adequately analyzed the risk of wildfires from operation of the proposed transmission lines, especially during “red flag” warning weather conditions, and the impact the proposed transmission lines will have on Mr. Myers’s ability to use an aerial applicator on his farmland.  
Myers (personal interest)

**LU-10**  Whether the Department-proposed revisions to the Proposed Order requiring landowner consultation pursuant to ORS 215.276 are unnecessarily specific as to high-value farmland owners.  
Applicant

**N**  Need Standard - OAR 345-023-0005

**N-1**  Whether the Department erred in defining capacity in terms of kilovolts instead of megawatts.  
Stop B2H

**N-2**  Whether in evaluating capacity, the Department applied balancing considerations in contravention of OAR 345-022-0000(3)(d).  
Stop B2H

**N-3**  Whether Applicant demonstrated need for the proposed facility when Applicant has only shown that its needs represent 21 percent of the total capacity.  
Stop B2H

**NC**  Noise Control Regulations

**NC-1**  Whether the Department improperly modified/reduced the noise analysis area in Exhibit X from one mile of the proposed site boundary to ½ mile of the proposed site boundary and whether OAR 345-021-0010(1)(x)(E) requires notification to all owners of noise sensitive property within one mile of the site boundary.  
Stop B2H; Cooper

**NC-2**  Whether the Department erred in recommending that Council grant a variance/exception from the Oregon DEQ’s Noise Rules, OAR 340-035-0035, and whether the variance/exception is inconsistent with ORS 467.010.  
Stop B2H; Gilbert; Gray; Horst/Cavinato; Myers

**NC-3**  Whether the ODOE erred in approving the methodology used to evaluate compliance with OAR 340-035-0035.  
Stop B2H

**NC-4**  Whether the mitigation/proposed site conditions adequately protect the public health, safety and welfare.  
Stop B2H

**NC-5**  Whether the revisions in the Proposed Order, Section IV.Q.1, Noise Control Regulation (Methods and Assumptions for Corona Noise Analysis) are inaccurate, specifically the use of the 12:00 a.m. to 5:00 a.m. timeframe to establish ambient noise levels.  
Gilbert

**NC-6**  Whether Applicant’s methodology to assess baseline noise levels (described in the Proposed Order at pp. 635-638) reflect reasonable baseline noise estimates for residents of the Morgan Lake area.  
Gray
<table>
<thead>
<tr>
<th>PS</th>
<th>Public Services – OAR 345-022-0110</th>
</tr>
</thead>
<tbody>
<tr>
<td>PS-1</td>
<td>Traffic Safety: Whether Applicant was required to evaluate traffic safety impacts from construction-related use of Morgan Lake Road.</td>
</tr>
<tr>
<td>PS-2</td>
<td>Fire Protection: Whether the site certificate should require that the public have the opportunity to review and comment on the final Wildfire Mitigation Plan; whether the Wildfire Mitigation Plan should include remote cameras to detect wildfire, safety procedures during red flag conditions, and the requirement that firefighting equipment be present on-site during construction.</td>
</tr>
<tr>
<td>PS-3</td>
<td>Fire Protection: Whether Council’s reliance on the Wildfire Mitigation Plan (Public Services Condition 7) prepared by Applicant for the Oregon Public Utility Commission (OPUC) is adequate to address wildfire response consistent with the Public Services standard.</td>
</tr>
<tr>
<td>PS-4</td>
<td>Fire Protection: Whether Applicant adequately analyzed the risk of wildfire arising out of operation of the proposed facility and the ability of local firefighting service providers to respond to fires.</td>
</tr>
<tr>
<td>PS-5</td>
<td>Fire Protection: Whether the Wildfire Mitigation Plan is adequately developed and includes sufficient detail to allow for public participation.</td>
</tr>
<tr>
<td>PS-6</td>
<td>Traffic Safety: Whether Applicant adequately evaluated the potential traffic impacts and modifications needed on Hawthorne Drive and Modelaire Drive (Hawthorne Loop).</td>
</tr>
<tr>
<td>PS-7</td>
<td>Traffic Safety: Whether Applicant adequately evaluated construction-related traffic impacts of the proposed facility on public service providers and emergency vehicle access routes in La Grande.</td>
</tr>
<tr>
<td>PS-8</td>
<td>Whether Department-proposed revisions to Public Services Condition 7 are redundant with Attachment U-3 and existing condition requirements.</td>
</tr>
<tr>
<td>PS-9</td>
<td>Whether Department-proposed revisions to the Fire Prevention and Suppression Plan (Public Services Condition 6, Proposed Order Attachment U-3) incorrectly reference applicability to facility operations.</td>
</tr>
<tr>
<td>R</td>
<td>Recreation - OAR 345-022-0100</td>
</tr>
<tr>
<td>R-1</td>
<td>Whether Applicant adequately evaluated the potential adverse impact of the proposed facility on recreational opportunities at Morgan Lake Park</td>
</tr>
<tr>
<td>R-2</td>
<td>Whether the visual impacts of the proposed facility structures in the viewshed of Morgan Lake Park are inconsistent with the objectives of the Morgan Lake Park Recreational Use and Development Plan and should therefore be reevaluated.</td>
</tr>
<tr>
<td>R-3</td>
<td>Whether the mitigation proposed to minimize the visual impacts of the proposed facility structures at Morgan Lake Park ($100,000 for recreational facility improvements) is insufficient because the park’s remote areas will not benefit from the proposed mitigation.</td>
</tr>
<tr>
<td>R-4</td>
<td>Whether Applicant’s visual impact assessment for Morgan Lake Park adequately evaluates visual impacts to the more than 160 acres of undeveloped park land and natural surroundings, as visual simulations were only provided for high-use areas.</td>
</tr>
</tbody>
</table>

| RFA | Retirement and Financial Assurance - OAR 345-022-0050 |
| RFA-1 | Whether the $1 bond amount adequately protects the public from facility abandonment and provides a basis for the estimated useful life of the facility. | Carbiener/OCTA; Gilbert |
| RFA-2 | Whether, in the event of retirement of the proposed transmission line, removal of concrete footings to a depth of one foot below the surface is sufficient to restore the site to a useful, nonhazardous condition. | Carbiener/OCTA |
| RFA-3 | Whether Applicant has satisfied the Retirement and Financial Assurance standard, whether the financial assurances in the Proposed Order adequately address the risk of stranded assets, and whether Council must evaluate the ability of other project partners to meet financial assurance and retirement cost requirements. | Gillis |

| SR | Scenic Resources and Protected Areas – OAR 345-022-0080; -0040 |
| SR-1 | Whether Applicant was required to evaluate impacts to Morgan Lake Park under the Scenic Resources standard because it is recognized as a scenic resource in a local plan (Morgan Lake Recreational Use and Development Plan). | L. Barry |
| SR-2 | Whether Applicant satisfied the Scenic Resources and Protected Area standards at Flagstaff Hill/NHOTIC and whether Applicant adequately analyzed the feasibility of undergrounding the transmission line as mitigation for potential visual impacts. | Carbiener/OCTA; Miller |
| SR-3 | Whether Applicant adequately assessed the visual impact of the proposed project in the vicinity of the NHOTIC and properly determined the impact would be “less than significant.” | Deschner |
| SR-4 | Whether Applicant should have evaluated Union County as an important scenic resource under the Scenic Resources standard and, if so, whether the Department erred in concluding that the proposed facility is not likely to result in significant adverse impact to this scenic resource. | Moyal; D. White (personal interest) |

<p>| SP | Soil Protection – OAR 345-022-0022 |
| SP-1 | Whether the Soil Protection Standard and General Standard of Review require an evaluation of soil compaction, loss of soil structure and infiltration, and loss of stored carbon in the soil. | Fouty |</p>
<table>
<thead>
<tr>
<th>SS</th>
<th><strong>Structural Standard – OAR 345-022-0020</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>SS-1</td>
<td>Whether Design Feature 32 of the Proposed Order Attachment G-5 (Draft Framework Blasting Plan) should be a site certificate condition to ensure repair of landowner springs from damage caused by blasting.</td>
</tr>
<tr>
<td>SS-2</td>
<td>Whether Applicant adequately analyzed the risk of flooding in areas adjacent to the proposed transmission line arising out of the construction-related blasting. Whether Applicant should be required to evaluate hydrology, including more detailed and accurate mapping of existing creeks and ditches that drain into streets and private property, and core samples of sufficient variety and depth to determine the flooding risk to neighborhoods of south and west La Grande.</td>
</tr>
<tr>
<td>SS-3</td>
<td>Whether Applicant should be required to test water quality of private water wells to ensure that construction-related activities are not impacting water quality and quantity.</td>
</tr>
<tr>
<td>SS-4</td>
<td>Whether Applicant should remove the Hawthorne Loop as a construction access route due to the steep grade and the potential landslide risks if modifications are needed to support construction-related traffic.</td>
</tr>
<tr>
<td>SS-5</td>
<td>Whether Applicant has adequately evaluated construction-related blasting in Union County, City of La Grande, under the Structural Standard. Specifically, whether Applicant should be required to conduct site-specific geotechnical surveys to characterize risks from slope instability and radon emissions.</td>
</tr>
<tr>
<td>TE</td>
<td><strong>Threatened and Endangered Species – OAR 345-022-0072</strong></td>
</tr>
<tr>
<td>TE-1</td>
<td>Whether Applicant was required to have an Oregon Department of Agriculture botanist review the ASC.</td>
</tr>
</tbody>
</table>
On November 9, 2020, I mailed the foregoing NOTICE TO COUNCIL OF APPEALS PURSUANT TO OAR 345-015-0016(6) AND CORRECTED TABLE OF IDENTIFIED ISSUES on this date in OAH Case No. 2019-ABC-02833.

**By: First Class Mail:**

John C. Williams  
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La Grande, OR 97850

**By: Electronic Mail:**

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Charles A. Lyons  
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Anesia N. Valihov  
Hearing Coordinator
Energy Facility Siting Council November 19-20, 2020

**Agenda Item G: Boardman to Hemingway Transmission Line Project**
Council Review of Appeals on Hearing Officer Order on Party Status, Authorized Representatives and Issues for Contested Case for the November 19-20, 2020 EFSC Meeting

Attachment D: Appellant/Party Responses to Appeals
(Filed by Applicant and Oregon Department of Energy)
Applicant Response to Appeals
November 13, 2020

VIA EMAIL OR U.S. MAIL

Alison Greene-Webster, Senior Administrative Law Judge
Office of Administrative Hearings
550 Capitol Street NE, Salem, OR 97301
Fax: 503-373-7806
Email: OED_OAH_Referral@oregon.gov


Dear ALJ Greene-Webster:

Attached for filing in the Boardman to Hemingway Transmission Line matter is the Applicant Idaho Power Company’s Reply to Appeals.

Thank you,

Jocelyn Pease

Attachment
cc: B2H Service List
I. INTRODUCTION

Pursuant to the Letter regarding Procedural Information Concerning Hearing Officer’s Order on Party Status from Jesse Ratcliffe, dated October 30, 2020, and in response to the appeals filed by petitioners, Applicant Idaho Power Company (“Idaho Power” or the “Applicant”) files this Reply to Appeals ("Reply"). To maintain an orderly and efficient contested case process, Idaho Power recommends that the Energy Facility Siting Council ("EFSC" or "Council") reject the appeals and instead uphold Administrative Law Judge ("ALJ" or "Hearing Officer") Webster’s rulings on limited party status and on the issues properly raised for the contested case in the Interim Order on Petitions for Party Status, Authorized Representatives and Issues for Contested Case issued on October 29, 2020 ("Party Status Order"), as amended by the Corrected Issues List issued on November 9, 2020. The ALJ’s rulings on party status and issues are well-reasoned, consistent with the EFSC statutes and rules as well as the Administrative Procedures Act ("APA") and the Attorney General’s Model Rules of Procedure for Contested Case ("Model Rules"), and fall squarely within the scope of her discretion.

A. Party Status

Throughout this proceeding, Idaho Power has recommended that all petitioners should be afforded limited party status, and that their participation be limited to the issues that the Hearing Officer concluded were properly raised in their petitions. This approach is consistent with the
APA, which allows agencies to impose restrictions on the participation of limited parties; it is fair, in that it allows the parties to address their issues of chief concern; and it will reasonably further the administrative goal of an orderly and efficient process.

Contrary to the assertions raised in the appeals, Idaho Power’s recommendation that party status be limited is not motivated by a desire to prevent members of the public from fully participating on their issues of concern. Instead, Idaho Power’s chief concern in arguing for limited party status is in maintaining an orderly process and reasonable schedule that will allow Idaho Power to meet its in-service date for the Boardman to Hemingway Transmission Line Project (“B2H” or “Project”) by 2026, which is critical to Idaho Power’s resource needs as the company exits coal plant operations over the coming years.

In the event that the Council reverses the ALJ’s Ruling and grants all petitioners full party status, Idaho Power urges that the Council also provide specific direction to the Hearing Officer to adopt procedural guidelines for the contested case that will reduce the inefficiency and delay that will likely result, and to allow Idaho Power to meet its in-service date for B2H.

B. Issues

Idaho Power recommends that the Council uphold the ALJ’s rulings on the issues properly raised in this case and reject the requests in the appeals to allow parties to address additional issues. In analyzing the petitions for party status and proposed contested case issues, the Hearing Officer closely followed the requirements of the EFSC statutes and rules related to the identification of contested case issues,¹ and Idaho Power agrees with and supports the analysis presented in the Party Status Order. Idaho Power does not further address the appeals regarding specific contested case issues in this Reply, and instead focuses on the party status issue and related concerns regarding schedule and process.

¹ ORS 469.370(3); OAR 345-0015-0016(3).
II. BACKGROUND

The Oregon Department of Energy ("ODOE") issued its Proposed Order on B2H on July 2, 2020, and required interested petitioners to file their petitions for party status by August 27, 2020. ODOE received 52 petitions, and subsequently, Idaho Power and ODOE filed Responses to Petitions on September 22, 2020. The Hearing Officer held Prehearing Conferences on September 25, 2020 and October 1, 2020, which provided petitioners an opportunity to present arguments about party status and proposed issues. During that same period in late September and early October, the Hearing Officer allowed for additional briefing on party status and issues.

The Hearing Officer issued her Party Status Order on October 29, 2020, identifying which petitioners had properly raised at least one issue to establish standing to participate in the contested case, identifying which issues had been properly raised, and granting limited party status to all petitioners who had established standing. Specifically, the Party Status Order clarifies that for limited parties, the scope of participation is limited to issues properly raised in their petitions for party status:

The limited party’s participation in the contested case will be limited to the specific issue or issues the limited party properly raised in their petition for party status. A limited party will have standing to respond on procedural matters, to participate in discovery related to the identified issue(s) properly raised in their petition, and to present evidence, cross-examine witnesses, and submit written briefing on the identified issue(s) properly raised in their petition.2

Additionally, the Party Status Order provides that where more than one limited party has established standing on a particular issue of public concern, the limited parties will be required to consolidate their representation and presentation on the issue, which will avoid redundancy, maintain order, and facilitate efficiency while allowing the asserted issue/public interest to be represented in the contested case.3

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3 Party Status Order at 11 (citing Marbet v. Portland General Electric, 277 Or 447, 455 (1977)).
Jesse Ratcliffe, as Counsel to EFSC, served a letter in this proceeding clarifying that petitioners could file an appeal on party status and issues by November 6, 2020, that ODOE and the Applicant would have an opportunity to respond on November 13, 2020, and that the appeals will be considered at the November 20, 2020 Council Meeting. Twenty-six petitioners timely filed appeals on party status and issues.

III. APPLICABLE LAW REGARDING PARTY STATUS

The EFSC statutes and rules grant party status to the applicant and ODOE in all contested cases relating to site certificates.\(^4\) Other interested individuals and organizations may petition for party or limited party status in the contested case.\(^5\) If the Hearing Officer grants a petition, she “shall specify areas of participation and procedural limitations” as she “deems appropriate.”\(^6\) Additionally, any “petition to participate as a party may be treated as a petition to participate as a limited party.”\(^7\)

The Council conducts its contested cases pursuant to the APA and the Council’s contested case procedures.\(^8\) Under the APA, parties may “present evidence and argument on all issues properly before the presiding officer in the proceeding.”\(^9\) However, the APA allows each agency to “adopt rules of procedure governing participation in contested case proceedings by persons appearing as limited parties.”\(^10\) The Council has promulgated its own rules governing participation

\(^4\) 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. The applicant shall be a party to the contested case. . . .”); OAR 345-015-0080(2) (“The Department must participate in all contested case proceedings conducted by the Council with all the rights of a party.”).

\(^5\) OAR 345-015-0016(2) (“Persons who have an interest in the outcome of the Council’s contested case proceeding or who represent a public interest in such result may request to participate as parties or limited parties.”).

\(^6\) OAR 137-003-0005(9).

\(^7\) OAR 137-003-0005(8).

\(^8\) 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.”).

\(^9\) ORS 183.417(1).

\(^10\) ORS 183.417(2); see also ORS 183.450(3) (“Every party shall have the right of cross-examination of witnesses who testify and shall have the right to submit rebuttal evidence. Persons appearing in a limited party status shall participate in the manner and to the extent prescribed by rule of the agency.”).
in contested cases, but also applies the Model Rules to the extent that they do not conflict with the Council’s rules. The Model Rules identify two important procedural limitations on limited parties’ participation in contested cases:

(3) The hearing shall be conducted, subject to the discretion of the presiding officer, so as to include the following:

* * * * *

(b) 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;

* * * * *

(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.

As mentioned above, the Hearing Officer may specify additional limitations as she “deems appropriate.” For example, in a 2015 EFSC contested case, the Hearing Officer limited participation to the issues that the petitioners properly raised in their petitions for party status.

Regardless of whether a party is accorded full or limited status, the Council’s rules authorize all parties “to propose site certificate conditions that the party believes are necessary or appropriate to implement the policy of ORS 469.310 or to meet the requirements of any other applicable statute, administrative rule or local government ordinance.” Parties and limited parties may also “present evidence relating to the appropriateness, scope or wording of any other
party’s proposed site certificate conditions and may present written proposed findings of fact, briefs and other argument concerning proposed conditions.”

IV. ARGUMENT

The limitations on party status in the Party Status Order appropriately balance the importance of public participation with need for a fair and orderly process.

First, limiting petitioners’ participation to the issues properly raised in their petitions will result in the most efficient and effective presentation of the issues for the Council’s consideration and will ensure that “unduly repetitious evidence” is properly excluded from the record. Similarly, Idaho Power’s proposed limitation will help the Hearing Officer “[m]aintain order” and “[f]acilitate presentation of evidence” in the contested case. In the Party Status Order, the Hearing Officer granted limited party status to 35 petitioners and identified 71 properly raised contested case issues. Given the breadth of issues and number of petitioners, if each petitioner were allowed to address every contested case issue, it would be very difficult to maintain an orderly evidentiary process. Limiting petitioners to the issues properly raised in their petition and consolidating participation on issues as recommended by the Hearing Officer will reduce duplicative testimony and argument, and provide for an efficient and orderly process.

Second, the recommended approach is consistent with the Council’s regulatory framework and Oregon administrative law, which require parties to raise issues at an early stage in the process to (1) provide fair notice to the applicant and reviewing agency such that they have an opportunity

16 OAR 345-015-0085(2).
17 ORS 183.450(1) (“Irrelevant, immaterial or unduly repetitious evidence shall be excluded but erroneous rulings on evidence shall not preclude agency action on the record unless shown to have substantially prejudiced the rights of a party.”). The Model Rules authorize the Hearing Officer to enforce this requirement. OAR 137-003-0040(6) (“The presiding officer may set reasonable time limits for oral presentation and may exclude or limit cumulative, repetitious, or immaterial matter.”).
18 OAR 345-015-0023(2)(b),(d) (A hearing officer shall take all necessary action to: . . . Facilitate presentation of evidence; [and] . . . Maintain order[,]”).
to respond to the issue; and (2) avoid unfair surprise in the contested case. Limiting petitioners to the issues that they properly raised in their DPO comments and petition for party status will ensure that Idaho Power and ODOE receive fair notice of all contested case issues, as is required by relevant EFSC statutes and rules governing the identification of contested case issues.

Finally, Idaho Power’s recommended approach is practical and fair, given that the issues properly raised by a petitioner are likely to be those most meaningful to that petitioner, and which that petitioner is best suited to present. Petitioners may represent either a personal or public interest in the outcome of the contested case, and in either case the petitioners that identified the interest in their petition will be best prepared to assert that interest in the contested case. Additionally, to the extent that a petitioner raised a personal interest, it is not clear that it would be appropriate for any other petitioner to address that personal interest. To the extent that petitioners purport to address a public interest, it is not clear that all petitioners would be qualified to address that public interest. The practical effect of granting all petitioners full party status would be to allow them to provide evidence in this case on issues that they have not addressed in their DPO comments or petitions, and about which they have not expressed any particular interest or claimed

19 Boldt v. Clackamas County, 107 Or App 619, 622–23 (1991). Boldt applied the “sufficient specificity” statute from LUBA proceedings, but that statute has similar requirements to the analogue in EFSC contested cases. Compare ORS 197.763(1) with ORS 469.370(3).  
20 In accordance with ORS 469.370(5), “[i]ssues that may be the basis for a contested case shall be limited to those raised on the record of the public hearing” unless “[t]he action recommended in the proposed order, including any recommended conditions of the approval, differs materially from that described in the draft proposed order, in which case only new issues related to such differences may be raised.” Thus, in order to be included in the contested case, an issue must have been raised on the record of the DPO or relate to a new issue or new condition language in the Proposed Order. In addition, for contested case issues raised on the record of the DPO, EFSC rules further provide that the issue must (1) be within the jurisdiction of the Council, and (2) have been presented “with sufficient specificity to afford the decision maker an opportunity to respond to the issue[.]” OAR 345-015-0016(3). “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.” Id. (Emphasis added).  
21 The determination of whether a petitioner’s interest will be impacted is left to the agency but is subject to judicial review. ORS 183.310(7)(c). The Council has the authority to determine whether a petitioner is qualified to represent a public interest. Marbet, 277 Or at 455.  
22 With respect to at least several issues, petitioners filed their petitions to address a specific area on which they claim to have expertise – for example, Dr. Fouty for soils, Kevin and Anne March for fisheries issues, and Gail Carbien for Oregon Trails issues. Accordingly, it makes sense for parties’ participation to be limited to their claimed areas of expertise. Dr. Fouty did not raise fisheries issues or Oregon trail issues in her DPO comments or petition, and it is not clear that she would have any particular expertise to address these issues. Similarly, Kevin and Anne March did not raise soils or trails issues and it is not clear that either would have relevant expertise on these topics.

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REPLY TO APPEALS
expertise. This approach simply does not make sense and would substantially burden the record in this case without providing any discernible benefit to the record. Accordingly, the argument that all parties should be permitted to address all issues should be rejected.

V. RESPONSES TO APPEALS

STOP B2H, Irene Gilbert, and numerous other petitioners filed appeals requesting that they be granted full party status to address any and all issues in the contested case. Their primary contention is that all petitioners must be allowed to address every contested case issue because the APA guarantees that right to all parties. Additionally, the parties contend that: the Model Rules allow the Hearing Officer to grant limited party status only if limited party status is requested by the petitioner, the ALJ’s granting limited party status is an abuse of discretion, and granting the petitioners limited party status will prevent them from responding to Idaho Power’s proposed contested case issues. None of these arguments is sound. As discussed below, the APA allows agencies to adopt their own rules for how limited parties participate in contested case proceedings, the Model Rules plainly allow the ALJ discretion to grant petitioners limited party status, and limited parties may respond to Idaho Power’s proposed contested case issues because those issues are all related to proposed site certificate conditions.

A. The Hearing Officer’s Rulings are Consistent with the APA.

In its appeal, STOP B2H relies on the APA sections ORS 183.417(1) and ORS 183.413(2)(e) to assert that the petitioners are entitled to address every issue in the contested

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24 STOP B2H Appeal at 3.
25 Gilbert Appeal at 3.
26 STOP B2H Appeal at 5-6.
27 Ms. Gilbert also raises a similar argument. Gilbert Appeal at 3.
However, their reliance on those provisions is misplaced, ignoring critical context in the applicable statutory framework, and failing to give meaning to all provisions of the APA and EFSC statutes.

STOP B2H’s position is rooted primarily in ORS 183.417(1) of the APA, governing procedures in contested case hearings. That subsection states that parties may “present evidence and argument on all issues properly before the presiding officer” in the contested case. STOP B2H implies that this provision guarantees that limited parties have an absolute right to respond to every issue in a case, regardless of agency rules. However, this argument entirely ignores the very next sentence in that statute found in ORS 183.417(2) which grants agencies, including the Council, the authority to “adopt rules of procedure governing participation in contested case proceedings by persons appearing as limited parties.” Similarly, ORS 183.450(3) governing evidence in contested cases explicitly provides that, while every party shall have the right of cross-examination and to submit rebuttal evidence, “[p]ersons appearing in a limited party status shall

28 STOP B2H Appeal at 3 (“The Oregon Administrative Procedure Act (APA) provides that a ‘party has the right to respond to all issues properly before the presiding officer and present evidence and witnesses on those issues.’”) (emphasis in original); Gilbert Appeal at 3 (“ORS 183.413(2)(e) States the party has the right to respond to all issues properly before the presiding officer and present evidence and witnesses on those issues.”).

29 STOP B2H also argues that ORS 183.413(2)(e)—stating that “a party has the right to respond to all issues properly before the presiding officer”—creates “a due process right on the part of STOP (and others) to participate on ‘all issue[s]’ – not just on certain issues.” STOP B2H Appeal at 3. This reading of the statute is wrong, as it fails to consider the text and context of the statute. See State v. Gaines, 346 Or 160, 171 (2009) (reiterating that the first step in statutory analysis “remains an examination of text and context.”). Indeed, as explained by the Oregon Supreme Court, the statutory purpose of ORS 183.413 is to enumerate the contents of a notice of a hearing—not to confer any substantive procedural rights. Smith v. Bd. Of Parole & Post-Prison Supervision, 268 Or App 457, 467 (2015) (noting that the statutory text “pertains solely to the contents of a notice of hearing . . . it does not purport to confer any substantive procedural rights” (emphasis in original); see also Smith v. Mills, 268 Or App 454, 456 (2015) (following Smith). In this context, ORS 183.413(2) compiles procedural rights addressed elsewhere in the APA, but does create any additional procedural rights for contested case hearings. See, e.g., Villanueva v. Bd. of Psychologist Exam’rs, 175 Or App 345, 356–57 (2001) “ORS 183.413 requires that parties to a contested case be informed generally of their rights and remedies in the process. Subsection (2) of that statute sets out the information that must be provided.”; Schuch v. Bd. Of Parole & Post-Prison Supervision, 139 Or App 327, 331 (1996) (“ORS 183.413 . . . establishes the general notice requirements for contested case hearings.”); Liu v. Portland State Univ., 281 Or App 294, 301 (2015) (noting in a parenthetical that ORS 183.413 gives a party to a contested case a right to prehearing notice of rights and procedures).

30 ORS 183.417(1); STOP B2H Appeal at 3; Gilbert Appeal at 4.

31 ORS 183.417(2) (“Agencies may adopt rules of procedure governing participation in contested case proceedings by persons appearing as limited parties.”).
participate in the manner and to the extent prescribed by rule of the agency.” 32 These provisions of the APA evince a clear legislative intent to allow agencies to promulgate rules to restrict the scope of participation by limited parties.

The Oregon Supreme Court has recognized that “when one statute deals with a subject in general terms and another deals with the same subject in a more minute and definite way, the two should be read together and harmonized, if possible, while giving effect to a consistent legislative policy.” 33 Here, ORS 183.417(1) is a more general statement of procedural rights for parties, while ORS 183.417(2) is a more specific provision addressing the participation of limited parties in contested case proceedings. Thus, to give effect to both provisions of ORS 183.417, subsection 2, must be understood to explain and modify subsection 1. 34 In other words, parties may respond to all issues in a case—unless an agency imposes restrictions on the participation by limited parties, in which case those limitations must be given effect. Indeed, this reading is required in order to avoid an absurd result, whereby, on one hand, agencies are allowed to impose limitations on participation by limited parties, but on the other hand are deprived of the ability to impose the most meaningful limitation on these parties’ participation—limitations on the scope of participation. 35

Additionally, the APA framework must also be considered in context and harmonized with the EFSC statutory scheme, which imposes limitations on how parties may raise issues in an EFSC contested case proceeding. Specifically, the EFSC statutes require that persons that intend to request party or limited party status in a contested case before the Council must first raise their

32 ORS 183.450(3).
33 State v. Edmonds, 364 Or 410, 421 (2019); see also Antonin Scalia & Bryan Garner, Reading Law: The Interpretation of Legal Texts 183 (2012) (explaining that “the specific provision comes closer to addressing the very problem posed by the case at hand and is thus more deserving of credence”).
34 Notably, construing ORS 183.417(2) to modify ORS 183.417(1), would be similar to the approach to interpreting ORS 183.450(3), which describes both parties and limited parties in the same statutory provision, and in which the second sentence addressing limited parties modifies the first sentence addressing parties.
35 Consistent with principle of statutory construction, the Council must interpret ORS 183.417(1) and (2) so that each provision to give meaning to both without achieving an absurd result. See ORS § 174.010; Vasquez v. Double Press Mfg. Inc., 364 Or 609, 630 (2019) (“We have recognized that when a statute has two or more plausible interpretations, we would not favor the one that ‘would lead to an absurd result that is inconsistent with the apparent policy of the legislation as a whole.’”) (quoting State v. Vasquez-Rubio, 323 Or 275, 282–83 (1996)).
issues in comments before the record of the public hearing closes, and the issues must be raised with sufficient specificity to allow the council, the Department of Energy, and the applicant an adequate opportunity to respond.36 Persons that did not participate in the public hearing and comment phase of the proceeding may not participate in the contested case.37 This framework indicates a legislative intent that petitioners in EFSC proceedings be allowed to address only those issues that they properly raised in the comment phase, and included in their petitions. The only way to harmonize EFSC’s framework is to give effect to ORS 183.417(2) by allowing EFSC to adopt rules restricting limited parties to the issues they properly raised in comments on the record during the public hearing stage and properly present in their petitions for party status.

Accordingly, STOP B2H’s reading of ORS 183.417(1) to allow all parties to present evidence on all issues—without any limitation as contemplated in ORS 183.417(2)—would frustrate the legislature’s intent to allow agencies to prescribe rules restricting limited parties’ evidentiary powers and would achieve an absurd result. The more general statement of rights in ORS 183.417(1) must be read in context with ORS 183.417(2) and 183.450(3) and the EFSC statutory scheme, and the more specific statements regarding limited parties’ control over any conflict with the more general statements relevant to all parties. The most plausible way to harmonize these two provisions is to read the specific provisions of ORS 183.417(2), regarding limited parties, as being a modification to the general statement enumerated in ORS 183.417(1). Thus, when all relevant provisions of the APA are read together, it is clear that parties’ rights to respond to all issues in a case are subject to the specific limitations imposed by agencies on those persons who are accorded limited party status.

B. STOP B2H’s Assertion that the Hearing Officer Cannot Treat Petitions Filed in this Case as Petitions for Limited Party Status is Inconsistent with the Model Rules.

STOP B2H challenges the Hearing Officer’s authority to treat petitions for party status as

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36 ORS 469.370(2)(e) and (3).
37 ORS 469.370(5).
petitions for limited party status. According to STOP B2H, OAR 137-003-0005(8) allows the Hearing Officer to exercise that discretion only when a petitioner chooses to request limited party status, and there is nothing “in the Rule or the APA that provides authority for an ALJ or Hearings Officer to forcibly limit a party’s participation when they meet the criteria for full party status.” STOP B2H has not provided any support for this assertion and its statements contradict the plain language of OAR 137-003-0005(8), which states: “A petition to participate as a party may be treated as a petition to participate as a limited party.” Additionally, the APA contemplates that agencies have the authority to limit parties’ participation, but is completely silent as to how agencies may do so—leaving the matter entirely to the discretion of the agency. Here, EFSC has adopted rules, including the Model Rules, which provide the agency with broad authority to limit parties’ participation.

Moreover, while not explicit in STOP B2H’s appeal, they are essentially arguing that the Model Rules violate the APA—and thus if the Council were to adopt STOP B2H’s reasoning, the Council would also be repudiating the Model Rules, which it has incorporated by reference into its own rules. A much more reasonable result would be to give effect to the statutory provisions in the APA and rule provisions in the Model Rules regarding limited party status.

C. The ALJ Acted Within Her Discretion to Limit Party Status Under the Model Rules.

Consistent with ORS 183.417(2), the Council has in fact adopted and incorporated provisions of the Model Rules governing participation for limited parties. Those rules

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38 STOP B2H Appeal at 3-4 (“The Model Rules of Procedure for Contested Cases make reference to the concept of ‘limited’ party status. However, the reference in the rules is to the ability of a party to limit their own status should they choose to do so. . . . The ALJ’s conclusion that these requirements somehow authorize forcibly limiting a parties [sic] participation to only certain issues contravenes both the express language of the APA and also the spirit or intent of the APA.”).
40 OAR 345-015-0001.
41 ORS 183.417(2); ORS 183.450(3); OAR 137-003-0005(8) and (9).
42 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[.]”).
specifically provide the hearing officer with discretion to determine whether a petition for party status should be treated as a petition for limited party status, and provide that limited parties may testify and cross-examine witnesses only within “the area or areas of participation granted by the agency.” Similarly, EFSC’s own rule, OAR 345-015-0083(2) contemplates that petitioners will be granted limited party status.

Despite those permissible limitations, Ms. Gilbert argues that the ALJ has abused her discretion in imposing limitations on party status, that the Oregon Court of Appeals precedent in *Berwick v. Adult & Family Servs. Div.* implies an obligation on the ALJ to grant full party status to assist petitioners in presenting evidence in the contested case. However, nothing in *Berwick* suggests that a petitioner seeking to intervene in a contested case is entitled to present evidence on all issues arising in that contested case, and there are significant differences between *Berwick* and the instant case. First, the contested case in *Berwick* was a non-adversarial fact-gathering proceeding meant to assist the agency in deciding whether the claimant satisfied the criteria to prove unemployability. The court expressly relied on the nature of the proceedings in its determination that the ALJ had a heightened responsibility to assist the claimant. Conversely, the contested case process before EFSC is much more adversarial, and the ALJ plays a role more akin to the “disinterested adjudicator.” For that reason, it is not clear that *Berwick* affects the ALJ’s

43 OAR-137-003-0005(8); 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[,]”).

44 “At the conclusion of the conferences, the hearing officer must issue a prehearing order stating the issues to be addressed in the contested case hearing and, in a contested case on an application for a site certificate, limiting parties to those issues they raised on the record of the public hearing described in OAR 345-015-0220.” OAR 345-015-0083(2).

45 Gilbert Appeal at 3.

46 *Berwick*, 74 Or App 460, 465-466 (1985) (On appeal, the court discussed the non-adversarial nature of public benefit hearings. In cases before the AFSD, claimant is the only party to the proceeding, for AFSD is the decider, not the opponent, and the court explained: “The hearings officer's responsibilities are shaped by the character of the hearing. The hearings officer is not a disinterested adjudicator observing two parties fighting. Rather, he or she aims both at helping AFSD make the best possible decision and at assuring the claimant a fair and full hearing.”).
duties in this contested case in any manner. 47

Furthermore, Berwick does not bear on the question of whether a petitioner is entitled to party or limited party status. In Berwick the claimant’s rights were the subject of the contested case. Accordingly, the claimant was a party under ORS 183.310(7)(a) and did not need to petition for party or limited party status under ORS 183.310(7)(c). Although individuals who are statutorily granted full party status have the right to present evidence on all issues, nothing in Berwick suggests that petitioners seeking to participate in a contested case have that same right. Rather, in Berwick the court held merely that the hearings officer in a non-adversarial proceeding has a duty to ensure a full and fair hearing to the claimant and that part of that duty requires the ALJ to assist an unrepresented claimant in presenting favorable evidence.

D. If Granted Limited Party Status, Petitioners May Nevertheless Respond to Idaho Power’s Proposed Conditions.

STOP B2H argues that if it is limited to party status, it would be precluded from responding to the issues that Idaho Power identified in its Petition Identifying Contested Case Issues. 48 However, all of the issues that Idaho Power identified as contested case issues relate to proposed site certificate conditions, as described in the Hearing Officer’s Corrected Table of Identified Issues. Under the Council’s contested case rules, “any party or limited party may present evidence relating to the appropriateness, scope or wording of any other party’s proposed site certificate conditions and may present written proposed findings of fact, briefs and other argument concerning proposed conditions.” 49 Because those issues relate to Idaho Power’s proposed

47 See Wahlgren v. ODOT, 196 Or App 452, 459 (2004) (stating that “it is not clear . . . that Berwick even applies” to adversarial implied consent cases before the DMV).
48 STOP B2H Appeal at 5 (“For example, being a limited party would potentially mean that STOP could not challenge or oppose on the issues that the applicant IPC has appealed on. One of those IPC appeal points seeks to remove a critical condition that the agency placed in the draft Proposed Order, that would require the applicant to survey and deal with bats. . . .Yet as a limited party, STOP would potentially not be able to present evidence, or cross examine, or submit briefs on this issue.”).
49 OAR 345-015-0085(2) (“In a contested case proceeding on an application for a site certificate or on a proposed site certificate amendment, any party or limited party may present evidence relating to the appropriateness, scope or
modifications to site certificate conditions, all limited parties, including STOP B2H, may address those proposed conditions.

VI. RELIEF IN THE ALTERNATIVE

In the event the Council rejects the Hearing Officer’s decision on party status, and grants full party status to the petitioners, Idaho Power urges the Council to consider the potential implications to the ability of the Hearing Officer to maintain an efficient and orderly process, as well as the potential impacts to the overall schedule, and provide direction to help keep the contested case on track so that Idaho Power may receive a site certificate in time to meet its 2026 in-service date.

In particular, Idaho Power is concerned that if all parties have full party status to address all issues identified in the Party Status Order, conceivably all 35 parties could issue discovery and provide evidence and argument on all 71 issues. Even if each party were allowed to ask only one question or data request per issue in discovery, this would result in 2,485 discrete questions or data requests—many of which may be cumulative or duplicative—creating inefficiency in the discovery process. The same considerations apply to testimony and briefing, where, in the absence of consolidation, there is a high likelihood of cumulative and duplicative testimony and argument.\(^50\) These process considerations will necessarily result in significant delays to the overall schedule.

Idaho Power proposed a schedule in this case, which assumed the Hearing Officer’s limits on party participation, and certain parties have already indicated they will need substantially more time to prepare their case. For example, STOP B2H claims that they will need 90 to 120 days from the date of completing discovery to file their testimony.\(^51\) Under Stop B2H’s timeline, 8 to

\(^{50}\) OAR 137-003-0005(3)(f).

\(^{51}\) In the Matter of the Application for Site Certificate for the Boardman to Hemingway Transmission Line, STOP B2H Coalition’s Memorandum in Opposition to Idaho Power’s Motion to Adopt Proposed Schedule at 9 (Oct. 29, 2020).
9 months will have passed between issuance of the Proposed Order and the start of direct testimony—and that’s assuming there is no discovery and the parties continued to be limited to the issues they properly raised in their petition.\textsuperscript{52} If the Council grants the parties full party status and/or discovery occurs, it is not unreasonable to anticipate the parties will request to push the start of testimony out even longer. Furthermore, if the scope of issues that each party may address expands by affording all parties full party status, Idaho Power and ODOE may require more time to review and respond to cumulative and duplicative discovery requests, testimony, and argument, and the Hearing Officer may require additional time to review and consider the entire record in issuing a contested case order.

Indeed, there is significant risk that a process with no limitations imposed could result in extending the schedule out far enough to potentially jeopardize Idaho Power’s 2026 in-service date. Importantly, the 2026 in-service date is not merely aspirational—it is needed to fill a resource gap resulting from the Company’s coal plant exits in the coming years.\textsuperscript{53} Receiving a timely decision from the Council on the site certificate will be essential to meeting the 2026 on-line date for B2H. And while 2026 may seem distant, many intermediate tasks are required between obtaining the site certificate and completing construction. There is very little, if any, room in the schedule for delay. Therefore, Idaho Power seeks to have a final decision and site certificate by the end of 2021.

Without any sideboards on the contested case process, Idaho Power is concerned that the

\textsuperscript{52} Note that the timing contemplated in the EFSC statute for issuance of a site certificate is 12 months from submission of the application for site certificate. ORS 469.370(9)(d).

\textsuperscript{53} B2H is needed in 2026 to make up the capacity deficit created by customer growth and Idaho Power’s planned exit from coal operations at the Valmy, Boardman and certain units of the Jim Bridger coal plants. Idaho Power exited Valmy Unit 1 (127 MW) in 2019, and the Boardman plant ceased operations just last month. In addition, the Second Amended 2019 Integrated Resource Plan filed in early October 2020 with the Public Utility Commission of Oregon (“OPUC”) (see In the Matter of Idaho Power Company, 2019 Integrated Resource Plan, Docket LC 74, Idaho Power Company’s Amended 2019 Integrated Resource Plan, (Oct. 2, 2020)), contemplates that Idaho Power will exit one Bridger Coal unit (177 MW) and Valmy Unit 2 (133 MW) in 2022, a second Bridger unit (180 MW) in 2026, a third Bridger unit (174 MW) in 2028, and the fourth and last Bridger unit (177 MW) in 2030. As a result of these coal plant exits, combined with expected load growth, Idaho Power will be facing resource deficits by 2026—unless B2H is completed and on-line as planned.
process considerations described above will quickly overwhelm the Hearing Officer’s ability to maintain an efficient and orderly process. In light of these concerns, if the Council elects to grant full party status to all petitioners, Idaho Power urges the Council to also provide the following direction in its order on the appeals:

1. The Hearing Officer should take any and all appropriate measures to consolidate participation to ensure an orderly and efficient process and to avoid unnecessary cumulative and duplicative discovery requests, evidence, and argument.  

2. The Hearing Officer and parties in the case will endeavor to maintain a reasonable schedule in this case without undue delay, which would allow for a Council decision on the site certificate by the end of 2021.

VII. CONCLUSION

Idaho Power requests that the Council reject the appeals on party status and issues and uphold the Hearing Officer’s rulings in the Party Status Order. To the extent that the Council is inclined to grant the appeals and overrule the Hearing Officer, Idaho Power urges the Council to also provide specific direction regarding the consolidation of participation and schedule in this case to avoid overwhelming and unduly delaying the contested case process.

54 For example, some reasonable process recommendations that could help streamline the process include requiring that parties identify which of the 71 issues they propose to address in the case before the December 4, 2020 Case Management conference, that all discovery requests on a particular issue must be coordinated among the parties seeking to address that issue to avoid duplicative requests, that parties must coordinate and work together to provide testimony, that requests for cross-examination must be consolidated such that a single representative from all intervening parties would be responsible for cross-examination on a particular issue, and that parties must work together to consolidate briefing to avoid duplicative argument.
DATED: November 13, 2020

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CERTIFICATE OF FILING AND SERVICE

I hereby certify that on November 13, 2020, the foregoing APPLICANT IDAHO POWER COMPANY’S REPLY TO APPEALS 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 November 13, 2020, the foregoing APPLICANT IDAHO POWER COMPANY’S REPLY TO APPEALS was served by First Class Mail or electronic mail as indicated below:

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Oregon Department of Energy Response to Appeals
On July 2, 2020, the Oregon Department of Energy (“Department”) issued Public Notice of the Proposed Order on the Application for Site Certificate (“ASC”) for the Boardman to Hemingway Transmission Line (“proposed facility”). The proposed facility is a 300-mile 500 kilovolt transmission line, extending across five Oregon counties (Morrow, Umatilla, Union, Malheur and Baker), proposed by Idaho Power Company (“Applicant”). In the Public Notice, the Department established an August 6, 2020 deadline for eligible participants to submit petitions for party or limited party status in the contested case proceeding on the Proposed Order on the ASC for the proposed facility. The August 6, 2020 deadline was extended by the Department based upon requests from eligible participants to August 27, 2020.

In response to the Public Notice, 53 petitions were filed with the Hearing Officer. Pursuant to OAR 137-003-0005(4), Hearing Officer notified petitioners, Applicant and Department of their opportunity to file responses to petitions. The Department and Applicant filed responses on September 22, 2020, the Hearing Officer’s established filing date. Following Pre-Hearing Conferences conducted on September 25 and October 1, 2020 by the Hearing Officer, petitioners were provided an opportunity to file additional written argument on limited party status and the Department’s September 22, 2020 Response to Petitions. Additional written responses were filed by petitioners McAllister, Morton, Moyal,

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1 B2HAPPDoc3-2 Contested Case 2019-ABC-02833 Amended Notice of Pre-Hearing Conference and Pre-Hearing Conference Agenda. 2020-09-08.
Gilbert, White, Luciani, Larkin, STOP B2H Coalition, Geer, Deschner, Fouty, Cooper, L. Barry, Carbiener, Squire, Cimon, K. Andrew, P. Barry, C. Andrew, Foss, Proesch, Aston and Winters. Based upon additional filed written responses and oral arguments provided at the September 25 and October 1, 2020 Pre-Hearing Conferences, the Department filed an Amended Response to Petitions and Second Amended Response to Petitions on September 28 and October 6, 2020, respectively, based upon leave granted by Hearing Officer. The Second Amended Response to Petitions recommended two additional petitioners be granted limited party status, added issues and added or modified 23 issue statements based on clarification provided in petitioner responses.

The Hearing Officer issued her Order on Petitions for Party Status, Authorized Representatives and Issues for Contested Case (“Order on Party Status”) on October 29, 2020, granting limited party status to 35 petitioners and denying limited or full party status to the other 18 petitioners; the order identifies 70 properly raised contested case issues, and denies 47 issues. The Order on Party Status notified petitioners of their right to appeal the Hearing Officer’s determination, pursuant to OAR 345-015-0016(6) and OAR 345-015-0057(1), within seven days, or by November 6, 2020. On November 9, 2020, Hearing Officer issued a Notice to Council of Appeals Pursuant to OAR 345-015-0016(6) and Corrected Table of Identified Issues (“Notice to Council”) identifying and including appeals filed by 27 petitioners.

The Department submits the following response, including the Department’s interpretation of the requirements for requesting party status in the contested case, the legal requirements for issues considered in a contested case and an evaluation of whether appeals filed meet the established legal requirements.

I. LEGAL REQUIREMENTS OF A CONTESTED CASE

A. Requesting Party Status

Pursuant to ORS 469.370(5) and OAR 345-015-0016, in order to become a party or limited party, a person must submit a petition which satisfies several requirements:

(1) The person must have commented either in writing or in person on the record of the draft
proposed order public hearing, from May 22 through August 22, 2019.
(2) The person must demonstrate a personal interest in the outcome of the proceeding or demonstrate that they represent a public interest in the outcome of the proceeding and are qualified to represent the public interest.
(3) The person must have properly raised at least one contested case issue in the request for party or limited status.

B. Properly Raised Contested Case Issues

Pursuant to ORS 469.370(5) and OAR 345-015-0016(3), in order to properly raise a contested case issue, the issue must:

(1) Be within the Energy Facility Siting Council’s (“EFSC”) jurisdiction;
(2) Have been raised in person or in writing on the record of the draft proposed order hearings;
(3) Have been raised with sufficient specificity to afford EFSC, the Department, and the Applicant an adequate opportunity to respond to the issue; and,
(4) Have been included in the petition for party or limited party status, with a short and plain statement of the issue or issues that a petitioner wishes to raise, including a reference to the petitioner’s comments on the record of the public hearing showing that the person raised the issue on the record of the public hearing.

C. Appeal Rights

Hearing Officer’s Order on Party Status notified petitioners of their right to appeal the Hearing Officer’s determination, pursuant to OAR 345-015-0016(6) and OAR 345-015-0057(1), which state:

- OAR 345-0016(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.”
- OAR 345-015-0057(1): “Except as otherwise specifically provided for in the rules of this division, a party or limited party may not take an interlocutory appeal to the Council from a ruling
of the hearing officer unless such ruling would terminate that party’s right to participate in the contested case proceeding.”

II.  RESPONSE TO APPEALS

A.  Stop B2H Coalition

Appeal Summary

Petitioner Stop B2H Coalition filed an appeal on November 6, 2020, disputing the following findings of the Order on Party Status:

1.  Petitioner disputes designation as a limited rather than full party.

2.  Petitioner disputes denial of the following issues:

   a.  Whether Applicant’s visual impact assessments are invalid because Applicant used an outdated methodology (based on a 1974 USFS Handbook) to access visual impacts on Morgan Lake Park and other areas instead of Landscape Aesthetic, Scenic Management System (SMS), published in 1995.


   c.  Whether the methods used to determine the extent of an adverse impact of the proposed facility on scenic resources, protected area and recreation along the Oregon Trail were flawed and developed without peer review on public input. Specifically, whether Applicant erred in applying numeric values to the adverse impact and whether Applicant used unsatisfactory measurement locations/observation points in its visual impact assessment.

3.  Petitioner seeks clarification on properly raised contested case issue statements.

   a.  Whether the Department improperly modified/reduced the noise analysis area in Exhibit X from one mile of the proposed site boundary to ½ mile of the proposed site boundary
and whether OAR 345-021-0010(1)(x)(E) requires notification to all owners of noise sensitive property within one mile of the site boundary.

b. Whether the Department erred in approving the methodology used to evaluate compliance with OAR 340-035-0035.

4. Petitioner disputes Council’s legal authority to evaluate appeal on issues.

_Evaluation_

1. Council may hear Stop B2H Coalition’s appeal on limited party status pursuant to OAR 345-015-0016(6), as determined in the Order on Party Status.

Stop B2H argues that the Oregon Administrative Procedures Act (APA) gives all parties to a contested case regarding a site certificate the right to participate with regard to every issue being considered in the contested case even if the party never raised the issue on the record of the Draft Proposed Order nor requested a contested case on the issue. As support for this assertion, Stop cites to ORS 183.413(2)(e), which states that the notice an agency must give prior to commencement of a contested case must include “a statement that the party has a right to respond to all issues properly before the presiding officer and present evidence and witnesses on those issues.” ORS 183.413(2)(e). Stop also cites to ORS 183.417(1) for the same proposition.

There are two flaws in Stop’s argument. First, ORS 183.413(2)(e) does not confer substantive rights on parties to a contested case, it only addresses what must be included in a notice. Second, ORS 183.417(1) and 183.413(2)(e) must be interpreted in conjunction with other statutes and rules that establish EFSC has the right to treat persons seeking full party status as limited parties and that participation in EFSC contested cases by persons other than the

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applicant and Department is limited to those issues the person raised with sufficient specificity on the record of the Draft Proposed Order.

By statute, persons that intend to request to participate in a contested case regarding an application for a site certificate must first raise their issues in comments before closing of the record of the final public hearing before the Department’s issuance of the proposed order (i.e., on the record of the Draft Proposed Order). ORS 469.370(2)(e) and (3). The issues must be raised with sufficient specificity to allow the Council, the Department of Energy, and the applicant an adequate opportunity to respond. ORS 469.370(3). Persons that did not participate in the public hearing and comment phase of the proceeding may not participate in the contested case. ORS 469.370(5).

Model Rule for Contested Cases OAR 137-003-0005(8) establishes that an agency (or in this matter the Hearing Officer) may treat a petition to participate as a party as a petition to participate as a limited party, stating: “A petition to participate as a party may be treated as a petition to participate as a limited party.” Further, subsection (9) of that rule states “the agency shall specify areas of participation and procedural limitations as it deems appropriate” (emphasis added).

Consistent with those statutes, and as expressly allowed by the Model Rule provisions discussed above, EFSC has limited persons allowed to participate in the contested case hearing to those issues that they previously raised on the record. OAR 345-015-0083(2) imposes that requirement for the contested case hearing on an initial application for a site certificate, stating: “the hearing officer shall issue a prehearing order stating the issues to be addressed in the contested case hearing and, in a contested case on an application for a site certificate, limiting

3 In OAR 345-001-0005(1) EFSC adopted the Model Rules for Contested Cases in 137-003-0001 through 137-003-0092.
parties to those issues they raised on the record of the public hearing described in OAR 345-015-0220” (emphasis added).

Thus, contrary to Stop’s assertion, Stop is not entitled to participate in every issue in the contested case; rather, it may participate with regard to those issues that it raised on the record of the Draft Proposed Order and for which the Hearing Officer rules is appropriate for the contested case. This same approach holds true for all petitioners.

2. Council may hear Stop B2H Coalition’s appeal on denied issues (a), (b) and (c), as listed above, pursuant to OAR 345-015-0016(6). Denial of issues (a), (b) and (c) should be maintained as determined in the Order on Party Status.

   a. Stop B2H Coalition disputes denial of the issue arguing “Whether Applicant’s visual impact assessments are invalid because Applicant used an outdated methodology (based on a 1974 USFS Handbook) to access visual impacts on Morgan Lake Park and other areas instead of Landscape Aesthetic, Scenic Management System (SMS), published in 1995” and of Hearing Officer’s determination that STOP B2H Coalition “did not raise the outdated methodology issue with sufficient specificity on the record of the draft proposed order” public hearing. Stop B2H Coalition maintains that the issue of inappropriate methodology was properly raised in its draft proposed order comments. Stop B2H Coalition does not appear to refute Hearing Officer’s determination that STOP B2H Coalition did not specifically contend that the Applicant’s methodology was outdated or that Applicant should have used the 1995 SMS methodology instead. Instead, STOP B2H Coalition asserts that there is not a legal requirement to use certain “magic words” to raise an issue with sufficient specificity, and that they were not required to use specific terminology or reference specific documents to have properly raised the issue of whether Applicant used an inappropriate visual impact assessment methodology.
Pursuant to OAR 345-015-0016(3), to have raised an issue with sufficient specificity, the person raising an issue must have presented facts at the public hearing that support the person’s position on the issue. As noted in the Order on Party Status, Stop B2H Coalition’s draft proposed order comments identified concerns about the visual impact assessment at Morgan Lake Park and asserted that the Applicant had “conjured up many pages of methodology” and that the resulting conclusions were “unsupported with relevant credible data and fail to consider Oregonian’s subjective ‘opinion/evaluation’ of their scenic and recreational resources.” Stop B2H Coalition’s concerns with the methodology used did not provide facts to illustrate how the methodology failed to produce deficient conclusions, except to point out that it did not consider the subjective opinions or evaluations of Oregonians.

In its petition; however, STOP B2H Coalition specifically requests a contested case proceeding on the issue of whether Applicant’s use of an outdated 1974 USFS Handbook to evaluate visual impacts invalidates conclusions of visual impacts. In addition to substantially refining the issue raised in comments, the petition effectively adds new facts to support Stop B2H Coalition’s position on the issue, which conflicts with the OAR 345-015-0016(3) requirement that the issue be raised with sufficient specificity on the record of the draft proposed order. For this reason, the Department recommends Council concur with Hearing Officer’s determination that the issue did not satisfy OAR 345-015-0016(3); therefore, Hearing Officer’s denial of the issue should be maintained.

b. Stop B2H Coalition disputes denial of the issue, “Whether the Soil Protection Standard and General Standard of Review require an evaluation of carbon sequestration, carbon storage and carbon loss” and Hearing Officer’s determination that “the Soil Protection Standard does not extend to impacts on the earth’s atmosphere from soil. The General Standard of review does not require Council to evaluate any adverse impact on soils (a
resource) apart from or independent of the Soil Protection standard” and “the carbon sequestration issue is not within the jurisdiction of the Council.” Stop B2H Coalition contends that the Hearing Officer erred by focusing on one of the reasons why it had said that soil impacts were important to consider (because carbon released back into the atmosphere as a result of damaged or disturbed soils), but that Stop B2H Coalition (with Dr. Fouty’s DPO comments) raised issues of vegetative and ground disturbing activity, soil compaction, etc.

Pursuant to OAR 345-015-0016(5)(b), Stop B2H Coalition’s petition included the following short and plain statement of the issue it desired to raise in the contested case proceeding. “The particular issue we would like to raise in this contested case relates to Soil Protection. In particular our disagreement concerns Idaho Power’s repeated statements that there are no EFSC standards that require them to analyze or address carbon sequestration, carbon storage or carbon loss in the EFSC process...” The Department recommends Council rely on the petition in its evaluation of whether the issue was properly raised and not consider modification of the issue through appeal in order to reverse Hearing Officer’s determination.

OAR 345-015-0016(5)(b) requires a petitioner to provide a short and plain statement of the issue or issues on the issue that the person desires to raise in the contested case proceeding. While Stop B2H Coalition may have preserved its right to raise other issues related to soil impacts in the contested case proceeding through its comments on the draft proposed order, it failed to do so in its petition and instead, chose to on one particular issue. For this reason, the Department recommends Council concur with Hearing Officer’s determination that the issue raised in the petition does not meet the requirements under OAR 345-015-0016(3), and therefore Hearing Officer’s denial of the issue should be maintained.
c. Stop B2H Coalition disputes denial of the issue, “Whether the methods used to determine the extent of an adverse impact of the proposed facility on scenic resources, protected area and recreation along the Oregon Trail were flawed and developed without peer review on public input. Specifically, whether Applicant erred in applying numeric values to the adverse impact and whether Applicant used unsatisfactory measurement locations/observation points in its visual impact assessment” and the Hearing Officer’s determination that the issue was not raised on the record of the draft proposed order public hearing with sufficient specificity. Stop B2H Coalition notes Hearing Officer’s acknowledgement that it did raise concerns about how “the proposed transmission line would severely compromise the scenic, historical, and cultural values of the Oregon Trail,” and that “STOP B2H also challenged Applicant’s undergrounding analysis.” Stop B2H Coalition again argues that it did not need to use “magic words” such as we “challenge the methodology” for assessing Oregon Trail impacts because they challenged the conclusions of visual impact assessments which effectively includes the methods for the impact assessment. The Department agrees that STOP B2H Coalition did raise concerns and state their position on the issue of impacts to the Oregon trail, but notes that to raise an issue with sufficient specificity to afford the applicant an opportunity to respond to the issue, the person must have presented facts at the public hearing that support the person’s position. No such evidence or argument was provided to support the assertion that the methods used to determine the extent of an adverse impact of the proposed facility on scenic resources, protected area and recreation along the Oregon Trail were flawed. Department notes that STOP B2H Coalition’s DPO comments did provide specific examples of alleged deficiencies of Applicants undergrounding analysis provided as Exhibit BB to the Application for Site Certificate, however these examples are related to an alternative design that is not proposed by the applicant, and are therefore
not relevant to the issue of whether the methods used to determine the extent of an adverse impact of the proposed facility are flawed. The Department recommends Council concur with Hearing Officer’s determination that the issue does not meet the requirements under OAR 345-015-0016(3) and therefore denial of the issue should be maintained.

3. Council may hear Stop B2H Coalition’s appeal to clarify properly raised contested case issues identified under heading A. 3(a) and (b) listed above, pursuant to OAR 345-015-0016(6), as determined in the Order on Party Status. Issue statement for issue A.3 (a) listed above should be maintained; issue statement for Issue A.3 (b) should be modified.

   a. Stop B2H Coalition contests the accuracy of the following issue statement, “Whether the Department improperly modified/reduced the noise analysis area in Exhibit X from one mile of the proposed site boundary to ½ mile of the proposed site boundary and whether OAR 345-021-0010(1)(x)(E) requires notification to all owners of noise sensitive property within one mile of the site boundary.” Stop B2H Coalition maintains that the issue raised was not a challenge to the “noise analysis area” but that the Department improperly modified the OAR 345-021-0010(1)(x)(E) “noise notification area.”
   
   The framing of the issue is consistent with the issue raised in the petition which stated, “ODOE in the DPO improperly modified/reduced the distance for noise evaluation of the noise sensitive properties, from 1 mile to ½ mile. This has not been corrected and has been carried into the Proposed Order. STOP wishes to contest this error” [Emphasis added]. Further, this properly raised contested case issue has two parts: the first part questions whether the Department improperly modified the noise analysis area for Exhibit X and the second part questions whether OAR 345-021-0010(1)(x)(E) requires notification to all owners of noise sensitive properties within one mile of the site boundary. The Department notes the second part of the issue – whether OAR 345-021-
0010(1)(x)(E) requires notification to noise sensitive receptors within one mile of the site boundary – is expected to address the sub-issue raised in the appeal. For this reason, the Department recommends Council maintain the issue statement, as presented in the *Order on Party Status*.

b. Stop B2H Coalition requests clarification of the following issues statement, “Whether the Department erred in approving the methodology used to evaluate compliance with OAR 340-035-0035.” Stop B2H Coalition questions whether the issue statement broadly covers issues they raised on noise methodologies or whether it would be limited only to a review of the Department’s authority to approve noise methodologies.

In draft proposed order comments, Stop B2H Coalition raised concerns with the Department’s approval of noise analysis methodologies and methodologies themselves, including concerns with Applicant’s use of representative monitoring positions.

Therefore, the Department recommends Council amend the issue statement as follows: “Whether the *methodologies used for the noise analysis to evaluate compliance with OAR 340-035-0035 were appropriate and whether the Department erred in approving the methodology used to evaluate compliance with OAR 340-035-0035.*”

4. Council may hear STOP B2H Coalition’s question on the legal basis for an interlocutory appeal to Council on anything other than the issue of party status (i.e. issues and issue clarifications).

The Department notes that the appeals reviewed by Council are being done so under OAR 345-015-0016(6) and not under an interlocutory appeal under OAR 345-015-0057, where -0057 is specifically limited to an appeal of a party’s termination to participate in the contested case proceeding.

**B. Colin Andrew**

*Appeal Summary*
Petitioner Colin Andrew filed an appeal on November 6, 2020, disputing the following findings of the Order on Party Status:

1. Petitioner disputes designation as a limited rather than full party.

2. Petitioner disputes denial of the following issues:
   
   a. Whether, as a reference for its assessing visual impacts of the proposed facility on Morgan Lake Part, Applicant was required to use updated assessment criteria, Landscape Aesthetic, Scenic Management System (SMS), published in 1995, instead of the 1974 USFS Handbook.

Evaluation

1. Council may hear Mr. Andrew’s appeal on limited party status pursuant to OAR 345-015-0016(6), as determined in the Order on Party Status.

   Mr. Andrew disputes Hearing Officer’s limited party designation arguing: his issues should not be limited to a narrowly defined subset because they are interconnected to other contested case issues; petitioners are qualified and educated to respond to other issues; and it is wrong to streamline the process. The Department recommends Council maintain Hearing Officer’s limited party designation, limiting Mr. Andrew’s participation in the contested case proceeding to his properly raised contested case issues as determined by the Hearing Officer, pursuant to OAR 137-003-0005(8) and – (9). Limited party status is also appropriate under OAR 137-003-0040, and OAR 345-015-0083.

2. Council may hear Mr. Andrew’s appeal on denied issue (a) pursuant to OAR 345-015-0016(6), as determined in the Order on Party Status. Denial of issue (a) should be maintained.

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4 Under OAR 137-003-0005(8) an agency (or in this matter the Hearing Officer) may treat a petition to participate as a petition to participate as a limited party. Subsection (9) states, “the agency shall specify areas of participation and procedural limitations as it deems appropriate.”
a. Mr. Andrew disputes denial of the issue, “Whether, as a reference for its assessing visual impacts of the proposed facility on Morgan Lake Part, Applicant was required to use updated assessment criteria, Landscape Aesthetic, Scenic Management System (SMS), published in 1995, instead of the 1974 USFS Handbook,” and of Hearing Officer’s determination that “he did not raise a specific challenge to the methodology and assessment criteria Applicant used to evaluated visual impacts of the proposed facility at Morgan Lake Park, and did not reference the 1995 SMS in those comments” and therefore the issue was not raised on the record of the draft proposed order public hearing.

Mr. Andrew asserts that “it does not matter whether I specifically referred to the 1995 SMS or not,” which is inconsistent with OAR 345-015-0016(3), which states that to have raised an issue with sufficient specificity, the person raising an issue must have presented facts at the public hearing that support the person’s position on the issue. Based upon review, Mr. Collin’s draft proposed order comments states that “Morgan Lake Park… and Summary of Impacts… severely underestimates the permanent impact of development on this unique park,” but does not address or identify the issue raised in his petition. For these reasons, the Department recommends Council concur with Hearing Officer’s determination that because the issue was not raised on the record of the draft proposed order public hearing, the issue was not raised with sufficient specificity to afford the decisionmaker an opportunity to respond to the issue. Hearing Officer’s denial of the issue should be maintained.

C. Kathryn Andrew

Appeal Summary

Petitioner Kathryn Andrew filed an appeal on November 6, 2020, disputing the following findings of the Order on Party Status:

OREGON DEPARTMENT OF ENERGY RESPONSE TO PETITIONER APPEALS OF HEARING OFFICER ORDER ON PARTY STATUS

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# 32141878
1. Petitioner disputes designation as a limited rather than full party.

2. Petitioner disputes denial of the following issues:
   a. Whether noise and visual impacts of the proposed facility on Morgan Lake Park and Wallowa-Whitman National Forest is inconsistent with Statewide Land Use Planning Goal 4 (forestlands to provide for recreational opportunities).

Evaluation

1. Council may hear Ms. Andrew’s appeal on limited party status pursuant to OAR 345-015-0016(6), as determined in the Order on Party Status. Ms. Andrew disputes Hearing Officer’s limited party designation on the issues she properly raised because she believes full participation by concerned citizens “is key to an informed decision as to whether environmental and public safety issues have been or can be adequately addressed by the applicant.” Ms. Andrew does not offer legal argument to support her contention that full party status should be granted. The Department recommends Council maintain Hearing Officer’s limited party designation, limiting Ms. Andrew’s participation in the contested case proceeding to her properly raised contested case issues as determined by the Hearing Officer, pursuant to OAR 137-003-0005(8) and –(9). Limited party status is also appropriate under OAR 137-003-0040, and OAR 345-015-0083.

2. Council may hear Ms. Andrew’s appeal on denied issue (a) pursuant to OAR 345-015-0016(6), as determined in the Order on Party Status. Denial of issue (a) should be maintained.
   a. Ms. Andrew disputes denial of the issue “Whether noise and visual impacts of the proposed facility on Morgan Lake Park and Wallowa-Whitman National Forest is inconsistent with Statewide Land Use Planning Goal 4 (forestlands to provide for recreational opportunities).” Hearing Officer found that Ms. Andrew raised concerns

5 Under OAR 137-003-0005(8) an agency (or in this matter the Hearing Officer) may treat a petition to participate as a petition to participate as a limited party. Subsection (9) states, “the agency shall specify areas of participation and procedural limitations as it deems appropriate.”
regarding impacts to forestlands and consistency with Goal 4 in her comments on the DPO, but did not present facts or arguments to support her position with regard to Morgan Lake Park and therefore did not raise the issue with sufficient specificity to afford the Department, Applicant or Council an opportunity to respond.

Ms. Andrew concedes that it was her understanding “that the criteria at this point in the process is to raise the issue, and that arguments regarding my issue are to be made later in the proceeding” but cites her statement on the record of the DPO that “…The loss of forest land recreational opportunities at Morgan Lake to the buzzing high voltage towers planned to transverse the park would be in direct violation of the intention of Goal #4” and Hearing Officer and Department’s ability to respond to and rephrase that statement as evidence that “issue facts were clearly presented,” and therefore fulfilled the criteria for preserving standing for consideration in the contested case. The Department does not contest Ms. Andrew’s assertion that she clearly identified her position on the issue in her DPO comments; however, asserting a position on an issue does not satisfy the requirement to raise an issue with sufficient specificity found in OAR 345-015-0016(3). The rule requires a presentation of facts to support the petitioner’s position on the issue. Ms. Andrew did not, and does not appear to purport to have, identified facts about the nature of the loss, the nature of recreational opportunities alleged to be impacted, or the nature of the impacts themselves that would allow the Department, Council, or Applicant to respond. As such, the Department recommends Council maintain Hearing Officer’s denial of the issue.

D. Janet Aston

Petitioner Janet Aston filed an email complaint on November 2, 2020 regarding the effect of participation by the Department and Applicant on the fairness and equitability of the contested case proceeding. The email complaint did not include specific appeal of the Order on Party Status.
E. Miranda Aston

Petitioner Miranda Aston filed an email complaint on November 2, 2020 regarding the effect of participation by the Department and Applicant on the fairness and equitability of the contested case proceeding. The email complaint did not include specific appeal of the Order on Party Status.

F. Lois Barry

Appeal Summary

Petitioner Lois Barry filed appeals on November 5 and 6, 2020, disputing the following findings of the Order on Party Status:

1. Petitioner disputes designation as a limited rather than full party.

2. Petitioner disputes denial of the following issue:
   a. Whether Applicant’s visual impact assessments are invalid because Applicant did not use updated USFS visual assessment criteria (1995 Landscape Aesthetic, Scenic Management System (SMS)) to evaluate visual impacts, thereby invalidating the visual impact analysis for Morgan Lake Park and other protected areas, scenic resources and important recreational opportunities.

Evaluation

1. Pursuant to OAR 345-015-0016(6), Council may hear Ms. Barry’s appeal on limited party status, as determined in the Order on Party Status. Ms. Barry disputes Hearing Officer’s designating her as a limited party, arguing she should be granted full party status because she has “fulfilled each of the stipulations listed in OAR 137-003-0005(7).” This rule sets forth criteria a Hearing Officer

\[\text{OAR 137-003-0005(7) states: “In ruling on petitions to participate as a party or a limited party, the agency shall consider: (a) Whether the petitioner has demonstrated a personal or public interest that could reasonably be affected by the outcome of the proceeding; (b) Whether any such affected interest is within the scope of the agency’s jurisdiction and within the scope of the notice of contested case hearing; (c) When a public interest is alleged, the qualifications of the petitioner to represent that interest; (d) The extent to which the petitioner’s interest will be represented by existing parties.”}\]
should consider when determining whether a petitioner should be allowed to participate in a
contested case. It does not establish that a person such as Ms. Barry, who the Hearing Officer
determined only requested a contested case with regard to five issues, should be allowed to
participate in the contested case on every issue in the contested case, including issues that she did
not raise with sufficient specificity or issues for which she never requested a contested case. For
these reasons, the Department recommends Council maintain Hearing Officer’s limited party
designation, limiting Ms. Barry’s participation in the contested case proceeding to the contested
case issues she properly raised, as determined by the Hearing Officer.

2. Pursuant to OAR 345-015-0016(6), Council may hear Ms. Barry’s appeal on denied issue (a) as
determined in the Order on Party Status. Denial of issue (a) should be maintained.
   a. Ms. Barry disputes denial of her petition for a contested case on the issue of whether
      Idaho Power used “an outdated and superseded methodology” for analyzing visual
      impacts of the proposed facility to support their conclusions of ‘no significant impact’
      under the Council’s scenic, recreational and protected areas standards. She alleges “[i]t is
      essential to accept a contested case on this issue to determine if applicant’s findings of
      ‘no significant adverse impact’ would be valid using the requisite 1995 SMS
      methodology.”
      In her comments on the record of the DPO, Ms. Barry raised concern regarding the visual
      impact assessment completed for Morgan Lake Park, but she did not express concern
      regarding the version of the USFS methodology employed. Ms. Barry does not dispute
      that she did not raise this issue on the record of the DPO. Rather, she contends she did not
      raise this issue on the record because she assumed applicant was using the 1995
      methodology because Applicant said they were using that methodology. The Hearing
      Officer correctly ruled that because Ms. Barry did not raise the version of USFS
methodology issue with sufficient specificity on the record of the DPO, it is not a proper issue to be considered in the contested case.

G. Peter Barry

Appeal Summary

Petitioner Peter Barry filed an appeal on November 6, 2020, disputing the following findings of the Order on Party Status:

1. Petitioner disputes designation as a limited rather than full party.
2. Petitioner disputes denial of the following issues:
   a. Whether Applicant has established a need for the proposed facility.
   b. Whether Morgan Lake Park should be evaluated as a protected area.

Evaluation

1. Pursuant to OAR 345-015-0016(6), Council may hear Mr. Barry’s appeal on limited party status, as determined in the Order on Party Status. Mr. Barry disputes Hearing Officer’s designating him as a limited party and requests full party status “based on the laws, commons sense and the goal for which we all are involved here – a full hearing of facts and issues concerning the siting of an energy facility.” For the reasons discussed in Section II. A. above (response to Stop B2H appeal), the Department recommends Council maintain Hearing Officer’s ruling that Mr. Barry’s (and all petitioners’) participation in the contested case proceeding is limited to the contested case issues he properly raised, as determined by the Hearing Officer.

2. Pursuant to OAR 345-015-0016(6), Council may hear Mr. Barry’s appeal on denied issues (a) and (b) as determined in the Order on Party Status. Denial of issue (a) and (b) issues should be maintained.
   a. Mr. Barry disputes Hearing Officer’s denial of the issue, “Whether Applicant has established a need for the proposed facility.” In Mr. Barry’s appeal he contends that he is requesting that all of the issues he raised be accepted based on full compliance with the
process and OAR's stated by other petitioners, however, he does not provide any supporting information for the appeal, petition, or DPO comments for Council to consider. The Department recommends Council concur with Hearing Officer’s determination that because the issue was not raised on the record of the draft proposed order public hearing with sufficient specificity to afford the Decision Maker, Department, and Applicant to respond to, therefore the issue was not properly raised because the requirements under OAR 345-015-0016(3) were not met.

b. Mr. Barry’s disputes Hearing Officer’s denial of the issue, “Whether Morgan Lake Park should be evaluated as a protected area.” In Mr. Barry’s appeal he contends that he is requesting that all of the issues he raised be accepted based on full compliance with the process and OAR's stated by other petitioners, however, he does not provide any supporting information for the appeal, petition, or DPO comments for Council to consider. The Department recommends Council concur with Hearing Officer’s determination that because the issue was not raised on the record of the draft proposed order public hearing, the issue was not properly raised because the requirements under OAR 345-015-0016(3) were not met.

H. Gail Carbiener

Appeal Summary

Petitioner Gail Carbiener filed an appeal on November 5, 2020, disputing the following findings of the Order on Party Status:

1. Petitioner disputes denial of the following issues:

   a. Whether the methods Applicant use to assess visual impacts for purposes of the Protected Areas, Scenic Resources, and Recreation Standards were independently obtained.

   Whether the key observation points for visual simulations were adequate and whether Applicant adequately analyzed the visual impact from NHOTIC.
Evaluation

1. Council may hear Mr. Carbiener’s appeal on denied issue (a) pursuant to OAR 345-015-0016(6), as determined in the Order on Party Status. Denial of issue (a) should be maintained.

   a. Mr. Carbiener’s disputes denial of the issue, “Whether the methods Applicant use to assess visual impacts for purposes of the Protected Areas, Scenic Resources, and Recreation Standards were independently obtained. Whether the key observation points for visual simulations were adequate and whether Applicant adequately analyzed the visual impact from NHOTIC.” Mr. Carbiener offers additional details that were not included in his petition or DPO comments including dates and locations where Key Observation Point (KOP) photos were taken and references comments provided as part of the federal NEPA review. The Department notes that the record is closed, and Council cannot consider information added to the record at this point. Mr. Carbiener challenged Applicant’s conclusions of visual impact assessment and asserted that the DPO does not comply with the scenic values from the Blue Mountains Parkway and NHOTIC because the proposed transmission lines cause a significant decrease in scenic values but he did not specifically challenge applicant’s methodology for assessing visual impacts, including the locations of KOPs. For this reason, the Department recommends Council concur with Hearing Officer’s determination that because the issue was not raised on the record of the draft proposed order public hearing, the issue was not properly raised because the requirements under OAR 345-015-0016(3) were not met.

   I. Matt Cooper

Appeal Summary

Petitioner Matt Cooper filed an appeal on November 6, 2020, disputing the following findings of the Order on Party Status:

1. Petitioner disputes designation as a limited rather than full party.
Evaluation

1. Council may hear Mr. Cooper’s appeal on limited party status pursuant to OAR 345-015-0016(6), as determined in the Order on Party Status. Mr. Cooper disputes Hearing Officer’s limited party designation on the issue he properly raised because: his issues overlap with other issues granted; he should not limited in his ability to introduce new evidence or share details with other petitioners; and, the designation stifles arguments brought forward by petitioners and is contradictory to the spirit of public participation and due process.

Council contested case rule OAR 345-015-0083(2) states “[a]t the conclusion of the [prehearing] conference(s), the hearing officer shall issue a prehearing order stating the issues to be addressed in the contested case hearing and, in a contested case on an application for a site certificate, limiting parties to those issues they raised on the record of the public hearing” described in OAR 345-015-0220” (the hearing on the DPO). Limited party status is also appropriate under OAR 137-003-0040, which states “limited parties may question only those witnesses whose testimony may relate to the area or areas of participation granted by the agency” and which the Council adopted in OAR 345-001-0005(1). For these reasons and those discussed in Section II. A. above (response to Stop B2H appeal), the Department recommends Council maintain Hearing Officer’s limited party designation, limiting Mr. Cooper’s participation in the contested case proceeding to his properly raised contested case issues as determined by the Hearing Officer.

J. Whit Deschner

Appeal Summary

Petitioner Whit Deschner filed an appeal on November 5, 2020, disputing the following findings of the Order on Party Status:

1. Petitioner disputes designation as a limited rather than full party.

Evaluation
1. Council may hear Mr. Deschner’s appeal on limited party status pursuant to OAR 345-015-0016(6), as determined in the *Order on Party Status*. Mr. Deschner disputes Hearing Officer’s limited party designation on the issue he properly raised because he filled all the requirements to qualify for full party status. For the reasons discussed in Section II. A. above (response to Stop B2H appeal), the Department recommends Council maintain Hearing Officer’s limited party designation, limiting Mr. Deschner’s participation in the contested case proceeding to his properly raised contested case issue as determined by the Hearing Officer, pursuant to OAR 137-003-0040 and OAR 345-015-0083, which the Council adopted as authorized by OAR 137-003-0005(8) and (9).

   **K. Jim and Kaye Foss**

*Appeal Summary*

Petitioner Kaye Foss filed an appeal on November 6, 2020, disputing the following findings of the Order on Party Status:

1. Petitioner disputes designation as a limited rather than full party.

*Evaluation*

1. Council may hear the Foss’s appeal on limited party status pursuant to OAR 345-015-0016(6), as determined in the *Order on Party Status*. The Foss’s dispute Hearing Officer’s limited party designation on the issue they properly raised because they raised the general issue of agriculture lands assessment and they feel strongly that landowners should also have the right to review the assessments and provide input and feedback. For the reasons discussed in Section II. A. above (response to Stop B2H appeal), the Department recommends Council maintain Hearing Officer’s

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7 Under OAR 137-003-0005(8) an agency (or in this matter the Hearing Officer) may treat a petition to participate as a petition to participate as a limited party. Subsection (9) states, “the agency shall specify areas of participation and procedural limitations as it deems appropriate.”
limited party designation, limiting the Foss’s participation in the contested case proceeding to their properly raised contested case issue as determined by the Hearing Officer, pursuant to OAR 137-003-0040 and OAR 345-015-0083, which the Council adopted as authorized by OAR 137-003-0005(8) and (9).  

L. Suzanne Fouty

Appeal Summary

Petitioner Suzanne Fouty filed an appeal on November 6, 2020, disputing the following findings of the Order on Party Status:

1. Petitioner disputes designation as a limited rather than full party.

2. Petitioner disputes the scope of the following issue:

3. Petitioner disputes the denial of the following issue:
   a. Whether the Soil Protection Standard and General Standard of Review require an assessment of loss of above ground organic material related to the construction and operation of transmission lines, including an assessment of the impact on soils of wildfires.

Evaluation

1. Council may hear Ms. Fouty’s appeal on limited party status pursuant to OAR 345-015-0016(6), as determined in the Order on Party Status. Ms. Fouty disputes Hearing Officer’s limited party designation on the issues she properly raised because she can only represent the public interest on soil-related impacts if she is given full party status because then she can correctly discuss the

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8 Under OAR 137-003-0005(8) an agency (or in this matter the Hearing Officer) may treat a petition to participate as a petition to participate as a limited party. Subsection (9) states, “the agency shall specify areas of participation and procedural limitations as it deems appropriate.”
issue of the project’s impacts on soil productivity and the Soil Protection Standard. For the
reasons discussed in Section II. A. above (response to Stop B2H appeal), the Department
recommends Council maintain Hearing Officer’s limited party designation, limiting Ms. Fouty’s
participation in the contested case proceeding, pursuant to OAR 137-003-0005(8) and – (9), to
her properly raised contested case issues as determined by the Hearing Officer. Limited party
status is also appropriate under OAR 137-003-0040, and OAR 345-015-0083.
2. Council may hear Ms. Fouty’s appeal of the scope of issue (a) pursuant to OAR 345-015-0016(6),
as determined in the Order on Party Status. Maintain scope of issue (a).
   a. Ms. Fouty disputes scope of the issue, “Whether the Soil Protected Standard and General
      Standard of Review require an evaluation of carbon sequestration, carbon storage and
      carbon loss,” and Hearing Officer’s determination that carbon sequestration, carbon
      storage, or carbon loss fall outside Council’s jurisdiction. Ms. Fouty maintains that these
      are covered under the Soil Protection Standard and the General Standard of Review
      because impacts to vegetation will impact soil productivity and anything that degrades
      the soil and vegetation will impact the atmosphere because the carbon that has been
      extracted by plants and put into the soil or held in plant matter is released back into the
      atmosphere. The Department notes that in the Hearing Officer’s Order on Party Status,
      Ms. Fouty properly raised the issues of erosion factors for potentially impacted soils, soil
      compaction and loss of soil structure, however, the portion of the issue related to carbon
      sequestration and carbon storage is not within Council jurisdiction. The Department
      recommends Council concur with Hearing Officer’s determination that the issue does not
      meet the requirements under OAR 345-015-0016(3), because it is not within the
      Council’s jurisdiction.
      In Ms. Fouty’s appeal, she also disputes the Hearing Officer findings under the
evaluation for issues not properly raised by the Stop B2H Coalition under the same issue
(a). She disagrees with the assertion that Soil Protection Standard is limited to impacts to soil from energy facility projects, because she contends, it is not possible to disconnect the soil and the atmosphere. She disputes the Hearing Officer evaluation of that there is not a Council siting standard that requires an applicant to analyze, or Council to consider, carbon sequestration, carbon storage, carbon loss. She states that there isn’t anything in OAR 345-022-0000 that excludes these factors from being evaluated and that the language in the General Standard of Review, “including, but not limited to” permits the evaluation of these factors. The Department recommends Council concur with Hearing Officer’s determination and the associated findings that the issue does not meet the requirements under OAR 345-015-0016(3), because it is not within the Council’s jurisdiction.

3. Council may hear Ms. Fouty’s appeal of the denial of issue (a) pursuant to OAR 345-015-0016(6), as determined in the Order on Party Status. Denial of issue (a) should be maintained.

   a. Ms. Fouty disputes scope of the issue, “Whether the Soil Protection Standard and General Standard of Review require an assessment of loss of above ground organic material related to the construction and operation of transmission lines, including an assessment of the impact on soils of wildfires,” and the Hearing Officer’s determination that this issue was not raised with sufficient specificity. In her appeal, Ms. Fouty contends that she raised the issue of wildfire and soil productivity and erosion as it relates to this project by including statements about carbon sinks and harvest and wildfire as carbon sources from the Oregon Global Warming Commission’s 2018 Forest Carbon Accounting Report. Ms. Fouty maintains that even if she did not state both construction and operation of the facility in portion of her comment letter, the connection (between the facility and fires) is clear. The Department recommends Council concur with Hearing Officer’s determination that the issue does not meet the requirements under OAR 345-015-0016(3), because it
was not raised with sufficient specificity. DPO comments make reference to the issue of wildfires and carbon sequestration however, they do not raise the issue of fires related to the construction and operation of the proposed facility, nor do they present facts of analysis of such.

M. Susan Geer

Appeal Summary

Petitioner Susan Geer filed an appeal on November 5, 2020, disputing the following findings of the Order on Party Status:

1. Petitioner disputes designation as a limited rather than full party.

2. Petitioner disputes denial of the following issue:
   a. Whether the Rice Glass Hill Natural Area should be evaluated as a Protected Area.

3. Petitioner objects to time limits imposed for submission of appeals.

Evaluation

1. Council may hear Ms. Geer’s appeal on limited party status pursuant to OAR 345-015-0016(6), as determined in the Order on Party Status. Ms. Geer disputes Hearing Officer’s limited party designation on the issues she properly raised because: her issues are complex and cannot be properly described or defended if limited to the discrete issues as defined in the Hearing Officer’s Order on Party Status. For the reasons discussed in Section II. A. above (response to Stop B2H appeal), the Department recommends Council maintain Hearing Officer’s limited party designation, limiting Ms. Geer’s participation in the contested case proceeding to her properly raised contested case issues as determined by the Hearing Officer.

2. Council may hear Ms. Geer’s appeal on denied issue (a) pursuant to OAR 345-015-0016(6), as determined in the Order on Party Status. Denial of issue (a) should be maintained.
   a. Ms. Geer disputes denial of the issue, “Whether the Rice Glass Hill Natural Area should be evaluated as a Protected Area” and of Hearing Officer’s determination that the issue
was not properly raised under OAR 345-015-0016(3) (i.e., issue raised with sufficient specificity, on the record of the draft proposed order, and within Council jurisdiction).

Ms. Geer believes that she identified the issue in comments on the record of the draft proposed order and that there are not requirements to provide rule or statutory references in support of issues. Ms. Geer’s draft proposed order comments describe native plants and grasses identified in a Natural Area Plan for the Glass Hill area which could be impacted by the proposed facility, however the comments did not refer to any standard or requirement applicable to the issue – reference to the Council’s Protected Areas standard was subsequently included in Ms. Geer’s petition. For this reason, the Department recommends Council concur with Hearing Officer’s determination that because the issue was not raised on the record of the draft proposed order public hearing and did not provide reference to an applicable Council standard or other applicable regulatory requirement, the issue was not properly raised because the requirements under OAR 345-015-0016(3) were not met.

3. Council may not hear Ms. Geer’s objection to the 7-day appeal period; in the alternative, if heard, the objection should be denied. Ms. Geer objects to the appeal period and requests that an additional week be granted for submission of appeals. The scope of appeals is established under OAR 345-015-0016(6) and -0057, which includes an established appeal timeframe of 7-days from the date of Hearing Officer determination on requests to participate as a party or limited party and for any Hearing Officer ruling resulting in termination of a party’s right to participate in the contested case proceeding, respectively. The objection is inconsistent with rule established timeframes and not within the scope of the rules.

N. Irene Gilbert

Appeal Summary
Petitioner Irene Gilbert filed two appeals on November 5, 2020, disputing the following findings of the Order on Party Status:

1. Petitioner disputes designation as a limited rather than full party.

2. Petitioner disputes denial of the following issues:
   a. Whether the Department erred in recommending approval of Applicant’s noise consultant’s methodology for assessing noise impacts because the recommendation is based on incorrect information, such as Council’s authority to review and approve sound measurement procedures and the methods for establishing ambient noise levels specific to a linear facility.
   b. Whether the impacts from the proposed facility on accepted farm practices and the cost of accepted farm practices have been adequately evaluated or mitigated.

3. Petitioner disputes the fairness of the opportunity to appeal the Order on Party Status.

Evaluation

1. Pursuant to OAR 345-015-0016(6), Council may hear Ms. Gilbert’s appeal on limited party status, as determined in the Order on Party Status. Ms. Gilbert disputes Hearing Officer’s limited party designation on the issues she properly raised because: it denies the ability of other parties to challenge other contested case issues; the determination was inappropriately based on recommendations from the Department and Applicant; and is inconsistent with ORS 183.413(2)(e), which states that a contested case notice shall include “A statement that the party has the right to respond to all issues properly before the presiding officer and present evidence and witnesses on those issues.” [Emphasis added]. For the reasons discussed in Section II. A. above (response to Stop B2H appeal), the Department recommends Council maintain the Hearing Officer’s limited party designation, limiting Ms. Gilbert’s participation in the contested case proceeding to her properly raised contested case issues as determined by the Hearing Officer.
2. Council may hear Ms. Gilbert’s appeal on denied issues (a) and (b) pursuant to OAR 345-015-0016(6), as determined in the Order on Party Status. Denial of issue (a) should be maintained; issue (b) should be granted.

   a. Ms. Gilbert disputes denial of the issue, “Whether the Department erred in recommending approval of Applicant’s noise consultant’s methodology for assessing noise impacts because the recommendation is based on incorrect information, such as Council’s authority to review and approve sound measurement procedures and the methods for establishing ambient noise levels specific to a linear facility” and of Hearing Officer’s determination that the issue was not related to a change in the proposed order which differed materially from the action recommended in the draft proposed order, as allowed under OAR 345-015-0016(3). Ms. Gilbert represents that the issue was raised resulting from “new information in the proposed order not previously disclosed in the draft proposed order.”

   While the issue is related to revisions presented in the proposed order, the Hearing Officer determined that those revisions did not result in a change in the action as recommended in the draft proposed order [see OAR 345-015-0016(3)] [Emphasis added]. The referenced revisions provide a discussion of the methods and assumptions used for the corona noise analysis, as provided in ASC Exhibit X, and did not result in changes in recommended conditions or actions from those presented in the draft proposed order. Therefore, the Department recommends Council concur with Hearing Officer’s determination that the issue does not meet the requirements under OAR 345-015-0016(3) and therefore should be denied.

   b. Ms. Gilbert disputes denial of the issue, “Whether the impacts from the proposed facility on accepted farm practices and the cost of accepted farm practices have been adequately evaluated or mitigated” and of Hearing Officer’s determination that the issue of
landowner compensation is not within Council jurisdiction. Hearing Officer’s determination also identifies that Ms. Gilbert’s petition did not identify the date, or provide reference to, where in her draft proposed order comments the issue was raised (required under OAR 345-015-0016(4)(c)), however, because it does not appear the issue was denied for this reason we do not address this determination further.

Ms. Gilbert argues that ORS 215.275(5) requires an evaluation of the impacts of a proposed transmission line to the cost of accepted farm practices. Hearing Officer denied the issue for consideration in the contested case because “concerns about economic losses to farmers along the transmission line fall outside the Council’s jurisdiction.” The Department agrees with Hearing Officer that matters of economic damages to individual farmers are outside of the Council’s jurisdiction; however, consideration of general increases in the costs of farm practices on farmland surrounding the proposed site of a utility facility under ORS 215.275(5) is within scope of the Council’s Land Use Standard and is applicable to the proposed facility. Because the issue relates to a matter within the Council’s jurisdiction, the Department recommends Council find that the issue was properly raised and should be granted for review in the contested case proceeding.

3. Council may not hear Ms. Gilbert’s objection regarding the fairness of the contested case process. The scope of appeals is established under OAR 345-015-0016(6) and -0057, which includes appeals of the Hearing Officer determination on requests to participate as a party or limited party and for any Hearing Officer ruling resulting in termination of a party’s right to participate in the contested case proceeding, respectively.

O. Jane and Jim Howell

Petitioners Jane and Jim Howell filed an email inquiry on October 7, 2020 requesting clarification on the scope of prehearing conferences held on September 25 and October 8, 2020 related to review and
discussion of issues raised in petitions. An appeal of the Hearing Officer’s Order on Party Status was not filed by petitioners during the established timeframe (October 29 through November 6, 2020).

**P. Greg Larkin**

*Appeal Summary*

Petitioner Greg Larkin filed an appeal on November 6, 2020, disputing the following findings of the Order on Party Status:

1. Petitioner disputes denial of petition for party status.
2. Petitioner objects to time limits imposed for submission of appeals.

*Evaluation*

1. Council may hear Mr. Larkin’s appeal on denial of participation as a party or limited party in the contested case proceeding pursuant to OAR 345-015-0016, as determined in the *Order on Party Status*. Denial of party status should be maintained.

Mr. Larkin disputes the Hearing Officer’s denial of party or limited party status in the contested case proceeding and Hearing Officer’s findings that because his draft proposed order comments did not “tie his concerns to a particular siting standard, did not challenge a specific finding or determination in the DPO or Proposed Order, and did not present facts or argument on the record of the DPO to support his concern” the issue does not satisfy the requirements under OAR 345-015-0016(3). In his appeal, Mr. Larkin asserts he was not required to raise his issue on the record of the DPO because the petition sought party status in the contested case based on proposed order revisions which differ materially from the action recommended in the draft proposed order, as allowed under OAR 345-015-0016(3).

The Department agrees that the proposed order includes changes from the draft proposed order in the recommended action presented in Section IV.Q.1 *Noise Control Regulation* related to granting a variance from the ambient antidegradation standard for the entirety of the length of the transmission line rather than limited to specific noise sensitive receptor locations. This change
was identified in the Department’s Notice of Proposed Order, Attachment 1; petitioners were afforded 56 days to review the notice, proposed order and submit a petition.

The Hearing Officer provided three opportunities for petitioners to identify their issues, as raised in their petition (Prehearing Conferences on September 25 and October 1, 2020; and an opportunity to respond to the Department’s Amended Response to Petitions). Mr. Larkin participated in the prehearing conferences and did not identify that his petition sought to raise an issue related to compliance with the rules for allowing an exception or a variance to DEQ’s Noise Rules. The Department does not consider it appropriate to appeal Hearing Officer’s determination based on new information or arguments that substantively change the nature of the issue stated in the petition, regardless of whether the revised issue is related to a material change as allowed under OAR 345-015-0016(3). For this reason, the Department recommends Council maintain Hearing Officer’s denial of Mr. Larkin’s participation as a party or limited party in the contested case proceeding.

2. Council may not hear Ms. Larkin’s objection to the 7-day appeal period; in the alternative, if heard, the objection should be denied. Mr. Larkin objects to the appeal period and requests that an additional week be granted for submission of appeals. The scope of appeals is established under OAR 345-015-0016(6), which establishes an appeal timeframe of 7-days from the date of Hearing Officer determination on requests to participate as a party or limited party and for any Hearing Officer ruling resulting in termination of a party’s right to participate in the contested case proceeding, respectively. The objection is inconsistent with rule established timeframes and not within the scope of the rules.

Q. John Luciani

Appeal Summary

Petitioner John Luciani filed an appeal on November 6, 2020, disputing the following findings of the Order on Party Status:
1. Petitioner disputes denial of petition for party status.

**Evaluation**

1. Council may hear Mr. Luciani’s appeal on denial of participation as a party or limited party in the contested case proceeding pursuant to OAR 345-015-0016, as determined in the *Order on Party Status*. Denial of party status should be maintained.

Mr. Luciani disputes the Hearing Officer’s denial of party or limited party status in the contested case proceeding and Hearing Officer’s findings that because his draft proposed order comments did not “tie his concerns to a particular siting standard, did not challenge a specific finding or determination in the DPO or Proposed Order, and did not present facts or argument on the record of the DPO to support his concern” the petition did not satisfy the requirements under OAR 345-015-0016(3). Mr. Luciani asserts that Hearing Officer claimed “that there is no rule that requires the developer to address and mitigate for impacts to my farm property. . .”, argues that listing exact standards in support of issues raised is not required, and identifies that his issue is related to ORS 215.275(5). The Hearing Officer’s determination on Mr. Larkin’s petition did not assert that there is not an applicable regulatory requirement to Mr. Larkin’s petition, rather that the petition did not meet any of the criteria under OAR 345-015-0016(3).

The Hearing Officer provided three opportunities for petitioners to identify their issues, as raised in their petition (Prehearing Conferences on September 25 and October 1, 2020; and an opportunity to respond to the Department’s Amended Response to Petitions). Mr. Luciani participated in the prehearing conferences and did not identify that his petition was seeking party status based on the evaluation under ORS 215.275(5). The Department does not consider it appropriate to appeal Hearing Officer’s determination based on new information provided in the appeal. For the above described reasons, the Department recommends Council maintain Hearing Officer’s denial of Mr. Luciani’s participation as a party or limited party in the contested case proceeding.
R. Charles Lyons

Appeal Summary

Petitioner Charles Lyons filed an appeal on November 6, 2020, disputing the following findings of the Order on Party Status:

1. Petitioner disputes denial of petition for party status.

Evaluation

1. Council may hear Mr. Lyon’s appeal on denial of participation as a party or limited party in the contested case proceeding pursuant to OAR 345-015-0016, as determined in the Order on Party Status. Denial of party status should be maintained.

Mr. Lyons disputes the Hearing Officer’s denial of party or limited party status in the contested case proceeding and Hearing Officer’s findings that “he did not raise the issues raised in his petition with sufficient specificity on the record of the draft proposed order” and therefore did not satisfy the requirements under OAR 345-015-0016(3). Mr. Lyons’ petition identifies an issue of whether the Draft Fire Prevention and Suppression Plan is sufficient due to its reliance on negotiated agreements and limited local resources for fire response. His appeal identifies that he did not reference the Draft Fire Prevention and Suppression Plan in his draft proposed order comments but that he raised the issue of wildfire risk on August 21, 2019. Mr. Lyons’s draft proposed order comments expressed concerns of potential wildfire risk but did not raise the issue as identified in his petition, did not identify an applicable rule or requirement for which to evaluate the issue, and did not provide any facts on the issue. Therefore, the Department recommends Council concur with Hearing Officer’s findings and maintain denial of Mr. Lyon’s participation as a party or limited party in the contested case proceeding.

S. Virginia and Dale Mammen

Appeal Summary
Petitioners Virginia and Dale Mammen filed an appeal on November 5, 2020, disputing the following findings of the Order on Party Status:

1. Petitioner disputes designation as a limited rather than full party.

**Evaluation**

1. Council may hear Mr. and Ms. Mammen’s appeal on limited party status pursuant to OAR 345-015-0016(6), as determined in the Order on Party Status. Mr. and Ms. Mammen dispute Hearing Officer’s limited party designation on the issues they properly raised arguing it is unreasonable to have been required to identify all issues of concern due to procedural time limits. For the reasons discussed in Section II. A. above (response to Stop B2H appeal), the Department recommends Council maintain Hearing Officer’s limited party designation, limiting Mr. and Ms. Mammen’s participation in the contested case proceeding to their properly raised contested case issues as determined by the Hearing Officer, pursuant to OAR 137-003-0005(8) and – (9). Limited party status is also appropriate under OAR 137-003-0040, and OAR 345-015-0083.

**T. Anne March**

**Appeal Summary**

Petitioner Anne March filed an appeal on November 6, 2020, disputing the following findings of the Order on Party Status:

1. Petitioner disputes denial of the following issues:

   a. Whether Applicant should include in its Fish Passage Plan and be required to replace a culvert on an unnamed stream (referenced as Crossing ID R-37969 in Exhibit BB-2, Table 1) to an appropriate size for fish passage.

**Evaluation**

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9 Under OAR 137-003-0005(8) an agency (or in this matter the Hearing Officer) may treat a petition to participate as a petition to participate as a limited party. Subsection (9) states, “the agency shall specify areas of participation and procedural limitations as it deems appropriate.”
1. Council may hear Ms. March’s appeal on denied issues (a) pursuant to OAR 345-015-0016(6), as determined in the Order on Party Status. Issue (a) should be granted.

   a. Ms. March disputes Hearing Officer’s denial of the issue, “Whether Applicant should include in its Fish Passage Plan and be required to replace a culvert on an unnamed stream (referenced as Crossing ID R-37969 in Exhibit BB-2, Table 1) to an appropriate size for fish passage” and of Hearing Officer’s determination that the issue be denied because Ms. March “did not raise concerns about this specific stream crossing in her comments on the DPO and therefore it is not a proper issue for consideration in the contested case.” Ms. March identifies that she raised the issue in draft proposed order comments provided on August 18, 2019. Based on review of the record, the Department confirms that Ms. March’s comments were received on August 22, 2019 and clearly identify an issue related to potential impacts to anadromous fish in Ladd Creek, as evaluated in ASC Exhibit BB, and necessity of a 3a/3b design for the Ladd Creek bridge crossings. Therefore, the Department recommends Council find that the issue was properly raised and grant the issue for review in the contested case proceeding.

   U. JoAnne Marlette

Appeal Summary

Petitioner JoAnne Marlette filed an appeal on November 6, 2020, disputing the following findings of the Order on Party Status:

   1. Petitioner disputes designation as a limited rather than full party.

Evaluation

   1. Council may hear Ms. Marlette’s appeal on limited party status pursuant to OAR 345-015-0016(6), as determined in the Order on Party Status. Ms. Marlette disputes Hearing Officer’s limited party designation on the issues she properly raised because: she meets all four requirements to be granted full party status; the determination was inappropriately based on
recommendations from the Department and Applicant; and is not supported by rule. For the reasons discussed in Section II. A. above (response to Stop B2H appeal), the Department recommends Council maintain Hearing Officer’s limited party designation, limiting Ms. Marlette’s participation in the contested case proceeding, pursuant to OAR 137-003-0005(8) and – (9),\textsuperscript{10} to her properly raised contested case issues as determined by the Hearing Officer. Limited party status is also appropriate under OAR 137-003-0040, and OAR 345-015-0083.

V. Michael McAllister

Appeal Summary

Petitioner Michael McAllister filed an appeal on November 6, 2020, disputing the following findings of the Order on Party Status:

1. Petitioner disputes designation as a limited rather than full party.

2. Petitioner disputes denial of the following issues:
   a. Failure to Comply with ORS 469.370(13)
   b. Remaining EFSC Standards Raised in Public Comment

Evaluation

1. Council may hear Mr. McAllister’s appeal on limited party status pursuant to OAR 345-015-0016(6), as determined in the Order on Party Status. Mr. McAllister disputes Hearing Officer’s limited party designation on the issue he properly raised because: there was no justification provided; his issues have broad reach and overlap with other contested case issues; he met the eligibility requirements under ORS 469.370(5) and OAR 345-015-0016 for full party status; and is inconsistent with ORS 183.413(2)(e), which states that a contested case notice shall include “A

\textsuperscript{10} Under OAR 137-003-0005(8) an agency (or in this matter the Hearing Officer) may treat a petition to participate as a petition to participate as a limited party. Subsection (9) states, “the agency shall specify areas of participation and procedural limitations as it deems appropriate.”
statement that the party has the right to respond to all issues properly before the presiding officer and present evidence and witnesses on those issues.” [Emphasis added]

For the reasons discussed in Section II. A. above (response to Stop B2H appeal), the Department recommends Council maintain Hearing Officer’s limited party designation, limiting Mr. McAllister’s participation in the contested case proceeding to his properly raised contested case issues as determined by the Hearing Officer.

2. Council may hear Mr. McAllister’s appeal on denied issues (a) and (b) pursuant to OAR 345-015-0016(6), as determined in the Order on Party Status. Issue (a) should be granted.

   a. Mr. McAllister disputes Hearing Officer’s framing of his issues and argues that Hearing Officer “misstated the issue, ignores its primary intent and framed the issue” in a way in order to determine that it is not within Council jurisdiction. The Order on Party Status identifies his issues as, “Whether Applicant was required to include the least impactful route, the Agency Selected NEPA route, in its application to Council” and “Whether Council’s failure to consider the Agency Selected NEPA Route constitutes a violation of ORS 469.370(13).” Hearing Officer’s determination denying the issue states that these issues fall outside of Council jurisdiction because there is no standard that requires Applicant’s to propose the least impactful route or the route recommended by a federal agency.

   Mr. McAllister appears to be arguing that his issue be defined more broadly and generally as “Whether Applicant failed to comply with ORS 469.370(13)” but then suggests that the Hearing Officer’s interpretation of ORS 469.370(13) would exclude routes reviewed by the federal agency to ensure NEPA compliance – which aligns with the second issue reviewed by the Hearing Officer. OAR 345-015-0016(5)(b) requires that a petition include a short and plain statement of the issue or issues that the person desired to raise in the contested case proceeding. Neither the petition nor appeal include a short
and plain statement of the issue being raised. It is not clear to the Department how the issues as framed and evaluated in the *Order on Party Status* differ substantively from the issue and arguments provided in the appeal. For these reasons, the Department recommends Council maintain Hearing Officer’s denial of the issue.

b. Mr. McAllister disputes Hearing Officer’s denial of issues raised related to other EFSC standards and refers to detailed analysis provided in his draft proposed order comments on environmental impacts of the Morgan Lake Alternative. Hearing Officer’s determination denying Mr. McAllister’s other issues was based on the issues not satisfying the requirements under OAR 345-015-0016(3). Based on thorough review of Mr. McAllister’s draft proposed order comments, petition and *Order on Party Status*, the Department recommends Council maintain Hearing Officer’s denial of Mr. McAllister’s other issues.

**W. Sam Myers**

*Appeal Summary*

Petitioner Sam Myers filed an email inquiry on November 5, 2020 seeking clarification on the Hearing Officer’s determination of his party status. The email inquiry requests that he be granted full party status, rather than limited. The Department construes the email inquiry as a potential appeal disputing the following findings of the *Order on Party Status*:

1. Petitioner requests full party status on his issues granted.

*Evaluation*

1. Council may hear Mr. Myers’s appeal on limited party status pursuant to OAR 345-015-0016(6), as determined in the *Order on Party Status*. Mr. Myers requests that he be granted full party status on his issues. Hearing Officer identified that Mr. Myers’s petition included two issues and determined that both issues were properly raised contested case issues. Therefore, it is clarified that Mr. Myers has been granted limited party status on the issues he raised. The designation of
limited party status does not limit the extent of the individual’s participation on their granted
issues. For the reasons discussed in Section II. A. above (response to Stop B2H appeal), the
Department recommends Council maintain Hearing Officer’s limited party designation, limiting
Mr. Myers’ participation in the contested case proceeding to his properly raised contested case
issues as determined by the Hearing Officer.

X. Tim Proesch

Petitioner Tim Proesch filed an email complaint on November 2, 2020 regarding the effect of
participation by the Department and applicant on the fairness and equitability of the contested case
proceeding. The email complaint did not include specific appeal of the Order on Party Status.

Y. Stacia Jo Webster

Appeal Summary

Petitioner Stacia Jo Webster filed an appeal on November 6, 2020, disputing the following findings of the
Order on Party Status:

1. Petitioner requests full party status on the denied issue.

2. Petitioner disputes denial of the following issues:
   a. Whether the Fire Prevention and Suppression Plan (Attachment U-3) is adequate and
      whether local service providers would be able to respond to a facility-related fire.

3. Petitioner requests clarification on the rules and next steps in the process; and requests that
   Hearing Officer be allowed to work independently of the Department and Applicant.

Evaluation

1. The Department recommends that Council not hear Ms. Webster’s appeal of full party status
   because it is related to the denied issue evaluated below. If Council grants issue (a) for
   consideration in the contested case proceeding, Ms. Webster would have limited party status on
   that issue. If Council maintains denial of the issue, the full party vs. limited party aspect of her
   appeal is moot.
2. Council may hear Ms. Webster’s appeal on denied issues (a) pursuant to OAR 345-015-0016(6), as determined in the Order on Party Status. Issue (a) should be denied.

   a. Ms. Webster disputes Hearing Officer’s denial of the issue, “Whether the Fire Prevention and Suppression Plan (Attachment U-3) is adequate and whether local service providers would be able to respond to a facility-related fire” and Hearing Officer’s determination that because Ms. Webster’s draft proposed order comments “did not reference the Fire Prevention and Suppression Plan and did not offer facts or argument to support her position that existing local resources would be unable to adequately provide fire response services,” the issue was not properly raised per the requirements under OAR 345-015-0016(3). Ms. Webster asserts that she referred to the Fire Prevention and Suppression Plan in her petition and during the October 1, 2020 prehearing conference, and that her draft proposed order comments were related to fire protection from wildfire during construction, operation, and maintenance of the proposed facility. Based on additional review of Ms. Webster’s draft proposed order comments and petition, the Department recommends Council concur with Hearing Officer’s determination and maintain denial of the issue because the issue was not properly raised per the requirements under OAR 345-015-0016(3).

3. Council may not hear Ms. Webster’s request for clarification on the rules and next steps in the process; or request that Hearing Officer be allowed to work independently of the Department and Applicant. The scope of appeals is established under OAR 345-015-0016(6) and -0057, which includes appeals of the Hearing Officer determination on requests to participate as a party or limited party and for any Hearing Officer ruling resulting in termination of a party’s right to participate in the contested case proceeding, respectively. The objection is not within the scope of the rules. Council may provide, or direct the Department or Hearing Officer to provide, the requested clarification outside of the appeal hearing.
Z. John Williams

Appeal Summary

Petitioner John Williams filed an appeal on November 6, 2020, disputing the following findings of the Order on Party Status:

1. Petitioner disputes limited party designation to represent a personal interest in potential impacts from proposed facility to cultural resources located on his private property.
2. Petitioner disputes the timeframe to appeal the Order on Party Status.

Evaluation

1. Council may hear Mr. Williams’s appeal of the personal interest designation of his limited party status pursuant to OAR 345-015-0016(6), as determined in the Order on Party Status. Mr. Williams asserts that his issue is “important to current and future generations” and therefore should not be “just about me or any landowner.” The Order on Party Status’s Table of Identified Issues and Parties with Standing on Issue identifies that Mr. Williams has been granted standing to represent a personal interest in the issue granted, “Whether Applicant adequately evaluated archeological resource “Site 6B2H-MC-10” on Mr. Williams’ property, Parcel 03S37E01300.” Mr. Williams petition stated, “I need to represent my concerns personally...” and identifies an issue specific to Site 6B2H-MC-10 on Parcel 03S37E1300. Mr. Williams’s petition did not include information required under OAR 137-003-0005(3)(e) and (f) to represent a public interest (i.e., petition did not identify an interest in representing a public interest, nor include the following required information: a detailed statement of such public interest, the manner in which such public interest would be affected by the results of the processing, petitioner’s qualifications to represent such public interest, and a statement of the reasons why existing parties to the proceeding cannot adequately represent the interest). For these reasons, the Department recommends Council deny the appeal of the personal interest designation of Mr. Williams’s limited party status.
2. Council may not hear Mr. Williams’ objection to the 7-day appeal period; in the alternative, if heard, the objection should be denied. Mr. Williams objects to the appeal period. The scope of appeals is established under OAR 345-015-0016(6) and -0057, which includes an established appeal timeframe of 7-days from the date of Hearing Officer determination on requests to participate as a party or limited party and for any Hearing Officer ruling resulting in termination of a party’s right to participate in the contested case proceeding, respectively. The objection is inconsistent with rule established timeframes and not within the scope of the rules.

III. CONCLUSION

In conclusion, the Department recommends Council maintain Hearing Officer’s determinations as presented in the Order on Party Status, with the exception of the following modifications:

1. The statement for issue NC-3, as defined in Hearing Officer’s Corrected Table of Identified Issues and Parties with Standard on Issue, should be modified as follows: “Whether the methodologies used for the noise analysis to evaluate compliance with OAR 340-035-0035 were appropriate and whether the Department erred in approving the methodology used to evaluate compliance with OAR 340-035-0035” because STOP B2H Coalition raised the issue of noise analysis methodologies in its petition and in its draft proposed order comments, and is within Council’s jurisdiction, consistent with the requirements under OAR 345-015-0016(3).

2. Ms. Gilbert should be granted limited party status on the following issue, “Whether the impacts from the proposed facility on accepted farm practices and the cost of accepted farm practices have been adequately evaluated or mitigated” because the issue is within Council jurisdiction under ORS 215.275(5), was raised on the record of the draft proposed order with sufficient specificity and therefore satisfies all requirements under OAR 345-015-0016(3).

3. Ms. Gilbert should be granted limited party status on the following issue, “Whether Applicant should include in its Fish Passage Plan and be required to replace a culvert on an unnamed stream (referenced as Crossing ID R-37969 in Exhibit BB-2, Table 1) to an appropriate size for fish
“passage” because the issue was raised on the record of the draft proposed order public hearing with sufficient specificity, and is within Council’s jurisdiction. The issue should be granted as a properly raised contested case issue because the requirements under OAR 345-015-0016(3) were satisfied.
CERTIFICATE OF FILING

I certify that on November 13, 2020, the foregoing THE OREGON DEPARTMENT OF
ENERGY’S RESPONSE TO APPEALS OF THE HEARING OFFICER’S OCTOBER 29, 2020 ORDER
ON PARTY STATUS, AUTHORIZED REPRESENTATIVES AND ISSUES was emailed to:

Alison Greene Webster, Senior Administrative Law Judge
Hearings Officer
Office of Administrative Hearings
OED_OAH_Referral@oregon.gov

DATED this 13th day of November 2020.

/s/ Patrick G. Rowe

Patrick G. Rowe, OSB #072122
Senior Assistant Attorney General
Attorney for the Oregon Department of
Energy

In the Matter of Boardman To Hemingway Transmission Line, OAH Case No. 2019-ABC-02833
CERTIFICATE OF FILING
# 32141878
CERTIFICATE OF SERVICE

I hereby certify that on November 13, 2020, the foregoing THE OREGON DEPARTMENT OF ENERGY’S RESPONSE TO APPEALS OF THE HEARING OFFICER’S OCTOBER 29, 2020 ORDER ON PARTY STATUS, AUTHORIZED REPRESENTATIVES AND ISSUES was served by mailing or emailing a true copy of the above-listed document as set forth below:

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