



Oregon

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To: Oregon Energy Siting Council

From: Sarah Esterson, Senior Policy Advisor

Date: November 24, 2020

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

Attachments: November 20, 2020 Agenda Item G Staff Report and Attachments 1-5 (documents previously provided to Council on November 6, 13 and 16, 2020)

BACKGROUND

The Energy Facility Siting Council (Council) conducted a meeting on November 19-20, 2020 including, as Agenda Item G, a hearing on appeals of the Hearing Officer's *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). In the *Order on Party Status*, 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.¹ In the *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.²

¹ Applicant is a party to the contested case pursuant to ORS 469.370(5); the Department shall have the right to participate in the contested case with all of the rights granted to a party pursuant to OAR 345-015-0080(2).

² Pursuant to ORS 469.370(5) and OAR 345-015-0016, to properly raise a contested case issue, petitioner must have met the following criteria: Commented 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; submit a written petition for party or limited party status by the specified deadline, in this case, August 27, 2020 at 5:00

COUNCIL SCOPE OF REVIEW

As indicated in the *Order on Party Status*, Council rules establish two appeal processes applicable to the *Order on Party Status*. Appeals of determinations in the *Order on Party Status* were filed by 26 petitioners/parties (appellants) pursuant to OAR 345-015-0016(6), as provided in the Hearing Officer's November 6, 2020 *Notice to Council of Appeals Pursuant to OAR 345-015-0016(6) and Corrected Table of Identified Issues* (Notice to Council). Pursuant to OAR 345-015-0016(6), the determination on requests to participate as a party or limited party 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.

At the November 20, 2020, meeting, Council heard oral arguments and reviewed appeals by, or on behalf of authorized representatives of, 26 appellants. At the conclusion of appellant oral argument, Chair Jenkins called a Special Council Meeting in accordance with OAR 345-011-0015(2) to occur on November 25, 2020 to allow a continuation of Council deliberation on issues disputed in appellant appeals which were not concluded. The Department, as staff to Council, issued a Special Meeting Agenda on November 23, 2020 to the general and special mailing lists established for Council meetings and this specific project. On the same day, Assistant Attorney General, Jesse Ratcliffe, Counsel to Council, served a copy of the November 25, 2020 Special Meeting Agenda to the Service list for the Boardman to Hemingway Transmission Line contested case proceeding.

At the November 25, 2020 Special Meeting, Council will continue review of remaining items including any clarification items, determination on disputed issues raised by STOP B2H Coalition and disputes of 17 appellants on their designation as a limited party.

Attachments:

Attachment 1: November 20, 2020 Agenda Item G Staff Report and Attachments
1-5 (documents previously provided to Council on November 6, 13 and 16, 2020)

p.m.; 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; and 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.