

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

IN THE MATTER OF:	)	<b>CONTESTED CASE STATUS</b>
	)	<b>UPDATE TO COUNCIL</b>
<b>THE APPLICATION FOR SITE</b>	)	<b>PURSUANT TO OAR 345-015-0023(4)</b>
<b>CERTIFICATE FOR THE</b>	)	
<b>BOARDMAN TO HEMINGWAY</b>	)	OAH Case No. 2019-ABC-02833
<b>TRANSMISSION LINE</b>	)	

OAR 345-015-0023(4) requires that the Administrative Law Judge (ALJ) “keep the Council informed regularly on the status of the contested case.” In accordance with this requirement, the ALJ offers the following status update. The ALJ anticipates providing written updates to Council in this matter on a bi-monthly basis, on or before the 15<sup>th</sup> of the month, through the course of the contested case. Additional updates will be issued as needed if significant developments arise in the contested case in between scheduled updates.

***Status of the Boardman to Hemingway Transmission Line Application for Site Certificate Contested Case as of April 15, 2021:***

The contested case is still in the Discovery Phase.

***Limited Party Withdrawal:***

On February 17, 2021, limited party John Milbert submitted a notice of withdrawal from the contested case. Thereafter, on February 22, 2021, the ALJ issued an Acknowledgement of Withdrawal of Limited Party and Contested Case Issue FW-8, acknowledging Mr. Milbert’s withdrawal from the case, removing issue FW-8 from the Table of Identified Issues, and removing Mr. Milbert from the Revised Service List.

***Discovery Rulings:***

As set out in the Contested Case Schedule, the parties and limited parties had until Friday, February 19, 2021 to request a discovery order under OAR 137-003-0025(3). On February 15, 2021, limited party Irene Gilbert requested, and was granted, an extension of time to file her discovery requests.

As of February 19, 2021, the ALJ received 36 requests for discovery orders, from Applicant Idaho Power Company (IPC) and limited parties Andrew, Badger-Jones, Lois

Barry (2), Peter Barry, Matt Cooper (3), Eastern Oregon University, Geer (2), Gillis, Mammen (4), March (2), Marlette, McAllister (2), STOP B2H, Webster (12) and Williams. In accordance with the extended deadline, limited Party Gilbert subsequently submitted four motions seeking discovery from the Union County Planning Department and the Oregon Department of Fish and Wildlife (ODFW), and additional discovery from IPC and ODOE. Limited parties Anne and Kevin March subsequently withdrew their request for discovery from ODFW.

On March 4 and 5, 2021, the ALJ issued 24 rulings denying limited parties' requests for discovery (interrogatories and requests for production of documents) from non-parties.<sup>1</sup> In the rulings, the ALJ explained that she lacked the authority to compel a non-party to the contested case to respond to written questions and/or to produce requested documents. The ALJ granted the limited parties leave, until April 2, 2021, to file a written request to take the deposition of a material witness in accordance with ORS 183.425 and OAR 137-003-0025.

Between March 16 and 26, 2021, the ALJ issued the remaining 15 rulings on requests for discovery. The ALJ partially granted IPC's motion, ordering limited parties Miller, Myers, and Proesch to respond to IPC's discovery requests by April 16, 2021. In addition, the ALJ granted IPC's request for an order establishing a deadline for parties and limited parties to identify expert witnesses and hearing exhibits for direct testimony. The ALJ ordered the following:

Each party/limited party shall submit a list of their expert witness(es) and the exhibits to be offered as direct testimony and evidence at hearing on or before September 3, 2021, *i.e.*, at least 14 days prior to the September 17, 2021 deadline for submitting the direct testimony and evidence and proposed site certificate conditions.

Ruling on Applicant Idaho Power Company's Request for Discovery Orders at 8.

The ALJ denied Lois Barry's requests for discovery orders to IPC and ODOE, sustaining the objections and finding that IPC and ODOE sufficiently responded to the discovery requests. The ALJ denied Peter Barry's request for a discovery order to IPC, sustaining IPC's objections and finding that IPC sufficiently responded to the discovery requests. The ALJ denied Eastern Oregon University's request for a discovery order to IPC, sustaining IPC's objections and finding that IPC sufficiently responded to the discovery requests. The ALJ denied Susan Geer's request for a discovery order to IPC,

---

<sup>1</sup> This includes: Union County Planning Department; Union County Public Works Department; Union County Emergency Services Department; Union County Weed Supervisor; the City of La Grande; La Grande Rural Fire Department; Avista; Grande Ronde Hospital; Terra Firma; US Forest Service; Adrian Rural Fire Protection District; Baker City Rural Fire Department; Bureau of Land Management-Baker Field Office; Boardman Fire Department; Huntington Fire Department; Ione Fire Department; North Powder Rural Fire Department; ODFW; and the Oregon Department of Forestry.

sustaining IPC's objections and finding that IPC sufficiently responded to the discovery requests. The ALJ denied Irene Gilbert's requests for discovery orders to IPC and ODOE, sustaining the objections and finding that IPC and ODOE sufficiently responded to the discovery requests. The ALJ denied Charles Gillis' request for an order compelling IPC to respond further or produce additional discovery. The ALJ denied the Marches' request for an order to IPC, sustaining IPC's objections and finding that IPC sufficiently responded to the discovery requests.

In addition, the ALJ denied JoAnne Marlette's request for a discovery order compelling IPC to provide a further response to Request No. 2. The ALJ denied Michael McAllister's requests for discovery orders to IPC and ODOE, sustaining the objections and finding that IPC and ODOE sufficiently responded to the discovery requests. The ALJ denied the STOP B2H Coalition's request for discovery from ODFW based on lack of jurisdiction and the request for further discovery from IPC, finding IPC sufficiently responded to the requests. The ALJ denied Stacia Webster's request for further discovery from ODOE, sustaining ODOE's objections and finding that ODOE provided responsive answers to the questions posed. Finally, the ALJ denied John Williams' request for additional discovery from IPC, finding that IPC provided adequate responses.

*Deposition Requests:*

As noted above, in denying limited parties' requests for discovery from non-parties, the ALJ granted the limited parties leave, until April 2, 2021, to request to take the deposition of a material witness. In the rulings, the ALJ did not authorize depositions by non-stenographic means.

On March 15, 2021, limited parties Andrew, Badger-Jones, Cooper, Geer, Gilbert, Dale and Virginia Mammen, and Webster, filed a Motion to Reconsider Procedures for Depositions asking the ALJ to reconsider her decision to require depositions by stenographic means. These limited parties sought approval to use a notary to administer the oath, Zoom to hold the depositions, and Otter to record and transcribe the deposition testimony. IPC, ODOE and the STOP B2H Coalition filed responses to the motion.

In a Ruling on Limited Parties' Motion to Reconsider Procedures for Depositions issued March 26, 2021, the ALJ denied the request to use Otter to record and transcribe the deposition, but authorized depositions by non-stenographic means as long as the deposition is recorded and transcribed in accordance with ORCP 39(D)(2) and G(1).

Thereafter, on April 2, 2021, the ALJ received three petitions for depositions of material witnesses, as follows:

(1) Matt Cooper and Stacia Webster's Petition for Deposition of Craig Kretschmer of La Grande Rural Fire Protection District; Issues PS-4 and PS-10;

(2) Susan Geer's Petition for Deposition of Brian Clapp, Union County Weed Supervisor, Issues FW-3, FW-6 and SR-5; and

(3) Irene Gilbert's and Kathryn Andrew's Petition for Deposition of Scott Hartell of Union County Planning, with request for subpoena *duces tecum*; Issues LU-3, LU-5, LU-7 and LU-8.

The ALJ set April 13, 2021 as the deadline for filing objections to the petitions for deposition. No objections were received by that deadline. On April 15, 2021, the ALJ signed and issued the deposition subpoenas. The limited parties requesting the depositions remain responsible for serving the deposition subpoenas.

#### *Next Steps*

The material witness depositions are scheduled for May 13 and 14, 2021, if the witnesses do not respond to the written deposition questions and provide requested documents prior to the scheduled deposition.

Following the Discovery Phase, the contested case will go into the Motion for Summary Determination Phase. The deadline for filing motions for summary determination is May 28, 2021. The ALJ anticipates ruling on any motions for summary determination on or before August 13, 2021.

As noted above, the deadline for submitting expert witness lists and exhibit lists is September 3, 2021. The Testimony Cross-Examination and Briefing Phase is set to begin on September 17, 2021. This is the date the parties and limited parties are to submit their direct testimony and evidence pursuant to OAR 345-015-0043, and proposed site certificate conditions pursuant to OAR 345-015-0085.

The ALJ will issue the next status update on or about June 15, 2021, absent significant developments requiring another update in the interim.

Alison Greene Webster  
Senior Administrative Law Judge  
Office of Administrative Hearings

**CERTIFICATE OF MAILING**

On April 15, 2021, I mailed the foregoing CONTESTED CASE STATUS UPDATE TO COUNCIL PURSUANT TO OAR 345-015-0023(4) issued on this date in OAH Case No. 2019-ABC-02833.

**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](mailto:dstanish@idahopower.com)

Lisa Rackner  
Attorney at Law  
Idaho Power Company  
[lisa@mrg-law.com](mailto:lisa@mrg-law.com)

Jocelyn Pease  
Idaho Power Company  
Attorney at Law  
[jocelyn@mrg-law.com](mailto:jocelyn@mrg-law.com)

Alisha Till  
[alisha@mrg-law.com](mailto:alisha@mrg-law.com)

Joseph Stippel  
Agency Representative  
Idaho Power Company  
[jstippel@idahopower.com](mailto:jstippel@idahopower.com)

Christopher Burford  
Attorney at Law  
Office of the President  
Eastern Oregon University  
[cburford@eou.edu](mailto:cburford@eou.edu)

Mike Sargetakis  
Attorney at La  
Oxbow Law Group, LLC  
[mike@oxbowlaw.com](mailto:mike@oxbowlaw.com)

Karl G. Anuta  
Attorney at Law  
Law Office of Karl G. Anuta  
[kga@integra.net](mailto:kga@integra.net)

Kellen Tardaewether  
Agency Representative  
[Kellen.tardaewether@oregon.gov](mailto:Kellen.tardaewether@oregon.gov)

Sarah Esterson  
Oregon Department of Energy  
[Sarah.Esterson@oregon.gov](mailto:Sarah.Esterson@oregon.gov)

Patrick Rowe  
Assistant Attorney General  
[Patrick.g.rowe@doj.state.or.us](mailto:Patrick.g.rowe@doj.state.or.us)

Jesse Ratcliffe  
Assistant Attorney General  
[jesse.d.ratcliffe@doj.state.or.us](mailto:jesse.d.ratcliffe@doj.state.or.us)

Jeffery R. Seeley  
[jeff.seeley@doj.state.or.us](mailto:jeff.seeley@doj.state.or.us)

Stop B2H Coalition  
[fuji@stopb2h.org](mailto:fuji@stopb2h.org)

Stop B2H Coalition  
Jim Kreider  
[jkreider@campblackdog.org](mailto:jkreider@campblackdog.org)

Colin Andrew  
[candrew@eou.edu](mailto:candrew@eou.edu)

Kathryn Andrew  
[lkathrynandrew@gmail.com](mailto:lkathrynandrew@gmail.com)

Dr. Karen Antell  
Professor of Biology Eastern Oregon  
University, Science Office  
[kantell@eou.edu](mailto:kantell@eou.edu)  
Susan Badger-Jones  
[sbadgerjones@eoni.com](mailto:sbadgerjones@eoni.com)

Lois Barry  
[loisbarry31@gmail.com](mailto:loisbarry31@gmail.com)

Peter Barry  
[petebarry99@yahoo.com](mailto:petebarry99@yahoo.com)

Ryan W. Browne  
[browner@eou.edu](mailto:browner@eou.edu)

Gail Carbiener  
[mcgccarb@bendbroadband.com](mailto:mcgccarb@bendbroadband.com)

Matt Cooper  
[mcooperpiano@gmail.com](mailto:mcooperpiano@gmail.com)

Whit Deschner  
[deschnerwhit@yahoo.com](mailto:deschnerwhit@yahoo.com)

Jim and Kaye Foss  
[onthehoof1@gmail.com](mailto:onthehoof1@gmail.com)

Suzanne Fouty  
[suzannefouty2004@gmail.com](mailto:suzannefouty2004@gmail.com)

Susan Geer  
[susanmgeer@gmail.com](mailto:susanmgeer@gmail.com)

Irene Gilbert  
[ott.irene@frontier.com](mailto:ott.irene@frontier.com)

Charles H. Gillis  
[charlie@gillis-law.com](mailto:charlie@gillis-law.com)

Dianne B. Gray  
[diannebgray@gmail.com](mailto:diannebgray@gmail.com)

Joe Horst and Ann Cavinato  
[joehorst@eoni.com](mailto:joehorst@eoni.com)

Jim and Jane Howell  
[d.janehowell@gmail.com](mailto:d.janehowell@gmail.com)

Virginia and Dale Mammen  
[dmammen@eoni.com](mailto:dmammen@eoni.com)

Anne March  
[amarch@eoni.com](mailto:amarch@eoni.com)

Kevin March  
[amarch@eoni.com](mailto:amarch@eoni.com)

JoAnn Marlette  
[garymarlette@yahoo.com](mailto:garymarlette@yahoo.com)

Michael McAllister  
[wildlandmm@netscape.net](mailto:wildlandmm@netscape.net)

Jennifer Miller  
[rutnut@eoni.com](mailto:rutnut@eoni.com)

David Moyal  
[moyald@gmail.com](mailto:moyald@gmail.com)

Sam Myers  
[sam.myers84@gmail.com](mailto:sam.myers84@gmail.com)

Timothy C. Proesch  
[tranquilhorizonscooperative@gmail.com](mailto:tranquilhorizonscooperative@gmail.com)

Louise Squire  
[squirel@eoni.com](mailto:squirel@eoni.com)

Stacia Jo Webster  
[staciajwebster@gmail.com](mailto:staciajwebster@gmail.com)



Daniel L. White  
[danno@bighdesign.biz](mailto:danno@bighdesign.biz)

Jonathan White  
[jondwhite418@gmail.com](mailto:jondwhite418@gmail.com)

John Winters  
[wintersnd@gmail.com](mailto:wintersnd@gmail.com)

Charles A Lyons  
[marvinroadman@gmail.com](mailto:marvinroadman@gmail.com)

Anesia N Valihov  
Hearing Coordinator