

**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>AS OF DECEMBER 15, 2021</b>
<b>BOARDMAN TO HEMINGWAY</b>	)	
<b>TRANSMISSION LINE</b>	)	OAH Case No. 2019-ABC-02833

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 December 15, 2021:***

The contested case is still in the Hearing phase (direct testimony, rebuttal and cross-examination).

***1. ALJ Ruling on Idaho Power’s Motion to Dismiss Issues:***

On September 29, 2021, Idaho Power filed a Motion to Dismiss Contested Case Issues FW-5, HCA-6, LU-4, LU-7, LU-8, PS-1, PS-5, SS-1, and SS-2, requesting dismissal of those issues for which the limited parties did not file testimony or evidence. The Department filed a Response to the Motion. Limited parties Matthew Cooper, Irene Gilbert, and Stacia Webster filed objections to the Motion.

On October 8, 2021, the ALJ issued a *Ruling on Idaho Power Company’s Motion to Dismiss Issues FW-5, HCA-6, LU-4, LU-7, LU-8, PS-1, PS-5, SS-1, and SS-2*, granting the motion.

On October 15, 2021, the Department filed a Motion to Reconsider Dismissal of Issues FW-5, HCA-6, LU-4, LU-7, LU-8, PS-1, PS-5, SS-1, and SS-2. On October 19, 2021, limited party Stop B2H Coalition filed an Amicus Memorandum in support of the

Department's Motion to Reconsider and, on October 20, 2021, limited party Irene Gilbert similarly filed an Amicus Memorandum.

On October 22, 2021, Idaho Power filed its Response to the Department's Motion to Reconsider.

On October 25, 2021, the ALJ issued an *Order Granting Reconsideration and Withdrawing Ruling on Idaho Power Company's Motion to Dismiss Issues FW-5, HCA-6, LU-4, LU-7, LU-8, PS-1, PS-5, SS-1, and SS-2*.

Thereafter, on November 2, 2021, the ALJ issued a *Ruling on Idaho Power Company's Motion to Dismiss Issues FW-5, HCA-6, LU-4, LU-7, LU-8, PS-1, PS-5, SS-1, and SS-2*, denying the motion. The ALJ found that because Idaho Power retains the burden under OAR 345-021-0100(2) to prove the proposed facility complies with applicable statutes and siting standards, it was not appropriate to dismiss these issues from the contested case despite limited parties' failure to submit written direct testimony or exhibits in support of these issues. The ALJ further found that by failing to present any written direct testimony and supporting exhibits by the September 17, 2021 deadline, the limited parties with standing on Issues FW-5, HCA-6, LU-4, LU-7, LU-8, PS-1, PS-5, SS-1, and SS-2 waived their opportunity to present any testimony or new evidence in support of their claims.

## ***2. List of Direct Testimony and Exhibits***

On October 21, 2021, the ALJ issued a *List of Direct Testimony and Exhibits Admitted into the Contested Case Record*, identifying, by issue code and number, the written direct testimony and new evidence admitted into the contested case hearing record as of October 15, 2021.

## ***3. Motions to Reconsider Rulings on Objections to Direct Testimony and Exhibits***

Limited parties Stop B2H, Irene Gilbert, Anne and Kevin March, and JoAnn Marlette filed motions seeking reconsideration of the ALJ's rulings sustaining Idaho Power's objections and excluding certain direct testimony and exhibits.

On November 2, 2021, the ALJ issued a *Ruling on Anne and Kevin March's Motion to Reconsider Rulings on Objections to Direct Testimony and Exhibits – Issue FW-7*, declining to reconsider the rulings and denying the Motion to Reconsider.

Also on November 2, 2021, the ALJ issued a *Ruling on Irene Gilbert's Motion to Reconsider Rulings on Objections to Direct Testimony and Exhibits – Issues NC-2 and LU-11*, denying the Motion to Reconsider.

On November 5, 2021, the ALJ issued a *Ruling on Stop B2H Coalition's Motion to Reconsider Ruling on Objections to Direct Testimony and Exhibits – Issues NC-2 and SR-7*, denying the Motion to Reconsider.

On November 9, 2021, the ALJ issued a *Ruling on JoAnn Marlette's Motion to Reconsider Ruling on Objections to Exhibit 7 – Issue HCA-3*, denying the Motion to Reconsider.

#### **4. November 4, 2021 Status Conference/Third Case Management Order**

On November 4, 2021, the ALJ convened a status conference by telephone to discuss logistics for the cross-examination hearing. The ALJ notified the parties and participants that the cross-examination hearing will be held virtually, via the Cisco WebEx platform.

On November 9, 2021, the ALJ issued a *Third Order on Case Management Matters and Guidelines for the Virtual Cross-Examination Hearing*.

On November 22, 2021, in follow up to the *Third Order on Case Management*, the ALJ issued a *Response to Idaho Power Company's Request for Clarification Regarding Procedures for Responding to Surrebuttal Evidence and New Proposed Site Certificate Conditions*. The ALJ then issued an *Amended Response* to correct an omission in the original Response.

#### **5. Rebuttal Evidence**

The deadline for submitting rebuttal testimony and evidence, and responses to proposed site certificate conditions was November 12, 2021. Idaho Power and the Department timely submitted rebuttal evidence on that date.

On November 17, 2021, limited party Stop B2H filed a Motion to Strike Portions of ODOE Rebuttal to Direct Testimony and Evidence. On November 18, 2021, limited party Irene Gilbert filed a Motion to Strike Portions of the Department's Rebuttal to Direct Testimony and Evidence and Response to Proposed Site Certificate Conditions.

On November 22, 2021, limited party Irene Gilbert filed a Motion to Exclude testimony and exhibits offered by Idaho Power in connection with Issues FW-3, FW-6 and LU-11 (Motion to Exclude).

On November 23, 2021, the ALJ issued a *Ruling on Stop B2H Coalition's Motion to Strike Portions of ODOE Rebuttal to Direct Testimony and Evidence*, denying Stop B2H's Motion to Strike. The ALJ accepted the Department's submission as an opening brief/hearing memorandum responsive to legal arguments in the direct testimony and to the limited parties' proposed site certificate conditions.

Also on November 23, 2021, the ALJ issued a *Ruling on Irene Gilbert's Motion to Strike Portions of ODOE Rebuttal to Direct Testimony and Evidence*, denying Ms. Gilbert's Motion to Strike on the same basis.

On November 30, 2021, the ALJ issued a *Ruling on Limited Party Irene Gilbert's Motion to Exclude Idaho Power's Testimony and Exhibits – Witness Jessica Taylor*, denying Ms. Gilbert's Motion to Exclude testimony and exhibits.

## **6. Sur-rebuttal Evidence**

The deadline for submitting sur-rebuttal testimony and evidence was December 3, 2021.

On November 22, 2021, limited party Anne March requested that the December 3, 2021 deadline be extended to midnight on Sunday, December 5, 2021, to allow the limited parties additional time over the weekend to prepare and submit their sur-rebuttal evidence. Also on November 22, 2021, limited party Stacia Webster requested that adjustments to filing deadlines be made because she and other limited parties were having difficulty accessing data files provided by Idaho Power. Idaho Power objected to the limited parties' requests to extend the sur-rebuttal deadline. Idaho Power also provided the limited parties with alternate means to access the data files referenced in the witness's testimony.

On November 24, 2021, the ALJ issued a *Ruling Denying Limited Parties' Requests to Adjust Contested Case Schedule Filing Deadlines*.

On November 22, 2021, limited party Irene Gilbert requested that her deadline to submit sur-rebuttal evidence and cross-examination requests be extended nine days, to December 12, 2021. On November 23, 2021, Idaho Power objected to Ms. Gilbert's request to extend the sur-rebuttal deadline.

On November 24, 2021, the ALJ issued a *Ruling on Limited Party Irene Gilbert's Request to Extend Deadline for Filing Sur-rebuttal and Cross-Examination Requests*, denying the request to extend the deadline.

On November 30, 2021, Ms. Gilbert requested reconsideration of the Ruling denying her request for a deadline extension.

On December 1, 2021, the ALJ issued a *Ruling on Limited Party Irene Gilbert's Motion to Reconsider Denial of Request to Extend Deadline for Filing Sur-rebuttal and Cross-Examination Requests* adhering to her November 24, 2021 ruling.

On December 3, 2021, the ALJ received sur-rebuttal evidence from the following limited parties: Matt Cooper (Issue PS-4), Suzanne Fouty (Issue SP-1), Susan Geer (Issues FW-3 and FW-6), Irene Gilbert (Issues FW-3 and LU-11), Anne and Kevin March (Issue FW-7), Stop B2H (Issues NC-2, NC-3, NC-4 and SP-1), and John Williams (Issue HCA-7).

On December 10, 2021, the ALJ received Idaho Power's Objections to Limited Parties' Sur-rebuttal Testimony and Exhibits. The schedule for responding to objections to sur-rebuttal testimony and exhibits will be set during the December 15, 2021 status conference.

### ***7. Cross-Examination Requests***

On December 3, 2021, the ALJ also received requests for cross-examination of witness(es) from the following parties/limited parties:

- Idaho Power, requesting cross-examination of Greg Larkin (Issues NC-2, NC-3, NC-4); Kerri Standlee (Issue NC-2); Isobel Lingenfelter (Issue SR-2); Lois Barry (Issue SR-7).
- Lois Barry, requesting cross-examination of Louise Kling (Issues R-2, R-3, and R-4).
- Gail Carbiener, requesting cross-examination of Louise Kling and Dennis Johnson (Issue SR-2).
- Matt Cooper, requesting cross-examination of Douglas Dockter, Dennis Johnson and Chris Lautenberger (Issue PS-4).
- Suzanne Fouty, requesting cross-examination of Mark Madison (Issue SP-1).
- Irene Gilbert, requesting cross-examination of Tim Butler and Jessica Taylor (Issues FW-3 and LU-11).
- Anne and Kevin March, requesting cross-examination of Chris James, Greg Apke, Sara Reif, and "an Oregon Department of Energy representative." (Issue FW-7).
- Stop B2H, requesting cross-examination of Mark Bastasch and Ken Kosky (Issues NC-1, NC-2, NC-3, and NC-4), Mark Madison (Issue SP-1), and Louise Kling (Issue SR-7).

The Department timely objected to the Marches' request to cross-examine "an Oregon Department of Energy representative," as no Oregon Department of Energy representative provided testimony on Issue FW-7.

The ALJ received no other objections to cross-examination requests.

### **8. *Certified Questions to Council***

On December 14, 2021, the ALJ sent *Certified Questions to Council Regarding Interpretation of OAR 345-015-0085(1) and (2)*, asking Council for guidance in harmonizing apparently conflicting provisions in the procedures governing site certificate contested case proceedings and interpreting OAR 345-015-0085(1) and (2).

### **9. *Court Reporter for Cross-Examination Hearing***

On December 2, 2021, the ALJ issued an *Acknowledgement of Court Reporter for Cross-Examination Hearing*, approving Idaho Power's request to use Buell Realtime Reporting to produce transcripts of the cross-examination hearing.

### **10. *Next Steps***

On Wednesday, December 15, 2021 at 1:00 PM Pacific Time, the ALJ will convene a status conference, by WebEx, with the parties and limited parties to address the schedule and logistics for the cross-examination hearing.

Following the status conference, the ALJ will issue a Notice of Cross-Examination Hearing and Schedule for the Cross-Examination Hearing.

The cross-examination hearing is scheduled to begin on January 10, 2022.

Prior to the commencement of the cross-examination hearing, the ALJ will issue Rulings on Idaho Power's Objections to Limited Parties' Sur-rebuttal Testimony and Exhibits.

The ALJ will issue the next status update on or about February 15, 2022, absent significant developments requiring another update in the interim.

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Alison Greene Webster  
Senior Administrative Law Judge  
Office of Administrative Hearings

**CERTIFICATE OF MAILING**

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

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