

From: [OED_OAH_REFERRAL * OED](#)
Sent: Thursday, October 29, 2020 3:55 PM
To: 'Patrick.g.rove@doj.state.or.us'; TARDAEWETHER Kellen *
[ODOE](#); 'lisa@mrg-law.com'; 'jocelyn@mrg-law.com';
'cburford@eou.edu'; 'jstippel@idahopower.com';
'dstanish@idahopower.com'; 'mike@oxbowlaw.com';
'kga@integra.net'; 'kantell@eou.edu'; [OED_OAH_REFERRAL * OED](#)
Cc: 'sam.myers84@gmail.com'; 'susanmgeer@gmail.com';
'deschnerwhit@yahoo.com';
'mcgcarb@bendbroadband.com'; 'charlie@gillis-law.com';
'moyald@gmail.com'; 'dutto@eoni.com';
'jmfisherman9@gmail.com'; 'lkathrynandrew@gmail.com';
'jerryhampton61@gmail.com'; 'ken_marsha@comcast.net';
'larkingreg34@gmail.com'; 'cndyrela@eoni.com';
'staciajwebster@gmail.com'; 'danno@bighdesign.biz';
'garymarlette@yahoo.com'; 'dirtfarmerjohn@gmail.com';
'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';
'amarch@eoni.com'; 'squirrel@eoni.com';
'rutnut@eoni.com'; 'amorter79@gmail.com';
'fuji@stopb2h.org'; 'ott.irene@frontier.com';
'kskovlin@gmail.com'; 'larkingreg34@gmail.com';
'browner@eou.edu'; 'jondwhite418@gmail.com';
'd.janehowell@gmail.com'; 'wintersnd@gmail.com';
'lotusbsilly@eoni.com'; 'samhartley57@gmail.com';
'bpdoherty@hughes.net'; 'suemc@eoni.com';
'Nichole.Milbrath@CenturyLink.com';
'jkreider@campblackdog.org'; TARDAEWETHER Kellen *
[ODOE](#); 'Patrick.g.rove@doj.state.or.us'; 'lisa@mrg-law.com';
'jocelyn@mrg-law.com'; 'cburford@eou.edu';
'jstippel@idahopower.com'; 'dstanish@idahopower.com';
'alisha@mrg-law.com'; SEELEY Jeff; 'mike@oxbowlaw.com';
'kga@integra.net'; 'kantell@eou.edu';
'carlmorton2000@gmail.com'
Subject: OAH Case No. 2019-ABC-02833 - Boardman to Hemingway -
ORDER ON PETITIONS FOR PARTY STATUS, AUTHORIZED
REPRESENTATIVES AND ISSUES FOR CONTESTED CASE
Attachments: ABC Interim Order Order on Party Status.rtf

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,

Anesia N. Valihov | Hearing Coordinator

Office of Administrative Hearings

PO Box 14020

Salem, OR 97309-4020

Phone: (503) 947-1510

Fax: (503)947-1923

Email: OED_OAH_REFERRAL@oregon.gov

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

IN THE MATTER OF:) **ORDER ON PETITIONS FOR PARTY**
) **STATUS, AUTHORIZED**
THE APPLICATION FOR SITE) **REPRESENTATIVES AND ISSUES FOR**
CERTIFICATE FOR THE) **CONTESTED CASE**
BOARDMAN TO HEMINGWAY)
TRANSMISSION LINE) OAH Case No. 2019-ABC-02833

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

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 Stanish; for petitioners requesting party status, Stop B2H Coalition (through attorneys Karl Anuta and Mike Sargetakis 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 Mammen; Anne March (through authorized representative, Kevin March); Kevin March; JoAnn Marlette; 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 Gilbert³

Eastern Oregon University (EOU), through representative Dr. Karen Antell⁴
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 Carbiener⁵
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).

Brian Doherty
Corrine Dutto
Jim & Kaye Foss
Suzanne Fouty
Susan Geer
Irene Gilbert
Charles Gillis
Dianne B. Gray
Jerry Hampton (on behalf of Baker County Fire Defense Board)
Sam Hartley
Ken & Marsha Hildebrandt
Joe Horst & Anna Cavinato
Jane & Jim Howell
Greg Larkin
John H. Luciani
Charles A. Lyons
Virginia & Dale Mammen
Anne March
Kevin March
JoAnn Marlette
Michael McAllister
Sue McCarthy
John B. Milbert
Jennifer Miller
Kathryn Morello
Ralph Morter
Carl Morton⁶
David Moyal
Sam Myers
Timothy Proesch
Kelly Skovlin
Louise Squire
Jeri Watson
Stacia Jo Webster
Daniel White
Jonathan White
John Williams
John Winters

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.

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,⁸ 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,⁹ 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.¹⁰
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.¹¹

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

specificity to afford the council, the department and Applicant an adequate opportunity to respond to each 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),¹⁵ 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 be 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 be 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

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 “(e) 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 Resources); 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.¹⁷ 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

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.²²

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).²³

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.

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 viewshed.

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.²⁴ 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

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 data and fail to consider Oregonians' subjective 'opinion/evaluation' of their scenic and recreational resource."²⁵ 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

²⁵ Stop B2H Coalition, Public Comments 8-22-2019 at 34.

(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*²⁶

(i) Whether the Soil Protection Standard and General Standard of Review require an evaluation of carbon sequestration, carbon storage and carbon loss.

The design, construction and operation of the proposed facility and its impact to soils is a matter within the Council's jurisdiction. OAR 345-022-0022.²⁷ 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,²⁸ 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 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.)

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).²⁹ But, in its comments, Stop B2H did not raise a challenge to Applicant's methodology for assessing

B2HAPPDoc8-381 DPO Comment_Stop B2H Krieder F 2019-08-22, page 45; Fouty Comments at page 2.

²⁹ Stop B2H Coalition, Public Comments 8-22-2019 at 78-80.

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)³⁰; 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

³⁰ 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. 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. 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*

(i) 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."³⁴ It is unclear what comment period Mr. Brown asserts he did not receive notice and there is

³⁴ B2HAPPD0c8-064 DPO Public Comment_Browne 2019-06-20.

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 OCTA 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 (NHOTIC) 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 NHOTIC 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 NHOTIC 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*

(i) 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*

(i) 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*

(i) 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)³⁵ 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

³⁵ OAR 345-021-0010(1)(c)(A), addressing Exhibit C to the ASC, 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 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*

(i) Whether the Soil Protection Standard and General Standard of Review require an evaluation of carbon sequestration, carbon storage and carbon loss.

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

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

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."

³⁹ B2HAPPDoc8-142 DPO Public Comment, Irene Gilbert, 6/18/2019.

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.⁴² 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.⁴³ 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."⁴⁴

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.⁴⁵ 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).

⁴⁴ B2HAPPDoc8-142 DPO Public Comment, Irene Gilbert, 6/18/2019.

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

⁴⁶ B2HAPPDoc8-142 DPO Public Comment, Irene Gilbert, 6/18/2019.

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,⁴⁷ 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.⁴⁸ 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.

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.”⁴⁹ 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 Archeological 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 misled 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, complies 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

(1) *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.

d. Issues Not Properly Raised: None.

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. JoAnn Marlette

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.

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.

c. Issues Properly Raised

(1) *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 impactful route or the route recommended by a federal agency. There is no siting standard requiring Council to consider routes not proposed by Applicant and no siting standard allowing Council to recommend routes that are not proposed in the ASC. Because Applicant's selection of the Morgan Lake Alternative route (instead of the Agency Selected NEPA Route, or other possible routes) falls outside Council's jurisdiction, the above issues are not properly raised for consideration in the contested case. OAR 345-015-0016(3).

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).⁵⁵

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*

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 watershed 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.

(ii) 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 wild life 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 archeological 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:

Miranda Aston	OAR 345-015-0016(3), lack of specificity
Janet Aston	OAR 345-015-0016(3), lack of specificity
Norm Cimon	OAR 345-015-0016(3), outside Council jurisdiction
Brian Doherty	OAR 345-015-0083(3), waiver of issues
Corrine Dutto	OAR 345-015-0083(3), waiver of issues
Jerry Hampton comment	ORS 469.370; OAR 345-015-0016(3), no DPO

⁶² This is essentially the same issue raised by Petitioner Cooper.

Sam Hartley comment	ORS 469.370; OAR 345-015-0016(3), no DPO
Ken & Marsha Hildebrandt	OAR 345-015-0083(3), waiver of issues
Greg Larkin	OAR 345-015-0016(3), lack of specificity
John Luciani	OAR 345-015-0016(3), lack of specificity
Charles Lyons	OAR 345-015-0016(3), lack of specificity
Sue McCarthy	OAR 345-015-0016(1), untimely, no good cause
Kathryn Morello	OAR 345-015-0083(3), waiver of issues
Ralph Morter comment	ORS 469.370; OAR 345-015-0016(3), no DPO
Carl Morton	OAR 345-015-0016(1), untimely, no good cause
Kelly Skovlin	OAR 345-015-0016(1), untimely, no good cause
Jeri Watson	OAR 345-015-0083(3), waiver of issues
Qwest Corp	OAR 345-015-0016(1), untimely, no good cause;
ORS comment	469.370; OAR 345-015-0016(3), no DPO

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 OF IDENTIFIED ISSUES AND PARTIES WITH STANDING ON ISSUE

	Subject Matter/Issue	Standing
M	Misc. Issues Under OAR 345-001-0010 – 345-021-0010(1)	
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.	Badger-Jones
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.	Gilbert
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.	Cooper
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.	Howell
M-5	Whether the maps provided in the ASC were sufficient to give notice of potential impacts from the proposed facility.	Howell
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).	Marlette
M-7	Notice: Whether Mr. Proesch received adequate notice regarding the proposed transmission line.	Proesch (personal interest)
FW	Fish and Wildlife Habitat – OAR 345-022-0060	
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	Stop B2H; Squire

	in the Baker and Cow Valley PACs	
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&W Condition 16	Applicant
FW-10	Whether Department-proposed revisions to F&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&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 Trail/NHT segments) fails to consider BLM Programmatic Agreement and adds new requirements for mitigation that are	Carbiener/OCTA

	inconsistent with the Department’s definition of “mitigation” in OAR 345-001-0010(33).	
HCA-3	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.	Gilbert; Marlette
HCA-4	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.	Horst/Cavinato (private interest)
HCA-5	Whether Applicant adequately analyzed the feasibility of undergrounding the transmission line as mitigation for potential visual impacts at Flagstaff Hill/NHOTIC.	Miller
HCA-6	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.	S. Webster
HCA-7	Whether Applicant adequately evaluated archeological resource “Site 6B2H-MC-10” on Mr. Williams’ property, Parcel 03S37E01300.	Williams (personal interest)
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
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
PS	Public Services – OAR 345-022-0110	
PS-1	Traffic Safety: Whether Applicant was required to evaluate traffic	Badger-Jones

	safety impacts from construction-related use of Morgan Lake Road.	
PS-2	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.	Carbiener/OCTA; Miller
PS-3	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.	Carbiener/OCTA; Miller
PS-4	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.	Cooper; Winters
PS-5	Fire Protection: Whether the Wildfire Mitigation Plan is adequately developed and includes sufficient detail to allow for public participation.	Gilbert
PS-6	Traffic Safety: Whether Applicant adequately evaluated the potential traffic impacts and modifications needed on Hawthorne Drive and Modelaire Drive (Hawthorne Loop).	Horst/Cavinato; Mammen
PS-7	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.	Howell
PS-8	Whether Department-proposed revisions to Public Services Condition 7 are redundant with Attachment U-3 and existing condition requirements.	Applicant
R	Recreation - OAR 345-022-0100	
R-1	Whether Applicant adequately evaluated the potential adverse impact of the proposed facility on recreational opportunities at Morgan Lake Park	C. Andrew
R-2	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.	L. Barry; McAllister
R-3	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.	L. Barry; P. Barry; C. Andrew; K. Andrew; Gilbert
R-4	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.	L. Barry

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)
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
SS	Structural Standard – OAR 345-022-0020	
SS-1	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.	Browne (personal interest); S. Webster (personal interest)
SS-2	Whether Applicant adequately analyzed the risk of flooding in	Cooper

	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.

///

///

///

///

///

///

///

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.

CERTIFICATE OF MAILING

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)

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

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

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

Alisha Till
alisha@mrg-law.com

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

Christopher Burford
Attorney at Law
Office of the President
Eastern Oregon University
cburford@eou.edu

Mike Sargetakis
Attorney at La
Oxbow Law Group, LLC
mike@oxbowlaw.com

Karl G. Anuta
Attorney at Law
Law Office of Karl G. Anuta
kga@integra.net

Kellen Tardaewether
Agency Representative
Kellen.tardaewether@oregon.gov

Patrick Rowe
Assistant Attorney General
Patrick.g.rowe@doj.state.or.us

Jeffery R. Seeley
jeff.seeley@doj.state.or.us

Stop B2H Coalition
fuji@stopb2h.org

Stop B2H Coalition
Jim Kreider
jkreider@campblackdog.org

Colin Andrew
candrew@eou.edu

Kathryn Andrew
lkathrynandrew@gmail.com

Dr. Karen Antell
Professor of Biology Eastern Oregon
University, Science Office
kantell@eou.edu

Susan Badger-Jones
sbadgerjones@eoni.com

Lois Barry
loisbarry31@gmail.com

Peter Barry
petebarry99@yahoo.com

Ryan W. Browne
browner@eou.edu

Gail Carbiener
mcgccarb@bendbroadband.com

Matt Cooper
mcooperpiano@gmail.com

Whit Deschner
deschnerwhit@yahoo.com

Jim and Kaye Foss
onthehoof1@gmail.com

Suzanne Fouty
suzannefouty2004@gmail.com

Susan Geer
susanmgeer@gmail.com

Irene Gilbert
ott.irene@frontier.com

Charles H. Gillis
charlie@gillis-law.com

Dianne B. Gray
diannebgray@gmail.com

Joe Horst and Ann Cavinato
joehorst@eoni.com

Jim and Jane Howell
d.janehowell@gmail.com

Virginia and Dale Mammen
dmammen@eoni.com

Anne March
amarch@eoni.com

Kevin March
amarch@eoni.com

JoAnn Marlette
garymarlette@yahoo.com

Michael McAllister
wildlandmm@netscape.net

John B. Milbert
jmfisherman9@gmail.com

Jennifer Miller
rutnut@eoni.com

David Moyal
moyald@gmail.com

Sam Myers
sam.myers84@gmail.com

Timothy C. Proesch
tranquilhorizonscooperative@gmail.com

Daniel L. White
danno@bighdesign.biz

Louise Squire
squirel@eoni.com

Jonathan White
jondwhite418@gmail.com

Stacia Jo Webster
staciajwebster@gmail.com

John Winters
wintersnd@gmail.com

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

Miranda Aston
tranquilhorizonscooperative@gmail.com

John H. Luciani
dirtfarmerjohn@gmail.com

Janet Aston
owyheeoasis@gmail.com

Charles A. Lyons
marvinroadman@gmail.com

Norm Cimon
ncimon@oregontrail.net

Sue McCarthy
suemc@eoni.com

Brian Doherty
bpdoherty@hughes.net

Nichole Milbrath
nichole.milbrath@centurylink.com

Corrine Dutto
dutto@eoni.com

Kathryn Morello
cndyrela@eoni.com

Jerry Hampton
jerryhampton61@gmail.com

Ralph Morter
amorter79@gmail.com

Sam Hartley
samhartley57@gmail.com

Carl Morton
carlmorton2000@gmail.com

Ken and Marsha Hildebrandt
ken_marsha@comcast.net

Kelly Skovlin
kskovlin@gmail.com

Greg Larkin
larkingreg34@gmail.com

Jeri Watson
lotusbsilly@eoni.com

Anesia N. Valihov
Hearing Coordinator