

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

IN THE MATTER OF:) **ORDER ON CASE MANAGEMENT**
) **MATTERS AND CONTESTED CASE**
THE APPLICATION FOR SITE) **SCHEDULE**
CERTIFICATE FOR THE)
BOARDMAN TO HEMINGWAY) OAH Case No. 2019-ABC-02833
TRANSMISSION LINE)

This contested case arises out of challenges to the Oregon Department of Energy’s (Department’s) Proposed Order issued July 2, 2020 recommending the Energy Facility Siting Council (Council) approve an Application for Site Certificate (ASC) submitted by Idaho Power Company (Applicant) for the proposed Boardman to Hemingway Transmission Line (proposed facility).

I. PARTY STATUS

Council’s *Order on Appeals* issued November 24, 2020 and the Administrative Law Judge’s¹ *Amended Order on Party Status* issued December 4, 2020 granted party or limited party status in the above-captioned contested case as follows:

A. Parties

1. Applicant is a party to the contested case pursuant to ORS 469.370(5).
2. The Department is a party pursuant to OAR 345-015-0080(2).

B. Limited Parties and number of issues with standing

1. STOP B2H Coalition – 11
2. Eastern Oregon University/Dr. Antell – 2
3. Colin Andrew – 2
4. Kathryn Andrew – 3
5. Susan Badger-Jones – 2
6. Lois Barry – 5
7. Peter Barry – 1
8. Ryan Browne – 2
9. Gail Carbiener/Oregon California Trail Assoc. (OCTA) – 6
10. Matt Cooper – 3

¹ As noted in previous interim orders, for purposes of this contested case, the term Administrative Law Judge (ALJ) has the same meaning as Hearing Officer, as that term is used in Council’s procedural rules, OAR Chapter 345, Division 15.

11. Whit Deschner – 1
12. Jim and Kaye Foss – 1
13. Suzanne Fouty – 1
14. Susan Geer – 4
15. Irene Gilbert – 15
16. Charles Gillis – 1
17. Diane Gray – 2
18. Joe Horst and Anna Cavinato – 4
19. Jane and Jim Howell – 3
20. Charles Lyons – 1
21. Virginia and Dale Mammen – 2
22. Anne March – 2
23. Kevin March – 1
24. JoAnne Marlette – 2
25. Michael McAllister – 3
26. John Milbert – 1
27. Jennifer Miller – 4
28. David Moyal – 1
29. Sam Myers – 2
30. Tim Proesch – 1
31. Louise Squire – 1
32. Stacia Jo Webster – 3
33. Daniel White – 1
34. Jonathan White – 1
35. John Williams – 1
36. John Winters – 1

No party or limited party submitted a petition for indigent status under OAR 345-015-0022 to the ALJ by the established deadline of 9:00 AM Pacific Time, January 7, 2021 (the date and time of the prehearing conference on case management matters).

II. IDENTIFIED ISSUES/PARTIES WITH STANDING ON ISSUE

A. As set out in Council’s *Order on Appeal* and the *Amended Order on Party Status*, the following table identifies, by issue code and number, the properly raised issues for this contested case and the parties/limited parties with standing on the identified issue.

TABLE OF IDENTIFIED ISSUES

Code	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 in the Baker and Cow Valley PACs	Stop B2H; Squire
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	Geer

	monitoring and control responsibilities after five years and allows for compensatory mitigation if weed control is unsuccessful.	
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
FW-12	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.	A. March
FW-13	Whether the proposed Morgan Lake Alternative route complies with the Fish and Wildlife Habitat standard	McAllister
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 inconsistent with the Department's definition of "mitigation" in OAR 345-001-0010(33).	Carbiener/OCTA
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	K. Andrew

	and Union Counties, thereby underestimating and misrepresenting the amount of potentially impacted forestland.	
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 impacts to the cost of forest management practices and whether mitigation must be provided for the entire length of the transmission line for the operational lifetime.	Gilbert
LU-9	Whether Applicant adequately analyzed the risk of wildfires from operation of the proposed transmission lines, especially during "red flag" warning weather conditions, and the impact the proposed transmission lines will have on Mr. Myers's ability to use an aerial applicator on his farmland.	Myers (personal interest)
LU-10	Whether the Department-proposed revisions to the Proposed Order requiring landowner consultation pursuant to ORS 215.276 are unnecessarily specific as to high-value farmland owners.	Applicant
LU-11	Whether the impacts from the proposed facility on accepted farm practices and the cost of accepted farm practices have been adequately evaluated or mitigated.	Gilbert
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 methodologies used for the noise analysis to evaluate compliance with OAR 340-035-0035 were appropriate and 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	Gray

	the Proposed Order at pp. 635-638) reflect reasonable baseline noise estimates for residents of the Morgan Lake area.	
PS	Public Services – OAR 345-022-0110	
PS-1	Traffic Safety: Whether Applicant was required to evaluate traffic safety impacts from construction-related use of Morgan Lake Road.	Badger-Jones
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
PS-9	Whether Department-proposed revisions to the Fire Prevention and Suppression Plan (Public Services Condition 6, Proposed Order Attachment U-3) incorrectly reference applicability to facility operations.	Applicant
PS-10	Whether the Draft Fire Suppression Plan (Attachment U-3) is adequate and whether local service providers would be able to respond to a facility-related fire.	Lyons/Webster
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-	Whether, in the event of retirement of the proposed transmission line, removal	Carbiener/OCTA

2	of concrete footings to a depth of one foot below the surface is sufficient to restore the site to a useful, nonhazardous condition.	
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; 345-022-0040	
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)
SR-5	Whether the Rice Glass Hill Natural Area should be evaluated as a Protected Area	Geer
SR-6	Whether Applicant’s visual impact assessments are invalid because Applicant did not incorporate Oregonians’ subjective evaluation of their resources to evaluated visual impacts, thereby invalidating the visual impact analysis for Morgan Lake Park and other protected areas, scenic resources and important recreational opportunities.	L. Barry; Stop B2H
SR-7	Whether the methods used to determine the extent of an adverse impact of the proposed facility on scenic resources, protected area and recreation along the Oregon Trail were flawed and developed without peer review on public input. Specifically, whether Applicant erred in applying numeric values to the adverse impact and whether Applicant used unsatisfactory measurement locations/observation points in its visual impact assessment.	Stop B2H
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 and loss of soil productivity as a result of the release of stored carbon in soils.	Fouty; Stop B2H
SP-2	Whether the proposed Morgan Lake Alternative complies with the Soil Protection standard.	McAllister
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 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.	Cooper

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

B. Joint Presentation of Public Interests

The 16 issues listed in the table below are issues of public interest in which more than one limited party has standing. As to these issues, the ALJ has discretion to require that the limited parties join in one presentation. *See, e.g., Marbet v. Portland General Electric, 277 Or 447, 455 (1977).*

The ALJ is not, at this time, ordering that, where more than one limited party has standing on a public issue, those limited parties join in one presentation and/or designate the most qualified limited party to represent and present the issue at hearing. However, to avoid redundancy and encourage efficiency, as to the 16 issues listed in the table below, the ALJ requests that the limited parties coordinate their presentations at hearing and their written closing arguments.

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 in the Baker and Cow Valley PACs	Stop B2H and Squire
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 and K. March
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 and Marlette
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 and 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 and Myers
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	Carbiener/OCTA and Miller

	wildfire, safety procedures during red flag conditions, and the requirement that firefighting equipment be present on-site during construction.	
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 and 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 and Winters
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 and Mammen
PS-10	Whether the Draft Fire Suppression Plan (Attachment U-3) is adequate and whether local service providers would be able to respond to a facility-related fire.	Lyons and Webster
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 and 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 and Gilbert
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 and Gilbert
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 and Miller
SR-6	Whether Applicant’s visual impact assessments are invalid because Applicant did not incorporate Oregonians’ subjective evaluation of their resources to evaluated visual impacts, thereby invalidating the visual impact analysis for Morgan Lake Park and other protected areas, scenic resources and important	Stop B2H and L. Barry
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 and loss of soil productivity as a result of the release of stored carbon in soils.	Stop B2H and Fouty

III. GUIDELINES FOR FILING AND SERVING DOCUMENTS AND NAMING CONVENTIONS

A. Submissions by Electronic Mail

For pleadings and documents filed with OAH and served on parties and limited parties by electronic mail, the email subject line shall include: the subject (*i.e.*, discovery request, motion, affidavit of xx, motion); the pertinent issue code and number (as set out in the Table of Identified Issues above); the last name of submitting party/limited party; and the OAH case number and case name (abbreviated as B2H), in this order.

Example: *Request for Discovery Order; Issues NC-1, NC-2, NC-3 and NC-4; Stop B2H; 2019-ABC-02833 B2H.*

B. Document Naming

Where feasible, in naming the document in the caption, include the requesting party/limited party's name, the subject, and the issue code and number.

Example: *Stop B2H Request for Discovery Order, Issues NC-1, NC-2, NC-3 and NC-4.*

C. Service List

Unless otherwise provided herein (*e.g.*, informal discovery requests), a copy of any submission to the OAH shall be served on those listed on the Service List attached to this order. In serving electronic copies to those on the Service List, do not include on the distribution list the email address of individuals who are *not* a party/limited party to the contested case.

IV. CONTESTED CASE PROCESS

A. Applicable Procedural Rules

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).

B. Role and Duties of the ALJ:

1. Pursuant to OAR 345-015-0023(2), the duties of the ALJ include taking all necessary action to:

- (a) Ensure a full, fair and impartial hearing;
- (b) Facilitate presentation of evidence;
- (c) Comply with statutory time limits on Council decisions;
- (d) Maintain order; and
- (e) Assist the Council in making its decision.

2. Pursuant to OAR 345-015-0023(5), the ALJ may:

- (a) Administer oaths and affirmations.
- (b) Rule on offers of proof and receive evidence.
- (c) Order depositions and other discovery and issue subpoenas.
- (d) Order and control discovery, as provided in OAR 137-003-0025.
- (e) Dispose of procedural matters and rule on motions.
- (f) Call and examine witnesses.
- (g) Hold conferences.
- (h) Continue the hearing from time to time.

- (i) Issue protective orders.
- (j) At the request of the Council, or upon motion of a party or limited party for good cause shown as provided in OAR 345-015-0062, and with reasonable notice to all parties, reopen the hearing for receipt of further evidence on issues identified in the notice at any time prior to final decision by the Council.
- (k) Certify any question to the Council for its consideration and disposition.
- (l) Prepare and serve upon the parties a proposed order.
- (m) Take any other action consistent with the Council's governing statutes and the Council's rules.

C. Burden of Proof/Evidence in Contested Cases

1. ORS 183.450(2): The burden of presenting evidence to support a fact or position in a contested case rests on the proponent of the fact or position.

Here, the Applicant had the initial burden to establish that each of the siting standards has been satisfied. In the Proposed Order, the Department found that, subject to compliance with the recommended site certificate conditions, the proposed transmission line complies with ORS 469.300 to 469.520, and the applicable siting standards. Therefore, **in this contested case, those with specific challenges to findings, conclusions and/or recommended site certificate conditions in the Department's Proposed Order bear the burden of proof.** The party or limited party must show how the Applicant failed to meet its burden with regard to the siting standards and/or how the Department erred in its findings, conclusions and/or recommended site certificate conditions.

A party or limited party challenging a finding or conclusion in the Proposed Order must provide factual testimony or evidence to substantiate the claim asserted. Unsubstantiated factual argument(s) or legal conclusions are insufficient to demonstrate the Applicant's failure to establish compliance with any applicable standard.

2. Standard of Proof: Preponderance of the evidence. *Dixon v. Board of Nursing*, 291 Or App 207 (2018); *Harris v. SAIF*, 292 Or 683, 690 (1982); *Metcalf v. AFSD*, 65 Or App 761, 765 (1983). Proof by a preponderance of the evidence means that the fact finder is persuaded that the facts asserted are more likely than not true. *Riley Hill General Contractor v. Tandy Corp.*, 303 Or 390, 402 (1987).

D. Discovery

1. Discovery is the prehearing process that allows a party or limited party to gain access to information in control or possession of another party. A discovery request must be reasonably likely to produce information that is generally relevant to issues in the contested case. OAR 137-003-0025(4).

2. Informal requests for discovery and information. Pursuant to OAR 137-

003-0025(1), before requesting a discovery order from the ALJ, a party must seek the discovery through an informal exchange of information. **As set out in the schedule below, the deadline for submitting informal discovery requests to another party/limited party is January 22, 2021.**²

An informal request for discovery from another party/limited party need not be in any particular form or format, but it must be in writing. It must specify the information requested, identify the party or limited party from which the discovery is sought, and must be served (by electronic mail) on the party or limited party from which the discovery is requested.

If the discovery request pertains to one of the 16 public interest issues identified above in which more than one limited party has standing, then the limited party requesting the discovery shall provide (via electronic mail) a courtesy copy of the discovery request to the other limited parties with standing on that issue, as set out in the table above.

3. OAR 137-003-0025(2): Discovery may include, but is not limited to, depositions of material witnesses, disclosure of names and addresses of witnesses expected to provide testimony; production of documents; requests for admission; and/or written interrogatories.

4. Requests for depositions and discovery orders. Pursuant to OAR 137-003-0025(3), if a party or limited party is not satisfied with the response through informal exchange of information, a party or limited party may file a written request for a discovery order or a written request for a deposition of a material witness in accordance with OAR 137-003-0025. **As set out in the schedule below, such requests must be filed with the ALJ by February 19, 2021.**

A request for deposition or discovery order under OAR 137-003-0025(3) must be in writing, filed with the ALJ, and served (by electronic mail) on the Department and the Applicant (and, if applicable, the limited party from which the discovery is sought). If the discovery request pertains to one of the 16 public interest issues identified above in which more than one limited party has standing, then the limited party requesting the discovery shall provide (via electronic mail) a courtesy copy of the request to the other limited parties with standing on that issue,

Pursuant to OAR 137-003-0025(3)(a), a request to take the deposition of a

² As set out in the December 4, 2020 Notice of Pre-Hearing Conference; Pre-Hearing Conference Agenda on Case Management Matters; Proposed Contested Case Schedule and Revised Service List, the period for discovery through informal exchange of information began as of January 8, 2021, and the deadline for responding to discovery through informal exchange is February 5, 2021. During the January 7, 2021 prehearing conference, Applicant sought clarification regarding the deadline for requesting discovery through informal exchange. The ALJ set January 22, 2021 as that deadline to provide the parties and limited parties at least two weeks (*i.e.*, until February 5, 2021) to timely respond to the informal request.

material witness must include: (1) the witness's name and address (contact information); (2) a showing of the materiality of the witness's testimony; (3) an explanation of why the deposition is necessary; and (4) a request that the witness's testimony be taken before an individual named in the request for the purpose of recording testimony.

Pursuant to OAR 137-003-0025(3)(b), a request for a discovery order (other than a request for a deposition of a material witness) must specify the type of information requested, identify the party or limited from which the discovery is sought, and include a description of the attempts to obtain the requested discovery informally. Furthermore, to assist the ALJ in determining whether to authorize the requested discovery, the request for a discovery order should specify the contested case issue(s) for which the discovery is sought and explain why the request is generally relevant to the issue and/or reasonably likely to produce relevant information. OAR 137-003-0025(4).

As set out in the schedule below, the ALJ anticipates issuing discovery orders on or before March 26, 2021, establishing April 16, 2021 as the due date for producing any discovery authorized and ordered by the ALJ.

E. Motions

1. Motions for Summary Determination:

It is within the ALJ's discretion whether to allow motions for summary determination in contested cases referred by Council.³ In this matter, the ALJ finds the summary determination process is available and it is therefore appropriate to include deadlines for filing such motions and responding to such motions in the Contested Case Schedule.⁴ In setting the motion schedule and

³ On September 2, 2020 the Attorney General (AG) issued an exemption ORS 183.630(2) for Contested Case Hearings Before the Council specifically approving the application of OAR 137-003-0580 to this contested case. Then, on October 21, 2020, the AG issued a broader exemption under ORS 183.630(2) superseding the September 2, 2020 exemption. In the October 21, 2020 exemption, the AG noted that that neither the Model Rules of Procedure for Contested Cases nor the Council's contested cases rules contained a specific rule regarding motions for summary determination. The AG left it "to the Council, presiding ALJ, and the parties to resolve" whether such motions are authorized. Based on the AG's exemption and grant of discretion and the absence of any indication from Council that such motions are prohibited, the ALJ finds such motions are authorized in contested cases before the Council.

⁴ Applicant indicated at the January 7, 2021 prehearing conference that it did not intend to utilize the summary determination process to request a favorable ruling on any of the identified issues and recommended that the ALJ eliminate the deadlines for filing and responding to such motions from the schedule. The Department also represented that it did not anticipate moving for summary determination on any identified issue in the contested case. However, a number of limited parties, including Stop B2H (with standing on 11 issues) and Ms. Gilbert (with standing on 15 issues) requested to retain the summary determination process on the contested case schedule. Stop B2H indicated that it could not assess whether any of its issues would be appropriate for summary determination until after discovery was

explaining the requirements for summary determination in this matter, the ALJ looks to OAR 137-003-0580 for guidance.

OAR 137-003-0580 provides, in pertinent part, as follows:

(1) Not less than 28 calendar days before the date set for hearing, the agency or a party may file a motion requesting a ruling in favor of the agency or party on any or all legal issues (including claims and defenses) in the contested case. The motion, accompanied by any affidavits or other supporting documents, shall be served on the agency and parties in the matter required by OAR 137-003-0520.

* * * * *

(5) The party and agency may stipulate to a record, including a record limited to documents, upon which a summary determination shall be made.

(6) The administrative law judge shall grant the motion for a summary determination if:

(a) The pleadings, affidavits, supporting documents (including any interrogatories and admissions) and the record in the contested case show that there is no genuine issue as to any material fact that is relevant to resolution of the legal issue as to which a decision is sought; and

(b) The agency or party filing the motion is entitled to a favorable ruling as a matter of law.

(7) The administrative law judge shall consider all evidence in a manner most favorable to the non-moving party or non-moving agency.

(8) Each party or the agency has the burden of producing evidence on any issue relevant to the motion as to which that party or the agency would have the burden of persuasion at the contested case hearing.

* * * * *

(10) When a motion for summary determination is made and supported as provided in this rule, a non-moving party or non-moving agency may not rest upon mere allegations or denials contained the

complete. Ms. Gilbert expressed her position that at least one, if not more, of the issues on which she has standing involve questions of law and not disputed facts. Therefore, the ALJ opted to retain the deadlines for filing and responding to motions for summary determination in the contested case schedule.

that party's or agency's notice or answer, if any. When a motion for summary determination is made and supported as provided in this rule, the administrative law judge or the agency must explain the requirements for filing a response to any unrepresented party or parties.⁵

As set out in the schedule below, the deadline for filing a motion for summary determination is May 28, 2021. The deadline for filing a response to the motion is June 25, 2021, and the deadline for any reply to the response brief is July 9, 2021. The motion for summary determination shall specifically reference the issue or issues to which the party or limited party seeks a favorable ruling as a matter of law, using the issue code and number from the Table of Identified Issues set out above.

The ALJ anticipates ruling on any timely filed motions for summary determination on or before August 16, 2021. The ALJ recommends that parties and limited parties electing not to file a motion for summary determination use this time in the contested case schedule to prepare their written testimony and evidence and any proposed site certificate conditions.

2. Other Motions:

Pursuant to OAR 345-015-0054, a party or limited party may file a motion for other relief in writing stating with particularity the grounds and relief sought. The moving party shall submit with the motion any brief, affidavit, or other document relied upon and, if appropriate, a proposed form of order. The moving party shall serve the motion on the Service List.

Within seven calendar days after service of the motion, a party or limited party with standing on the matter may file an answer in support of or in opposition to the motion, accompanied by affidavits or other evidence. The moving party shall have no right to reply, unless the ALJ grants permission to do so. OAR 345-015-0054(2).

F. The Hearing – Presentation of Evidence/Argument

1. Written direct testimony:

The parties and limited parties shall submit direct testimony and evidence in written format, using the document submission guidelines and naming conventions set out previously. Such direct testimony and evidence shall be limited to the issues on which the party or limited party has standing or to site conditions proposed pursuant to OAR 345-015-0085. *See* OAR 345-015-0043 (authorizing the hearing officer to require that witness' qualifications and direct

⁵ For purposes of this contested case, this excerpt from the rule serves as notice and explanation to unrepresented limited parties of the requirements for filing a response.

testimony be submitted in writing). All written submissions must be filed with the OAH by the established deadline with a copy served on all on the Service List.

Written testimony must reference the issue or issues to which the proffered testimony relates. Written testimony must include a statement of the witness's qualifications and copies of all documents to be included in the record.

Expert testimony must also reference the issue(s) to which the proffered testimony relates. Expert testimony must include a statement of the expert's qualifications and a list of the source material and supporting documents relied upon by the expert to establish the expert's conclusions and opinions.

As set out in the schedule below, the deadline for submitting written direct testimony and evidence and any proposed site certificate conditions under OAR 345-015-0085 is September 17, 2021.

2. Written rebuttal testimony:

The parties and limited parties shall submit rebuttal testimony and evidence and response to any proposed site certificate conditions in written format, using the document submission guidelines and naming conventions set out previously. Such testimony and evidence shall indicate the issue or issues to which the proffered testimony relates, and shall be limited to rebutting the testimony and evidence provided by other parties on the issue(s) through direct testimony, or rebutting the testimony relating to a site condition proposed pursuant to OAR 345-015-0085. **The deadline for submitting written rebuttal testimony and evidence is November 12, 2021.**

3. Request for Cross-Examination:

Any party or limited party intending to cross-examine any witness on any issue on which the party or limited party has standing must submit the written request for cross-examination by **November 24, 2021**. The request must identify the witness or witnesses to be cross-examined, and the issue or issues to which the requested cross-examination relates.

4. Status Conference:

Assuming that one or more parties or limited parties will request the opportunity to cross-examine one or more witnesses, the ALJ intends to convene a telephone status conference to address the cross-examination requests and the schedule for the cross-examination hearing. **This status conference is tentatively scheduled for Friday, December 3, 2021 at 1:00 PM, Pacific Time.**⁶

⁶ The date and time for this status conference is subject to change. The ALJ will issue written notice of the date and time of the status conference, along with the telephone number and access code for the conference, at least two weeks prior to the scheduled date for the conference.

Following the telephone status conference and prior to the scheduled cross-examination hearing, the ALJ will issue a scheduling order establishing a schedule for cross-examination.

5. Cross-Examination Hearing:

The Cross-Examination Hearing is scheduled to begin January 10, 2022.⁷
Location, precise dates, times, and witness schedule to be determined.

6. Written closing arguments:

Following the cross-examination hearing, the parties and limited parties shall submit written closing arguments on the issue or issues on which the party or limited party has standing or the proposed site conditions. The precise deadline for submitting written closing arguments is to be determined, but is anticipated to be 30 days after the close of the cross-examination hearing. Closing briefs shall be organized by issue and clearly reference the issue code and siting standard to which the argument relates, and submitted in accordance with the document submission guidelines and naming conventions set out previously.

The ALJ reserves the right to limit the font, format, and page length of the closing briefs. The ALJ will notify the parties and limited parties of any limitations for written closing arguments in a scheduling order issued prior to, or at the close of, the cross-examination hearing.

Following submission of written closing arguments, the parties and limited parties may also submit written response briefs, responding to closing arguments on the issues on which the party or limited party has standing or proposed site conditions. The deadline for submitting response briefs will be 30 days after the deadline for written closing arguments.

G. Proposed Contested Case Order – OAR 345-015-0085(3)

The ALJ anticipates issuing the Proposed Contested Case Order 60 days after the due date for written response briefs (or approximately 120 days from the close of the cross-examination hearing).

The Proposed Contested Case Order will include information on the process for filing exceptions under OAR 345-015-0085(5) and responses to exceptions pursuant to OAR 345-015-0085(6).

⁷ The ALJ anticipates holding the cross-examination hearing in-person. However, if pandemic conditions persist and/or logistics and public health and safety concerns at the time prevent in-person gatherings of large groups of individuals, then the ALJ may convene the cross-examination hearing virtually, via video conference or telephone or combination thereof.

V. CONTESTED CASE SCHEDULE

	Item	Date
DISCOVERY PHASE		
Parties	Discovery through informal information exchange, OAR 137-003-0025(1)	Begins 1/8/21
Parties	Deadline for requesting informal discovery	Fri 1/22/21
Parties	Deadline for responding through informal exchange	Fri 2/5/21
Parties	Deadline for requesting discovery order under OAR 137-003-0025(3)	Fri 2/19/21
Parties	Deadline for objections to discovery requests	Fri 3/5/21
ALJ	Discovery orders issued	Fri 3/26/21
Parties	Deadline for responses to discovery per discovery order	Fri 4/16/21
MOTIONS FOR SUMMARY DETERMINATION		
Parties	Deadline for filing motions for summary determination OAR 137-003-0580	Fri 5/28/21
Parties	Deadline for responses to motions for summary determination	Fri 6/25/21
Parties	Deadline for replies to responses to motions for summary determination	Fri 7/9/21
ALJ	Rulings on motions for summary determination	Fri 8/13/21
TESTIMONY, CROSS-EXAM HEARING, BRIEFS		
Parties	Submit direct testimony and evidence OAR 345-015-0043 and submit proposed site certificate conditions OAR 345-015-0085	Fri 9/17/21
Parties	Submit rebuttal testimony and evidence, and responses to proposed site certificate conditions	Fri 11/12/21
Parties	Submit sur-rebuttal testimony and evidence	Wed 11/24/21
Parties	Submit requests for cross-examination of witnesses	Wed 11/24/21
Parties	Submit responses to cross-examination requests	Thurs 12/2/21
All	Status Conference re: Cross Examination Hearing schedule	Fri 12/3/21 at 1:00 PM
ALJ	Issues Notice of Cross-Examination Hearing and Schedule for Hearing	Fri 12/10/21
Parties	Cross-examination Hearing– (grouped by siting standard/issue – location, precise dates, and times to be determined)	1/10/22 to 1/28/22
Parties	Submit written closing arguments	30 days after close of hearing record
Parties	Submit written response briefs	30 days later
CONTESTED CASE ORDER		
ALJ	Issue Proposed Contested Case Order	60 days after response briefs filed
Parties	Deadline for exceptions to Proposed Contested Case Order	30 days after PO issued
Parties	Deadline for response to exceptions	15 days later

The ALJ reserves the right to adjust the Contested Case Schedule due to unforeseen or extenuating circumstances and to ensure that all parties and limited parties have a full and fair opportunity to be heard in this matter. The ALJ will notify the parties and limited parties in writing of changes or adjustments to the schedule.

So Ordered.

Date: January 14, 2021

Alison Greene Webster
Senior Administrative Law Judge
Office of Administrative Hearings

CERTIFICATE OF MAILING

On January 14, 2021, I mailed the foregoing ORDER ON CASE MANAGEMENT MATTERS AND CONTESTED CASE SCHEDULE issued on this date in OAH Case No. 2019-ABC-02833.

By: First Class Mail:

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

By: Electronic Mail:

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

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 Law
Oxbow Law Group, LLC
mike@oxbowlaw.com

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

Kellen Tardaewether
Agency Representative
Kellen.tardaewether@oregon.gov

Sarah Esterson
Oregon Department of Energy
Sarah.Esterson@oregon.gov

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

Jesse Ratcliffe
Assistant Attorney General
jesse.d.ratcliffe@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
mcgcarb@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

Louise Squire
squirrel@eoni.com

Stacia Jo Webster
staciajwebster@gmail.com

Daniel L. White
danno@bighdesign.biz

Jonathan White
jondwhite418@gmail.com

John Winters
wintersnd@gmail.com

Charles A Lyons
marvinroadman@gmail.com

Anesia N Valihov
Hearing Coordinator